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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

WHEN: Tuesday, September 15, 2009
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Adjustment of Appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2009 Tariff-Rate Quota Year

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document sets forth the revised appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2009 quota year reflecting the cumulative annual transfers from Appendix 1 to Appendix 2 for certain dairy product import licenses permanently surrendered by licensees or revoked by the Licensing Authority.

DATES: *Effective Date:* August 14, 2009.

FOR FURTHER INFORMATION CONTACT: Jorge Martinez, Dairy Import Licensing Program, Import Policies and Export Reporting Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1021 or telephone at (202) 720–9439 or e-mail at *jorge.martinez@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service (FAS), under a delegation of authority from the Secretary of Agriculture, administers the Dairy Tariff-Rate Import Quota Licensing Regulation codified at 7 CFR 6.20–6.37 that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule of the United States. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The Import Policies and Export Reporting Division, Foreign Agricultural Service, U.S. Department of Agriculture, issues these licenses and, in conjunction with U.S. Customs and Border Protection, U.S. Department of Homeland Security, monitors their use.

The regulation at 7 CFR 6.34(a) states: ''Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23, is permanently surrendered or is revoked by the Licensing Authority, the amount of such license will be transferred to Appendix 2.'' Section 6.34(b) provides that the cumulative annual transfers will be published in the **Federal Register**. Accordingly, this document sets forth the revised Appendices for the 2009 tariff-rate quota year.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, Imports, Reporting and recordkeeping requirements.

Issued at Washington, DC, the 13th day of July 2009.

Ronald Lord,

Licensing Authority.

■ Accordingly, 7 CFR part 6 is amended as follows:

PART 6—IMPORT QUOTAS AND FEES

■ 1. The authority citation for Part 6, Subpart—Dairy Tariff-Rate Import Quota Licensing continues to read as follows:

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Public Law 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Public Law 103–465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

■ 2. Appendices 1, 2 and 3 to Subpart—Dairy Tariff-Rate Import Quota Licensing are revised to read as follows:

Appendices 1, 2 and 3 to Subpart—Dairy Tariff-Rate Import Quota Licensing

ARTICLES SUBJECT TO: APPENDIX 1, HISTORICAL LICENSES; APPENDIX 2, NONHISTORICAL LICENSES; AND APPENDIX 3, DESIGNATED IMPORTER LICENSES FOR QUOTA YEAR 2009

[Quantities in kilograms]

Article by additional U.S. note number and country of origin	Appendix 1	Appendix 2	Appendix 3	
			Tokyo round	Uruguay round
NON-CHEESE ARTICLES				
BUTTER (NOTE 6)	5,278,428	1,698,572	.....	.....
EU–25	75,459	20,702	.....	.....
New Zealand	111,671	38,922	.....	.....
Other Countries	52,986	20,949	.....	.....
Any Country	5,038,312	1,617,999	.....	.....
DRIED SKIM MILK (NOTE 7)	.....	5,261,000	.....	.....
Australia	.....	600,076	.....	.....
Canada	.....	219,565	.....	.....
Any Country	.....	4,441,359	.....	.....
DRIED WHOLE MILK (NOTE 8)	3,175	3,318,125	.....	.....
New Zealand	3,175	.....	.....	.....
Any Country	.....	3,318,125	.....	.....
DRIED BUTTERMILK/WHEY (NOTE 12)	11,000	213,981	.....	.....
Canada	.....	161,161	.....	.....

ARTICLES SUBJECT TO: APPENDIX 1, HISTORICAL LICENSES; APPENDIX 2, NONHISTORICAL LICENSES; AND APPENDIX 3, DESIGNATED IMPORTER LICENSES FOR QUOTA YEAR 2009—Continued

[Quantities in kilograms]

Article by additional U.S. note number and country of origin	Appendix 1	Appendix 2	Appendix 3	
			Tokyo round	Uruguay round
New Zealand	11,000	52,820	.....	.....
BUTTER SUBSTITUTES CONTAINING OVER 45 PERCENT OF BUTTERFAT AND/OR BUTTER OIL (NOTE 14)	.....	6,080,500	.....	.....
Any Country	.....	6,080,500	.....	.....
TOTAL: NON-CHEESE ARTICLES	5,292,603	16,572,178	.....	.....
CHEESE ARTICLES				
CHEESE AND SUBSTITUTES FOR CHEESE (EXCEPT: SOFT RIPENED COW'S MILK CHEESE; CHEESE NOT CONTAINING COW'S MILK; CHEESE (EXCEPT COTTAGE CHEESE) CONTAINING 0.5 PERCENT OR LESS BY WEIGHT OF BUTTERFAT; AND, ARTICLES WITHIN THE SCOPE OF OTHER IMPORT QUOTAS PROVIDED FOR IN THIS SUBCHAPTER) (NOTE 16)	23,018,053	8,451,678	9,661,128	7,496,000
Argentina	7,690	.....	92,310	.....
Australia	535,628	5,542	758,830	1,750,000
Canada	1,013,777	127,223	.....	.....
Costa Rica	.....	.....	.....	1,550,000
EU–25	15,878,329	7,389,327	1,132,568	3,446,000
Of which Portugal is	65,838	63,471	223,691	.....
Israel	79,696	.....	593,304	.....
Iceland	294,000	.....	29,000	.....
New Zealand	4,389,093	426,379	6,506,528	.....
Norway	124,982	25,018	.....	.....
Switzerland	593,952	77,460	548,588	500,000
Uruguay	.....	.....	.....	250,000
Other Countries	100,906	100,729	.....	.....
Any Country	.....	300,000	.....	.....
BLUE-MOLD CHEESE (EXCEPT STILTON PRODUCED IN THE UNITED KINGDOM) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, BLUE-MOLD CHEESE (NOTE 17)	2,285,947	195,054	.....	430,000
Argentina	2,000	.....	.....	.....
EU–25	2,283,946	195,054	.....	350,000
Chile	.....	.....	.....	80,000
Other Countries	1	.....	.....	.....
CHEDDAR CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, CHEDDAR CHEESE (NOTE 18)	3,596,515	687,341	519,033	7,620,000
Australia	916,205	68,294	215,501	1,250,000
Chile	.....	.....	.....	220,000
EU–25	52,404	210,596	.....	1,050,000
New Zealand	2,525,360	271,108	303,532	5,100,000
Other Countries	102,546	37,343	.....	.....
Any Country	.....	100,000	.....	.....
AMERICAN-TYPE CHEESE, INCLUDING COLBY, WASHED CURD AND GRANULAR CHEESE (BUT NOT INCLUDING CHEDDAR) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING OR PROCESSED FROM SUCH AMERICAN-TYPE CHEESE (NOTE 19)	2,720,253	445,300	357,003	.....
Australia	780,380	100,618	119,002	.....
EU–25	145,148	208,852	.....	.....
New Zealand	1,644,084	117,915	238,001	.....
Other Countries	150,641	17,915	.....	.....
EDAM AND GOUDA CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, EDAM AND GOUDA CHEESE (NOTE 20)	5,135,020	471,382	.....	1,210,000
Argentina	110,495	14,505	.....	110,000
EU–25	4,905,445	383,555	.....	1,100,000
Norway	114,318	52,682	.....	.....
Other Countries	4,762	20,640	.....	.....
ITALIAN-TYPE CHEESES, MADE FROM COW'S MILK, (ROMANO MADE FROM COW'S MILK, REGGIANO, PARMESAN, PROVOLONE, PROVOLETTI, SBRINZ, AND GOYA—NOT IN ORIGINAL LOAVES) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH ITALIAN-TYPE CHEESES, WHETHER OR NOT IN ORIGINAL LOAVES (NOTE 21)	6,411,744	1,108,803	795,517	5,165,000
Argentina	3,915,276	210,207	367,517	1,890,000
EU–25	2,496,468	885,532	.....	2,025,000
Romania	.....	.....	.....	500,000

ARTICLES SUBJECT TO: APPENDIX 1, HISTORICAL LICENSES; APPENDIX 2, NONHISTORICAL LICENSES; AND APPENDIX 3, DESIGNATED IMPORTER LICENSES FOR QUOTA YEAR 2009—Continued

[Quantities in kilograms]

Article by additional U.S. note number and country of origin	Appendix 1	Appendix 2	Appendix 3	
			Tokyo round	Uruguay round
Uruguay	.....	.....	428,000	750,000
Other Countries	.....	13,064	.....	.....
SWISS OR EMMENTHALER CHEESE OTHER THAN WITH EYE FORMATION, GRUYERE-PROCESS CHEESE AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH CHEESES (NOTE 22)	5,341,056	1,310,258	823,519	380,000
EU–25	4,071,866	1,080,128	393,006	380,000
Switzerland	1,235,692	183,795	430,513	.....
Other Countries	33,498	46,335	.....	.....
CHEESE AND SUBSTITUTES FOR CHEESE, CONTAINING 0.5 PERCENT OR LESS BY WEIGHT OF BUTTERFAT (EXCEPT ARTICLES WITHIN THE SCOPE OF OTHER TARIFF-RATE QUOTAS PROVIDED FOR IN THIS SUBCHAPTER), AND MARGARINE CHEESE (NOTE 23)	1,867,826	2,557,092	1,050,000	.....
EU–25	1,867,825	2,557,092	.....	.....
Israel	.....	.....	50,000	.....
New Zealand	.....	.....	1,000,000	.....
Other Countries	1	.....	.....	.....
SWISS OR EMMENTHALER CHEESE WITH EYE FORMATION (NOTE 25)	15,999,980	6,297,351	9,557,945	2,620,000
Argentina	.....	9,115	70,885	.....
Australia	209,698	.....	290,302	.....
Canada	.....	.....	70,000	.....
EU–25	11,188,057	5,288,771	4,003,172	2,420,000
Iceland	149,999	.....	150,001	.....
Israel	27,000	.....	.....	.....
Norway	3,187,264	468,046	3,227,690	.....
Switzerland	1,178,377	505,728	1,745,895	200,000
Other Countries	59,585	25,691	.....	.....
TOTAL: CHEESE ARTICLES	66,376,394	21,524,259	22,764,145	24,921,000

[FR Doc. E9–19529 Filed 8–13–09; 8:45 am]
BILLING CODE 3410–10–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 0807311007–91137–02]

RIN 0691–AA69

International Services Surveys: BE–140, Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Bureau of Economic Analysis' (BEA) regulations to set forth the reporting requirements for a new mandatory Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons. The survey will collect data on cross-border reinsurance and other insurance transactions from U.S. insurance companies. The BE–140 survey will be conducted every five years with the first survey covering calendar year 2008. The BE–140 survey data will be used by BEA to estimate the insurance services component of the U.S. International Transactions Accounts (ITAs) and other economic accounts compiled by BEA.

DATES: This final rule will be effective. September 14, 2009.

FOR FURTHER INFORMATION CONTACT: Chris Emond, Chief, Special Surveys Branch, Balance of Payments Division, (BE–50) Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; e-mail; or phone (202) 606–9826.

SUPPLEMENTARY INFORMATION: In the April 10, 2009 **Federal Register** (74 FR 16337), BEA published a notice of proposed rulemaking to amend 15 CFR 801.9(a) to set forth the reporting requirements for a new mandatory survey entitled BE–140, Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons. No comments were received on the proposed rule. Thus, the proposed rule is adopted without change.

Description of Changes

The BE–140 survey is a mandatory survey and will be conducted by BEA every five years, with the first survey covering calendar year 2008, pursuant to the authority provided in the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' For the initial survey, BEA will send the survey to potential respondents in September of 2009; responses will be due by December 1, 2009.

The BE–140 survey will collect information from U.S. insurance companies on the following covered transactions: Reinsurance assumed from or ceded to insurance companies resident abroad, primary insurance sold to foreign persons, and receipts and payments of auxiliary insurance services. The specific data that will be collected on the survey are: (1) Premiums earned, and (2) losses, on reinsurance assumed; (3) premiums incurred, and (4) losses, on reinsurance ceded; (5) premiums earned, and (6) losses, on primary insurance sold; (7) sales of, and (8) purchases of, auxiliary insurance services. The exemption level for the survey is $2 million based on

one of the eight categories listed above. Insurance companies that exceed this threshold must supply data on the amount of their insurance transactions for each category, disaggregated by country.

U.S. insurance companies that are exempt from the reporting requirements because they do not meet the criteria for reporting on the BE–140 survey form are requested to provide, on a voluntary basis, the estimates of their covered insurance transactions. Any U.S. insurance company that receives the BE–140 survey form from BEA, but that is not required to report data because it is exempt under the regulations, must provide information on the reason why it is exempt. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact. If a U.S. insurance company does not receive the BE–140 survey form and is not otherwise required to report under these regulations, then the company is not required to take any action.

Survey Background

BEA conducts the survey pursuant to authority provided in section 4(a) of the Act (22 U.S.C. 3103(a)), which provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection.

In section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated the responsibilities under the Act for performing functions concerning international trade in services to the Secretary of Commerce, who has redelegated them to BEA.

Data from the BE–140 survey are needed to monitor U.S. exports and imports of insurance services and other international insurance transactions; analyze their impact on the U.S. and foreign economies; compile and improve the U.S. international transactions, national income and product, and input-output accounts; support U.S. international trade policy on insurance services; assess and promote U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 13132.

Paperwork Reduction Act

The collection-of-information in this final rule has been approved by the Office of Management and Budget (OMB) under control number 0608–0073 pursuant to the requirements of the Paperwork Reduction Act.

Notwithstanding any other provisions 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 Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number. The collection will display this number.

The BE–140 benchmark survey is expected to result in the filing of reports from approximately 1000 respondents. Of this number, approximately 500 respondents would report mandatory or voluntary data on the survey and approximately 500 respondents would not report data but would respond with the required statement of exemption. The respondent burden for this collection of information would vary from one respondent to another, but is estimated to average 8 hours annually, including time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information for the respondents that file mandatory or voluntary data and one hour for respondents that do not report data. Thus, the total respondent burden for the survey is estimated at 4,500 hours.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule should be sent to (1) The Bureau of Economic Analysis via mail to U.S. Department of Commerce, Bureau of Economic Analysis, Chris Emond, Chief, Special Surveys Branch (BE–50), Washington, DC 20230, via e-mail at *christopher.emond@bea.gov*, or by FAX at 202–606–5318; and (2) the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0073, PRA Desk Officer for BEA, via e-mail at *pbugg@omb.eop.gov,* or by FAX at 202–395–7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule. No comments were received regarding the economic impact of this rule. As a result, no final regulatory flexibility analysis was prepared.

List of Subjects in 15 CFR Part 801

International transactions, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: July 2, 2009.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

■ For the reasons set forth in the preamble, BEA amends 15 CFR part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

■ 1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; and E.O. 11961, 3 CFR, 1977 Comp., p. 86, as amended by E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518, 3 CFR, 1985 Comp., p 348.

■ 2. Revise § 801.9(a) to read as follows:

§ 801.9 Reports required.

(a) *Benchmark surveys.* Section 4(a)(4) of the Act (22 U.S.C. 3103) provides that benchmark surveys of trade in services between U.S. and unaffiliated persons be conducted, but not more frequently than every 5 years. General reporting requirements, exemption levels, and the years of coverage for the BE–120 survey may be found in § 801.10; general reporting requirements, exemption levels, and the years of coverage for the BE–80 survey may be found in § 801.11; and general reporting requirements, exemption levels, and the years for coverage for the BE–140 survey may be found in § 801.12: More detailed instructions are given on the forms themselves.

* * * * *

■ 3. Add § 801.12 to read as follows:

§ 801.12 Rules and regulations for the BE–140, Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons.

(a) The BE–140, Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons, will be conducted covering calendar year 2008 and every fifth year thereafter. All legal authorities, provisions, definitions, and requirements contained in § 801.1 through § 801.9(a) are applicable to this survey. More detailed instructions and descriptions of the individual types of transactions covered are given on the report form itself. The BE–140 consists of three parts and two schedules. Part 1 requests information on whom to consult concerning questions about the report and the certification section. Part 2 requests information about the reporting insurance company. Part 3 requests information needed to determine whether a report is required, the types of transactions that would be reported, and which schedules apply. Each of the two schedules covers the types of insurance services to be reported and the ownership relationship between the U.S. insurance company and foreign transactor and is to be completed only if the U.S. insurance company has transactions of the types covered by the particular schedule.

(b) Who must report.

(1) *Mandatory reporting.* A BE–140 report is required from each U.S. insurance company with respect to the transactions listed below, if any of the eight items was greater than $2 million or less than negative $2 million for the calendar year covered by the survey on an accrual basis:

(i) Premiums earned, and

(ii) Losses, on reinsurance assumed;

(iii) Premiums incurred, and

(iv) Losses, on reinsurance ceded;

(v) Premiums earned, and

(vi) Losses, on primary insurance sold;

(vii) Sales of, and

(viii) Purchases of, auxiliary insurance services.

U.S. insurance companies that file pursuant to this mandatory reporting requirement must complete parts 1 through 3 of Form BE–140 and all applicable schedules. The total amounts of transactions applicable to a particular schedule are to be entered in the appropriate column(s) and these amounts must be distributed among the countries involved in the transactions.

(2) *Voluntary reporting.* If, during the calendar year covered, the U.S. insurance company's transactions do not exceed the exemption level for any of the types of transactions covered by the survey, the U.S. person is requested to provide an estimate of the total for each type of transaction. Submission of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed records search.

(3) Any U.S. insurance company that receives the BE–140 survey form from BEA, but is not reporting data in either the mandatory or voluntary section of the form, must complete Parts 1 through 3 of the survey. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(c) *Covered types of insurance transactions.* The BE–140 survey is intended to collect information on U.S. international insurance transactions. The types of insurance transactions covered are: Reinsurance assumed from or ceded to insurance companies resident abroad, primary insurance sold to foreign persons, and receipts and payments of auxiliary insurance services.

[FR Doc. E9–19517 Filed 8–13–09; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM09–20–000; Order No. 725]

Service of Interlocutory Appeals

Issued August 10, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Commission is amending regulations which specify on whom persons appealing a presiding officer's denial of a motion to permit an interlocutory appeal must serve copies of the appeal. The amendment requires that any person filing an appeal must separately serve a copy on not only the Motions Commissioner but also on the General Counsel.

DATES: *Effective Date:* This rule will become effective September 14, 2009.

FOR FURTHER INFORMATION CONTACT:

Lawrence Greenfield, Deputy Associate General Counsel, Office of the General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 502–6415, *lawrence.greenfield@ferc.gov.*

Kirsten M. Bowden, Office of the General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 502–8877, *kirsten.bowden@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

1. By this instant final rule, the Commission is amending Rule 715(c)(1) of its Rules of Practice and Procedure, 18 CFR 385.715(c)(1), which governs the appeal process when a presiding officer has denied a motion to permit an interlocutory appeal. This amendment specifies on whom persons appealing a presiding officer's denial of a motion to permit an interlocutory appeal must serve copies of the appeal. Given that the Motions Commissioner has only seven days to act on an interlocutory appeal, it is important that the Motions Commissioner be made aware of the appeal as quickly as possible. Accordingly, the amendment adopted here requires that any person filing an appeal must serve a copy not only on the Motions Commissioner but also on the General Counsel.

II. Background

2. On April 28, 1982, the Commission promulgated Order No. 225,[1] reorganizing revising, and updating its Rules of Practice and Procedure.

3. In Order No. 225, the Commission adopted Rule 715, which governs interlocutory appeals to the Commission and sets forth the relevant standard by which a presiding officer or the Motions Commissioner determines whether to permit or deny an interlocutory appeal to the Commission. These procedures allow a question raised in a proceeding pending before a judge, or other presiding officer, to be determined by the Commission at a time prior to presentation of the entire case to the Commission for decision or review.[2]

4. In Order No. 402, the Commission revised Rule 715 and required that those filing an appeal of a denial of a motion to permit an interlocutory appeal separately serve an additional copy of the appeal on the Motions Commissioner.[3]

III. Discussion

5. The Commission is amending Rule 715(c)(1) to require persons filing an interlocutory appeal to serve an additional copy of the appeal of a denial of a motion to permit an interlocutory appeal on the General Counsel.

6. The Motions Commissioner has seven days after an appeal is filed to make a determination as to whether or not the participant that has filed the appeal has demonstrated extraordinary circumstances that warrant Commission action.[4] Within those seven days, the Motions Commissioner must: (1) Obtain the participant's filing; (2) consider whether the information presented is sufficiently complete; and (3) determine whether extraordinary circumstances exist which make prompt Commission review of the contested ruling necessary to prevent detriment to the public interest or to prevent irreparable harm to a person. If no extraordinary circumstances determination is made within seven days after the appeal is filed and if the Motions Commissioner has not otherwise provided for a different time period to receive and consider additional information, the appeal is automatically denied under Rule 715(c)(5).[5]

7. The Motions Commissioner, as noted, has only seven days to decide whether an appeal meets the extraordinary circumstances standard. Thus, it is important that the Motions Commissioner be made aware of the appeal as quickly as possible.[6]

8. The Commission believes that serving a copy of the appeal on the General Counsel, in addition to the Motions Commissioner, will better ensure that the Motions Commissioner receives the appeal in sufficient time to reach a decision.

IV. Information Collection Statement

9. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[7] However, this instant Final Rule does not contain any information collection requirements and compliance with OMB regulations is thus not required.

V. Environmental Analysis

10. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[8] Issuance of this Final Rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act of 1969. Part 380 of the Commission's regulations lists exemptions to the requirement to draft an Environmental Analysis or Environmental Impact Statement. Included is an exemption for procedural, ministerial or internal administrative actions.[9] This rulemaking is exempt under that provision.

VI. Regulatory Flexibility Act

11. The Regulatory Flexibility Act of 1980 (RFA) [10] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This instant Final Rule concerns agency procedures. The Commission certifies that it will not have a significant economic impact upon participants in Commission proceedings. An analysis under the RFA is not required.

VII. Document Availability

12. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

13. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

14. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VIII. Effective Date

15. The Commission is issuing this rule as an instant Final Rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure or practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of agency procedure and will not significantly affect regulated entities or the general public.

16. These regulations are effective September 14, 2009.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Electric utilities, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,

Secretary.

■ In consideration of the foregoing, the Commission amends Part 385, Chapter I,

[1] *Revision of Rules of Practice and Procedure To Expedite Trial-Type Hearings,* Order No. 225, 47 FR 19014 (May 3, 1982), FERC Stats. & Regs. ¶ 30,358 (1982), *order on reh'g,* Order No. 225–A, 47 FR 35952 (August 18, 1982), FERC Stats. & Regs. ¶ 30,385 (1982).

[2] 18 CFR 385.715.

[3] *Rules of Practice and Procedure; Interlocutory Appeals,* Order No. 402, 49 FR 39538 (October 9, 1984), FERC Stats. & Regs. ¶ 30,604 (1984).

[4] 18 CFR 385.715.

[5] *Id.; Rules of Practice and Procedure; Interlocutory Appeals,* Order No. 402, 49 FR 39538 (October 9, 1984), FERC Stats. & Regs. ¶ 30,604 (1984).

[6] 18 CFR 385.715; *Rules of Practice and Procedure; Interlocutory Appeals,* Order No. 402, 49 FR 39538 (October 9, 1984), FERC Stats. & Regs. ¶ 30,604 (1984).

[7] 5 CFR 1320.12.

[8] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[9] 18 CFR 380.4(a)(1).

[10] 5 U.S.C. 601–12.

Title 18, *Code of Federal Regulations,* as follows:

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825v, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352, 16441, 16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 2. Section 385.715, paragraph (c)(1), is revised to read as follows:

§ 385.715 Interlocutory appeals to the Commission from rulings of presiding officers (Rule 715).

* * * * *

(c) *Appeal of a presiding officer's denial of motion to permit appeal.* (1) If a motion to permit appeal is denied by the presiding officer, the participant who made the motion may appeal the denial to the Commissioner who is designated Motions Commissioner, in accordance with this paragraph. For purposes of this section, ''Motions Commissioner'' means the Chairman or a member of the Commission designated by the Chairman to rule on motions to permit interlocutory appeal. Any person filing an appeal under this paragraph must serve separate copies of the appeal on the Motions Commissioner and on the General Counsel by Express Mail or by hand delivery.

* * * * *

[FR Doc. E9–19471 Filed 8–13–09; 8:45 am]

BILLING CODE 6717–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans prescribes interest assumptions for valuing and paying certain benefits under terminating single-employer plans. This final rule amends the benefit payments regulation to adopt interest assumptions for plans with valuation dates in September 2009. Interest assumptions are also published on PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective September 1, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

These interest assumptions are found in two PBGC regulations: the regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022) and the regulation on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044). Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates only the assumptions under the benefit payments regulation.

Two sets of interest assumptions are prescribed under the benefit payments regulation: (1) a set for PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by PBGC (found in Appendix B to Part 4022), and (2) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to Part 4022 the interest assumptions for PBGC to use for its own lump-sum payments in plans with valuation dates during September 2009, and (2) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology for valuation dates during September 2009.

The interest assumptions that PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent no change from those in effect for August 2009. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during September 2009, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 191, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* *	*	*	*		*		*	
191	9–1–09	10–1–09	3.00	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 191, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* *	*	*	*		*		*	
191	9–1–09	10–1–09	3.00	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 6th day of August 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. E9–19437 Filed 8–13–09; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0523]

RIN 1625–AA00

Safety Zones: Swim Events in Lake Champlain, NY, and VT; Casco Bay, Rockland Harbor, Linekin Bay, ME

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing 5 temporary safety zones for various swim events within the Coast Guard Sector Northern New England area, including: the ''Tri for a Cure Triathlon'' in South Portland, Maine; the ''Y-Tri for a Cure Triathlon'' in Plattsburg, New York; the ''Greater Burlington YMCA Lake Swim'' in Burlington, Vermont; the ''Rockland Breakwater Swim'' in Rockland, Maine and the ''Cabbage Island Swim'' in Boothbay Harbor, Maine. These temporary safety zones are necessary to provide for the safety of life on the navigable waters by prohibiting spectators, vessels, and other users of the waterway from entering an area surrounding the participants of the swim events due to the hazards associated with multiple swimmers in close proximity to operating vessels.

DATES: This rule is effective from 8 a.m. on August 8, 2009 until 12:30 p.m. on August 29, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0523 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–2009–0523 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Chief Petty Officer Randy Bucklin, Coast Guard Sector Northern New England, Waterways Management Division; telephone 207–741–5440, e-mail *Randy.Bucklin@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 a notice and comment period would be impracticable due to the time constraints resulting from the immediacy of the upcoming events. The Coast Guard did not receive notification of the exact location or proposed dates for the swim events in sufficient time to issue a NPRM for this rulemaking. Further, the expeditious implementation of this rule is in the public interest because it will help ensure the safety of those involved in participating in the swim event, the spectators, and users of the waterway during the swim events. Finally, a delay or cancellation of the swim events in order to accommodate a notice and comment period is contrary to the public's interest in this event occurring as scheduled.

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**. As noted above, the Coast Guard finds that it is both impractical and contrary to public interest to delay the effective date of this rule for 30 days after publication. Immediate action is needed in order to ensure the safety of the participants of the swim events, spectators and users of the waterway. The public will have some notice after publication in the **Federal Register** for

the events scheduled near the end of August, specifically the Rockland Breakwater Swim.

Background and Purpose

The ''Tri for a Cure Triathlon''; the ''Y-Tri Triathlon''; the ''Greater Burlington YMCA Lake Swim''; the ''Rockland Breakwater Swim'' and the ''Cabbage Island Swim'' are annual swimming events held in the month of August in the towns of Plattsburg, New York; Burlington, Vermont; South Portland, Rockland, and Linekin Bay in Boothbay, Maine.

These regulations will establish fixed safety zones around the perimeter of the affected portions of the navigable waters of Plattsburg, Burlington, South Portland, Rockland and Linekin Bay. These safety zones are designed to protect, spectators from the hazards associated with swim events, and to protect the participants from the dangers of nearby vessel traffic by preventing entry into the zone during the enforcement time unless prior authorization is received by the Coast Guard Captain of the Port Sector Northern New England. Hazards include the vessels of both spectators and participants the risks to participants that could come in contact with vessels as well as the associated low visibility of the participants in the swim event.

Discussion of Rule

This rule creates the following temporary safety zones: ''Y-Tri for a Cure Triathlon'': All navigable waters of Lake Champlain within a 200 foot radius of the participants in the vicinity of Point Au State Park, Plattsburg, New York enclosed by an area starting at latitude 44°46′30″ N, longitude 073°23′26″ W; latitude 44°46′17″ N, longitude 073°23′26″ W; latitude 44°46′17″ N, longitude 073°23′46″ W; latitude 44°46′29″ N, longitude 073°23′46″ W; and thence to the beginning. This safety zone will be enforced from 9 a.m. to 10 p.m. on August 8, 2009;

''Greater Burlington YMCA Lake Swim'': All navigable waters of the Lake Champlain within a 200 foot radius of the participants in the vicinity of North Hero Island, Burlington, Vermont who are swimming in an area enclosed by a line starting at latitude 44°46′55″ N, longitude 073°22′14″ W; latitude 44°47′08″N, longitude 073°19′05″ W; latitude 44°46′48″N, longitude 073°17′13″ W; latitude 44°46′09″N, longitude 073°16′39″ W; latitude 44°41′08″N, longitude 073°20′58″ W; and latitude 44°41′36″ N, longitude 073°23′01″ W. This safety zone will be enforced from 8 a.m. to 6 p.m. on August 8, 2009;

''Tri for a Cure Triathlon'': all navigable waters of the Casco Bay within a 200 foot radius of the participants who are swimming in the vicinity of Spring Point Light House, South Portland, Maine, specifically within an area enclosed by an area starting at latitude 43°39′01″ N, longitude 070°13′32″ W; latitude 43°39′07″ N, longitude 070°13′29″ W; latitude 43°39′06″ N, longitude 070°13′41″ W; and latitude 43°39′01″ N, longitude 070°13′36″ W. This safety zone will be enforced from 7:30 a.m. to 11 a.m. on August 9, 2009;

''Rockland Breakwater Swim'': All navigable waters of Rockland Harbor within a 200 foot radius of the participants swimming in the vicinity of Rockland Breakwater, Rockland, Maine enclosed by an area starting at latitude 44°06′16″ N, longitude 069°04′39″ W; latitude 44°06′13″ N, longitude 069°04′36″ W; 44°06′12″ N, longitude 069°04′43″ W; latitude 44°06′17″ N, longitude 069°04′44″ W; and latitude 44°06′17″ N, longitude 069°04′40″ W. This safety zone will be enforced from 8:30 a.m. to 12:30 p.m. on August 29, 2009;

''Cabbage Island Swim'': All navigable waters of Linekin Bay within a 200 foot radius of the participants swimming in the vicinity of Cabbage Island and Sprucewold Beach in Boothbay Harbor, Maine enclosed by an area starting at latitude 43°50′37″ N, longitude 069°36′23″ W; latitude 43°50′37″ N, longitude 069°36′59″ W; latitude 43°50′16″ N, longitude 069°36′46″ W; and latitude 43°50′22″ N, longitude 069°36′21″ W. This safety zone will be enforced from 1 p.m. to 6 p.m. on August 8, 2009.

During the times when the safety zones are enforced, vessel traffic will be restricted within the designated locations. Entry into these zones by any person or vessel will be prohibited unless specifically authorized by the Captain of the Port Sector Northern New England, or his designated representatives.

The Coast Guard has determined that the safety zones will not have a significant impact on commercial vessel traffic due to the temporary nature of the zones' time and scope. The zones have been limited to the areas surrounding the events and they will be enforced only during the times of the swim event. Public notifications will be made via marine information broadcasts during the effective period of these safety zones.

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.

The Coast Guard determined that this rule is not a significant regulatory action for the following reasons: The safety zones will be of limited duration, cover only a small portion of the navigable waterways and the events are designed to avoid, to the extent practicable, deep draft, fishing, and recreational boating traffic routes. In addition, vessels may be authorized to transit the zone with permission of the Captain of the Port Sector Northern New England; and maritime advisories will be broadcast during the duration of the enforcement periods.

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 the designated safety zones during the enforcement periods stated above.

The safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zones are of limited size and of short duration and vessels that can safely do so may navigate in all other portions of the waterways except for the area designated as a safety zone. Additionally, before the enforcement periods, the Coast Guard will issue

maritime advisories via marine broadcasts and advisories.

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 safety zones. An environmental analysis checklist and a categorical exclusion determination will be available for review in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T01–0523 to read as follows:

§ 165.T01–0523 Safety Zones: Swim Events in Lake Champlain, NY, and VT; Casco Bay, Rockland Harbor, Linekin Bay, ME.

(a) *Locations.* The following areas are temporary safety zones:

(1) For the ''Y-Tri for a Cure Triathlon'': All navigable waters of Lake Champlain within a 200-foot radius of the participants swimming in the vicinity of Point Au State Park, Plattsburg, New York within an area enclosed by a line starting at latitude 44°46′30″ N, longitude 073°23′26″ W; thence to latitude 44°46′17″ N, longitude 073°23′26″ W; thence to latitude 44°46′17″ N, longitude

073°23′46″ W; thence to latitude 44°46′29″ N, longitude 073°23′46″ W; and thence to the beginning.

(2) For the ''Greater Burlington YMCA Lake Swim'': All navigable waters of the Lake Champlain within a 200-foot radius of the participants swimming in the vicinity of North Hero Island, Burlington, Vermont in an area enclosed by a line starting at latitude 44°46′55″ N, longitude 073°22′14″ W; thence to latitude 44°47′08″ N, longitude 073°19′05″ W; thence to latitude 44°46′48″ N, longitude 073°17′13″ W; thence to latitude 44°46′09″ N, longitude 073°16′39″ W; thence to latitude 44°41′08″ N, longitude 073°20′58″ W; and thence to latitude 44°41′36″ N, longitude 073°23′01″ W.

(3) For the ''Tri for a Cure Triathlon'': All navigable waters of Casco Bay within a 200-foot radius of the participants swimming in the vicinity of Spring Point Light House in South Portland, Maine within an area enclosed by a line starting at latitude 43°39′01″ N, longitude 070°13′32″ W; thence to latitude 43°39′07″ N, longitude 070°13′29″ W; thence to latitude 43°39′06″ N, longitude 070°13′41″ W; and thence to latitude 43°39′01″ N, longitude 070°13′36″ W.

(4) For the ''Rockland Breakwater Swim'': All navigable waters of Rockland Harbor within 200-foot radius of the participants swimming in the vicinity of Rockland Breakwater, Rockland, Maine within an area enclosed by a line starting at latitude 44°06′16″ N, longitude 069°04′39″ W; thence to latitude 44°06′13″ N, longitude 069°04′36″ W; thence to latitude 44°06′12″ N, longitude 069°04′43″ W; thence to latitude 44°06′17″ N, longitude 069°04′44″ W; and thence to latitude 44°06′18″ N, longitude 69°04′41″ W.

(5) For the ''Cabbage Island Swim'': All navigable waters of Linekin Bay within a 200-foot radius of the participants swimming in the vicinity of Cabbage Island and Sprucewold Beach in Boothbay Harbor, Maine within an area enclosed by a line starting at latitude 43°50′37″ N, longitude 069°36′23″ W; thence to latitude 43°50′37″ N, longitude 069°36′59″ W; thence to latitude 43°50′16″ N, longitude 069°36′46″ W; and thence to latitude 43°50′22″ N, longitude 069°36′21″ W.

(b) *Enforcement Period.* The temporary safety zones noted above will be enforced during the following dates and times:

(1) For the ''Y-Tri Triathlon'': August 08, 2009, between 9 a.m. to 10 p.m.

(2) For the ''Greater Burlington YMCA Lake Swim'': August 08, 2009, between 8 a.m. to 6 p.m.

(3) For the ''Tri for a Cure Triathlon'': August 09, 2009, between 7:30 a.m. to 11 a.m.

(4) For the ''Rockland Breakwater Swim'' August 29, 2009, between 8:30 a.m. to 12:30 p.m.

(5) For the ''Cabbage Island Swim'': August 08, 2009, between 1 p.m. to 6 p.m.

(c) *Regulations.*

(1) In accordance with the general regulations in 33 CFR 165.23, during the enforcement period, entry into, transiting, remaining within or anchoring in these safety zones is prohibited unless authorized by the Captain of the Port Sector Northern New England or his designated representatives.

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

(3) Vessel operators desiring to enter or operate within the safety zones shall contact the Captain of the Port Sector Northern New England or his designated representative via VHF Channel 16 to obtain permission to do so.

(4) Vessel operators given permission to enter or operate in the safety zones must comply with all directions given to them by the Captain of the Port Sector Northern New England or his designated representatives.

Dated: August 4, 2009.

J.B. McPherson,

Captain, U.S. Coast Guard, Captain of the Port, Sector Northern New England.

[FR Doc. E9–19548 Filed 8–13–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0594]

RIN 1625–AA00

Safety Zone; Missouri River, Mile 366.3 to 369.8

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Missouri River, Mile 366.3 to 369.8, extending the entire width of the river. This safety zone is needed to protect persons and vessels from safety hazards associated with an aerial display occurring over a portion of the Missouri River. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Upper Mississippi River or a designated representative.

DATES: This rule is effective from 12 p.m. until 5 p.m. CDT on August 21, 2009, and from 11:30 a.m. until 5 p.m. CDT, each day, on August 22 and 23, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0594 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0594 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Commander (LCDR) Matthew Barker, Sector Upper Mississippi River Response Department at telephone (314) 269–2540, e-mail *Matthew.P.Barker@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. Publishing an NPRM would be contrary to the public interest because immediate action is needed to protect vessels and mariners from the safety hazards associated with a fireworks display.

For the same reason, 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

On August 21, 22, and 23, 2009, the U.S. Air Force Thunderbirds will be conducting a fixed wing air show between mile 366.3 and 369.8 on the Missouri River. This event presents safety hazards to the navigation of vessels between mile 366.3 and mile 369.8, extending the entire width of the river. The Captain of the Port Upper Mississippi River will inform the public of all safety zone changes through broadcast notice to mariners.

Discussion of Rule

The Coast Guard is establishing a safety zone for all waters of the Missouri River, Mile 366.3 to 369.8, extending the entire width of the river. Entry into this zone is prohibited to all vessels and persons except participants and those persons and vessels specifically authorized by the Captain of the Port Upper Mississippi River. This rule is effective from 12 p.m. until 5 p.m. CDT on August 21, 2009 and from 11:30 a.m. until 5 p.m. CDT on August 22 & 23, 2009. The Captain of the Port Upper Mississippi River will inform the public through broadcast notice to mariners of all safety zone changes and enforcement periods.

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. The economic impact of this temporary rule is expected to be minimal because of the small size and short duration of the safety zone.

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 the Missouri River, Mile 366.3 to 369.8, from 12 p.m. until 5 p.m. CDT on August 21, 2009 and from 11:30 a.m. until 5 p.m. CDT on August 22 & 23, 2009. This safety zone will not have a significant economic impact on a substantial number of small entities because it will cover a relatively small area and only be in effect for a short period of time.

If you are a small business entity and are significantly affected by this regulation, please contact LCDR Matthew Barker, Sector Upper Mississippi River at (314) 269–2540.

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 they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T09–0594 to read as follows:

§ 165.T09–0594 Safety Zone; Missouri River, Mile 366.3 to 369.8.

(a) *Location.* The following area is a safety zone: all waters of the Missouri River, Mile 366.3 to 369.8 extending the entire width of the waterway.

(b) *Effective date.* This rule is effective from 12 p.m. until 5 p.m. CDT on August 21, 2009 and from 11:30 a.m. until 5 p.m. CDT, each day, on August 22 and 23, 2009.

(c) *Periods of Enforcement.* The Captain of the Port Upper Mississippi River will inform the public through broadcast notice to mariners of all safety zone changes and enforcement periods.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Upper Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Upper Mississippi River or a designated representative. The Captain of the Port Upper Mississippi River representative may be contacted at (314) 269–2332.

(3) All persons and vessels must comply with the instructions of the Captain of the Port Upper Mississippi River or a designated representative. Designated Captain of the Port representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: June 30, 2009.

S.L. Hudson,

Captain, U.S. Coast Guard, Captain of the Port Upper Mississippi River.

[FR Doc. E9–19551 Filed 8–13–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0524]

RIN 1625–AA00

Safety Zone; MS Harborfest Tugboat Races in Casco Bay, ME

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the MS Harborfest Tugboat Races in Casco Bay, Maine. This temporary safety zone is necessary to provide for the safety of life on the navigable waters by prohibiting spectators, vessels, and other users of the waterway from entering the area surrounding the tugboat races due to the hazards associated with the tugboat races.

DATES: This rule is effective from 11 a.m. until 4 p.m. on August 16, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0524 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–2009–0524 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Chief Petty Officer Randy Bucklin, Coast Guard Sector Northern New England, Waterways Management Division; telephone 207–741–5440, e-mail *Randy.Bucklin@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 a notice and comment period would be impracticable due to the time constraints resulting from the immediacy of the upcoming event. The Coast Guard did not receive notification of the exact location or proposed date for the boating event in sufficient time

to issue a NPRM and hold a comment period for this rulemaking. The expeditious implementation of this rule is in the public interest because it will help ensure the safety of those involved in the tugboat races, the spectators, and users of the waterway during the boating event. Finally, a delay or cancellation of the tugboat races in order to accommodate a notice and comment period is contrary to the public's interest in this event occurring as scheduled.

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**. Any delay in the effective date of this regulation would be contrary to the public interest as immediate action is necessary to protect the maritime community from the hazards associated with tugboat races. A delay or cancellation of the MS Harborfest tugboat races to accommodate a 30 day comment period would be contrary to public interest.

Background and Purpose

The MS Harborfest is an annual marine boating event held in the month of August, in Casco Bay, Maine.

These regulations will establish a fixed safety zone around the perimeter of the tugboat race course located in Casco Bay. The tugboat race involves several heavy vessels that are limited in their ability to quickly maneuver if an unexpected vessel were to enter the race area. Hazards also include the potential risks to persons and property that could come in contact with the tugboats, their wakes, or their gear. There is also a potential risk to the tugboats and their crew should they come into contact with unauthorized vessels traversing through the safety zone. Therefore this safety zone is designed to protect spectators and vessels from the hazards associated with the tugboat races, and to protect the race participants from the dangers of nearby vessel traffic by preventing entry into the zone during the enforcement time. Entry into the safety zone is prohibited unless prior authorization is received by the Coast Guard Captain of the Port Sector Northern New England.

Discussion of Rule

The Coast Guard is establishing a safety zone for the MS Harborfest Tugboat Races. The safety zone is being established by reference to geographical coordinates as follows: All navigable waters of Casco Bay bounded by a line connecting the following geographic coordinates: Latitude 43°40′24″ N, longitude 070°14′20″ W, to latitude 43°40′36″ N, longitude 070°13′56″ W, to latitude 43°39′58″ N, longitude 070°13′21″ W, to latitude 43°39′46″ N, longitude 070°13′51″ W.

During the effective time of the safety zone, all vessels and persons are prohibited from entering, anchoring, remaining within or transiting in the zone unless specifically authorized by the Captain of the Port Sector Northern New England, or his designated representatives.

The Coast Guard has determined that the safety zone will not have a significant impact on commercial vessel traffic due to the temporary nature of the zone's time and scope. The zone has been limited to the area surrounding the event and it will be enforced only during the time of the tugboat races. Public notifications will be made via marine information broadcasts during the effective period of this safety zone.

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.

The Coast Guard determined that this rule is not a significant regulatory action for the following reasons: The safety zone will be of limited duration, cover only a small portion of the navigable waterway, and the event is designed to avoid, to the extent practicable, deep draft, fishing, and recreational boating traffic routes. In addition, vessels may be authorized to transit the zone with permission of the Captain of the Port Sector Northern New England and maritime advisories will be broadcast during the duration of the enforcement periods.

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 the designated safety zone during the enforcement period stated above.

The safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone is of limited size and of short duration and vessels that can safely do so may navigate in all other portions of the waterway except for the area designated as a safety zone. Additionally, before the enforcement period, the Coast Guard will issue maritime advisories via marine broadcasts and advisories.

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 safety zone. An environmental analysis checklist and a categorical exclusion determination will be available for review in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T01–0524 to read as follows:

§ 165.T01–0524 Safety Zone; MS Harborfest Tugboat Races in Casco Bay, ME.

(a) *Location:* all navigable waters of Casco Bay in the vicinity of Fish Point and Diamond Island Ledge that are bounded by a line connecting the following geographic coordinates: Latitude 43°40′24″ N, longitude 070°14′20″ W, to latitude 43°40′36″ N, longitude 070°13′56″ W, to latitude 43°39′58″ N, longitude 070°13′21″ W, to latitude 43°39′46″ N, longitude 070°13′51″ W.

(b) *Effective Period:* This Safety Zone is effective on August 16, 2009, from 11 a.m. to 4 p.m.

(c) *Regulations.*

(1) The general regulations in 33 CFR 165.23 apply.

(2) This safety zone is closed to all vessel traffic. Entry into, transiting, remaining within or anchoring in this safety zone is prohibited unless authorized by the Captain of the Port Sector Northern New England or his designated representatives.

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

(4) Vessel operators desiring to enter or operate within the safety zones shall contact the Captain of the Port Sector Northern New England or his designated representative via VHF Channel 16 to obtain permission to do so.

(5) Vessel operators given permission to enter or operate in the safety zones must comply with all directions given to them by the Captain of the Port Sector Northern New England or his designated representatives.

Dated: August 4, 2009.

J.B. McPherson,

Captain, U.S. Coast Guard, Captain of the Port, Sector Northern New England.

[FR Doc. E9–19549 Filed 8–13–09; 8:45 am]

BILLING CODE 4910–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket No. CP2009–47; Order No. 266]

Global Plus 1 Contract

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is including a new contract within the Global Plus 1 product in the Competitive Product List. This is action consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant products and competitive products is also consistent with requirements in the law.

DATES: Effective August 14, 2009 and is applicable beginning July 31, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 36276 (July 22, 2009).

I. Introduction

The Postal Service proposes to add a specific Global Plus 1 contract to the Global Plus Contracts product established in Docket No. CP2008–8. For the reasons discussed below, the Commission approves the Postal Service's proposal.

II. Background

On July 13, 2009, the Postal Service filed a notice, pursuant to 39 CFR 3015.5, announcing that it has entered into two additional Global Plus 1 contracts, which it states fit within the previously established Global Plus Contracts product.[1] The Postal Service states that each contract is functionally equivalent to previously submitted Global Plus 1 contracts, are filed in accordance with Order No. 85, and are supported by Governors' Decision No. 08–8 filed in Docket No. CP2008–8.[2] Notice at 1.

The Notice also states that in Docket No. CP2008–8, the Governors established prices and classifications for competitive products not of general applicability for Global Plus Contracts.[3] The Postal Service states that the instant contract is the immediate successor contract to Docket No. CP2008–10 which is to expire soon, which the Commission found to be functionally equivalent in Order No. 85. *Id.* at 2.

The Postal Service contends that the instant contract should be included within the Global Plus 1 product on the Competitive Product List. *Id.* at 1.

In support, the Postal Service has also filed a redacted version of the instant contract and related materials as Attachment 1–B. A redacted version of the certified statement required by 39 CFR 3015.5 is included as Attachment 2–B. The Postal Service requests that the instant contract ''be considered the new 'baseline' contract[s] for future functional equivalency analyses concerning this product.'' *Id.* at 2.

The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. The contract becomes effective August 1, 2009, unless regulatory reviews affect that date, and has a one-year term.

The Postal Service maintains that certain portions of this contract and certified statement required by 39 CFR 3015.5(c)(2), containing names and identifying information of the Global Plus 1 customer, related financial information, 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 contract is functionally equivalent with the contract filed in Docket No. CP2009–46 because they share similar cost and market characteristics. It contends that they should be classified as a single product. *Id.* It states that while the existing contracts filed in Docket Nos. CP2008–9 and CP2008–10 exhibited minor distinctions, the new contracts are virtually identical to one another. *Id.* at 4.

The Postal Service maintains these differences only add detail or amplify processes included in prior Global Plus 1 contracts. It contends because the instant contract has 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 contract. *Id.* at 7–8. It states the contract is substantially similar both to the existing contract in Docket No. CP2008–10 and to the existing Global Plus 1 contracts and should be added to the Global Plus 1 product. *Id.* at 8.

In Order No. 249, the Commission gave notice of the docket, appointed a Public Representative, and provided the public with an opportunity to comment.[4] On July 22, 2009, Chairman's Information Request No. 1 (CHIR No. 1) was issued with responses due by July 27, 2009. On July 24, 2009, the Postal Service provided its responses to CHIR No. 1.

III. Comments

Comments were filed by the Public Representative.[5] No other interested parties submitted comments. The Public Representative states the individual contracts appear to satisfy the statutory criteria, but because of the timeframe to provide comments and information identified in CHIR No. 1, his response is not an unqualified recommendation in support of each contract's approval. *Id.* at 2. He notes that relevant provisions of 39 U.S.C. 3632, 3633 and 3642 appear to be met by these additional Global Plus 1 contracts. *Id.* The Public Representative states that he believes the contracts are functionally equivalent to the existing Global Plus Contracts product. He also determines that the Postal Service has provided greater transparency and accessibility in its filings. *Id.* at 3.

The Public Representative notes that the general public benefits from the availability of these contracts in several ways: well prepared international mail adds increased efficiency in the mailstream, enhanced volume results in timeliness in outbound shipments to all countries including those with small volume, and the addition of shipping options may result in expansion of mail volumes, particularly with the incentives for Postal Qualified Mailers (PQWs) and increased efficiency in existing postal capacity. *Id.* at 4–5.

Finally, he discusses the need for self-contained docket filings. In particular, he notes that the instant contract relies on data from the most recent International Cost and Revenue Analysis (ICRA), which was filed under seal in another docket. He suggests that the Postal Service should identify the location of the ICRA utilized and cited in that docket. *Id.* at 6.

IV. Commission Analysis

The Postal Service proposes to add an additional contract under the Global

[1] Notice of the United States Postal Service of Filing Two Functionally Equivalent Global Plus 1 Contracts Negotiated Service Agreements, July 13, 2009 (Notice). While the Notice was filed jointly in Docket Nos. CP2009–46 and CP2009–47, the Commission will address the issues in these dockets in separate orders. The Postal Service requests that the two contracts be included in the Global Plus 1 product, and ''that they be considered the new 'baseline' contracts for future functional equivalency analyses. * * *'' *Id.* at 2.

[2] *See* Docket Nos. CP 2008–8 through CP2008–10, Order Concerning Global Plus Negotiated Service Agreements, June 27, 2008 (Order No. 85).

[3] *See* Docket No. CP2008–8, Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Plus Contracts, June 2, 2008, at 1.

[4] Notice and Order Concerning Two Functionally Equivalent Global Plus 1 Contracts Negotiated Service Agreements, July 16, 2009 (Order No. 249).

[5] Public Representative Comments in Response to Order No. 249, July 23, 2009 (Public Representative Comments). The Public Representative's comments jointly address the Postal Service's filings in Docket Nos. CP2009–46 and CP2009–47.

Plus Contracts product that was created in Docket No. CP2008–8. As filed, this docket presents two issues for the Commission to consider: (1) Whether the contract satisfies 39 U.S.C. 3633, and (2) whether the contract is functionally equivalent to previously reviewed Global Plus 1 contracts. In reaching its conclusions, the Commission has reviewed the Notice, the contract and the financial analyses provided under seal, supplemental information, and the Public Representative's comments.

Statutory requirements. The Postal Service contends that the instant contract and supporting documents filed in this docket establish compliance with the statutory provisions applicable to rates for competitive products (39 U.S.C. 3633). Notice at 2. W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department asserts Governors' Decision No. 08–8 for Global Plus Contracts establishes price floor and ceiling formulas issued on May 28, 2008. He certifies that the pricing in the instant contract meets the Governors' pricing formula and meets the criteria of 39 U.S.C. 3633(a)(1), (2) and (3). He further states that the prices demonstrate that the contract and the included ancillary services should cover their attributable costs, preclude the subsidization of competitive products by market dominant products, and should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs. *Id.,* Attachment 2–B.

For his part, the Public Representative indicates that the contract appears to satisfy 39 U.S.C. 3633. Public Representative Comments at 1–3.

Based on the review of the data submitted, including the supplemental information, the Commission finds that the contract should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed contract indicates that it comports with the provisions applicable to rates for competitive products.

Functional equivalence. The Postal Service asserts that the instant contract is functionally equivalent to the contract filed in the companion proceeding, Docket No. CP2009–46, as well as with Global Plus 1 contracts filed previously because they share similar cost and market characteristics. Notice at 4. The Postal Service states that the customers under the existing and proposed contracts are the same. In addition, it notes that existing contracts exhibited some differences, but the contracts proposed in Docket Nos. CP2009–46 and CP2009–47 are virtually identical. *Id.*

Having reviewed the contracts filed in the instant proceeding and in Docket No. CP2009–46, and the Postal Service's justification, the Commission finds that the two contracts may be treated as functionally equivalent.

New baseline. The Postal Service requests that the contracts filed in Docket Nos. CP2009–46 and 2009–47 be included in the Global Plus 1 product and ''considered the new 'baseline' contracts for purposes of future functional equivalency analyses concerning this product.'' Notice at 2. Currently, the Global Plus 1 product consists of two existing contracts that will be superseded by the contracts in Docket Nos. CP2009–46 and CP2009–47. Under those circumstances, the new contracts need not be designated as a new product. Accordingly, the new contracts in Docket Nos. CP2009–46 and CP2009–47 will be included in the Global Plus 1 product and become the ''baseline'' for future functional equivalency analyses regarding that product.

Self-contained docket filings. The Public Representative reiterates a point made in Order No. 247 regarding the need for self-contained docket filings. In particular, he points to the difficulty in obtaining ICRA data relied on to support the instant contract but filed under seal in another docket. He suggests that ''filings that reference the ICRA should include a pointer to the location of the ICRA utilized and cited in that docket.'' Public Representative Comments at 6.

The Public Representative point is well taken. The Commission does not wish to burden the Postal Service with extraneous filing requirements, nor does it intend for the process of reviewing Postal Service filings to become labyrinthine. Recognizing that Postal Service filings are electronic, the Commission will adopt the following policy: (1) The redacted Governors' Decision on which the contract is based should be included with the filing; (2) an html link should be provided to the document filed by the Postal Service that notices that the unredacted Governors' Decision is being filed under seal; and (3) all other confidential data relied on to support the specific contract should be filed in the docket in which that specific contract is filed.

Other considerations. If the agreement terminates earlier than anticipated, the Postal Service shall promptly inform the Commission of the new termination date.

In conclusion, the Commission finds that the negotiated service agreement submitted in Docket No. CP2009–47 is appropriately included within the Global Plus Contracts product.

V. Ordering Paragraphs

It is ordered:

1. The contract filed in Docket No. CP2009–47 is included within the Global Plus 1 product (CP2008–8 and CP2009–47).

2. The existing Global Plus 1 product (CP2008–9 and CP2008–10) is removed from the product list.

3. As discussed in the body of this order, future contract filings which rely on materials filed under seal in other dockets should be self contained.

4. The Postal Service shall notify the Commission if the termination date changes as discussed in this order.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

Issued: July 31, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals

Outside County Periodicals
Package Services
Single-Piece Parcel Post
Inbound Surface Parcel Post (at UPU rates)
Bound Printed Matter Flats
Bound Printed Matter Parcels
Media Mail/Library Mail
Special Services
Ancillary Services
International Ancillary Services
Address List Services
Caller Service
Change-of-Address Credit Card Authentication
Confirm
International Reply Coupon Service
International Business Reply Mail Service
Money Orders
Post Office Box Service
Negotiated Service Agreements
HSBC North America Holdings Inc. Negotiated Service Agreement
Bookspan Negotiated Service Agreement
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement
Inbound International
Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services
Market Dominant Product Descriptions
First-Class Mail
[Reserved for Class Description]
Single-Piece Letters/Postcards
[Reserved for Product Description]
Bulk Letters/Postcards
[Reserved for Product Description]
Flats
[Reserved for Product Description]
Parcels
[Reserved for Product Description]
Outbound Single-Piece First-Class Mail International
[Reserved for Product Description]
Inbound Single-Piece First-Class Mail International
[Reserved for Product Description]
Standard Mail (Regular and Nonprofit)
[Reserved for Class Description]
High Density and Saturation Letters
[Reserved for Product Description]
High Density and Saturation Flats/Parcels
[Reserved for Product Description]
Carrier Route
[Reserved for Product Description]
Letters
[Reserved for Product Description]
Flats
[Reserved for Product Description]
Not Flat-Machinables (NFMs)/Parcels
[Reserved for Product Description]
Periodicals
[Reserved for Class Description]
Within County Periodicals
[Reserved for Product Description]
Outside County Periodicals
[Reserved for Product Description]
Package Services
[Reserved for Class Description]
Single-Piece Parcel Post
[Reserved for Product Description]
Inbound Surface Parcel Post (at UPU rates)
[Reserved for Product Description]
Bound Printed Matter Flats
[Reserved for Product Description]
Bound Printed Matter Parcels
[Reserved for Product Description]
Media Mail/Library Mail
[Reserved for Product Description]
Special Services
[Reserved for Class Description]
Ancillary Services
[Reserved for Product Description]
Address Correction Service
[Reserved for Product Description]
Applications and Mailing Permits
[Reserved for Product Description]
Business Reply Mail
[Reserved for Product Description]
Bulk Parcel Return Service
[Reserved for Product Description]
Certified Mail
[Reserved for Product Description]
Certificate of Mailing
[Reserved for Product Description]
Collect on Delivery
[Reserved for Product Description]
Delivery Confirmation
[Reserved for Product Description]
Insurance
[Reserved for Product Description]
Merchandise Return Service
[Reserved for Product Description]
Parcel Airlift (PAL)
[Reserved for Product Description]
Registered Mail
[Reserved for Product Description]
Return Receipt
[Reserved for Product Description]
Return Receipt for Merchandise
[Reserved for Product Description]
Restricted Delivery
[Reserved for Product Description]
Shipper-Paid Forwarding
[Reserved for Product Description]
Signature Confirmation
[Reserved for Product Description]
Special Handling
[Reserved for Product Description]
Stamped Envelopes
[Reserved for Product Description]
Stamped Cards
[Reserved for Product Description]
Premium Stamped Stationery
[Reserved for Product Description]
Premium Stamped Cards
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
Address List Services
[Reserved for Product Description]
Caller Service
[Reserved for Product Description]
Change-of-Address Credit Card Authentication
[Reserved for Product Description]
Confirm
[Reserved for Product Description]
International Reply Coupon Service
[Reserved for Product Description]
International Business Reply Mail Service
[Reserved for Product Description]
Money Orders
[Reserved for Product Description]
Post Office Box Service
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Class Description]
HSBC North America Holdings Inc. Negotiated Service Agreement
[Reserved for Product Description]
Bookspan Negotiated Service Agreement
[Reserved for Product Description]
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

2000 Competitive Product List

Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Inbound International Expedited Services 1 (CP2008–7)
Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Royal Mail Group Inbound Air Parcel Post Agreement
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M-Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
Canada Post—United States Postal service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail Contract 3 (MC2009–15 and CP2009–21)
Express Mail Contract 4 (MC2009–34 and CP2009–45)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)

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POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–26 and CP2009–36; Order No. 264]

International Mail Products and Special Services

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Direct Entry Parcels Contracts and two related special services to the Competitive Product List. The two special services are categorized within International Ancillary Services. This action is consistent with changes in a recent law governing postal operations.

Republication of the lists of market dominant and competitive products is also consistent with requirements in the new law.

DATES: Effective August 14, 2009 and is applicable beginning July 31, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman at 202–789–6820 or *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 30646 (June 29, 2009).

I. Introduction

The Postal Service seeks to add Direct Entry Parcels (DEP) Contracts, International Return Service, and Harmonization Service to the Competitive Product List. For the reasons discussed below, the Commission approves adding the specific DEP contract (DEP 1) as a new product, along with International Return Service and Harmonization Service as ancillary (or special) services.

II. Background

On June 11, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Direct Entry Parcels Contracts, International Return Service, and Harmonization Service to the Competitive Products List.[1] The Postal Service indicates that Governors' Decision No. 09–7, dated June 10, 2009, establishes prices and classifications not of general applicability for DEP contracts and the ancillary services of International Return Service and Harmonization Service.[2] The Request has been assigned Docket No. MC2009–26.

The Postal Service contemporaneously filed a DEP contract pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request at 1. The contract has been assigned Docket No. CP2009–36.

The Request incorporates (1) A Statement of Supporting Justification as required by 39 CFR 3020.32; [3] (2) Governors' Decision No. 09–7 authorizing the new product and services; [4] (3) proposed changes to the Mail Classification Schedule (MCS); [5] (4) the pricing formulas applicable to DEP contracts, International Return Service and Harmonization Service; [6] (5) an analysis of those pricing formulas; [7] (6) certification of

[1] Request of the United States Postal Service to Add Direct Entry Parcels Contracts, International Return Service, and Harmonization Service to the Competitive Products List, and Notice of Filing (Under Seal) of Contract and Enabling Governors' Decision, June 11, 2009 (Request).

[2] Governors' Decision No. 09–7, filed June 11, 2009, establishes prices and classifications not of general applicability for Direct Entry Parcels Contracts, International Return Service, and Harmonization Service Offered with Customized Agreements. *Id.* at 1.

[3] Attachment 1 to the Request.

[4] Attachment 2 to the Request.

[5] Attachment 2, Attachments A–1, A–2, and A–3 to the Request.

[6] Attachment 2, Attachments B–1, B–2, and B–3 to the Request.

[7] Attachment 2, Attachments C–1, C–2, and C–3 to the Request.

compliance with 39 U.S.C. 3633(a);[8] (7) a redacted version of the contract;[9] and (8) certification that the instant contract (DEP 1) complies with 39 U.S.C. 3633(a).[10] Substantively, the Request seeks to add the DEP contract, and the ancillary services of International Return Service, and Harmonization Service to the Competitive Products List. Request at 1–2.

In the Statement of Supporting Justification, Frank Cebello, Executive Director, Global Business Management, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.,* Attachment 1. Thus, Mr. Cebello contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

The Postal Service represents that the instant contract is consistent with 39 U.S.C. 3633(a), 39 CFR 3015.5 and 39 CFR 3015.7. *See id.,* Attachment 2. DEP contracts include International Return Service and Harmonization Service as optional features which reflect the proposed MCS language in Attachments A–2 and A–3 of the Governors' Decision, respectively. DEP contracts provide for mail acceptance within the United States, transportation to a receiving country of parcels bearing the appropriate foreign indicia, transportation to customs within the receiving country, and customs clearance and prepayment of customs duties and taxes to the receiving country. The Postal Service states that International Return Service provides for the return of refused or undeliverable items. It states that Harmonization Service offers review of outbound items by a licensed customs broker and the broker's assignment of Harmonized Tariff Schedule codes to facilitate assessment of customs duties. *Id.* at 2–3. The Postal Service notes that the latter two services will only be available through customized agreements, in particular through DEP contracts similar to the instant contract.

The contract becomes effective within 30 days after the Postal Service notifies the customer that it has received all required reviews and the Commission has provided all necessary regulatory approvals. The term of the contract is one year from the effective date.

The Postal Service filed much of the supporting materials, including Governors' Decision 09–7, and related financial information, including analysis of the instant contract in redacted versions and under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain under seal. *Id.* at 3–4.

The Postal Service requests that the Commission list the instant DEP contract, as well as any subsequent functionally equivalent DEP contracts, as one product on the Competitive Product List. *Id.* at 1–2. The Request advances reasons why DEP contracts as described in the proposed MCS language are in conformity with the requirements of 39 U.S.C. 3642 as competitive products. Among other things, the Postal Service asserts that DEP contracts are intended for merchandise exempt from the Private Express Statutes; that the Postal Accountability and Enhancement Act (PAEA) classifies bulk international mail as competitive; and that classifying DEP contracts as competitive is consistent with Commission precedent. It contends that even though the senders of DEP items may mail individual pieces, the contract customer has committed to compensate the Postal Service for a bulk volume of DEP items. The Postal Service also notes that Direct Entry Parcels, Harmonization Service, and International Return Service are contractual services not available to individual retail customers. *Id.* at 4–5.

In Order No. 228, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[11] On June 26, 2009, Chairman's Information Request No. 1 (CHIR No. 1) was issued. The Postal Service filed its response to CHIR No. 1 on July 2, 2009.[12] The Postal Service responses provided some of the information requested in CHIR No. 1 and indicated that revised financial information in response to questions 2, 5, 8 and 9 would be filed as soon as it could be completed. On July 15, 2009, the Postal Service filed the revised financial information as referenced in its July 2, 2009 response.[13]

III. Comments

Comments were filed by the Public Representative on June 29, 2009 (Public Representative Comments). No filings were submitted by any other interested parties.

The Public Representative states that the Governors' Decision authorizes DEP contracts subject to price floor and price ceiling formulas. Public Representative Comments at 1. He contends the instant contract is specifically authorized by the Governors, but any additional DEP contracts would require a separate Governors' Decision in order to comply with the law. *Id.* The Public Representative contends that the price formulas in Governors' Decision No. 09–7 use *ex ante* values which will change over the life of the contract. He notes that the contract permits (but does not require) changing prices if some of the variables in the formula change. Therefore, he concludes there is some risk that a change in the variables under the contract could eliminate the contract's profit. *Id.* at 2. The Public Representative also states it appears the volume under the instant contract is new to the Postal Service. *Id.*

IV. Commission Analysis

The Commission has reviewed the Request, the Agreement, the financial analysis filed under seal, supplemental information filed in response to CHIR No. 1, and the comments filed by the Public Representative.

As a preliminary matter, it may be useful to outline the Request before the Commission. The Postal Service seeks to add DEP Contracts, International Return Service, and Harmonization Service to the Competitive Product List within the Mail Classification Schedule. Request at 1. While the Request characterizes these as three products (*id.*), it appears that International Return Service and Harmonization Service are ancillary (or special) services available only in conjunction with DEP contracts or other customized agreements. *Id.* at 1, n.1 and 3. More specifically, the Postal Service requests that the instant DEP contract, together with any subsequent functionally equivalent DEP contracts, be listed as one product on the Competitive Product List.[14]

[8] Attachment 2, Attachment D to the Request.

[9] Attachment 3 to the Request.

[10] Attachment 4 to the Request.

[11] PRC Order No. 228, Notice and Order Concerning Direct Entry Parcels Contract, International Return Service and Harmonization Service Negotiated Service Agreements, June 22, 2009 (Order No. 228).

[12] Response of the United States Postal Service to Chairman's Information Request No. 1, July 2, 2009.

[13] Notice of the United States Postal Service Regarding the Filing of Library Reference USPS–CP2009–36NP3, July 15, 2009 and Notice of the United States Postal Service Regarding the Filing of Library Reference USPS–CP2009–36NP4.

[14] Id. at 1–2. *See also id.* at 5 (urging the Commission to add ''this product [DEP Contracts] to the competitive products list * * *.''); and at 6

The Governors' Decision establishes classifications and prices for DEP Contracts, a new product, and International Return Service and Harmonization Service, two special services. The proposed draft MCS language describes these classifications. The instant contract is the first DEP contract executed pursuant to the Governors' Decision. The Commission's consideration of the Request will thus focus on that contract and the ancillary (or special) services offered with it. As discussed below, DEP 1, International Return Service and Harmonization Service will be added to the Competitive Product List and the proposed classification language will be added to the MCS. It is premature, however, to consider the treatment of any future DEP contracts in this proceeding. Whether subsequent DEP contracts, if any, are functionally equivalent with DEP 1 can be addressed in the relevant subsequent proceeding(s).

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning DEP 1 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with PAEA requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign DEP 1 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether ''the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.'' 39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service states that DEP contracts are for U.S. based entities that seek a channel to send merchandise or other articles to their overseas customers in packaging that has the '''look and feel''' of domestic items in the destination country. Request, Attachment 1, ¶ (d). It states that, generally, DEP contracts will include the use of a licensed customs broker to review items for proper Harmonized Tariff Schedule classification (Harmonization Service), and the Postal Service may arrange the return of undeliverable or refused items (International Return Service). The Postal Service indicates that because of the competitive nature of international shipping services, the market does not permit it to raise prices substantially above costs and the contract is premised on prices that provide sufficient incentive for customers to ship with the Postal Service rather than a competitor. *Id.*

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices or decrease service without the risk of losing volume to private companies in the international shipping industry. The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar international parcel delivery services. *Id.* It further states that in the proposed MCS language established by the Governors, DEP contract items consist of Parcel Post items that are not subject to the Private Express Statutes and that any letters inserted in Direct Entry Parcels would also likely be within the letter monopoly exclusion of letters under the Private Express Statutes. *Id.*, ¶ (e).

The Postal Service states that the market for international delivery services is highly competitive and the addition of DEP contracts should have minimal, if any, impact on small business concerns. It contends that large shipping companies, consolidators, and freight forwarders comprise the market represented by the customers for the instant contracts, and it is unaware of any small business that can offer comparable service for the customer's volume. It notes that small businesses are gaining an additional option for shipping articles internationally, beyond the service offered by its competitors, resulting in a positive impact on small businesses. Therefore, the Postal Service concludes the net impact on small business should be positive. *Id.*, ¶ (h).

The Public Representative does not oppose the proposed classification of DEP contracts as competitive.

Having considered the statutory requirements, the support offered by the Postal Service, and all comments, the Commission finds that DEP 1 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The initial supporting documentation filed by the Postal Service on June 11, 2009 did not include source contracts with third-party providers to substantiate certain cost factors. In addition, the rates in the supporting documentation did not match the rates in the instant contract. The Commission had to request the source contracts and additional supporting documentation and seek clarification of discrepancies between rates in the instant contract and supporting documentation in order to complete its analysis.

In its response to CHIR No. 1 on July 15, 2009, the Postal Service filed supporting documentation which included two sets of rates. However, only one set of rates was included in the instant DEP contract. The Commission understands that the second set of rates is only based on projected cost increases as allowed for in the instant contract and explained below under ''*Pricing provisions.*''

In future filings, the Postal Service should provide all supporting source documentation, including relevant contracts with third-party providers, and ensure consistency between rates in filed contracts and supporting documentation. Postal Service requests that contain inconsistent or missing information hinder the Commissioner's ability to review filings promptly and may delay final disposition, such as in this instance.

Based on the data submitted, the Commission finds that revenue from DEP 1 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the instant DEP contract indicates that it comports with the provisions applicable to rates for competitive products.

Pricing provisions. The instant contract includes provisions that would permit price changes during the 1-year term of the contract. The Public Representative notes that these provisions may affect results under the

(''the Postal Service believes that this DEP Contract should be added to the competitive products list.'')

contract. Public Representative Comments at 2.

Article 9.2 provides that the prices under the DEP contract are based on prices established by Canada Post Corporation for Xpresspost, and that if the latter change, the Postal Service reserves the right to adjust prices accordingly. The second provision, Article 9.1, is somewhat more problematic as it is not based on the destination country's post, but rather on cost increases incurred by the Postal Service over a specified threshold.

The provisions, agreed to by the parties, mitigate risks associated with the contract. Should either of these provisions be invoked during the contract year, the Postal Service shall file a notice of the price changes with the Commission. The notice, in lieu of a filing under 39 CFR 3015, shall include the new prices as well prior to their effective date.

Scope of the Governors' Decision. The Public Representative states that the instant DEP contract is authorized by Governors' Decision No. 09–7, but that any future DEP contracts must be based on a separate Governors' Decision. Otherwise, 39 U.S.C. 402 would be violated. Public Representative Comments at 1.

The Public Representative apparently views Governors' Decision No. 09–7 as having ''effectively delegated'' the Governors' authority to Postal Service management. He argues that the PAEA does not provide for delegation by the Governors, as distinct from the Board of Governors. The Public Representative concludes that the instant contract has been explicitly authorized by the Governors, but that Governors' Decision No. 09–7 could not be used to support any further DEP contracts. The Commission does not read the Governors' Decision so narrowly. That Governors' Decision authorizes contracts that fall within the terms of the MCS language and price formulas attached to the Governors' Decision. The Public Representative does not explain and it is not clear to the Commission why the Governors' Decision should be read to authorize only the instant contract, but no other. While his conclusion may be predicated on his theory of delegation, the Commission finds that it is unnecessary to address those claims for purposes of this proceeding.

Other considerations. The Postal Service shall promptly notify the Commission of the effective date and termination date of the contract. If the contract terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the product from the MCS at the earliest possible opportunity.

In conclusion, the Commission approves Direct Entry Parcels 1 as a new product, and International Return Service and Harmonization Service as competitive special services. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this order.

V. Ordering Paragraphs

It is ordered:

1. Direct Entry Parcels 1 (MC2009–26 and CP2009–36) is added to the Competitive Product List as a new product.

2. International Return Service and Harmonization Service are added as components of the International Ancillary Services product.

3. The Postal Service shall notify the Commission of the scheduled effective date and termination date and update the Commission if the contract terminates at an earlier date, as discussed in this order.

4. As discussed in this order, price changes pursuant to Direct Entry Parcels 1 shall be filed with the Commission.

5. The Secretary shall arrange for the publication of this Order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Admininistrative practice and procedure, Postal Service.

Issued: July 31, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- International Ancillary Services
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement
- Inbound International
- Canada Post—United States Postal Service Contractual Bilateral
- Agreement for Inbound Market Dominant Services

Market Dominant Product Descriptions

First-Class Mail

[Reserved for Class Description]
- Single-Piece Letters/Postcards
- [Reserved for Product Description]
- Bulk Letters/Postcards
- [Reserved for Product Description]
- Flats
- [Reserved for Product Description]
- Parcels
- [Reserved for Product Description]
- Outbound Single-Piece First-Class Mail International
- [Reserved for Product Description]
- Inbound Single-Piece First-Class Mail International
- [Reserved for Product Description]

Standard Mail (Regular and Nonprofit)

[Reserved for Class Description]
- High Density and Saturation Letters
- [Reserved for Product Description]
- High Density and Saturation Flats/Parcels
- [Reserved for Product Description]
- Carrier Route
- [Reserved for Product Description]
- Letters
- [Reserved for Product Description]
- Flats
- [Reserved for Product Description]
- Not Flat-Machinables (NFMs)/Parcels
- [Reserved for Product Description]

Periodicals
[Reserved for Class Description]
Within County Periodicals
[Reserved for Product Description]
Outside County Periodicals
[Reserved for Product Description]
Package Services
[Reserved for Class Description]
Single-Piece Parcel Post
[Reserved for Product Description]
Inbound Surface Parcel Post (at UPU rates)
[Reserved for Product Description]
Bound Printed Matter Flats
[Reserved for Product Description]
Bound Printed Matter Parcels
[Reserved for Product Description]
Media Mail/Library Mail
[Reserved for Product Description]
Special Services
[Reserved for Class Description]
Ancillary Services
[Reserved for Product Description]
Address Correction Service
[Reserved for Product Description]
Applications and Mailing Permits
[Reserved for Product Description]
Business Reply Mail
[Reserved for Product Description]
Bulk Parcel Return Service
[Reserved for Product Description]
Certified Mail
[Reserved for Product Description]
Certificate of Mailing
[Reserved for Product Description]
Collect on Delivery
[Reserved for Product Description]
Delivery Confirmation
[Reserved for Product Description]
Insurance
[Reserved for Product Description]
Merchandise Return Service
[Reserved for Product Description]
Parcel Airlift (PAL)
[Reserved for Product Description]
Registered Mail
[Reserved for Product Description]
Return Receipt
[Reserved for Product Description]
Return Receipt for Merchandise
[Reserved for Product Description]
Restricted Delivery
[Reserved for Product Description]
Shipper-Paid Forwarding
[Reserved for Product Description]
Signature Confirmation
[Reserved for Product Description]
Special Handling
[Reserved for Product Description]
Stamped Envelopes
[Reserved for Product Description]
Stamped Cards
[Reserved for Product Description]
Premium Stamped Stationery
[Reserved for Product Description]
Premium Stamped Cards
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
Address List Services
[Reserved for Product Description]
Caller Service
[Reserved for Product Description]
Change-of-Address Credit Card Authentication
[Reserved for Product Description]
Confirm
[Reserved for Product Description]
International Reply Coupon Service
[Reserved for Product Description]
International Business Reply Mail Service
[Reserved for Product Description]
Money Orders
[Reserved for Product Description]
Post Office Box Service
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Class Description]
HSBC North America Holdings Inc. Negotiated Service Agreement
[Reserved for Product Description]
Bookspan Negotiated Service Agreement
[Reserved for Product Description]
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

2000 Competitive Product List

Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Inbound International Expedited Services 1 (CP2008–7)
Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Royal Mail Group Inbound Air Parcel Post Agreement
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M–Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
Canada Post—United States Postal service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail Contract 3 (MC2009–15 and CP2009–21)
Express Mail Contract 4 (MC2009–34 and CP2009–45)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Priority Mail Contract 5 (MC2009–21 and CP2009–26)
Priority Mail Contract 6 (MC2009–25 and CP2009–30)
Priority Mail Contract 7 (MC2009–25 and CP2009–31)
Priority Mail Contract 8 (MC2009–25 and CP2009–32)
Priority Mail Contract 9 (MC2009–25 and CP2009–33)
Priority Mail Contract 10 (MC2009–25 and CP2009–34)
Priority Mail Contract 11 (MC2009–27 and CP2009–37)
Priority Mail Contract 12 (MC2009–28 and CP2009–38)
Priority Mail Contract 13 (MC2009–29 and CP2009–39)
Priority Mail Contract 14 (MC2009–30 and CP2009–40)
Outbound International
Direct Entry Parcels Contracts
Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Plus Contracts
Global Plus 1 (CP2008–9 and CP2008–10)
Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
Inbound International
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
Competitive Product Descriptions
Express Mail
[Reserved for Group Description]
Express Mail
[Reserved for Product Description]
Outbound International Expedited Services
[Reserved for Product Description]
Inbound International Expedited Services
[Reserved for Product Description]
Priority
[Reserved for Product Description]
Priority Mail
[Reserved for Product Description]

Outbound Priority Mail International
[Reserved for Product Description]
Inbound Air Parcel Post
[Reserved for Product Description]
Parcel Select
[Reserved for Group Description]
Parcel Return Service
[Reserved for Group Description]
International
[Reserved for Group Description]
International Priority Airlift (IPA)
[Reserved for Product Description]
International Surface Airlift (ISAL)
[Reserved for Product Description]
International Direct Sacks—M–Bags
[Reserved for Product Description]
Global Customized Shipping Services
[Reserved for Product Description]
International Money Transfer Service
[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
International Insurance
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Group Description]
Domestic
[Reserved for Product Description]
Outbound International
[Reserved for Group Description]

Part C—Glossary of Terms and Conditions [Reserved]

Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. E9–19366 Filed 8–13–09; 8:45 am]
BILLING CODE 7710–FW–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–8087]

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:				
Colonial Beach, Town of, Westmoreland County.	510172	March 5, 1975, Emerg; September 18, 1987, Reg; August 18, 2009, Susp.	August 18, 2009	August 18, 2009.
Westmoreland County, Unincorporated Areas.	510250	September 23, 1974, Emerg; September 18, 1987, Reg; August 18, 2009, Susp.	.....*do	Do.
Region IV				
Alabama:				
Barbour County, Unincorporated Areas.	010315	January 20, 1976, Emerg; January 1, 1987, Reg; August 18, 2009, Susp.	.....do	Do.
Blue Springs, Town of, Barbour County.	010224	November 3, 1975, Emerg; September 1, 1986, Reg; August 18, 2009, Susp.	.....do	Do.
Brent, Town of, Bibb County	010012	November 1, 1974, Emerg; September 4, 1985, Reg; August 18, 2009, Susp.	.....do	Do.
Centreville, City of, Bibb County	010369	May 28, 1975, Emerg; August 19, 1985, Reg; August 18, 2009, Susp.	.....do	Do.
Clayton, Town of, Barbour County	010377	April 11, 1990, Emerg; May 1, 1994, Reg; August 18, 2009, Susp.	.....do	Do.
Clio, Town of, Barbour County	010223	December 30, 1975, Emerg; July 18, 1985, Reg; August 18, 2009, Susp.	.....do	Do.
Double Springs, Town of, Winston County.	010350	February 8, 1991, Emerg; September 1, 1991, Reg; August 18, 2009, Susp.	.....do	Do.
Eufaula, City of, Barbour County	010011	April 10, 1975, Emerg; January 15, 1988, Reg; August 18, 2009, Susp.	.....do	Do.
Haleyville, City of, Winston County	010303	October 23, 1975, Emerg; June 25, 1976, Reg; August 18, 2009, Susp.	.....do	Do.
Louisville, Town of, Barbour County ...	010225	November 25, 1975, Emerg; September 1, 1987, Reg; August 18, 2009, Susp.	.....do	Do.
West Blockton, Town of, Bibb County	010014	October 24, 1974, Emerg; September 18, 1985, Reg; August 18, 2009, Susp.	.....do	Do.
Winston County, Unincorporated Areas.	010304	January 14, 1991, Emerg; September 1, 1991, Reg; August 18, 2009, Susp.	.....do	Do.
Florida:				
Kenneth, City of, Pinellas County	120245	August 6, 1974, Emerg; January 16, 1981, Reg; August 18, 2009, Susp.	.....do	Do.
Leon County, Unincorporated Areas ..	120143	June 4, 1973, Emerg; March 3, 2000, Reg; August 18, 2009, Susp.	.....do	Do.
Pinellas Park, City of, Pinellas County	120251	October 8, 1971, Emerg; August 15, 1977, Reg; August 18, 2009, Susp.	.....do	Do.
Tallahassee, City of, Leon County	120144	March 10, 1972, Emerg; December 6, 1976, Reg; August 18, 2009, Susp.	.....do	Do.
Georgia:				
Baker County, Unincorporated Areas	130270	August 18, 1994, Emerg; June 19, 1997, Reg; August 18, 2009, Susp.	.....do	Do.
Butts County, Unincorporated Areas ..	130518	January 24, 1995, Emerg; March 18, 1996, Reg; August 18, 2009, Susp.	.....do	Do.
Cairo, City of, Grady County	130097	May 30, 1975, Emerg; September 1, 1986, Reg; August 18, 2009, Susp.	.....do	Do.
Colquitt, City of, Miller County	130135	July 22, 1992, Emerg; April 1, 1993, Reg; August 18, 2009, Susp.	.....do	Do.
Flovilla, City of, Butts County	130283	July 13, 1976, Emerg; September 29, 1986, Reg; August 18, 2009, Susp.	.....do	Do.
Grady County, Unincorporated Areas	130096	October 20, 1994, Emerg; April 1, 1996, Reg; August 18, 2009, Susp.	.....do	Do.
Ideal, City of, Grady County	130520	February 1, 1995, Emerg; April 3, 1996, Reg; August 18, 2009, Susp.		
Jackson, City of, Butts County	130222	July 8, 1975, Emerg; September 29, 1986, Reg; August 18, 2009, Susp.	.....do	Do.
Jenkinsburg, Town of, Butts County ...	130525	January 3, 2001, Emerg; NA, Reg; August 18, 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
Macon County, Unincorporated Areas	130506	September 22, 1994, Emerg; April 3, 1996, Reg; August 18, 2009, Susp.	.....do	Do.
Marshallville, Town of, Macon County	130536	NA, Emerg; March 19, 1999, Reg; August 18, 2009, Susp.	.....do	Do.
Miller County, Unincorporated Areas ..	130134	November 29, 1994, Emerg; NA, Reg; August 18, 2009, Susp.	.....do	Do.
Montezuma, City of, Macon County ...	130136	February 21, 1975, Emerg; August 1, 1986, Reg; August 18, 2009, Susp.	.....do	Do.
Newton, City of, Baker County	130004	May 29, 1975, Emerg; September 1, 1986, Reg; August 18, 2009, Susp.	.....do	Do.
Oglethorpe, City of, Macon County	130133	February 22, 1975, Emerg; September 29, 1986, Reg; August 18, 2009, Susp.	.....do	Do.
Unified Government of, Webster County.	135268	February 27, 2006, Emerg; NA, Reg; August 18, 2009, Susp.	.....do	Do.
North Carolina:				
Mount Airy, City of, Surry County	370226	May 28, 1975, Emerg; December 1, 1981, Reg; August 18, 2009, Susp.	.....do	Do.
Surry County, Unincorporated Areas ..	370364	November 9, 1979, Emerg; December 1, 1981, Reg; August 18, 2009, Susp.	.....do	Do.
Region V				
Illinois:				
Bluffs, Village of, Scott County	170608	April 28, 1983, Emerg; April 28, 1983, Reg; August 18, 2009, Susp.	.....do	Do.
Meredosia, Village of, Morgan County	170517	March 13, 1974, Emerg; April 15, 1982, Reg; August 18, 2009, Susp.	.....do	Do.
Morgan County, Unincorporated Areas.	170903	April 4, 1979, Emerg; January 17, 1986, Reg; August 18, 2009, Susp.	.....do	Do.
Ohio:				
Ashland County, Unincorporated Areas.	390759	April 20, 1982, Emerg; January 1, 1988, Reg; August 18, 2009, Susp.	.....do	Do.
Creston, Village of, Wayne County	390575	NA, Emerg; October 17, 1994, Reg; August 18, 2009, Susp.	.....do	Do.
Perrysville, Village of, Ashland County	390730	April 6, 1976, Emerg; August 1, 1987, Reg; August 18, 2009, Susp.	.....do	Do.
Streetsboro, City of, Portage County ..	390797	April 16, 1976, Emerg; December 18, 1984, Reg; August 18, 2009, Susp.	.....do	Do.
Windham, Village of, Portage County	390459	October 14, 1976, Emerg; December 14, 1979, Reg; August 18, 2009, Susp.	.....do	Do.
Wisconsin:				
Bellevue, Village of, Brown County	550627	NA, Emerg; February 9, 2005, Reg; August 18, 2009, Susp.	.....do	Do.
Brown County, Unincorporated Areas	550020	March 10, 1972, Emerg; April 17, 1978, Reg; August 18, 2009, Susp.	.....do	Do.
De Pere, City of, Brown County	550021	June 12, 1975, Emerg; July 2, 1981, Reg; August 18, 2009, Susp.	.....do	Do.
Green Bay, City of, Brown County	550022	August 30, 1974, Emerg; September 30, 1977, Reg; August 18, 2009, Susp.	.....do	Do.
Pulaski, Village of, Brown County	550024	February 27, 1976, Emerg; August 3, 1981, Reg; August 18, 2009, Susp.	.....do	Do.
Region VII				
Kansas:				
Basehor, City of, Leavenworth County	200187	August 6, 1975, Emerg; December 7, 1984, Reg; August 18, 2009, Susp.	.....do	Do.
Leavenworth, City of, Leavenworth County.	200190	May 1, 1973, Emerg; January 5, 1978, Reg; August 18, 2009, Susp.	.....do	Do.

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

Dated: August 11, 2009.

Deborah Ingram,

Acting Deputy Assistant Administrator for Mitigation, Mitigation Directorate.

[FR Doc. E9–19540 Filed 8–13–09; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1757; MB Docket No. 09–110; RM–11542]

Television Broadcasting Services; Santa Fe, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by the Regents of the University of New Mexico, the licensee of noncommercial educational station KNMD–DT, DTV channel *9, Santa Fe, New Mexico, requesting the substitution of DTV channel *8 for DTV channel *9 at Santa Fe.

DATES: This rule is effective August 14, 2009.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 09–110, adopted August 4, 2009, and released August 6, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under New Mexico, is amended by adding DTV channel *8 and removing DTV channel *9 at Santa Fe.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–19524 Filed 8–13–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1758; MB Docket No. 09–111; RM–11541]

Television Broadcasting Services; Colorado Springs, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Gray Television Licensee, LLC, the licensee of station KKTV (TV), DTV channel 10, Colorado Springs, Colorado, requesting the substitution of DTV channel 49 for DTV channel 10 at Colorado Springs.

DATES: This rule is effective August 14, 2009.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 09–111, adopted August 4, 2009, and released August 6, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments

under Colorado, is amended by adding DTV channel 49 and removing DTV channel 10 at Colorado Springs.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau, Federal Communications Commission.

[FR Doc. E9–19525 Filed 8–13–09; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–36

[FMR Amendment 2009–05; FMR Case 2009–102–2; Docket 2009–0002, Sequence 4]

RIN 3090–AI87

Federal Management Regulation; FMR Case 2009–102–2; Disposition of Excess Personal Property

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

ACTION: Final rule.

SUMMARY: The General Services Administration is amending the Federal Management Regulation (FMR) by making a change to its personal property policy. This final rule updates and clarifies language that has caused some confusion with our customers and resulted in unnecessarily prolonged periods to remove property.

DATES: *Effective Date:* This final rule is effective on August 14, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Robert Holcombe, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management (MT), (202) 501–3828 or e-mail at *robert.holcombe@gsa.gov.* For information pertaining to status or publication schedules contact the Regulatory Secretariat, 1800 F Street, NW., Room 4041, Washington, DC, 20405, (202) 501–4755. Please cite FMR case 2009–102–2.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on February 23, 2009 (74 FR 14510) to solicit comments on a proposed change to FMR section 102–36.135 (41 CFR 102–36.135). The language used in that section caused confusion with our customers and resulted in unnecessarily prolonged removal periods. The proposed revision would make it clear that the acquiring agency is responsible for scheduling and coordinating the property removal once the acquiring agency receives notification from GSA that they have been allocated the property. No comments were received.

B. Executive Order 12866

This final rule is excepted from the definition of ''regulation'' or ''rule'' under Section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, was not subject to review under Section 6(b) of that Executive Order.

C. Regulatory Flexibility Act

This final rule was not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act does not apply. However, a proposed rule was published on February 23, 2009 in order to elicit comments and to provide transparency in the promulgation of federal policies.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 41 CFR Part 102–36

Government property, property disposal.

Dated: July 15, 2009.

Paul F. Prouty,

Acting Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR part 102–36 as set forth below:

PART 102–36—DISPOSITION OF EXCESS PERSONAL PROPERTY

■ 1. The authority citation for 41 CFR part 102–36 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 2. Revise § 102–36.135 to read as follows:

§ 102–36.135 How much time do we have to pick up excess personal property that has been approved for transfer?

Normally, you have 15 calendar days from the date of GSA allocation to pick up the excess personal property for transfer, and you are responsible for scheduling and coordinating the property removal with the holding agency. If additional removal time is required, you are responsible for requesting such additional removal time.

[FR Doc. E9–19481 Filed 8–13–09; 8:45 am]

BILLING CODE 6820–14–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 519, and 552

[GSAR Amendment 2009–09; GSAR Case 2006–G501 (Change 37) Docket 2008–0007; Sequence 6]

RIN 3090–AI56

General Services Administration Acquisition Regulation; GSAR Case 2006–G501, Mentor-Protégé Program

AGENCIES: General Services Administration (GSA), Office of the Chief Acquisition Officer.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to amend its acquisition regulations to formally encourage GSA prime contractors to assist small business, including veteran-owned small business, service-disabled veteran-owned small business, HUBZone, small disadvantaged business, and women-owned small business, in enhancing their capabilities to perform contracts and subcontracts for GSA and other Federal agencies. The program seeks to increase the base of small business eligible to perform GSA contracts and subcontracts. The program also seeks to foster long-term business relationships between GSA prime contractors and small business entities and to increase the overall number of small business entities that receive GSA contracts, and subcontract awards.

DATES: *Effective Date*: September 14, 2009.

Applicability Date: The final rule applies to solicitations and existing contracts for supplies or services, including Federal Supply Schedules and construction. Existing contracts shall be modified at no cost to the Government by mutual agreement of both parties.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. For information pertaining to status or publication schedules, contact the Regulatory

Secretariat (VPR), Room 4041, 1800 F Street, NW, Washington, DC, 20405, (202) 501–4755. Please cite Amendment 2009–09, GSAR case 2006–G501 (Change 37).

SUPPLEMENTARY INFORMATION:

A. Background

The U.S. General Services Administration (GSA) published a notice of proposed rulemaking in the **Federal Register** at 73 FR 32669, June 10, 2008), in which GSA proposed to develop a Mentor-Protégé Program that encouraged GSA prime contractors to assist small business, including small disadvantaged business, veteran-owned, service-disabled veteran-owned, HUBZone, and women-owned small business in enhancing their capabilities to perform contracts and subcontracts for GSA and other Federal agencies. Successful Mentor-Protégé arrangements represent opportunities for creating access for small business to GSA contracts and awards. GSA received comments on the proposed rule suggesting the Agency clarify the eligible participants in the Program and the types of incentives GSA may provide to prime contractors for providing developmental assistance to protégés. After careful consideration of the public comments received on the notice of proposed rulemaking, GSA is issuing a final rule.

Resolution of Comments

Twelve commenters submitted comments in response to the proposed rule. Three of the twelve commenters expressed interest in participating in the GSA Mentor-Protégé Program. A discussion of the comments and the changes made to the rule as a result of those comments is provided below.

Comment: One commenter recommends that the word ''small'' needs to be defined. Large businesses ''hide'' behind small businesses.

Response: Non-concur. The comment is outside the scope of this GSAR case. With the exception of small disadvantaged businesses, 8(a) Participants and HUBZone small business concerns, all other firms self-certify in accordance with the definitions in FAR Part 2.

Comment: A commenter states that incentives are insufficient and suggests monetary reimbursement for mentoring expenses, limited ownership interest in the protégé, or relaxation of small business affiliation rule.

Response: Non-concur. GSA does not have legal authority to incorporate the incentives suggested by the commenter. GSAM 519.7004, Incentive for Prime Contract Participation, is consistent with the Mentor-Protégé Programs of other civilian agencies.

Comment: Two commenters recommend better monitoring of the Mentor-Protégé Programs.

Response: GSA is not responsible for the experiences of other Federal agency Mentor-Protégé Programs and plans to carefully monitor the GSA Mentor-Protégé Program. GSA anticipates having a very successful program that will be beneficial to both mentors and protégés.

Comment: Under GSAM 519.7003, General Policy, a commenter recommends the need to address how Mentor-Protégé Agreements can be incorporated into small business prime awards and how evaluation credit during source selection is given to small business firms that are mentors with small business subcontractors.

Response: Concur. As with other terms and conditions that need incorporation into a contract, the Mentor-Protégé agreement should be incorporated into the small business prime contractor's contract. In addition, there is nothing in the FAR or GSAR that precludes establishing source selection criteria that would apply to both large and small businesses.

Comment: One commenter states that GSAR 519.7004, paragraph (b) does not appear to belong in this section since it points out that the mentor's cost are not reimbursable directly but may be reimbursable once indirect cost rates are established with the cognizant audit agency. How does this relate to incentives for mentors?

Response: Non-concur. The civilian agencies do not have the statutory authority that the Department of Defense has for its Mentor-Protégé Program; therefore, civilian agency incentives are limited. GSAM 519.7004, Incentive for Prime Contract Participation, is consistent with the Mentor-Protégé Programs of other civilian agencies.

Comment: One commenter requests specific details about the non-monetary award in GSAM 519.7004(d). In addition, the commenter questions why the GSA annual conference in GSAM 519.7004(e) is listed as an incentive and states that overall there are no true incentives offered for the time and effort the Mentor Program would require.

Response: Non-concur. GSA will provide the specifics of the non-monetary award at a later date. The civilian agencies do not have the statutory authority that the Department of Defense has; therefore, the incentives for civilian agencies are limited. The GSA annual conference is an opportunity to network, share Mentor-Protégé experiences and share the ''Lessons Learned''. GSAM 519.7004, Incentive for Prime Contract Participation, is consistent with the Mentor-Protégé Programs of other civilian agencies.

Comment: A commenter questions indirect costs and states that these costs are generally established for cost contracts and certain special fixed price contracts. The references for indirect cost rates seem to be entirely out of place and would often be inapplicable to many competitive firm fixed GSA contracts.

Response: Non-concur. Even though this paragraph may not apply to many GSA contracts, this is a GSA-wide Mentor-Protégé Program that can include contracts that may have indirect costs associated with it. The intent of the GSA Mentor-Protégé Program is to not exclude any potential GSA contracts, including GSA cost contracts.

Comment: One commenter refers to FAR 15.101–1 which discusses the trade-off process. The commenter states that the natural implication is that the evaluation credit is not applicable to lowest-price technically acceptable source selection, given that tradeoffs are not permitted in that scenario and should be clearly stated, for it substantially limits the circumstance under which this incentive could be applied. The commenter further states that careful distinction is required since the same paragraph goes on to state that past compliance with subcontracting plans can be considered as part of past performance evaluation (trade-off scenario) but also as part of Responsibility Determinations which are made regardless of whether the trade-off or LPTA scenario is used so the paragraph is unclear in regard to the distinction between the two types of source selection.

Response: Non-concur. The FAR clearly explains how the trade-off process is utilized. The GSAR language at 519.7004(c) states that the contracting officer ''may'' give mentors evaluation credit under FAR 15.101–1 considerations for subcontracts which means that it may not be used in all cases.

Comment: Regarding GSAM 519.7005, one commenter suggests that the regulation address how measurement of the program success within the first year of the agreement if a Protégé has not received a contract award or dollars. Depending on the terms of the agreement, the first year of the program may involve only development or training; therefore, contract awards may not be immediate.

Response: The GSA Mentor-Protégé Program will not be measured only on the contract award and dollars. The measurement of success will include developmental assistance given to the Protégé as required by the Mentor-Protégé Program.

Comment: One commenter requests clarification on GSAM 519.7006 and 519.7009. GSAM 519.7009 indicates that a large business mentor's application must include a statement that the firm is currently performing under at least one active approved subcontracting plan. However, GSAM 519.7006 states that mentors must either currently be operating under an approved subcontracting plan under a negotiated award or must have operated under one for a contract awarded within the past five years.

Response: Concur. The language has been revised to state that the large business mentor must currently be performing under an approved subcontracting plan. The language ''or has performed under at least one approved subcontracting plan awarded under a negotiated contract within the last five years'' has been deleted.

Comment: A commenter believes that GSAM 519.7003(c) is vague and recommends that the provision be changed to state that an active mentor-protégé arrangement requires the protégé to already be or become a subcontractor under a GSA contract of the mentor firm that contains a subcontracting plan. This revision will then be in agreement with GSAM 519.7009(b).

Response: Concur. The language in GSAM 519.7003(c) has been revised.

Comment: One commenter recommends that the GSAM language be clear to indicate that this section includes schedules.

Response: Concur. Adopted comment.

Comment: One commenter states that GSAM 519.7004(c) does not clearly elaborate on the incentives and the associated specifics. The commenter further states that the current language does not mention that the mentor can take credit for costs incurred by the mentor. Other Federal mentor-protégé programs allow the mentor to subsequently receive credit towards their subcontracting plan based on the amount invested. This section combines mentor-protégé performance with small business subcontracting plan compliance which are totally separate elements. Commenter recommends adding language that explicitly describes the incentive as follows: ''future solicitations contain a source selection factor or subfactor regarding the participation in the Mentor-Protégé Program. In order to receive credit under source selection factor or subfactor, the offeror shall provide a signed letter of mentor-protégé agreement approval before initial evaluation of proposals. The contracting officer may, in his or her discretion, give credit for approvals that occur after the initial evaluation of proposals, but before final evaluation''. (Currently in DHS and NASA's programs).

Response: Non-concur. With the exception of instances of allowing indirect costs, costs incurred by the mentor are not allowable.

Comment: A commenter suggests adding language that enables the mentor to take credit for the developmental assistance provided and how this credit can be applied. Suggested language: ''Mentors are eligible to take post-award incentive for subcontracting plan credit whereby the mentor will receive credit towards its subcontracting plan for costs it incurs to provide assistance to a protégé firm. The mentor may use this additional credit toward achievement of its goal under the same or another GSA subcontracting plan. GSA may wish to adjust the credit factor as it sees fit, but it is a federal agency best practice as represented at DOD, DHS, NASA, and others to explicitly state how the benefit and credit is determined.''

Response: GSA does not concur. GSA believes that the incentives in GSAM 519.7004, ''Incentives for prime contractors,'' that includes coverage whereby mentors may be reimbursed for their indirect costs are sufficient incentives.

Comment: One commenter recommends removing GSAM 519.7004(c)(2) in its entirety.

Response: Non-concur. The commenter provides no rationale for its removal. GSA believes that this subparagraph is an incentive for prime contractor participation.

Comment: A commenter recommends that GSA, if not at inception, then at a later date, to provide greater elaboration and detail regarding the criteria for the OSBU mentoring award.

Response: Concur. After implementation of the GSA Mentor-Protégé Program, the Associate Administrator of the Office of Small Business Utilization (OSBU), will be responsible for developing the criteria for the OSBU mentoring award.

Comment: One commenter states that GSAM 519.7009 as currently proposed combines elements of a Mentor Application process and a Mentor-Protégé agreement submittal process. It implies that for each protégé agreement, a mentor submit an application. These two elements should be completely separate as consistent with other Federal agency practices and procedures. The application for the mentor should not contain requests for the number of proposed mentor-protégé arrangements as cited in GSAM 519.7009(b)(2) since it is not known how many will be developed in outlying years. In addition, the specifics on the type of developmental assistance GSAM 519.7009(b)(5) to be provided, or that a signed letter of intent by the mentor and protégé GSAM 519.7009(b)(6) be required are not truly indicative of a prime contractor's eligibility as a mentor. They are elements germane to the development of a specific mentor-protégé agreement and should be incorporated into the ensuing section. By separating the mentor application process from the agreement submittal process, industry and Government are given the flexibility in the future to efficiently add a protégé or protégés as long as it is in good standing both as a prime contractor and mentor. This will result in a reduction in the amount of paperwork and time saving for the Government.

Response: Non-concur. Initially, in the proposed rule, GSA had the application and the agreement as separate submissions. However, GSA has determined that it would be less burdensome on both the contractors and GSA personnel to have the application and agreement combined. This is consistent with Mentor-Protégé Programs of other Federal agencies, such as USAID and Department of Homeland Security.

Comment: One commenter recommends deletion of GSAM 519.7009(b)(2) requiring mentors to state the number of proposed protégé arrangements at the time of mentor application review and mentor-protégé agreement process.

Response: Non-concur. GSA is interested in how many protégés the mentor plans to develop.

Comment: Delete GSAM 519.7009(b)(6) requiring a letter of intent be signed by the prospective mentor and protégé at the time of mentor application submittal. This should be a requirement at the time of mentor-protégé submittal.

Response: Concur. The final rule now combines the application and agreement. Therefore, the letter of intent is unnecessary.

Comment: A commenter recommends adding a section in the mentor application for prospective mentors to provide information on their previous participation in Federal agency mentor-protégé programs. Should the prospective mentor not have any prior

experience, they should describe the entity's ability to provide developmental assistance and how that assistance will potentially increase subcontracting opportunities for protégés. This should be inserted under GSAM 519.7009.

Response: Non-concur. The GSA Mentor-Protégé Program stands independently. GSA will be evaluating the mentor-protégé relationship on its own merits. Having experience (positive or negative) on other mentor-protégé programs would not add value and would increase the paperwork burden on the contractor.

Comment: Commenter encourages GSA to review and consider the current mentor-protégé application process and forms of those currently in practice at NASA, DOD or DHS as a baseline.

Response: GSA has reviewed and considered other agencies' mentor-protégé application processes and forms and has chosen the most appropriate to suit GSA's needs.

Comment: Section 519.7017 provides guidance for contracting officers to insert this clause. It seems to imply that will be only for new contracts with no clear guidance regarding the GSA contracts already in place. This will limit the ability for participation by industry at the onset, thus limiting the potential short-term impact and success. Recommend that GSA give clear guidance or instructions as to how existing contracts can be modified to incorporate these new clauses in order to facilitate industry participated once initiated.

Response: Concur. GSA did not intend for current contractors to be excluded from participation in the Mentor-Protégé Program. GSAM 519.7017 does not need a revision as it states to insert the clause in all contracts and is not stating newly awarded contracts. The **Federal Register** Notice indicates that the final rule applies to current contracts.

Comment: Two commenters recommend that GSA amend its rule to include language defining non-profit agencies (NPAs) for people who are blind or have severe disabilities authorized by the Committee for Purchase from People Who Are Blind or Severely disabled as protégé firms in Section 519.7007(a).

Response: Non-concur. The Small Business Administration regulation, 13 CFR 121.105(a)(1) states: ''Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.''

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, GSA prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

The GSA Mentor-Protégé Program will allow small businesses to become protégés and receive developmental assistance from large business mentors. The GSA Mentor-Protégé Program also will allow small businesses who want to mentor other small businesses to participate in the program to provide developmental assistance to protégés. This Program encourages fostering the establishment of long-term business relationships between these small business entities and GSA prime contractors. It is expected that the Program will increase the overall number of small business entities that receive GSA contract and subcontract awards.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat will be submitting a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 3090–0286.

List of Subjects in 48 CFR Parts 501, 519, and 552

Government procurement.

Dated: August 7, 2009.

Rodney P. Lantier,

Acting Senior Procurement Executive, and Acting Deputy Chief Acquisition Officer, Office of the Chief Acquisition Officer, General Services Administration.

■ Therefore, GSA amends 48 CFR parts 501, 519, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 501, 519, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

■ 2. Amend section 501.106, in the table, by adding, in numerical sequence, GSAR References ''519.70'', ''552.219–75'', ''552.219–76'' and their corresponding OMB Control Number ''3090–0286''.

PART 519—SMALL BUSINESS PROGRAMS

■ 3. Add Subpart 519.70, consisting of sections 519.7001 through 519.7017, to read as follows:

Subpart 519.70—GSA Mentor-Protégé Program

Sec.

Subpart 519.70—GSA Mentor-Protégé Program

519.7001 Scope of subpart.

The GSA Mentor-Protégé Program is designed to encourage and motivate GSA prime contractors to assist small businesses concerns, small disadvantaged businesses concerns, women-owned small businesses concerns, veteran-owned small business concerns, service-disabled veteran-owned small businesses concerns, and HUBZone small businesses concerns, and enhance their capability of performing successfully on GSA contracts and subcontracts, foster the establishment of long-term business relationships between these small business entities and GSA prime contractors, and increase the overall number of small business entities that receive GSA contract and subcontract awards.

519.7002 Definitions.

The definitions of small business concern, small disadvantaged business concern, HUBZone small business concern, women-owned small business concern, veteran-owned small business

concern, and service-disabled veteran-owned small business concern are the same as found in FAR 2.101. Also see 13 CFR 121, 124, 125 and 126.

(a) *Mentor* as used in the GSA Mentor-Protégé Program, is a prime contractor that elects, on a specific GSA contract, to promote and develop small business subcontractors by providing developmental assistance designed to enhance the business success of the protégé.

(b) *Mentor-Protégé Program Manager* means an employee in the Office of Small Business Utilization (OSBU) (E) designated by the Associate Administrator of OSBU to manage the Mentor-Protégé Program.

(c) *Protégé* as used in the GSA Mentor-Protégé Program is a small business concern that is the recipient of developmental assistance pursuant to a mentor-protégé arrangement on a specific GSA contract.

519.7003 General policy.

(a) A large business prime contractor that meets the requirements at section 519.7006, and is approved as a mentor firm by the Mentor-Protégé Program Manager, may enter into an Agreement with a small business concern, small disadvantaged business concern, women-owned small business concern, veteran-owned small business concern, service-disabled veteran-owned small business concern or HUBZone small business concern that meets the requirements for being a protégé (see 519.7007) in order to provide appropriate developmental assistance to enhance the capabilities of the protégé to perform successfully as a subcontractor and supplier.

(b) A small business prime contractor that is capable of providing developmental assistance to protégés, may also be approved as a mentor.

(c) An active mentor-protégé arrangement requires the protégé to either be a current or newly selected subcontractor under the mentor's prime contract with GSA.

(d) A small business concern's status as a protégé under a GSA contract shall not have an effect on its ability to seek other prime contracts or subcontracts.

(e) Potential Mentors may submit an application for admittance to the Mentor-Protégé Program at any time as long as the requirements at section 519.7006 are met.

(f) The determination of affiliation is a function of the SBA.

519.7004 Incentives for prime contractors.

(a) Under the Small Business Act, 15 U.S.C. 637(d)(4)(E), the GSA is authorized to provide appropriate incentives to prime contractors in order to encourage subcontracting opportunities for small business concerns consistent with the efficient and economical performance of the contract. This authority is limited to negotiated procurements, including the GSA Multiple Award Schedule contracts and the GSA Governmentwide Acquisition Contracts. It does not include orders under any GSA contracts.

(b) Costs incurred by a mentor to provide developmental assistance, as described in section 519.7012 to fulfill the terms of their agreement(s) with a protégé firm(s), are not reimbursable as a direct cost under a GSA contract. If GSA is the mentor's responsible audit agency under FAR 42.703–1, GSA will consider these costs in determining indirect cost rates. If GSA is not the responsible audit agency, mentors are encouraged to enter into an advance agreement with their responsible audit agency on the treatment of such costs when determining indirect cost rates.

(c) In addition to paragraph (b) of this section, contracting officers may give mentors evaluation credit during the source selection process for subcontracts awarded under their subcontracting plans pursuant to their Mentor-Protégé Agreements. (See FAR 15.101–1). Therefore:

(1) Contracting officers may evaluate proposals with subcontracting plans containing Mentor-Protégé Agreements more favorably than proposals with subcontracting plans that do not include Mentor-Protégé Agreements; and

(2) Contracting officers may assess the prime contractor's compliance with the subcontracting plans submitted in previous contracts as a factor in evaluating past performance under certain circumstances (see FAR 15.304(c)(3) and 15.305(a)(2)(v)) and determining contractor responsibility FAR section 19.705–5(a)(1).

(d) *OSBU Mentoring Award.* A non-monetary award may be presented annually to the mentoring firm providing the most effective developmental support of a protégé. The Mentor-Protégé Program Manager will recommend an award winner to the Administrator of GSA.

(e) *OSBU Mentor-Protégé Annual Conference.* At the conclusion of each year in the Mentor-Protégé Program, mentor firms will be invited to brief contracting officers, program leaders, office directors, and other guests on their experience and progress under the Program. Participation is voluntary.

519.7005 Measurement of program success.

The overall success of the GSA Mentor-Protégé Program encompassing all participating mentors and protégés will be measured by the extent to which it results in:

(a) An increase in the number, dollar value, and percentage of subcontracts awarded to protégés by mentor firms under GSA contracts since the date of entry into the Program. The baseline that demonstrates an increase is determined by comparing the number and total dollar amount of subcontract awards made to the identified protégé firm(s) during the two preceding fiscal years (if any) that are listed in application;

(b) An increase in the number and dollar value of contract and subcontract awards (including percentage of subcontract awards) to protégé firms since the date of the protégé's entry into the Program (under GSA contracts and contracts awarded by other Federal agencies);

(c) An increase in the number and dollar value of subcontracts awarded to a protégé firm by its mentor firm; and

(d) An increase in subcontracting with protégé firms in industry categories where they have not traditionally participated within the mentor firm's activity (*i.e.*, the protégé is expanding its field of expertise or is increasing its opportunities in areas where it has not traditionally performed).

(e) Assessments of the semi-annual reports submitted by the mentors and ''Lessons Learned'' evaluation submitted by the mentors and protégés to the GSA Mentor-Protégé Program Manager.

519.7006 Mentor firms.

(a) Mentors must be:

(1) A large business prime contractor that is currently performing under an approved subcontracting plan as required by FAR 19.7 - Small business mentors are exempted; or

(2) A small business prime contractor that can provide developmental assistance to enhance the capabilities of protégés to perform as contractors, subcontractors, and suppliers;

(b) Must be eligible (not listed in the ''Excluded Parties List System'') for U.S. Government contracts and not excluded from the Mentor-Protégé Program under section 519.7014(b);

(c) Must be able to provide developmental assistance that will enhance the ability of protégés to perform as contractors and subcontractors; and

(d) Must provide semi-annual reports detailing the assistance provided and the cost incurred in supporting protégés.

519.7007 Protégé firms.

(a) For selection as a protégé, a firm must be:

(1) A small business concern, small disadvantaged business concern, veteran-owned small business concern, service-disabled veteran-owned small business concern, HUBZone small business concern, or women-owned small business concern;

(2) Small for the NAICS code the prime contractor/mentor assigns to the subcontract; and

(3) Eligible (not listed in the ''Excluded Parties List System'') for U.S. Government contracts and not excluded from the Mentor-Protégé Program under section 519.7014(b).

(b) A protégé firm may self-represent to a mentor firm that it meets the requirements set forth in paragraph (a) of this section. Mentors may check the Central Contractor Registration (CCR) at *www.ccr.gov* to verify that the self-representation of the potential protégé meets the specified small business and socioeconomic category eligibility requirements (see FAR 19.703(b) and (d)). HUBZone and small disadvantaged business status eligibility and documentation requirements are determined according to 13 CFR Parts 124 and 126.

(c) A protégé firm must not have another formal, active mentor-protégé relationship under GSA's Mentor-Protégé Program but may have an active mentor-protégé relationship under another agency's program.

519.7008 Selection of protégé firms.

(a) Mentor firms will be solely responsible for selecting protégé firms. Mentors are encouraged to select from a broad base of small business concerns including small disadvantaged business concerns, women-owned small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, and HUBZone small business concerns. A protégé must be either a current subcontractor or a newly selected subcontractor for the prime contractor's GSA contract.

(b) Mentor firms may have more than one protégé. GSA reserves the right to limit the number of protégés participating under each mentor firm.

(c) The selection of protégé firms by mentor firms is not protestable, except for a protest regarding the size or eligibility status of an entity selected by a mentor to be a protégé. Such protests shall be handled in accordance with FAR 19.703(b). The contracting officer shall notify the Office of Small Business Utilization (OSBU) of the protest.

519.7009 Application process.

(a) Prime contractors interested in becoming a mentor firm must apply in writing by submitting the GSA Form 3695 to the GSA Mentor-Protégé Program Manager, at GSA Office of Small Business Utilization (E), Washington, DC 20405. The Application shall include the Mentor-Protégé Agreement and will be evaluated for approval based on the extent to which the company plans to provide developmental assistance.

(b) The application must contain:

(1) A statement that the mentor firm is currently performing under at least one active approved subcontracting plan (small business exempted) and the firm is eligible, as of the date of Application, for the award of Federal contracts;

(2) The number of proposed protégé arrangements;

(3) Data on all current GSA contracts, and subcontracts including the contract/subcontract number(s), type of contract(s), period of performance (including options), contract/subcontract value(s) including options, technical program effort(s) (program title), name of GSA Project Manager or Contracting Officer's Representative (including contact information), name of contracting officer(s) and contact information, and awarding GSA installation;

(4) Data on total number and dollar value of subcontracts awarded under GSA prime contracts within the past 2 years and the number and dollar value of such subcontracts awarded to entities who are proposed protégés;

(5) Information on the proposed types of developmental assistance. For each proposed mentor-protégé relationship include information on the company's ability to provide developmental assistance to the identified protégé firm and how that assistance will potentially increase subcontracting opportunities for the protégé firm, including subcontracting opportunities in industry categories where these entities are not dominant in the company's current subcontractor base; and

(6) Agreement information as listed in 519.7010.

519.7010 Agreement contents.

The contents of the Agreement must contain:

(a) Names, addresses (including facsimile, e-mail, and homepage) and telephone numbers of mentor and protégé firms and the name, telephone number, and position title within both firms of the person who will oversee the Agreement.

(b) An eligibility statement from the protégé stating that it is a small business, its primary NAICS code, and when applicable the type of small business (small disadvantaged business concern, HUBZone small business concern, women-owned small business concern, veteran-owned small business concern, or service-disabled veteran-owned small business concern).

(c) A description of the type of developmental assistance that will be provided by the mentor firm to the protégé firm (see 519.7012).

(d) Milestones for providing the identified developmental assistance.

(e) Factors to assess the protégé firm's developmental progress under the Program.

(f) The anticipated dollar value and type of subcontracts that may be awarded to the protégé firm consistent with the extent and nature of mentor firm's business, and the period of time over which they may be awarded.

(g) Program participation term: State the period of time over which the developmental assistance will be performed.

(h) *Mentor termination procedures*: Describe the procedures applicable to the mentor firm when notifying the Protégé firm, in writing and at least 30 days in advance, of the mentor firm's intent to voluntarily withdraw its participation in the Program, or to terminate the Agreement.

(i) *Protégé termination procedures*: Describe the procedures applicable to the protégé firm when notifying the mentor firm, in writing at least 30 days in advance, of the protégé firm's intent to terminate the Mentor-Protégé Agreement.

(j) Plan for accomplishing contract work should the Mentor-Protégé Agreement be terminated or a party excluded under 519.7014(b). The mentor's prime contract with GSA continues even if the Mentor-Protégé Agreement or the Mentor-Protégé Program is discontinued.

(k) The protégé must agree to provide input into the mentor firm's semi-annual reports (see 519.7015). The protégé must submit a ''Lessons Learned'' evaluation along with the mentor firm at the conclusion of the Mentor-Protégé agreement.

(l) Other terms and conditions as specified by the Mentor-Protégé Manager on a case-by-case basis.

519.7011 Application review.

(a) The Mentor-Protégé Program Manager will review the information specified in section 519.7009(b) and

519.7010 to establish the Mentor's and Protégé's eligibility and to ensure all necessary information is included. If the application relates to a specific contract, then the Mentor-Protégé Program Manager will consult with the applicable contracting officer regarding the adequacy of the proposed Agreement, as appropriate. The Mentor-Protégé Program Manager will complete its review no later than 30 days after receipt of the application. The contracting officer must provide feedback to the Program Manager no later than 10 days after receipt of the application.

(b) After the Mentor-Protégé Program Manager completes its review and provides written approval, the Mentor may execute the Agreement and implement the developmental assistance as provided under the Agreement. The Mentor-Protégé Program Manager will provide a copy of the Mentor-Protégé Agreement to the GSA contracting officer for any GSA contracts affected by the Agreement.

(c) The Agreement defines the relationship between the Mentor and the Protégé firms only. The Agreement itself does not create any privity of contract or contractual relationship between the Mentor and GSA nor the Protégé and GSA.

(d) If the Agreement is disapproved, the Mentor may provide additional information for reconsideration. The Mentor-Protégé Program Manager will complete the review of any supplemental information no later than 30 days after its receipt. Upon finding deficiencies that GSA considers correctable, the Mentor-Protégé Program Manager will notify the Mentor and Protégé and request correction of the deficiencies to be provided within 15 days.

519.7012 Developmental assistance.

The forms of developmental assistance a mentor can provide to a protégé include:

(a) Management guidance relating to—

(1) Financial management;

(2) Organizational management;

(3) Overall business management/planning; and

(4) Business development.

(b) Engineering and other technical assistance.

(c) Loans.

(d) Rent-free use of facilities and/or equipment.

(e) Temporary assignment of personnel to the protégé for purpose of training.

(f) Any other types of developmental assistance approved by the GSA Mentor-Protégé Program Manager.

519.7013 Obligation.

(a) The mentor or protégé may terminate the Agreement in accordance with 519.7010. The mentor will notify the Mentor-Protégé Program Manager and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the Program or to terminate the Agreement, or upon receipt of a protégé's notice to withdraw from the Program.

(b) Mentor and protégé firms will submit a ''Lessons Learned'' evaluation to the GSA Mentor-Protégé Program Manager at the conclusion or termination of each Mentor-Protégé Agreement or withdrawal from the Mentor-Protégé program.

519.7014 Internal controls.

(a) The GSA Mentor-Protégé Program Manager will manage the Program. Internal controls will be established by the Mentor-Protégé Program Manager to achieve the stated Program objectives (by serving as checks and balances against undesired actions or consequences) such as:

(1) Reviewing and evaluating mentor Applications for realism, validity and accuracy of provided information;

(2) Monitoring each Mentor-Protégé Agreement by reviewing semi-annual progress reports submitted by mentors and protégés on protégé development to measure protégé progress against the master plan contained in the approved Agreement;

(3) Monitoring milestones in the Agreement (see 519.7010); and

(4) Evaluating ''Lessons Learned'' submitted by the Mentor and the Protégé as required by section 519.7013 to improve the GSA Mentor-Protégé Program.

(b)(1) GSA has the authority to exclude mentor or protégé firms from participating in the GSA Program.

(2) GSA may rescind approval of an existing Mentor-Protégé Agreement if it determines that such action is in GSA's best interest. The rescission shall be in writing and sent to the Mentor and protégé after approval by the Director of OSBU. Rescission of an Agreement does not change the terms of any subcontract between the Mentor and the Protégé.

(3) Exclusion from the Program does not constitute a termination of the subcontract between the mentor and the protégé.

519.7015 Reports.

(a) Semi-annual reports shall be submitted by the mentor to the GSA Mentor-Protégé Program manager to include information as outlined in section 552.219–76(c).

(b) Protégés must agree to provide input into the mentor firm's semi-annual reports detailing the assistance provided and goals achieved since agreement inception. However, for cost reimbursable contracts, costs associated with the preparation of these reports are unallowable costs under these Government contracts and will not be reimbursed by the Government.

(c) The GSA contracting officer, or if applicable the technical program manager, shall include an assessment of the prime contractor's (mentor's) performance in the Mentor-Protégé Program in a quarterly ''Strengths and Weaknesses'' evaluation report. A copy of this assessment will be provided to the Mentor-Protégé Program Manager and to the mentor and protégé.

519.7016 Program review.

At the conclusion of each year in the Mentor-Protégé Program (anniversary date of the Mentor-Protégé Program), the prime contractor and protégé, as appropriate, will formally brief the GSA Mentor-Protégé Program Manager, the technical program manager, and the contracting officer regarding Mentor-Protégé Program accomplishments pertaining to the approved Agreement.

519.7017 Contract clauses.

(a) The contracting officer shall insert the clause at 552.219–75, GSA Mentor-Protégé Program, in all unrestricted solicitations (not set aside) and contracts that exceed the simplified acquisition threshold that offer subcontracting opportunities or in the case of a small business, that can offer developmental assistance to a small business protégé.

(b) The contracting officer shall insert the clause at 552.219–76, Mentor Requirements and Evaluation, in contracts anticipated to exceed the simplified acquisition threshold where the prime contractor has signed a Mentor-Protégé Agreement with GSA.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add sections 552.219–75 and 552.219–76 to read as follows:

552.219–75 GSA Mentor-Protégé Program.

As prescribed in 519.7017(a), insert the following clause:

GSA MENTOR-PROTÉGÉ PROGRAM ([SEP 2009])

(a) Prime contractors, including small businesses, are encouraged to participate in the GSA Mentor-Protégé Program for the purpose of providing developmental assistance to eligible protégé entities to

enhance their capabilities and increase their participation in GSA contracts.

(b) The Program consists of:

(1) Mentor firms are large prime contractors with at least one active subcontracting plan, or that are eligible small businesses;

(2) Protégés are subcontractors to the prime contractor, and include small business concerns, small disadvantaged business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, and women-owned small business concerns meeting the qualifications specified in Subpart 519.70; and

(3) Mentor-protégé Applications and Agreements, approved by the Mentor-Protégé Program Manager in the GSA Office of Small Business Utilization (OSBU).

(c) *Mentor participation in the Program* means providing technical, managerial and financial assistance to aid protégés in developing requisite high-tech expertise and business systems to compete for and successfully perform GSA contracts and subcontracts.

(d) Contractors interested in participating in the Program are encouraged to read FAR Subpart 19.7 and to contact the GSA Office of Small Business Utilization (E), Washington, DC 20405, (202) 501–1021, for further information.

(End of clause)

552.219–76 Mentor Requirements and Evaluation.

As prescribed in 519.7017(b), insert the following clause:

MENTOR REQUIREMENTS AND EVALUATION ([SEP 2009])

(a) The purpose of the GSA Mentor-Protégé Program is for a GSA prime contractor to provide developmental assistance to certain subcontractors qualifying as protégés. Eligible protégés include small business concerns, small disadvantaged business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, and women-owned small business concerns meeting the qualifications specified in section 519.7007. The Program requires an Application process and an Agreement between the mentor and the protégé. See GSAR Subpart 519.70 for more information.

(b) GSA will evaluate a GSA mentor's performance on the following factors:

(1) Specific actions taken by the contractor, during the evaluation period, to increase the participation of its protégé as a subcontractor and supplier;

(2) Specific actions taken by the contractor during this evaluation period to develop the technical and corporate administrative expertise of its protégé as defined in the Agreement;

(3) To what extent the protégé has met the developmental objectives in the Agreement; and

(4) To what extent the firm's participation in the Mentor-Protégé Program resulted in the protégé receiving competitive contract(s) and subcontract(s) from private firms other than the mentor, and from agencies.

(c) Semi-annual reports shall be submitted by a GSA mentor to the GSA Mentor-Protégé Program Manager, GSA Office of Small Business Utilization (E), Washington, DC 20405. The reports must include information as outlined in paragraph (b) of this section. The semi-annual report may include a narrative describing the forms of developmental assistance a mentor provides to a protégé and any other types of permissible, mutually beneficial assistance.

(d) A GSA mentor will notify the GSA Mentor-Protégé Program Manager and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the GSA Program or terminate the Agreement, or upon receipt of a protégé's notice to withdraw from the Program.

(e) GSA mentor and protégé firms will submit a ''Lessons Learned'' evaluation to the GSA Mentor-Protégé Program Manager at the conclusion of the Mentor-Protégé Agreement. At the end of each year in the Mentor-Protégé Program, the mentor and protégé, as appropriate, will formally brief the GSA Mentor-Protégé Program manager, the technical program manager, and the contracting officer during a formal Program review regarding Program accomplishments as they pertain to the approved Agreement.

(f) GSA has the authority to exclude mentor or protégé firms from participating in the GSA Program. If GSA excludes a mentor or a protégé from the Program, the GSA Office of Small Business Utilization will deliver to the contractor a Notice specifying the reason for Program exclusion and the effective date. The exclusion from the Program does not constitute a termination of the subcontract between the mentor and the protégé. A plan for accomplishing the subcontract effort should the Agreement be terminated shall be submitted with the Agreement as required in section 519.7011(j).

(g) Subcontracts awarded to GSA protégé firms under this Program are exempt from competition requirements, notwithstanding FAR 52.244–5. However, price reasonableness should still be determined.

(End of clause)

[FR Doc. E9–19482 Filed 8–13–09; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 501

[Docket No. NHTSA–2009–0146; Notice 1]

Delegations of Authority

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document amends NHTSA's delegations of authority. The amendment effectuates an adjustment that will enable NHTSA to achieve its mission more effectively and efficiently.

DATES: *Effective Date:* The amendment is effective August 14, 2009.

FOR FURTHER INFORMATION CONTACT: You may contact Jessica Lang, Office of Chief Counsel, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590, by phone at 202–366–5263, or by fax at 202–366–3820.

SUPPLEMENTARY INFORMATION: This final rule amends the regulation on delegation of powers and duties within the National Highway Traffic Safety Administration (NHTSA). The amendment relates solely to the placement of the delegation of authority for a function within the agency. It increases the authority of the Chief Counsel to compromise civil penalties and monetary settlements. There is no substantive effect. Notice and the opportunity for comment are therefore not required under the Administrative Procedure Act. The amendment is effective immediately upon publication in the **Federal Register**. In addition, the amendment is not subject to Executive Order 12866, the Department of Transportation's regulatory policies and procedures, or the provisions for Congressional review of final rules in Chapter 8 of Title 5, United States Code.

List of Subjects in 49 CFR Part 501

Authorities, Delegations, Organization and functions, Succession to Administrator.

■ In consideration of the foregoing, 49 CFR part 501 is amended as follows:

PART 501—[AMENDED]

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 49 U.S.C. secs. 105 and 322, delegation of authority at 49 CFR 1.50.

Amendment effective August 14, 2009.

■ 2. Section 501.8(d)(2) is revised to read as follows:

§ 501.8 Delegations.

* * * * *

(d) * * *

(2) Establish the legal sufficiency of all investigations and enforcement actions conducted under the authority of the following chapters, including notes, of Title 49 of the United States Code: Chapter 301; chapter 323; chapter 325; chapter 327; chapter 329; and chapter 331; to make an initial penalty demand based on a violations of any of these chapters; and to compromise any civil penalty or monetary settlement in an amount of $100,000 or less resulting

from a violation of any of these chapters.

* * * * *

Issued: August 7, 2009.

Ronald L. Medford,

Acting Deputy Administrator.

[FR Doc. E9–19480 Filed 8–13–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 593

[Docket No. NHTSA–2009–0124]

List of Nonconforming Vehicles Decided To Be Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the list of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards (FMVSS) that NHTSA has decided to be eligible for importation. This list is published in an appendix to the agency's regulations that prescribe procedures for import eligibility decisions. The list has been revised to add all vehicles that NHTSA has decided to be eligible for importation since October 1, 2008, and to remove all previously listed vehicles that are now more than 25 years old and need no longer comply with all applicable FMVSS to be lawfully imported. NHTSA is required by statute to publish this list annually in the **Federal Register**.

DATES: The revised list of import eligible vehicles is effective on August 14, 2009.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA, (202) 366–3151.

SUPPLEMENTARY INFORMATION:

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as the Secretary of Transportation decides to be adequate.

Under 49 U.S.C. 30141(a)(1), import eligibility decisions may be made ''on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under [49 U.S.C. 30141(c)].'' The Secretary's authority to make these decisions has been delegated to NHTSA. The agency publishes notice of eligibility decisions as they are made.

Under 49 U.S.C. 30141(b)(2), a list of all vehicles for which import eligibility decisions have been made must be published annually in the **Federal Register**. On October 1, 1996, NHTSA added the list as an appendix to 49 CFR Part 593, the regulations that establish procedures for import eligibility decisions (61 FR 51242). As described in the notice, NHTSA took that action to ensure that the list is more widely disseminated to government personnel who oversee vehicle imports and to interested members of the public. *See* 61 FR 51242–43. In the notice, NHTSA expressed its intention to annually revise the list as published in the appendix to include any additional vehicles decided by the agency to be eligible for importation since the list was last published. *See* 61 FR 51243. The agency stated that issuance of the document announcing these revisions will fulfill the annual publication requirements of 49 U.S.C. 30141(b)(2). *Ibid.*

Regulatory Analyses and Notices

A. Executive Order 12866, Regulatory Planning and Review

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations about whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This rule will not have any of these effects and was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. The effect of this rule is not to impose new requirements. Instead it provides a summary compilation of decisions on import eligibility that have already been made and does not involve new decisions. This rule will not impose any additional burden on any person. Accordingly, the agency believes that the preparation of a regulatory evaluation is not warranted for this rule.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this rule under the National Environmental Policy Act. This rule does not impose any change that would result in any impacts to the quality of the human environment. Accordingly, no environmental assessment is required.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rule on small entities (5 U.S.C. 601 *et seq.*). I certify that this rule will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act. The following is our statement providing the factual basis for the certification (5 U.S.C. 605(b)). This rule will not have any significant economic impact on a substantial number of small businesses because the rule merely furnishes information by revising the list in the Code of Federal Regulations of vehicles for which import eligibility decisions have previously been made. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.

D. Executive Order 13132, Federalism

Executive Order 13132 requires NHTSA 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.'' Executive Order 13132 defines the term ''Policies that have federalism implications'' 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, NHTSA may not issue a regulation that has 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 NHTSA consults with State and local officials early in the process of developing the regulation.

This rule will have no 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 as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) 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 more than $100 million annually. This rule will not result in additional expenditures by State, local or Tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not impose any new collection of information requirements for which a 5 CFR Part 1320 clearance must be obtained. DOT previously submitted to OMB and OMB approved the collection of information associated with the vehicle importation program in OMB Clearance No. 2127–0002.

G. Civil Justice Reform

Pursuant to Executive Order 12988, ''Civil Justice Reform,'' we have considered whether this rule has any retroactive effect. We conclude that it will not have such an effect.

H. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that is not clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make the rule easier to understand?

If you wish to do so, please comment on the extent to which this final rule effectively uses plain language principles.

I. National Technology Transfer and Advancement Act

Under the National Technology and Transfer and Advancement Act of 1995 (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' This rule does not require the use of any technical standards.

J. Privacy Act

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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

K. Executive Order 13045, Economically Significant Rules Disproportionately Affecting Children

This rule is not subject to Executive Order 13045 because it is not ''economically significant'' as defined under Executive Order 12866, and does not concern an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children.

L. Notice and Comment

NHTSA finds that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because this action does not impose any regulatory requirements. This rule merely revises the list of vehicles not originally manufactured to conform to the FMVSS that NHTSA has decided to be eligible for importation into the United States since the last list was published in September, 2008.

In addition, so that the list of vehicles for which import eligibility decisions have been made may be included in the next edition of 49 CFR Parts 400 to 599, which is due for revision on October 1, 2009, good cause exists to dispense with the requirement in 5 U.S.C. 553(d) for the effective date of the rule to be delayed for at least 30 days following its publication.

List of Subjects in 49 CFR Part 593

Imports, Motor vehicle safety, Motor vehicles.

■ In consideration of the foregoing, Part 593 of Title 49 of the Code of Federal Regulations is amended as follows:

PART 593—DETERMINATIONS THAT A VEHICLE NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS IS ELIGIBLE FOR IMPORTATION

■ 1. The authority citation for Part 593 continues to read as follows:

Authority: 49 U.S.C. 322 and 30141(b); delegation of authority at 49 CFR 1.50.

■ 2. Appendix A to Part 593 is revised to read as follows:

Appendix A to Part 593—List of Vehicles Determined To Be Eligible for Importation

(a) Each vehicle on the following list is preceded by a vehicle eligibility number. The importer of a vehicle admissible under any eligibility decision must enter that number on the HS–7 Declaration Form accompanying entry to indicate that the vehicle is eligible for importation.

(1) ''VSA'' eligibility numbers are assigned to all vehicles that are decided to be eligible for importation on the initiative of the Administrator under Sec. 593.8.

(2) ''VSP'' eligibility numbers are assigned to vehicles that are decided to be eligible under Sec. 593.7(f), based on a petition from a manufacturer or registered importer submitted under Sec. 593.5(a)(1), which establishes that a substantially similar U.S.-certified vehicle exists.

(3) ''VCP'' eligibility numbers are assigned to vehicles that are decided to be eligible under Sec. 593.7(f), based on a petition from a manufacturer or registered importer submitted under Sec. 593.5(a)(2), which

establishes that the vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

(b) Vehicles for which eligibility decisions have been made are listed alphabetically, first by make and then by model.

(c) All hyphens used in the Model Year column mean ''through'' (for example, ''1988–1990'' means ''1988 through 1990'').

(d) The initials ''MC'' used in the Make column mean ''Motorcycle.''

(e) The initials ''SWB'' used in the Model Type column mean ''Short Wheel Base.''

(f) The initials ''LWB'' used in the Model Type column mean ''Long Wheel Base.''

(g) For vehicles with a European country of origin, the term ''Model Year'' ordinarily means calendar year in which the vehicle was produced.

(h) All vehicles are left-hand-drive (LHD) vehicles unless noted as RHD. The initials ''RHD'' used in the Model Type column mean ''Right-Hand-Drive.''

VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS

VSA–80	(a) All passenger cars less than 25 years old that were manufactured before September 1, 1989; (b) All passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208; (c) All passenger cars manufactured on or after September 1, 1996, and before September 1, 2002, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS No. 214; (d) All passenger cars manufactured on or after September 1, 2002, and before September 1, 2007, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS Nos. 201, 214, 225, and 401; (e) All passenger cars manufactured on or after September 1, 2007, and before September 1, 2008, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 138, 201, 208, 213, 214, 225, and 401; (f) All passenger cars manufactured on or after September 1, 2008 and before September 1, 2011 that, as originally manufactured, comply with FMVSS Nos. 110, 118, 138, 201, 202a, 206, 208, 213, 214, 225, and 401; (g) All passenger cars manufactured on or after September 1, 2011 and before September 1, 2012 that, as originally manufactured, comply with FMVSS Nos. 110, 118, 126, 138, 201, 202a, 206, 208, 213, 214, 225, and 401.
VSA–81	(a) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that are less than 25 years old and that were manufactured before September 1, 1991; (b) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on and after September 1, 1991, and before September 1, 1993 and that, as originally manufactured, comply with FMVSS Nos. 202 and 208; (c) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1993, and before September 1, 1998, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, and 216; (d) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1998, and before September 1, 2002, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, 214, and 216; (e) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 2002, and before September 1, 2007, and that, as originally manufactured, comply with FMVSS Nos. 201, 202, 208, 214, and 216, and, insofar as it is applicable, with FMVSS No. 225; (f) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2007 and before September 1, 2008, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 201, 202, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225; (g) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2008 and before September 1, 2011, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 201, 202a, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225; (h) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2011 and before September 1, 2012, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 126, 201, 202a, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225.
VSA–82	All multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 4,536 kg (10,000 lb) that are less than 25 years old.
VSA–83	All trailers and motorcycles less than 25 years old.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Acura	Legend		1988	51		
Acura	Legend		1989	77		
Acura	Legend		1990–1992	305		
Alfa Romeo	164		1989	196		
Alfa Romeo	164		1991	76		
Alfa Romeo	164		1994	156		
Alfa Romeo	GTV		1985	124		
Alfa Romeo	Spider		1987	70		
Alfa Romeo	Spyder		1992	503		
Alpina	B12 5.0 Sedan		1988–1994			41
Aston Martin	Vanquish		2002–2004	430		
Audi	80		1988–1989	223		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Audi	100		1989	93		
Audi	100		1993	244		
Audi	100		1990–1992	317		
Audi	200 Quattro		1985	160		
Audi	A4		1996–2000	352		
Audi	A4, RS4, S4	8D	2000–2001	400		
Audi	A6		1998–1999	332		
Audi	A8		2000	424		
Audi	A8		1997–2000	337		
Audi	A8 Avant Quattro		1996	238		
Audi	RS6 & RS Avant		2003	443		
Audi	S6		1996	428		
Audi	S8		2000	424		
Audi	TT		2000–2001	364		
Bentley	Arnage (manufactured 1/1/01–12/31/01)		2001	473		
Bentley	Azure (LHD & RHD)		1998	485		
Bimota (MC)	DB4		2000	397		
Bimota (MC)	SB8		1999–2000	397		
BMW	316		1986	25		
BMW	3 Series		1998	462		
BMW	3 Series		1999	379		
BMW	3 Series		2000	356		
BMW	3 Series		2001	379		
BMW	3 Series		1995–1997	248		
BMW	3 Series		2003–2004	487		
BMW	318i, 318iA		1986		23	
BMW	318i, 318iA		1984–1985		23	
BMW	318i, 318iA		1987–1989		23	
BMW	320, 320i, 320iA		1984–1985		16	
BMW	320i		1990–1991	283		
BMW	323i		1984–1985		67	
BMW	325, 325i, 325iA, 325E		1985–1986		30	
BMW	325e, 325eA		1984–1987		24	
BMW	325i		1991	96		
BMW	325i		1992–1996	197		
BMW	325i, 325iA		1987–1989		30	
BMW	325iS, 325iSA		1987–1989		31	
BMW	325iX		1990	205		
BMW	325iX, 325iXA		1988–1989		33	
BMW	5 Series		2000	345		
BMW	5 Series		1990–1995	194		
BMW	5 Series		1995–1997	249		
BMW	5 Series		1998–1999	314		
BMW	5 Series		2000–2002	414		
BMW	5 Series		2003–2004	450		
BMW	518i		1986	4		
BMW	520iA		1989	9		
BMW	524tdA		1985–1986		26	
BMW	525i		1989	5		
BMW	528e, 528eA		1984–1988		21	
BMW	528i, 528iA		1984		20	
BMW	533i, 533iA		1984		22	
BMW	535i, 535iA		1985–1989		25	
BMW	633CSi, 630CSiA		1984		18	
BMW	635, 635CSi, 635CSiA		1984		27	
BMW	635CSi, 635CSiA		1985–1989		27	
BMW	7 Series		1992	232		
BMW	7 Series		1990–1991	299		
BMW	7 Series		1993–1994	299		
BMW	7 Series		1995–1999	313		
BMW	7 Series		1999–2001	366		
BMW	728, 728i		1984–1985		70	
BMW	728i		1986	14		
BMW	730iA		1988	6		
BMW	732i		1984		72	
BMW	733i, 733iA		1984		19	
BMW	735, 735i, 735iA		1984		28	
BMW	735i, 735iA		1985–1989		28	
BMW	745i		1984–1986		73	
BMW	8 Series		1991–1995	361		
BMW	850 Series		1997	396		
BMW	850i		1990	10		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
BMW	All other passenger car models except those in the M1 and Z1 series.		1984–1989		78	
BMW	L7		1986–1987		29	
BMW	M3		1988–1989		35	
BMW	M3 (manufactured prior to 9/1/06)		2006	520		
BMW	M5		1988		34	
BMW	M6		1987–1988		32	
BMW	X5 (manufactured 1/1/03–12/31/04)		2003–2004	459		
BMW	Z3		1996–1998	260		
BMW	Z3 (European market)		1999	483		
BMW	Z8		2002	406		
BMW	Z8		2000–2001	350		
BMW (MC)	C1		2000–2003			40
BMW (MC)	K1		1990–1993	228		
BMW (MC)	K100		1984–1992	285		
BMW (MC)	K1100, K1200		1993–1998	303		
BMW (MC)	K75		1996			36
BMW (MC)	K75S		1987–1995	229		
BMW (MC)	R1100		1994–1997	231		
BMW (MC)	R1100		1998–2001	368		
BMW (MC)	R1100RS		1994	177		
BMW (MC)	R1150GS		2000	453		
BMW (MC)	R1200C		1998–2001	359		
BMW (MC)	R80, R100		1986–1995	295		
Buell (MC)	All Models		1995–2002	399		
Cadillac	DeVille		1994–1999	300		
Cadillac	DeVille (manufactured 8/1/99–12/31/00)		2000	448		
Cadillac	Seville		1991	375		
Cagiva	Gran Canyon 900 motorcycle		1999	444		
Carrocerias	Cimarron trailer		2006–2007			37
Chevrolet	400SS		1995	150		
Chevrolet	Astro Van		1997	298		
Chevrolet	Blazer		1986	405		
Chevrolet	Blazer (plant code of "K" or "2" in the 11th position of the VIN).		1997	349		
Chevrolet	Blazer (plant code of "K" or "2" in the 11th position of the VIN).		2001	461		
Chevrolet	Camaro		1999	435		
Chevrolet	Cavalier		1997	369		
Chevrolet	Corvette		1992	365		
Chevrolet	Corvette Coupe		1999	419		
Chevrolet	Suburban		1989–1991	242		
Chevrolet	Tahoe		2000	504		
Chevrolet	Tahoe		2001	501		
Chevrolet	Trailblazer (manufactured prior to 9/1/07 for sale in the Kuwaiti market).		2007	514		
Chrysler	Daytona		1992	344		
Chrysler	Grand Voyager		1998	373		
Chrysler	LHS (Mexican market)		1996	276		
Chrysler	Shadow (Middle Eastern market)		1989	216		
Chrysler	Town and Country		1993	273		
Citroen	XM		1990–1992			1
Daimler	Limousine (LHD & RHD)		1985	12		
Dodge	Ram		1994–1995	135		
Ducati (MC)	748		1999–2003	421		
Ducati (MC)	851		1988	498		
Ducati (MC)	888		1993	500		
Ducati (MC)	900		2001	452		
Ducati (MC)	916		1999–2003	421		
Ducati (MC)	600SS		1992–1996	241		
Ducati (MC)	748 Biposto		1996–1997	220		
Ducati (MC)	900SS		1991–1996	201		
Ducati (MC)	996 Biposto		1999–2001	475		
Ducati (MC)	996R		2001–2002	398		
Ducati (MC)	Monster 600		2001	407		
Ducati (MC)	ST4S		1999–2005	474		
Eagle	Vision		1994	323		
Ferrari	360		2001	376		
Ferrari	456		1995	256		
Ferrari	550		2001	377		
Ferrari	575		2002–2003	415		
Ferrari	599 (manufactured prior to 9/1/06)		2006	518		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Ferrari	575		2004–2005	507		
Ferrari	208, 208 Turbo (all models)		1984–1988		76	
Ferrari	308 (all models)		1984–1985		36	
Ferrari	328 (all models)		1985		37	
Ferrari	328 (all models)		1988–1989		37	
Ferrari	328 GTS		1986–1987		37	
Ferrari	348 TB		1992	86		
Ferrari	348 TS		1992	161		
Ferrari	360 (manufactured after 9/31/02)		2002	433		
Ferrari	360 (manufactured before 9/1/02)		2002	402		
Ferrari	360 Modena		1999–2000	327		
Ferrari	360 Series		2004	446		
Ferrari	360 Spider & Coupe		2003	410		
Ferrari	456 GT & GTA		1999	445		
Ferrari	456 GT & GTA		1997–1998	408		
Ferrari	512 TR		1993	173		
Ferrari	550 Marinello		1997–1999	292		
Ferrari	Enzo		2003–2004	436		
Ferrari	F355		1995	259		
Ferrari	F355		1999	391		
Ferrari	F355		1996–1998	355		
Ferrari	F430 (manufactured prior to 9/1/06)		2005–2006	479		
Ferrari	F50		1995	226		
Ferrari	GTO		1985		38	
Ferrari	Mondial (all models)		1984–1989		74	
Ferrari	Testarossa		1989		39	
Ferrari	Testarossa		1987–1988		39	
Ford	Bronco (manufactured in Venezuela)		1995–1996	265		
Ford	Escort (Nicaraguan market)		1996	322		
Ford	Escort RS Cosworth		1994–1995			9
Ford	Explorer (manufactured in Venezuela)		1991–1998	268		
Ford	F150		2000	425		
Ford	Mustang		1993	367		
Ford	Mustang		1997	471		
Ford	Windstar		1995–1998	250		
Freightliner	FLD12064ST		1991–1996	179		
Freightliner	FTLD112064SD		1991–1996	178		
GMC	Suburban		1992–1994	134		
Harley Davidson (MC)	FX, FL, XL Series		1998	253		
Harley Davidson (MC)	FX, FL, XL Series		1999	281		
Harley Davidson (MC)	FX, FL, XL Series		2000	321		
Harley Davidson (MC)	FX, FL, XL Series		2001	362		
Harley Davidson (MC)	FX, FL, XL Series		2002	372		
Harley Davidson (MC)	FX, FL, XL Series		2003	393		
Harley Davidson (MC)	FX, FL, XL Series		2004	422		
Harley Davidson (MC)	FX, FL, XL Series		2005	472		
Harley Davidson (MC)	FX, FL, XL Series		2006	491		
Harley Davidson (MC)	FX, FL, XL Series		1984–1997	202		
Harley Davidson (MC)	FX, FL, XL, & VR Series		2007	506		
Harley Davidson (MC	FX, FL, XL, & VR Series		2008	517		
Harley Davidson (MC)	FXSTC Soft Tail Custom		2007	499		
Harley Davidson (MC)	VRSCA		2002	374		
Harley Davidson (MC)	VRSCA		2003	394		
Harley Davidson (MC)	VRSCA		2004	422		
Hatty	45 ft double axle trailer		1999–2000			38
Heku	750 KG boat trailer		2005			33
Hobby	Exclusive 650 KMFE Trailer		2002–2003			29
Hobson	Horse Trailer		1985			8
Honda	Accord		1991	280		
Honda	Accord		1992–1999	319		
Honda	Accord (sedan & wagon (RHD))		1994–1997	451		
Honda	Civic DX Hatchback		1989	128		
Honda	CRV		2002	447		
Honda	CR–V		2005	489		
Honda	Prelude		1989	191		
Honda	Prelude		1994–1997	309		
Honda (MC)	CB 750 (CB750F2T)		1996	440		
Honda (MC)	CB1000F		1988	106		
Honda (MC)	CBR 250		1989–1994			22
Honda (MC)	CMX250C		1984–1987	348		
Honda (MC)	CP450SC		1986	174		
Honda (MC)	RVF 400		1994–2000	358		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Honda (MC)	VF750		1994–1998	290		
Honda (MC)	VFR 400		1994–2000	358		
Honda (MC)	VFR 400, RVF 400		1989–1993			24
Honda (MC)	VFR750		1990	34		
Honda (MC)	VFR750		1991–1997	315		
Honda (MC)	VFR800		1998–1999	315		
Honda (MC)	VT600		1991–1998	294		
Hyundai	Elantra		1992–1995	269		
Hyundai	XG350		2004	494		
Jaguar	Sovereign		1993	78		
Jaguar	S–Type		2000–2002	411		
Jaguar	XJ6		1984		41	
Jaguar	XJ6		1987	47		
Jaguar	XJ6		1985–1986		41	
Jaguar	XJ6 Sovereign		1988	215		
Jaguar	XJS		1991	175		
Jaguar	XJS		1992	129		
Jaguar	XJS		1984–1985		40	
Jaguar	XJS		1986–1987		40	
Jaguar	XJS		1994–1996	195		
Jaguar	XJS, XJ6		1988–1990	336		
Jaguar	XK–8		1998	330		
Jeep	Cherokee		1993	254		
Jeep	Cherokee (European market)		1991	211		
Jeep	Cherokee (LHD & RHD)		1994	493		
Jeep	Cherokee (LHD & RHD)		1995	180		
Jeep	Cherokee (LHD & RHD)		1996	493		
Jeep	Cherokee (LHD & RHD)		1997–1998	516		
Jeep	Cherokee (LHD & RHD)		1997–2001	515		
Jeep	Cherokee (Venezuelan market)		1992	164		
Jeep	Grand Cherokee		1994	404		
Jeep	Grand Cherokee		1997	431		
Jeep	Grand Cherokee		2001	382		
Jeep	Grand Cherokee (LHD—Japanese market)		1997	389		
Jeep	Liberty		2002	466		
Jeep	Liberty		2005	505		
Jeep	Liberty (Mexican market)		2004	457		
Jeep	Wrangler		1993	217		
Jeep	Wrangler		1995	255		
Jeep	Wrangler		1998	341		
Kawasaki (MC)	EL250		1992–1994	233		
Kawasaki (MC)	VN1500–P1/P2 series		2003	492		
Kawasaki (MC)	ZX1000–B1		1988	182		
Kawasaki (MC)	ZX400		1987–1997	222		
Kawasaki (MC)	ZX6, ZX7, ZX9, ZX10, ZX11		1987–1999	312		
Kawasaki (MC)	ZX600		1985–1998	288		
Kawasaki (MC)	ZZR1100		1993–1998	247		
Ken-Mex	T800		1990–1996	187		
Kenworth	T800		1992	115		
Komet	Standard, Classic & Eurolite trailer		2000–2005	477		
KTM (MC)	Duke II		1995–2000	363		
Lamborghini	Diablo (except 1997 Coupe)		1996–1997	416		
Lamborghini	Diablo Coupe		1997			26
Lamborghini	Gallardo (manufactured 1/1/04–12/31/04)		2004	458		
Lamborghini	Gallardo (manufactured 1/1/06–8/31/06)		2006	508		
Lamborghini	Murcielago	Roadster	2005	476		
Land Rover	Defender 110		1993	212		
Land Rover	Defender 90	VIN & Body Limited	1994–1995	512		
Land Rover	Defender 90 (manufactured before 9/1/97) and VIN "SALDV224*VA" or "SALDV324*VA".		1997	432		
Land Rover	Discovery		1994–1998	338		
Land Rover	Discovery (II)		2000	437		
Land Rover	Range Rover		2004	509		
Lexus	GS300		1998	460		
Lexus	GS300		1993–1996	293		
Lexus	RX300		1998–1999	307		
Lexus	SC300		1991–1996	225		
Lexus	SC400		1991–1996	225		
Lincoln	Mark VII		1992	144		
Magni (MC)	Australia, Sfida		1996–1999	264		
Maserati	Bi-Turbo		1985	155		
Mazda	MPV		2000	413		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Mazda	MX–5 Miata		1990–1993	184		
Mazda	RX–7		1986	199		
Mazda	RX–7		1987–1995	279		
Mazda	Xedos 9		1995–2000	351		
Mercedes Benz	190	201.022	1984		54	
Mercedes Benz	200	124.020	1985		55	
Mercedes Benz	200	123.220	1984–1985		52	
Mercedes Benz	230	123.023	1984–1985		52	
Mercedes Benz	250	123.026	1984–1985		52	
Mercedes Benz	280	123.030	1984–1985		52	
Mercedes Benz	190 D	201.126	1984–1989		54	
Mercedes Benz	190 D (2.2)	201.122	1984–1989		54	
Mercedes Benz	190 E	201.029	1986		54	
Mercedes Benz	190 E	201.028	1990	22		
Mercedes Benz	190 E	201.036	1990	104		
Mercedes Benz	190 E	201.024	1991	45		
Mercedes Benz	190 E	201.028	1992	71		
Mercedes Benz	190 E	201.018	1992	126		
Mercedes Benz	190 E		1993	454		
Mercedes Benz	190 E	201.034	1984–1985		54	
Mercedes Benz	190 E	201.028	1986–1989		54	
Mercedes Benz	190 E (2.3)	201.024	1984–1989		54	
Mercedes Benz	190 E (2.6)	201.029	1987–1989		54	
Mercedes Benz	190 E (2.6) 16	201.034	1986–1989		54	
Mercedes Benz	200 D	124.120	1986	17		
Mercedes Benz	200 E	124.021	1989	11		
Mercedes Benz	200 E	124.012	1991	109		
Mercedes Benz	200 E	124.019	1993	75		
Mercedes Benz	200 TE	124.081	1989	3		
Mercedes Benz	220 E		1993	168		
Mercedes Benz	220 TE Station Wagon		1993–1996	167		
Mercedes Benz	230 CE	124.043	1991	84		
Mercedes Benz	230 CE	123.043	1992	203		
Mercedes Benz	230 CE	123.243	1984		52	
Mercedes Benz	230 E	124.023	1988	1		
Mercedes Benz	230 E	124.023	1989	20		
Mercedes Benz	230 E	124.023	1990	19		
Mercedes Benz	230 E	124.023	1991	74		
Mercedes Benz	230 E	124.023	1993	127		
Mercedes Benz	230 E	123.223	1984–1985		52	
Mercedes Benz	230 E	124.023	1985–1987		55	
Mercedes Benz	230 T	123.083	1984–1985		52	
Mercedes Benz	230 TE	124.083	1985		55	
Mercedes Benz	230 TE	124.083	1989	2		
Mercedes Benz	230 TE	123.283	1984–1985		52	
Mercedes Benz	240 D	123.123	1984–1985		52	
Mercedes Benz	240 TD	123.183	1984–1985		52	
Mercedes Benz	250 D		1992	172		
Mercedes Benz	250 E		1990–1993	245		
Mercedes Benz	260 E	124.026	1985		55	
Mercedes Benz	260 E	124.026	1986		55	
Mercedes Benz	260 E	124.026	1992	105		
Mercedes Benz	260 E	124.026	1987–1989		55	
Mercedes Benz	260 SE	126.020	1986	18		
Mercedes Benz	260 SE	126.020	1989	28		
Mercedes Benz	280 CE	123.053	1984–1985		52	
Mercedes Benz	280 E		1993	166		
Mercedes Benz	280 E	123.033	1984–1985		52	
Mercedes Benz	280 SE	116.024	1984–1988		51	
Mercedes Benz	280 SE	126.022	1984–1985		53	
Mercedes Benz	280 SEL	126.023	1984–1985		53	
Mercedes Benz	280 SL	107.042	1984–1985		44	
Mercedes Benz	280 TE	123.093	1984–1985		52	
Mercedes Benz	300 CD	123.150	1984–1985		52	
Mercedes Benz	300 CD	123.153	1984–1985		52	
Mercedes Benz	300 CE	124.051	1990	64		
Mercedes Benz	300 CE	124.051	1991	83		
Mercedes Benz	300 CE	124.050	1992	117		
Mercedes Benz	300 CE	124.061	1993	94		
Mercedes Benz	300 CE	124.050	1988–1989		55	
Mercedes Benz	300 D	123.133	1984–1985		52	
Mercedes Benz	300 D	123.130	1984–1985		52	

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Mercedes Benz	300 D	124.130	1985–1986		55	
Mercedes Benz	300 D Turbo	124.133	1985		55	
Mercedes Benz	300 D Turbo	124.193	1986		55	
Mercedes Benz	300 D Turbo	124.193	1987–1989		55	
Mercedes Benz	300 DT	124.133	1986–1989		55	
Mercedes Benz	300 E	124.030	1985		55	
Mercedes Benz	300 E	124.031	1992	114		
Mercedes Benz	300 E	124.030	1986–1989		55	
Mercedes Benz	300 E 4–Matic		1990–1993	192		
Mercedes Benz	300 SD	126.120	1984–1989		53	
Mercedes Benz	300 SE	126.024	1985		53	
Mercedes Benz	300 SE	126.024	1990	68		
Mercedes Benz	300 SE	126.024	1986–1987		53	
Mercedes Benz	300 SE	126.024	1988–1989		53	
Mercedes Benz	300 SEL	126.025	1986		53	
Mercedes Benz	300 SEL	126.025	1987		53	
Mercedes Benz	300 SEL	126.025	1990	21		
Mercedes Benz	300 SEL	126.025	1988–1989		53	
Mercedes Benz	300 SL	107.041	1989	7		
Mercedes Benz	300 SL	129.006	1992	54		
Mercedes Benz	300 SL	107.041	1986–1988		44	
Mercedes Benz	300 TD	123.190	1984–1985		52	
Mercedes Benz	300 TD	123.193	1984–1985		52	
Mercedes Benz	300 TE	124.090	1990	40		
Mercedes Benz	300 TE		1992	193		
Mercedes Benz	300 TE	124.090	1986–1989		55	
Mercedes Benz	320 CE		1993	310		
Mercedes Benz	320 SL		1992–1993	142		
Mercedes Benz	380 SE	126.043	1984–1989		53	
Mercedes Benz	380 SE	126.032	1984–1989		53	
Mercedes Benz	380 SEL	126.033	1984–1989		53	
Mercedes Benz	380 SL	107.045	1984–1989		44	
Mercedes Benz	380 SLC	107.025	1984–1989		44	
Mercedes Benz	400 SE		1992–1994	296		
Mercedes Benz	420 E		1993	169		
Mercedes Benz	420 SE	126.034	1985		53	
Mercedes Benz	420 SE	126.034	1986		53	
Mercedes Benz	420 SE	126.034	1987–1989		53	
Mercedes Benz	420 SE		1990–1991	230		
Mercedes Benz	420 SEC		1990	209		
Mercedes Benz	420 SEL	126.035	1990	48		
Mercedes Benz	420 SEL	126.035	1986–1989		53	
Mercedes Benz	420 SL	107.047	1986		44	
Mercedes Benz	450 SEL	116.033	1984–1988		51	
Mercedes Benz	450 SEL (6.9)	116.036	1984–1988		51	
Mercedes Benz	450 SL	107.044	1984–1989		44	
Mercedes Benz	450 SLC	107.024	1984–1989		44	
Mercedes Benz	500 E	124.036	1991	56		
Mercedes Benz	500 SE	126.036	1988	35		
Mercedes Benz	500 SE		1990	154		
Mercedes Benz	500 SE	140.050	1991	26		
Mercedes Benz	500 SE	126.036	1984–1986		53	
Mercedes Benz	500 SEC	126.044	1990	66		
Mercedes Benz	500 SEC	126.044	1984–1989		53	
Mercedes Benz	500 SEL		1990	153		
Mercedes Benz	500 SEL	126.037	1991	63		
Mercedes Benz	500 SEL	126.037	1984–1989		53	
Mercedes Benz	500 SL	129.066	1989	23		
Mercedes Benz	500 SL	126.066	1991	33		
Mercedes Benz	500 SL	129.006	1992	60		
Mercedes Benz	500 SL	107.046	1986–1989		44	
Mercedes Benz	560 SEC	126.045	1990	141		
Mercedes Benz	560 SEC		1991	333		
Mercedes Benz	560 SEC	126.045	1986–1989		53	
Mercedes Benz	560 SEL	126.039	1990	89		
Mercedes Benz	560 SEL	140	1991	469		
Mercedes Benz	560 SEL	126.039	1986–1989		53	
Mercedes Benz	560 SL	107.048	1986–1989		44	
Mercedes Benz	600 SEC Coupe		1993	185		
Mercedes Benz	600 SEL	140.057	1993–1998	271		
Mercedes Benz	600 SL	129.076	1992	121		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Mercedes Benz	All other passenger car models except Model ID 114 and 115 with sales designations ''long,'' ''station wagon,'' or ''ambulance''.		1984–1989		77	
Mercedes Benz	C 320	203	2001–2002	441		
Mercedes Benz	C Class		1994–1999	331		
Mercedes Benz	C Class	203	2000–2001	456		
Mercedes Benz	CL 500		1998	277		
Mercedes Benz	CL 500		1999–2001	370		
Mercedes Benz	CL 600		1999–2001	370		
Mercedes Benz	CLK 320		1998	357		
Mercedes Benz	CLK Class		1999–2001	380		
Mercedes Benz	CLK–Class	209	2002–2005	478		
Mercedes Benz	E 200		1994	207		
Mercedes Benz	E 200		1995–1998	278		
Mercedes Benz	E 220		1994–1996	168		
Mercedes Benz	E 250		1994–1995	245		
Mercedes Benz	E 280		1994–1996	166		
Mercedes Benz	E 320		1994–1998	240		
Mercedes Benz	E 320	211	2002–2003	418		
Mercedes Benz	E 320 Station Wagon		1994–1999	318		
Mercedes Benz	E 420		1994–1996	169		
Mercedes Benz	E 500		1994	163		
Mercedes Benz	E 500		1995–1997	304		
Mercedes Benz	E Class	W210	1996–2002	401		
Mercedes Benz	E Class	211	2003–2004	429		
Mercedes Benz	E Series		1991–1995	354		
Mercedes Benz	G–Wagon	463	1996			11
Mercedes Benz	G–Wagon	463	1997			15
Mercedes Benz	G–Wagon	463	1998			16
Mercedes Benz	G–Wagon	463	1999–2000			18
Mercedes Benz	G–Wagon 300	463.228	1993			3
Mercedes Benz	G–Wagon 300	463.228	1994			5
Mercedes Benz	G–Wagon 300	463.228	1990–1992			5
Mercedes Benz	G–Wagon 320 LWB	463	1995			6
Mercedes Benz	G–Wagon 5 DR LWB	463	2001			21
Mercedes Benz	G–Wagon 5 DR LWB	463	2002	392		
Mercedes Benz	G–Wagon LWB V–8	463	1992–1996			13
Mercedes Benz	G–Wagon SWB	463	2005			31
Mercedes Benz	G–Wagon SWB	463	1990–1996			14
Mercedes Benz	G–Wagon SWB Cabriolet & 3DR	463	2004			28
Mercedes Benz	G–Wagon SWB Cabriolet & 3DR	463	2001–2003			25
Mercedes Benz	G–Wagon SWB Cabriolet & 3DR (manufactured before 9/1/06).	463	2006			35
Mercedes Benz	Maybach		2004	486		
Mercedes Benz	S 280	140.028	1994	85		
Mercedes Benz	S 320		1994–1998	236		
Mercedes Benz	S 420		1994–1997	267		
Mercedes Benz	S 500		1994–1997	235		
Mercedes Benz	S 500		2000–2001	371		
Mercedes Benz	S 600		1995–1999	297		
Mercedes Benz	S 600		2000–2001	371		
Mercedes Benz	S 600 Coupe		1994	185		
Mercedes Benz	S 600L		1994	214		
Mercedes Benz	S Class		1993	395		
Mercedes Benz	S Class	140	1991–1994	423		
Mercedes Benz	S Class		1995–1998	342		
Mercedes Benz	S Class		1998–1999	325		
Mercedes Benz	S Class	W220	1999–2002	387		
Mercedes Benz	S Class	220	2002–2004	442		
Mercedes Benz	SE Class		1992–1994	343		
Mercedes Benz	SEL Class	140	1992–1994	343		
Mercedes Benz	SL Class		1993–1996	329		
Mercedes Benz	SL Class	W129	1997–2000	386		
Mercedes Benz	SL Class	R230	2001–2002			19
Mercedes Benz	SL–Class (European market)	230	2003–2005	470		
Mercedes Benz	SLK		1997–1998	257		
Mercedes Benz	SLK		2000–2001	381		
Mercedes Benz	SLK Class (manufactured between 8/31/04 and 8/31/06).	171 Chassis	2005–2006	511		
Mercedes Benz (truck)	Sprinter		2001–2005	468		
Mini	Cooper (European market)	Convertible	2005	482		
Mitsubishi	Galant Super Salon		1989	13		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Mitsubishi	Galant VX		1988	8		
Mitsubishi	Pajero		1984	170		
Moto Guzzi (MC)	California		2000–2001	495		
Moto Guzzi (MC)	California EV		2002	403		
Moto Guzzi (MC)	Daytona		1993	118		
Moto Guzzi (MC)	Daytona RS		1996–1999	264		
MV Agusta (MC)	F4		2000	420		
Nissan	240SX		1988	162		
Nissan	300ZX		1984	198		
Nissan	GTS & GTR (RHD) a.k.a. "Skyline" manufactured 1/96–6/98.	R33	1996–1998			32
Nissan	Maxima		1989	138		
Nissan	Pathfinder		2002	412		
Nissan	Pathfinder		1987–1995	316		
Nissan	Stanza		1987	139		
Peugeot	405		1989	65		
Plymouth	Voyager		1996	353		
Pontiac	Firebird Trans Am		1995	481		
Pontiac (MPV)	Trans Sport		1993	189		
Porsche	911		1997–2000	346		
Porsche	928		1991–1996	266		
Porsche	928		1993–1998	272		
Porsche	911 (996) Carrera		2002–2004	439		
Porsche	911 (996) GT3		2004	438		
Porsche	911 C4		1990	29		
Porsche	911 Cabriolet		1984–1989		56	
Porsche	911 Carrera		1993	165		
Porsche	911 Carrera		1994	103		
Porsche	911 Carrera		1984–1989		56	
Porsche	911 Carrera		1995–1996	165		
Porsche	911 Carrera 2 & Carrera 4		1992	52		
Porsche	911 Carrera Cabriolet (manufactured before 9/1/06).	997	2005–2006	513		
Porsche	911 Coupe		1984–1989		56	
Porsche	911 Targa		1984–1989		56	
Porsche	911 Turbo		1992	125		
Porsche	911 Turbo		2001	347		
Porsche	911 Turbo		1984–1989		56	
Porsche	924 Coupe		1984–1989		59	
Porsche	924 S		1987–1989		59	
Porsche	924 Turbo Coupe		1984–1989		59	
Porsche	928 Coupe		1984–1989		60	
Porsche	928 GT		1984–1989		60	
Porsche	928 S Coupe		1984–1989		60	
Porsche	928 S4		1990	210		
Porsche	928 S4		1984–1989		60	
Porsche	944 Coupe		1984–1989		61	
Porsche	944 S Cabriolet		1990	97		
Porsche	944 S Coupe		1987–1989		61	
Porsche	944 S2 (2-door Hatchback)		1990	152		
Porsche	944 Turbo Coupe		1985–1989		61	
Porsche	946 Turbo		1994	116		
Porsche	All other passenger car models except Model 959.		1984–1989		79	
Porsche	Boxster		1997–2001	390		
Porsche	Boxster (manufactured before 9/1/02)		2002	390		
Porsche	Carrera GT		2004–2005	463		
Porsche	Cayenne		2003–2004	464		
Porsche	Cayenne (manufactured prior to 9/1/06)		2006	519		
Porsche	GT2		2001			20
Porsche	GT2		2002	388		
Rolls Royce	Bentley		1987–1989	340		
Rolls Royce	Bentley Brooklands		1993	186		
Rolls Royce	Bentley Continental R		1990–1993	258		
Rolls Royce	Bentley Turbo		1986	53		
Rolls Royce	Bentley Turbo R		1995	243		
Rolls Royce	Bentley Turbo R		1992–1993	291		
Rolls Royce	Camargue		1984–1985	122		
Rolls Royce	Corniche		1984–1985	339		
Rolls Royce	Phantom		2004	455		
Rolls Royce	Silver Spur		1984	188		
Saab	9.3		2003	426		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Saab	9000		1988	59		
Saab	9000		1994	334		
Saab	900 S		1987–1989	270		
Saab	900 SE		1995	213		
Saab	900 SE		1990–1994	219		
Saab	900 SE		1996–1997	219		
Smart Car	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure).		2005			30
Smart Car	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure).		2002–2004			27
Smart Car	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure) manufactured before 9/1/06.		2006			34
Smart Car	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure) manufactured before 9/1/06.		2007			39
Subaru	Forester		2006–2007	510		
Suzuki (MC)	GS 850		1985	111		
Suzuki (MC)	GSF 750		1996–1998	287		
Suzuki (MC)	GSX1300R a.k.a. "Hayabusa"		1999–2006	484		
Suzuki (MC)	GSX–R 1100		1986–1997	227		
Suzuki (MC)	GSX–R 750		1986–1998	275		
Suzuki (MC)	GSX–R 750		1999–2003	417		
Toyota	4–Runner		1998	449		
Toyota	Avalon		1995–1998	308		
Toyota	Camry		1989	39		
Toyota	Camry		1987–1988		63	
Toyota	Celica		1987–1988		64	
Toyota	Corolla		1987–1988		65	
Toyota	Land Cruiser		1989	101		
Toyota	Land Cruiser		1984–1988	252		
Toyota	Land Cruiser		1990–1996	218		
Toyota	MR2		1990–1991	324		
Toyota	Previa		1991–1992	326		
Toyota	Previa		1993–1997	302		
Toyota	RAV4		1996	328		
Toyota	RAV4		2005	480		
Toyota	Van		1987–1988	200		
Triumph (MC)	Thunderbird		1995–1999	311		
Vespa (MC)	ET2, ET4		2001–2002	378		
Vespa (MC)	LX and PX		2004–2005	496		
Volkswagen	Eurovan		1993–1994	306		
Volkswagen	Golf		1987	159		
Volkswagen	Golf		1988	80		
Volkswagen	Golf		2005	502		
Volkswagen	Golf III		1993	92		
Volkswagen	Golf Rallye		1988	73		
Volkswagen	Golf Rallye		1989	467		
Volkswagen	GTI (Canadian market)		1991	149		
Volkswagen	Jetta		1994–1996	274		
Volkswagen	Passat	Wagon & Sedan	2004	488		
Volkswagen	Passat 4-door Sedan		1992	148		
Volkswagen	Scirocco		1986	42		
Volkswagen	Transporter		1990	251		
Volkswagen	Transporter		1986–1987	490		
Volkswagen	Transporter		1988–1989	284		
Volvo	740 GL		1992	137		
Volvo	740 Sedan		1988	87		
Volvo	850 Turbo		1995–1998	286		
Volvo	940 GL		1992	137		
Volvo	940 GL		1993	95		
Volvo	945 GL	Wagon	1994	132		
Volvo	960 Sedan & Wagon		1994	176		
Volvo	C70		2000	434		
Volvo	S70		1998–2000	335		
Yamaha (MC)	Drag Star 1100		1999–2007	497		
Yamaha (MC)	FJ1200 (4 CR)		1991	113		
Yamaha (MC)	FJR 1300		2002			23
Yamaha (MC)	R1		2000	360		
Yamaha (MC)	Virago		1990–1998	301		

Issued on: August 10, 2009.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0808011016–91210–04]

RIN 0648–AX14

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands (Amendment 92) and Gulf of Alaska License (Amendment 82) Limitation Program

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 92 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 82 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. This action removes trawl gear endorsements on licenses issued under the license limitation program in specific management areas if those licenses have not been used on vessels that met minimum recent landing requirements using trawl gear. This action provides exemptions to this requirement for licenses that are used in trawl fisheries subject to certain limited access privilege programs. This action issues new area endorsements for trawl catcher vessel licenses in the Aleutian Islands if minimum recent landing requirements in the Aleutian Islands were met. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plans, and other applicable law.

DATES: Effective September 14, 2009.

ADDRESSES: Amendments 92 and 82, the Environmental Assessment (EA), Regulatory Impact Review (RIR), and the Final Regulatory Flexibility Analysis (FRFA) for this action are available from the NMFS Alaska Region website at *http://www.alaskafisheries.noaa.gov*.

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

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background on the License Limitation Program

NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands Management Area (BSAI) and the Gulf of Alaska (GOA) under the fishery management plans (FMPs) for groundfish in the respective areas. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council and NMFS have long sought to control the amount of fishing in the North Pacific Ocean to ensure that fisheries are conservatively managed and do not exceed established biological thresholds. One of the measures used by the Council and NMFS is the license limitation program (LLP) which limits access to the groundfish, crab, and scallop fisheries in the BSAI and GOA. The LLP is intended to limit entry into federally managed fisheries. For groundfish, the LLP requires that persons hold and assign a license to each vessel that is used to fish in federally managed fisheries, with some limited exemptions. The Council initially envisioned the LLP as an early step in a long-term plan to establish a comprehensive rationalization program for groundfish in the North Pacific that would ultimately assign tradable quotas to fishery participants that would provide them an exclusive access privilege to groundfish resources. These exclusive access programs are more commonly known as limited access privilege programs (LAPPs).

The LLP for groundfish fisheries was recommended by the Council as Amendments 39 and 41 to the BSAI and GOA groundfish FMPs, respectively. The Council adopted the LLP for groundfish in June 1995, and NMFS approved Amendments 39 and 41 on September 12, 1997. NMFS published a final rule to implement the LLP on October 1, 1998 (63 FR 52642); and LLP licenses were required for federal groundfish fisheries beginning on January 1, 2000. The preamble to the final rule implementing the groundfish LLP and the EA/RIR/FRFA prepared for this rule describe the rationale and specific provisions of the LLP in greater detail (see **ADDRESSES**) and are not repeated here. The key components of the LLP are briefly summarized below.

The LLP for groundfish established specific criteria that must be met to allow a person to use a vessel to directed fish in most federally managed groundfish fisheries. An LLP license must be assigned to each vessel that is used to participate in directed fishing for most federally managed groundfish species. The term directed fishing and the specific groundfish species for which an LLP license is required are defined in regulations at § 679.2. An exception to the requirement that an LLP license must be assigned to a vessel applies if the vessel is: less than 26 feet length overall (LOA) and fishing in the GOA; less than 32 feet LOA and fishing in the BSAI; using jig gear in the BSAI if the vessel is less than 60 feet LOA and deploys no more than five jigging machines; or specifically constructed for and used exclusively in Community Development Quota fisheries, and designed and equipped to meet specific needs that are described in regulations at § 679.4(k).

Under the LLP, NMFS issued licenses that (1) endorse fishing activities in specific regulatory areas in the BSAI and GOA; (2) restrict the length of the vessel on which the LLP license may be used; (3) designate the fishing gear that may be used on the vessel (i.e., trawl or non-trawl gear designations); (4) designate the type of vessel operation permitted (i.e., LLP licenses designate whether the vessel to which the LLP is assigned may operate as a catcher vessel or as a catcher/processor); and (5) are issued so that the endorsements for specific regulatory areas, gear designations, or vessel operational types are non-severable from the LLP license (i.e., once an LLP license is issued, the components of the LLP license cannot be transferred independently). By creating LLP licenses with these characteristics, the Council and NMFS limited the ability of a person to assign an LLP license that was derived from the historic landing activity of a vessel in one area, using a specific fishing gear or operational type to be used in other areas, with different gears or operational types, in a manner that could expand fishing capacity. The preamble to the final rule implementing the groundfish LLP provides a more detailed explanation of the rationale for specific

provisions in the LLP (October 1, 1998; 63 FR 52642).

The regulatory areas for which LLP licenses were issued included the Bering Sea subarea (BS), Aleutian Islands subarea (AI), Southeast Outside District (SEO), Central Gulf of Alaska (CG), which includes the West Yakutat District, and Western Gulf of Alaska (WG). The documented harvest requirements necessary to receive an LLP license endorsed for a specific area differed depending on the size and the operational type of the vessel. For example, for a vessel owner to receive an endorsement for trawl gear in the CG with a catcher/processor designation, a vessel must have met the minimum documented harvest requirements in the CG using trawl gear and must have caught and processed those documented harvests onboard the vessel. NMFS did not issue any LLP licenses with a trawl endorsement in SEO because trawl gear is prohibited in SEO. Therefore, this action does not apply to the SEO management area.

In 1999, NMFS issued groundfish LLP licenses with the appropriate regulatory area endorsements, gear, vessel length, and vessel operational type designations based on the documented harvests of vessels. LLP licenses were required for vessels participating in directed fishing for LLP groundfish species as of January 1, 2000. NMFS issued over 300 LLP licenses endorsed for trawl gear for use in the BSAI and GOA. In many cases, trawl LLP licenses were endorsed for multiple regulatory areas (e.g., WG, CG, and BS) if a vessel met the minimum number of documented harvests in more than one area. Additionally, a number of trawl LLP licenses were designated for both trawl and non-trawl gear (i.e., hook-and-line, pot, or jig gear) if the vessel met the documented harvest requirements using both trawl and non-trawl gear.

After LLP licenses were initially issued, NMFS became aware from public testimony and a review of landings data that a substantial number of trawl-endorsed LLP licenses were not being used for fishing in some, or all, of the regulatory areas for which they were endorsed. Changes in the economic viability of some fishing operations, changes in fishery management regulations, or consolidation of fishery operations were likely factors that affected the number of LLP licenses actively used by vessels. LLP licenses that are valid but are not currently being used on a vessel are commonly known as ''latent'' LLP licenses.

In early 2007, the Council began reviewing the use of trawl-endorsed LLP licenses. This review was initiated primarily at the request of active trawl fishery participants who were concerned that latent trawl-endorsed LLP licenses could become active in the future and adversely affect their fishing operations. If the total allowable catch (TAC) or exvessel value of a fishery resource increased these factors could attract additional effort by trawl vessels. This increased effort could result in overcapacity in the fishery and make it more difficult for NMFS to close fisheries in a timely manner, potentially resulting in the TAC being exceeded for a fishery. During the process of this review, the Council also received input from the public requesting modification to the LLP to meet unique conditions in the AI area that limit the ability of catcher vessels to harvest, and specific AI area communities to process, federally managed groundfish. In April 2008, after more than a year of review and extensive public comment, the Council recommended modifications to the LLP to revise eligibility criteria for trawl endorsements on LLP licenses.

Notice of Availability and Proposed Rule

NMFS published the notice of availability for Amendments 92 and 82 on December 12, 2008 (73 FR 75659), with a public comment period that closed on February 10, 2009. NMFS published the proposed rule for this action on December 30, 2008 (73 FR 79773), with a public comment period that closed on February 13, 2009. Amendments 92 and 82 were approved by NMFS on March 16, 2009. NMFS received eight public comments from three unique persons on Amendments 92 and 82 and the proposed rule; these are summarized and responded to below.

Changes to the LLP Program

This rule implements two different actions. First, this rule removes certain latent trawl regulatory area endorsements on LLP licenses. With two exceptions, a trawl endorsement for a specific regulatory area is removed from an LLP license that has been assigned to a vessel that has not made a minimum of two landings using trawl gear in a specific regulatory area during the period 2000 through 2006.

One exemption allows a person to retain a trawl endorsement on an LLP license for both the CG and the WG if the LLP license had been used on a vessel that made at least 20 landings using trawl gear in either the CG or WG from 2005 through 2007. The second exemption allows a person to retain a trawl endorsement in a specific regulatory area if that area endorsement is required for continued participation in one of three limited access privilege programs (LAPPs): the American Fisheries Act (AFA); the Amendment 80 Program; or the CG Rockfish Program. Under this exemption, NMFS will not remove trawl endorsements in the BS or AI regulatory areas from LLP licenses that are assigned for use in the AFA or Amendment 80 LAPP, and NMFS will not remove trawl endorsements in the CG regulatory area from LLP licenses assigned for use in the CG Rockfish Program LAPP. This exemption would apply only to LLP licenses used in fisheries managed under these three LAPPs, because under NMFS' regulations, fisheries managed under other LAPPs in the North Pacific (e.g., BSAI crab and BSAI halibut and fixed-gear sablefish) cannot be fished by vessels using trawl gear.

The second action under this rule is the issuance of new and additional trawl AI area endorsements for catcher vessel operations for use in the Aleutian Islands Subarea. Under this rule, NMFS will issue AI trawl endorsements based on the harvests of: (1) non-AFA catcher vessels less than 60 feet in LOA, if those vessels have made at least 500 metric tons (mt) of landings of Pacific cod harvested from State of Alaska (State) waters adjacent to the Aleutian Islands Subarea during 2000 through 2006; and (2) non-AFA catcher vessels equal to or greater than 60 feet LOA if those vessels have made at least one landing of fish harvested from State waters during the Federal groundfish season in the Aleutian Islands Subarea and have made at least 1,000 mt of Pacific cod landings harvested from the BSAI during 2000 through 2006. The rationale and effects of these two proposed actions are described in detail in the preamble to the proposed rule and the EA/RIR/FRFA supporting this action (see **ADDRESSES**) and are briefly summarized here.

Action 1: Removing Latent Trawl LLP Licenses

Use of Trawl LLP Endorsements

Latent LLP licenses are inactive, but not invalid. Removing latent trawl LLP endorsements reduces the risk that in the future vessel operators could assign latent LLP licenses to trawl vessels, effectively reactivating those licenses and thereby increasing the amount of trawl effort in the groundfish fisheries. This additional effort could increase harvest rate in the trawl fishery, and adversely affect currently active participants by increasing competition, diluting their potential gross revenues and creating incentives for harvesters to

race for fish in a potentially wasteful manner.

The Council considered a range of options and alternatives to determine the minimum number of landings required for a trawl LLP endorsement to remain valid. After a review of groundfish catch history and public testimony, the Council determined that two landings during the seven year period from 2000 through 2006 represented a minimal, but sufficient, amount of participation in the trawl fisheries to indicate some level of dependence on trawl fishing. The Council recommended that this landing requirement apply to each regulatory area so that endorsements would be removed only for those regulatory areas where minimum landing requirements were not met. Therefore, LLP licenses that were active in more than one regulatory area might meet the minimum landing requirements in one area but not another.

Determining the Number of Landings Assigned to an LLP License

Beginning in 2002, NMFS required that an LLP license designate a specific vessel on which it was being used. This requirement allowed NMFS to assign landings to a specific LLP license without having to make any assumptions about the specific vessel to which the LLP license was assigned. If an LLP license is not assigned a sufficient number of landings in a specific regulatory area, NMFS would extinguish the trawl endorsement on that LLP license in that regulatory area. NMFS can verify use of an LLP license on a specific vessel after 2002. When combined with landings records, NMFS can determine how many landings may be assigned to a specific LLP license during a specific time frame.

However, during the first two years of the LLP, 2000 and 2001, NMFS did not track the use of LLP licenses on specific vessels. Although LLP licenses were required to be onboard vessels, there is no independent data source to verify specific LLP licenses used on specific vessels during 2000 and 2001. NMFS will assume that the vessel that had the eligible landings for the original LLP license (i.e., the original qualifying vessel) used the LLP license during all of 2000 and 2001, unless an LLP license holder provides NMFS a clear and unambiguous contract or other written documentation to prove this assumption is incorrect. This assumption offers an LLP holder the opportunity to challenge NMFS's official record, but a rebuttal of this assumption cannot be based merely on oral testimony or recollection, which NMFS considers to be insufficient evidence for purposes of this action.

If a vessel was designated on more than one LLP license, NMFS will assign the credit for that landing to any LLP licenses assigned to, or ''stacked,'' on that vessel at the time of landing. Effectively, NMFS will credit a single landing to more than one LLP license. This provision ensures that in those cases in which more than one LLP license with a specific area endorsement was assigned to a vessel that made a landing, all LLP licenses assigned to that vessel at the time of landing would be credited with the landing. Because NMFS, and in many cases vessel owners and operators, did not specify how specific landings should be assigned to multiple LLP licenses assigned to a vessel at the time a landing was made, this provision will resolve any disputes that may arise about the assignment of specific landings by crediting all LLP licenses used on that vessel when a landing was made.

Exemptions From the Minimum Landing Requirements

Exemption 1: LLP Licenses Used on Vessels Active in the GOA

This rule will retain a trawl endorsement on a catcher vessel LLP license in a regulatory area in the GOA (i.e., the CG or WG), if the LLP license was assigned to a vessel that made more than 20 landings in at least one of the regulatory areas of the GOA from 2005 through 2007. This exemption allows catcher vessel LLP license holders who have demonstrated a substantial and recent dependence in the GOA to continue to hold an endorsement in both the CG and WG. Furthermore, this will allow active participants in the CG to keep their WG endorsements because the TACs for several groundfish species in the Western GOA have not been fully harvested in recent years.

Exemption 2: Retaining Trawl Endorsements for LLP Licenses Assigned to LAPPs

This rule exempts any LLP license that is assigned for use in the AFA, CG Rockfish Program, or the Amendment 80 Program from the specific landing requirements in the regulatory areas for which that area endorsement is required. This exemption applies as follows:

1. Exempt landing requirements for BS or AI area endorsements originally issued to LLP licenses for vessels qualified under the AFA, and any BS or AI area endorsement on an LLP license assigned to an AFA vessel not having any other LLP license assigned to that vessel as of the effective date of this rule.

2. Exempt landing requirements for BS or AI area endorsements originally issued to LLP licenses for vessels that may generate quota share (QS) under the Amendment 80 Program.

3. Exempt landing requirements for CG area endorsements on LLP licenses that are eligible to receive QS under the CG Rockfish Program.

This exemption benefits the participants in the three LAPPs that have already met stricter requirements for these specific management areas to participate in these programs. A person must hold a valid LLP license with endorsements in specific regulatory areas to be eligible to participate in these LAPPs. The AFA and Amendment 80 LAPPs require that a person assign an LLP license with a valid trawl endorsement in the BS or AI to a vessel eligible under those LAPPs. Similarly, under the CG Rockfish Program, a person must have an LLP license with a trawl endorsement in the CG to participate in that LAPP. Removing LLP licenses that do not meet specific landing requirements, but that are required to continue to receive exclusive harvest allocations for these LAPPs for which they are otherwise qualified, adversely affects LAPP participants. This is not the intent of this action. The intent of this action is to remove latent trawl endorsements. The net effect of this exemption is that AFA LLP licenses and LLP licenses originally issued to Amendment 80 vessels that are eligible to generate QS are subject only to the CG and WG area endorsement landing requirements, and the CG Rockfish Program LLP licenses are subject only to the BS, AI, and WG area endorsement landing requirements.

NMFS will determine which LLP licenses are eligible for this exemption from the landing requirements for each of the three LAPPs as follows:

1. For the AFA, LLP licenses with a trawl gear designation with a BS or AI area endorsement that were originally issued based on the harvest activities of AFA vessels are exempt from the landing requirements. In addition, LLP licenses with a trawl gear designation with BS or AI area endorsements that were not originally issued based on the harvest activities of AFA vessels, but that are assigned to AFA vessels on the effective date of this regulation, are exempt from the landing requirements in the BS or AI. This exemption to the landing requirements applies to an LLP license only if no LLP licenses originally issued based on the harvest activities of AFA vessels are assigned to

that AFA vessel on the effective date of the rule.

2. For the Amendment 80 Program, all LLP licenses with a trawl gear designation and with a BS or AI area endorsement that were originally issued based on the harvest activities of Amendment 80 vessels that may generate QS are exempt from the landing requirements in the BS or AI. A list of the Amendment 80 vessels that were used to harvest catch that may result in the issuance of QS under the Amendment 80 Program is provided in Column A of Table 31 to 50 CFR part 679. The LLP licenses originally issued based on the harvest activities of those Amendment 80 vessels, and that are subject to this exemption are listed in Column C of Table 31 to 50 CFR part 679.

3. For the CG Rockfish Program, all LLP licenses with a trawl gear designation and with a CG area endorsement to which NMFS has assigned Rockfish QS are exempt from the landing requirements in the CG. This ensures that LLP licenses that were issued QS and are necessary to participate in the CG Rockfish Program can continue to be used in the CG and remain valid.

Action 2: Adding Aleutian Island Endorsements to Non-AFA Trawl Catcher Vessel LLP Licenses

Background on Aleutian Island Fisheries

Congress, the Council, and NMFS have developed and implemented a series of programs in recent years that provide harvest opportunities for catcher vessels in the Aleutian Islands. They attempted to provide economic opportunities for harvesters and processors in the Aleutian Islands, specifically for the community of Adak. For example, section 803 of the Consolidated Appropriations Act of 2004 (Public Law 108–199), allocates the Aleutian Islands directed pollock fishery to the Aleut Corporation, or its authorized agents, for the economic development of Adak. NMFS published a final rule to implement section 803 on March 1, 2005 (70 FR 9856). Also in 2005, NMFS implemented the Crab Rationalization Program, a LAPP for BSAI crab fisheries (March 2, 2005, 70 FR 10174) that allocates 10 percent of the TAC for Western Aleutian Islands golden king crab (Lithodes aequispinus) to a specific entity representing the community of Adak. The Crab Rationalization Program also places geographic delivery requirements on a portion of the remaining Western Aleutian Islands golden king crab TAC that favors processing in Adak and the nearby community of Atka. In 2007, NMFS implemented the Amendment 80 Program which specifies that a portion of the Aleutian Islands Pacific ocean perch and Atka mackerel fisheries would be available for harvest by trawl catcher vessels. These vessels may choose to land their catch in Adak or Atka, but are not required to do so (September 14, 2007, 72 FR 52668).

The State of Alaska also has established Pacific cod and sablefish fisheries in the State waters of the Aleutian Islands that are exclusively managed by the State and that provide harvesting and processing opportunities for vessels and processors based in Adak and the nearby community of Atka. These fisheries are managed based on a guideline harvest level (GHL) that is determined by the State. These State-managed fisheries are tailored to open after the close of the federally managed seasons. In addition, State fishery managers coordinate with NMFS to open and close State waters to fishing concurrently with openings and closings for the Federal seasons to harvest the Federal TAC. A State-managed fishery that occurs in state waters concurrently with a Federal fishery is called a ''parallel fishery.'' The coordinated parallel fishery in State waters allows harvesters to efficiently harvest the Federal TAC regardless of whether harvest occurs in State or Federal waters.

Commercial fishing grounds often occur within State waters (i.e., within 3 nautical miles of the coastline) on the narrow continental shelf around some of the Aleutian Islands because of the bathymetry of the region and the life histories of the target species; however, these fishery resources are also present in Federal waters. In recent years, many of the catcher vessels actively fishing in the Aleutian Islands and delivering their catch to Adak, and to a lesser extent, Atka, have harvested fish from State waters, either under the GHL during the State-managed Pacific cod fishery, or under the Federal TAC during the parallel fishery. Many of these vessels are not currently designated on an LLP license with an AI area endorsement.

This action will assign new AI area endorsements to provide additional harvest opportunities to non-AFA trawl catcher vessels that have been active in State waters in the Aleutian Islands in recent years, but which are not designated on an LLP license with an AI area endorsement. These new AI area endorsements will be added to LLP licenses that name non-AFA trawl catcher vessels because those vessels have been active in the fisheries in the Aleutian Islands, and AFA LLP licenses that already hold AI area endorsements will continue to be eligible to use those LLP licenses to fish in the Aleutian Islands under the exemption to the landing requirements described earlier in this preamble. In particular, these new AI area endorsements will provide additional opportunities for catcher vessels to harvest and process Pacific cod in the Aleutian Islands. Pacific cod is the groundfish species most frequently targeted by non-AFA catcher vessels in the State GHL and parallel fisheries in the Aleutian Islands; therefore the Council used those landings as the basis for determining eligibility to receive an AI area endorsement.

Two different types of AI area endorsements will be created. First, non-AFA trawl catcher vessels that are equal to or greater than 60 feet LOA, have made at least one landing in either the State GHL or parallel fishery, and have made at least 1,000 metric tons (mt) of Pacific cod landings harvested from the BSAI from 2000 through 2006 will be eligible to receive an AI area endorsement on the LLP licenses that name these vessels. Second, non-AFA trawl catcher vessels that are less than 60 feet LOA and that have made at least 500 mt of Pacific cod landings harvested from the parallel fishery, but not the Stage GHL fishery, from 2000 through 2006 would be eligible to receive an AI endorsement on the LLP licenses that name these vessels. NMFS will assign these new AI endorsements to the LLP licenses that designate eligible vessels at the time of the effective date of this rule. The EA/RIR/FRFA estimates that eight AI area endorsements will be issued based on the catch history of vessels less than 60 feet LOA, and four AI area endorsements will be issued based on the catch history of vessels equal to or greater than 60 feet LOA (see **ADDRESSES**).

As discussed above, different qualification criteria apply for catcher vessels less than 60 feet LOA and those equal to or greater than 60 feet LOA. Vessels less than 60 feet LOA are typically adapted to fish in multiple fisheries using multiple gear types and are subject to a different range of monitoring, enforcement, recordkeeping, and reporting requirements under existing regulations than are vessels equal to or greater than 60 feet LOA. In addition, LLP licenses initially issued based on the documented landings of vessels less than 60 feet LOA cannot be used on vessels greater than 60 feet LOA. Because of the operational and regulatory distinctions applicable to

vessels less than and equal to or greater than 60 feet LOA, the Council recommended different criteria be applied to determine whether an AI trawl endorsement would be issued to vessels based on their size. The preamble to the proposed rule contains an extensive discussion of the rationale for this action, and is not repeated here.

In addition, the Council recommended that the new AI area endorsements based on the landings of vessels less than 60 feet LOA should be severable and transferable from the overall LLP license. However, the Council clarified that these AI area endorsements may be reassigned only to a trawl catcher vessel LLP license with a maximum length overall (MLOA) of less than 60 feet in order to ensure that these endorsements would be used on small vessels in the Aleutian Islands. During deliberations, the Council noted that the less than 60–foot catcher vessel fleet is more reliant on multi-species operations than are vessels greater than 60 feet; and most of the under 60–foot vessel operators also hold LLP licenses that are endorsed for trawl fisheries in other regulatory areas. These vessel operators must balance a variety of fishing opportunities in other areas (e.g., WG or CG) and may choose not to fish in the AI if conditions are not favorable. Vessels choosing to not fish in the AI could reduce potential economic benefits to processors in Adak or in other locations in the Aleutian Islands. However, if an LLP license holder were issued an AI area endorsement that could be transferred independently of the LLP license to which it was originally assigned, and at some point the LLP license holder decides to no longer fish in the Aleutian Islands, there could be increased incentive to sell the AI area endorsement, apart from the LLP license. Allowing the AI area endorsement to be severable from the LLP license to which it is originally assigned would avoid a situation in which AI endorsements would be irrevocably tied to LLP licenses that were not being used on vessels operating in the Aleutian Islands. The Council concluded that allowing severable AI endorsements would not lead to excess effort in the AI regulatory area.

The Council determined that the ability to sever endorsements for LLP license was not necessary for the AI area endorsements derived from vessels that are equal to or greater than 60 feet LOA. As noted earlier, the Council sought to balance the objectives of reducing latent fishing capacity in the first action included in this rule with the goal of providing additional harvesting and processing alternatives in the Aleutian Islands.

Assigning an AI Area Endorsement to a Specific LLP License

Because the landing criteria to qualify for an AI area endorsement are primarily based on landings with fish caught within State waters, some qualifying landings have been made by vessels that did not have LLP licenses assigned to them at the time the landings were made. Vessels fishing exclusively within the jurisdiction of the State in State waters are not under the jurisdiction of the Council and so are not required to be assigned an LLP license. Therefore, NMFS will use two methods to assign any new AI area endorsements to an LLP license to ensure that there is a linkage between the landings made by a non-AFA catcher vessel that fished in State waters and a specific LLP license.

The first method is applicable to non-AFA catcher vessels less than 60 feet LOA that meet the requisite minimum 500 mt landings requirement to receive an AI endorsement. NMFS will assign an AI endorsement based on the landings of a non-AFA trawl catcher vessel to an LLP license that 1) designates that non-AFA vessel on the effective date of this regulation; 2) was not derived in whole or in part from the qualifying fishing history of an AFA vessel; 3) has a trawl gear designation; 4) does not have a catcher/processor vessel designation; 5) does not have an MLOA equal to or greater than 60 feet; and 6) has at least 500 mt of Pacific cod landings using trawl gear harvested from the parallel fishery adjacent to the Aleutian Islands Subarea during the period from January 1, 2000, through December 31, 2006.

The second method is applicable to non-AFA catcher vessels equal to or greater than 60 feet LOA that meet the requisite minimum 1,000–mt-landings requirement to receive an AI area endorsement. NMFS will assign an AI area endorsement based on the landings of a non-AFA trawl catcher vessel to an LLP license that 1) designates that non-AFA vessel on the effective date of this regulation; 2) was not derived in whole or in part from the qualifying fishing history of an AFA vessel; 3) has a trawl gear designation; 4) does not have a catcher/processor vessel designation; and 5) has at least 1,000 mt of landings of Pacific cod using trawl gear harvested from the BSAI made under the authority of that LLP license during the period from January 1, 2000, through December 31, 2006, according to the official record created by NMFS.

These requirements would ensure that the AI area endorsement is assigned to an LLP license that can only be used on a non-AFA trawl catcher vessel consistent with the Council's intent. NMFS will establish a rebuttable presumption that an AI area endorsement will be assigned to the LLP license that designates the non-AFA trawl catcher vessel on the effective date of this rule. This presumption ensures that an AI area endorsement is issued to a specific LLP license that is actively being used on the vessel that met the requisite landing requirements.

If the official record shows that, on the effective date of this rule, the owner of a vessel that meets the AI endorsement landing criteria does not hold an LLP license to which an AI area endorsement may be assigned, the vessel owner will have the opportunity to provide additional information and challenge NMFS's presumption to designate an otherwise eligible LLP license. Similarly, if the vessel owner disagrees with NMFS's designation of the LLP license to which the AI area endorsement is assigned, the vessel owner will have the opportunity to provide additional information and challenge NMFS's designation and have the AI area endorsement assigned to an otherwise eligible LLP license. Should the owner of a vessel meeting the AI endorsement requirements subsequently receive an LLP license (i.e., purchase an LLP license) that is otherwise eligible to be assigned an AI endorsement (i.e., it is a non-AFA, trawl catcher vessel endorsed LLP license with the appropriate MLOA), the vessel owner can request that NMFS assign the AI endorsement to that LLP license. Otherwise, NMFS will assign the AI endorsement to the LLP license specified in the amended official record.

Transfers of AI Endorsements

Only LLP AI area endorsements for vessels less than 60 feet LOA are transferrable separate from the LLP. To facilitate the transfers, NMFS modified LLP license transfer regulations at § 679.4(k)(7) to clarify the process for transferring an AI area endorsement independent of the LLP license. NMFS specified that a new AI area endorsement may be transferred from the LLP license to which it was originally issued to another LLP license that (1) was not derived in whole or in part from the qualifying fishing history of an AFA vessel; (2) has a catcher vessel designation; (3) has a trawl gear designation; (4) has an MLOA of less than 60 feet LOA; and (5) has an MLOA that is not longer than the MLOA designated on the LLP license to which

that AI endorsement was originally issued. These limitations would meet the Council's intent to provide opportunities for LLP licenses used on smaller non-AFA catcher vessels.

The voluntary transfer process for an AI area endorsement is similar to the procedures currently in place for transferring an LLP license. First, a person seeking to transfer an AI area endorsement must submit a complete transfer application for an LLP license to the Regional Administrator as described under § 679.4(k)(7). As part of that application process, the person must specify the specific LLP license to which the transferred AI area endorsement will be assigned. NMFS will not approve the transfer unless the AI area endorsement was assigned for transfer to an LLP license that met the five requirements specified above.

This rule also will modify LLP license transfer regulations at § 679.4(k)(7)(v) to clarify that the Regional Administrator will transfer an AI area endorsement based on a court order, operation of law, or a security agreement if the Regional Administrator determines that the transfer application is complete and the transfer will not otherwise violate any of the provisions relating to LLP license transfers. This change is necessary to ensure that AI endorsements are treated in the same manner that applies to LLP licenses in general.

NMFS will apply the same limitations on the number of transfers of AI area endorsements that currently exist for LLP licenses. This limitation ensures that AI endorsements are not traded in a manner that could substantially increase the potential number of vessels actively fishing in the AI area, and would subject AI endorsements to the same transfer restrictions applicable to LLP licenses. Specifically, an AI area endorsement can be voluntarily transferred only once in any calendar year. A voluntary transfer is a transfer other than one pursuant to a court order, operation of law, or a security agreement. NMFS will not approve an application for transfer that will cause a person to exceed the transfer limit of this provision. NMFS will consider any transfer of an AI endorsement from one LLP license to another LLP license, or the transfer of an LLP license to which an AI endorsement is affixed, as a voluntary transfer of an AI endorsement. This provision is consistent with the Council's intent to limit the transfer of AI area endorsements in the same manner as those applicable to LLP licenses.

Process for Removing Latent Trawl Endorsements and Assigning New AI area Endorsements

NMFS will create an official record with all relevant information necessary to assign landings to specific LLP licenses. As explained earlier in this preamble, NMFS did not track the use of specific LLP licenses onboard specific vessels during 2000 and 2001. Because NMFS cannot assign landings made aboard specific vessels to specific LLP licenses during this time period, NMFS will assume that any landings made by a vessel during 2000 and 2001 will be assigned to the LLP license derived from that vessel. Prior to modifying any LLP licenses, NMFS will notify all trawl LLP license holders of the status of their LLP license endorsements (i.e., whether they will retain or lose their endorsements for specific regulatory areas, or will be eligible to receive an AI area endorsement). Should an LLP license holder disagree with NMFS's official record, NMFS will provide an opportunity for any person to submit information to rebut the assumptions made by NMFS.

The official record created by NMFS will contain vessel landings data and the LLP licenses to which those landings would be attributed. Evidence of the number and amount of landings would be based only on legally submitted NMFS weekly production reports for catcher/processors and State fish tickets for catcher vessels. Historically, NMFS has only used these two data sources to determine the specific amount and location of landings, and NMFS will continue to do so under this action. The official record will also include the records of the specific LLP licenses assigned to vessels and other relevant information necessary to attribute landings to specific LLP licenses. NMFS will presume the official record is correct, and a person wishing to challenge the presumptions in the official record will bear the burden of proof through an evidentiary and appeals process.

NMFS will mail a notification to each trawl LLP license holder to the address on record at the time the notification is sent about the status of each regulatory area endorsement for that LLP license. NMFS will provide a single 30–day evidentiary period from the date that notification is sent for an LLP holder to submit any supporting information, or evidence, to verify that the information contained in the official record is inconsistent with his or her records.

An LLP license holder who submits claims that are inconsistent with information in the official record will have the burden of proving that the submitted claims are correct. NMFS will not accept inconsistent claims unless verified by clear written documentation. NMFS will evaluate the additional information or evidence to support an LLP license holder's inconsistent claims submitted from the effective date of this regulation and within the 30–day evidentiary period. If NMFS determines that the additional information or evidence proves that the LLP license holder's inconsistent claims were indeed correct, NMFS will act in accordance with that information or evidence. However, if after the 30–day evidentiary period, NMFS determines that the additional information or evidence did not prove that the LLP license holder's inconsistent claims were correct, NMFS will deny the claim. NMFS will notify the applicant that the additional information or evidence did not meet the burden of proof to overcome the official record through an initial administrative determination (IAD). An applicant can appeal an IAD. The appeals process is described under § 679.43. A person who appeals an IAD will be eligible to use the disputed LLP license with the endorsements listed on the LLP license until final action by NMFS on the appeal. NMFS will reissue any LLP licenses pending final action by NMFS as interim LLP licenses. NMFS will prohibit the transfer of an interim LLP license until the appeal is resolved.

If a person does not dispute the notification of changes in their LLP license endorsements, or upon the resolution of any inconsistent claims, a revised LLP license with the appropriate endorsements will be reissued to the LLP license holder. In cases where all endorsements on a LLP license with only a trawl endorsement are extinguished, NMFS will not reissue the LLP license because it would no longer be valid for use with trawl gear in any management area.

Housekeeping Revisions to LLP Transfer Application and Permit Regulations

This rule modifies regulations at § 679.4(k)(7)(iii) to consolidate and clarify the regulations describing the contents of the LLP transfer application. In addition, this rule modifies the regulations at § 679.7(i)(2) through (5), and § 679.7(i)(8)(i) to replace the requirement that a person must have the original LLP license onboard to conduct directed fishing for license limitation groundfish, fish for LLP crab or scallops, or process those species with a requirement that a legible copy of the license will suffice.

Response to Comments

Comment 1: NMFS should consider a wider range of documentary evidence to establish that a vessel made the requisite qualifying landings. The commenter notes NMFS will consider only legal landings that are documented on State of Alaska (State) fish tickets or NMFS weekly production reports as the basis for establishing whether a specific LLP license meets the requirements to retain its trawl endorsements. Because a legal landing had to be properly recorded on a State fish ticket or weekly production report, the ability of a person to use other documentation to challenge NMFS's official record for determining whether an LLP license meets the qualification is meaningless. Although legal landings must be recorded on a State fish ticket or weekly production report, other documentary evidence establishing that landings were recorded but not in NMFS's official record should be accepted. State of Alaska law limits the ability of a vessel owner to review State fish ticket records without the consent of the vessel skipper, thereby limiting the ability of a person to challenge NMFS's official record based on those records. Therefore, a person's right to challenge NMFS's official record is meaningless and a violation of due process privileges.

Response: NMFS has used State fish tickets and NMFS weekly production reports as the most reliable and accurate information to establish landings in a variety of programs (e.g., Amendment 80 Program, and Central GOA Rockfish Program). The commenter does not propose that NMFS should use other sources for establishing a legal landing, but that NMFS should accept other information that a landing occurred but that landing was not, for whatever reason, properly submitted to NMFS or is not otherwise available in NMFS's official record. If NMFS and the commenter agree that only State fish tickets or NMFS weekly production reports should be used to certify a landing, then it is not clear how any other information could be considered as evidence of a landing.

NMFS will provide an LLP holder with the opportunity to submit information, including other documentary evidence, to challenge NMFS's official record. Even though other documentary evidence is not proof of a legal landing, this information can result in NMFS modifying the official record. For example, a person could submit landing settlements or other records that lead NMFS or the State to investigate the official record. This investigation could determine that a State fish ticket or NMFS weekly production report was misfiled by the State or NMFS, applied to the wrong vessel, or subject to some other error that could result in NMFS modifying the official record. An LLP license holder has a meaningful opportunity to present information to NMFS that could result in changes to the official record.

NMFS provides adequate opportunity for a person to challenge an agency decision. As noted in the preamble, NMFS will provide each LLP license holder with a single 30–day evidentiary period to submit any information to challenge the official record (79 FR 79785). If NMFS does not accept the information submitted and does not modify the official record, NMFS will issue an Initial Agency Determination (IAD) rejecting a claim. After an IAD is issued, an LLP license holder can pursue a challenge to the official record through the use of an appeals process established in regulation at § 679.43. NMFS will not revoke or extinguish an LLP license endorsement until the appeal process has concluded.

The commenter's concern about State confidentiality requirements for the release of State fish tickets is outside the scope of this action. NMFS does not have the authority to modify State statutes.

Comment 2: NMFS should clarify that those persons eligible to receive an AI trawl endorsement must designate the qualifying vessel on an eligible LLP license as of the effective date of the proposed regulations to receive the endorsement. To do otherwise, or to hold AI endorsements in regulatory limbo until the potential recipient obtains a qualifying LLP license to couple with that endorsement, will create too much uncertainty and limit the ability of NMFS to manage the fishery because of the potential increase in harvesting capacity associated with the AI trawl endorsements.

Response: In cases where a person does not hold an LLP license, but is otherwise eligible to receive an AI endorsement, NMFS will withhold issuing that AI endorsement until such time as that person holds an LLP license with the requisite endorsements and MLOA appropriate for that endorsement. Extinguishing an AI endorsement if a person does not hold an LLP license within some time frame after the implementation of this regulation was not specifically addressed by the Council during the development of this provision; establishing such a provision now would require new rulemaking and would prohibit otherwise eligible persons from receiving an AI endorsement. Choosing to withhold the issuance of an AI trawl endorsement until the potential recipient obtains the appropriate LLP license does not undermine the ability of NMFS to carry out its fishery management responsibilities. If an AI endorsement is issued to an LLP license at some point in the future, NMFS is able to track the specific LLP license to which the endorsement is assigned, the vessel to which an LLP license is assigned, and the fisheries that a vessel operator is actively fishing by communicating with the operator or by monitoring the vessel electronically through the vessel monitoring system. NMFS can monitor that vessel's landings through mandatory catch reports. NMFS can use this information to adjust management actions to account for the harvest activity of a vessel to which an AI endorsement is assigned by closing fisheries earlier to accommodate any increased effort due to additional AI endorsements.

In response to this comment, NMFS has modified the regulations at ' 679.4(k)(4)(ix)(C) and (D) to state that a person may designate the LLP license to which the AI endorsement is assigned when an endorsement is issued by NMFS. If a person otherwise eligible to receive an AI endorsement does not hold an LLP license to which an AI endorsement may be assigned at the time this rule takes effect, an otherwise eligible LLP license may be designated by that person in the future, such as when the person has purchased an eligible LLP license. Furthermore, NMFS concluded that the proposed regulatory text did not clearly state that a person could select a specific eligible LLP license if more than one was held by the person eligible for the AI endorsement. This change ensures that a person can amend the official record once that person holds an eligible LLP to be assigned an AI endorsement. This change clarifies that this amendment does not require a challenge to the official record. Although these changes modify the proposed process for assigning AI endorsements to LLP licenses, they do not change the intent of this provision.

Comment 3: NMFS should reissue trawl licenses for which all area endorsements are extinguished to facilitate the use of the AI trawl endorsements. Extinguishing a trawl endorsed LLP license if all of the area endorsements assigned to that license are no longer valid would be appropriate in most cases. However, allowing an LLP license holder to be able to transfer an AI endorsement onto

an LLP license that would otherwise be extinguished would provide some minimal value to some of the licenses that would otherwise be extinguished under this amendment package.

Response: Adopting the commenter's suggestion would have the effect of requiring that NMFS maintain latent trawl LLP licenses so that an AI endorsement could be transferred onto any LLP license at some indeterminate point in the future. This would frustrate the overall goal of this action, which is to remove area endorsements, and potentially LLP licenses, that have not met the minimum landing requirements. The action recommended by the Council did not include a provision to reissue LLP licenses that are extinguished under this action. Including such a provision now would be contrary to the purpose and need for this action and the clear intent of the Council. In an action that amended eligibility to hold crab LLP licenses (September 24, 2001; 66 FR 48813), NMFS extinguished those LLP licenses that no longer had any eligible endorsements, and a consistent approach would be used for this action.

Comment 4: Permitting LLP license holder to maintain a legible copy of an LLP license on their vessel while fishing or processing, as opposed to the original LLP license, will greatly benefit participants in the fisheries. Maintaining an original LLP license onboard a vessel can impose significant costs on the industry during fishing due to expedited delivery costs and incidental costs incurred while waiting for an original LLP license to arrive. This change is long overdue.

Response: NMFS agrees and notes the support.

Comment 5: Remove latent trawl LLP licenses as described in the proposed rule. The proposed rule provides active participants with stability and insures some amount of protection of their investments in, and dependency on, the North Pacific fisheries. The threshold landing requirement does not harm LLP holders who are active in the fisheries and who show a dependency in such fisheries. Maintain the exemption to allow WG or CG endorsements to remain valid if at least 20 landings were made during the qualifying period, and the exemption for LLP licenses required for specific LAPPs.

Response: NMFS notes the support for this action. NMFS notes that this action removes trawl endorsements. NMFS will be extinguishing, or removing, LLP licenses only in cases where all endorsements on an LLP license are extinguished (see response to Comment 3 for additional detail).

Comment 6: The commenter opposes the creation of new LLP endorsements for catcher vessels in the Aleutian Islands. This action is contrary to one of the central goals of the LLP Program as originally implemented. The action would not meet the goals stated in the preamble to the proposed rule. The rationale for this action is: the economic development of Adak, Alaska; the development of an under 60 foot vessel fleet to harvest the AI pollock quota given to the Aleut Corporation; and the development of a resident fleet for Adak.

This action will not contribute to the economic development for Adak. Because most participants in the AI fishery, including those that would receive new endorsements, have chosen not to deliver to Adak, increasing participation by issuing new federal endorsements could negatively impact Adak by attaining catch quotas and closing the fishery earlier without increasing deliveries to Adak fisheries. No new under–60–foot endorsements are needed to harvest AI pollock allocated to the Aleut Corporation because an AI endorsement is not required for those vessels. The creation of 12 new AI area endorsements will not develop a resident fleet of vessels for Adak. None of the vessel owners slated to receive the new endorsements are residents of Adak. The owners of the vessels that participated in the State Water Al Pacific cod fishery either live in Washington or Gulf of Alaska communities. More importantly, all have LLP licenses in other regions and are more dependent on fisheries in other regions.

Increased participation in the AI subarea would increase fishing pressure in relation to the regional distribution of BSAI Pacific cod biomass. The most harm would be caused by issuance of new area endorsements that are severable and transferable, an action that even one of the recipients of such a new transferable LLP area endorsement testified to the Council that he did not want. This is contrary not only to the original purpose of this action, it contradicts the purpose of the LLP which prohibits the severability and transfer of endorsements because it will increase rather than limit participation. In creating these new endorsements, Adak would be hurt because the influx of new participants would likely cause the trawl catcher vessel Pacific cod fishery to be shortened.

Response: As noted in the preamble to the proposed rule, this action would provide additional harvest opportunities to a specific group of LLP holders based on the catch history of vessels that have been active in AI parallel water fisheries in recent years. This action is intended to modify the LLP Program as originally implemented by NMFS, and the Council adopted a separate purpose and need statement to support this action. The Council is not restricted from modifying the LLP provided it is consistent with applicable law. The preamble to the proposed rule notes that this action is primarily intended to provide additional flexibility to vessels that are active in the Aleutian Islands and could provide additional opportunities for shorebased processors, but such opportunities were not guaranteed. Specifically, the preamble to the proposed rule (73 FR 79780) stated:

> LLP license holders who are issued new AI trawl endorsements would be provided with additional harvest opportunities in Federal waters that could be more economic to harvest. Processing facilities in the Aleutians, specifically those located in the communities of Adak and Atka, could benefit from access to Federal resources that could be more economically processed than fishery resources available only in State waters.

The commenter's assertion that this action would not result in additional deliveries to Adak cannot be verified by NMFS because there is no way to predict choices that vessel operators will make in the future about their fishery deliveries. As noted in the preamble to the proposed rule, this action is not intended to ensure that additional deliveries will occur at a specific port, but that the catcher vessel fleet will have additional harvesting opportunities in Federal waters that did not previously exist. Those additional harvest opportunities could provide additional processing for shorebased facilities in Adak and Atka. This action does not guarantee that additional deliveries will occur at these ports, or any other specific port.

Contrary to the commenter's assertion, the Council did not recommend this action to provide opportunities for the harvest of Aleutian Islands pollock. As noted in the preamble to the proposed rule, ''these new AI area endorsements would provide additional opportunities for catcher vessels to harvest and process Pacific cod in the Aleutian Islands. Pacific cod is the groundfish species most frequently targeted by non-AFA catcher vessels in the State GHL and parallel fisheries in the Aleutian Islands; therefore the Council used those landings as the basis for determining eligibility to receive an AI area endorsement (73 FR 79780). The analysis used to support this action also notes that the primary benefits of this

action would be for those active in the Atka mackerel, Pacific ocean perch, and Pacific cod fisheries (see section 2.8.2).

NMFS cannot confirm the commenter's assertion that the recipients of the AI endorsement will choose not to deliver catch to a specific port. Again, this action does not mandate delivery to specific ports and the Council did not intend that specific ports would receive a specific portion of the catch, nor did the Council guarantee such a result. As noted in section 2.7.5.4 of the analysis prepared for this rule ''there is no guarantee that these AI endorsements would be used to fish groundfish in the AI, or be used by vessels that would choose to ''homeport'', or deliver to a shoreside processing plant, in Adak. The creation of the endorsements, and their potential severability and transferability, however, may provide an opportunity to facilitate economic development in Adak, compared to the status quo.≥

The Council and NMFS were aware that this action could have distributional effects on the specific participants who are active in Aleutian Islands groundfish fisheries. Specifically, the preamble to the proposed rule (73 FR 79773) notes that:

> In recommending this action, the Council balanced the potential benefits against the potential negative effect on existing fishery participants in the Aleutian Islands. This proposed action would not increase the total amount of the TAC harvested in the BSAI. The TAC would continue to limit total harvests. This proposed action could shift the proportion of groundfish harvested by trawl vessels relative to other vessels in the Aleutian Islands thereby affecting the associated ex-vessel revenues for existing fishery participants.

The commenter's assertion that this action will result in increased fishing pressure on the regional distribution of the BSAI Pacific cod biomass is based on assumptions about the potential distribution of the Pacific cod biomass that have not been reviewed by the Council or NMFS. The Pacific cod fishery is constrained by the Pacific cod TAC specified annually for the BSAI. Based on data from a variety of sources, the Council is reviewing the potential implications of apportioning the Pacific cod TAC between the Bering Sea and Aleutian Islands. As that analysis is developed, the Council and NMFS will consider fishing practices in the Bering Sea and Aleutian Islands, and may recommend changes to fishery management program that may be necessary to accommodate a TAC apportionment. However, based on the best available information at this time, issuing a limited number of additional AI endorsements that are likely to be used on vessels that are already active in harvesting BSAI Pacific cod in the Aleutian Islands parallel water fishery would not be likely to cause the BSAI Pacific cod fishery to close earlier than it does currently. The Council did review and consider the potential effects of this action on current Aleutian Islands harvesters and processors during its deliberative process and in section 2.7.5 of the analysis prepared for this action.

Comment 7: The commenter supports designating LLP licenses as non-transferable while any appeals on the status of an LLP license endorsement are resolved. However, past experience suggests that the appeal process can be very lengthy, particularly for resolving LLP license appeals. While an LLP is under appeal it is still valid and may be used until the appeals process is completed. If the appeals process is lengthy, the net effect is that a regulation intended to reduce latent capacity does not fully accomplish its goal. The Alaska Region Office of Administrative Appeals should resolve any appeals quickly. In the Pacific groundfish fishery, regulations are in place that requires appeals to be resolved within 30 or 45 days. A similar timeline for resolution of appeals for this action would seem to be appropriate.

Response: NMFS notes the support for designating LLP licenses as non-transferable while under appeal. NMFS intends to move expeditiously to resolve all appeals in a timely manner, but a specific timeline for resolving appeals is difficult to predict given the wide range of issues that may be addressed under appeal. The Council considered and rejected a fixed timeline similar to the one used in the Pacific groundfish fishery to resolve appeals given the potential that complexities may arise during a specific appeal that could require more than the 30 or 45 days.

Comment 8: Although the proposed rule suggests that removing latent trawl LLP licenses became a consideration in early 2007, this issue came before the Council much earlier. In 2005, the Council considered provisions to remove latent catcher vessel LLP licenses under Amendment 80 and Amendment 85 to the FMP for BSAI groundfish. Additionally, GOA rationalization was under consideration as early as 2003; if adopted, this LAPP would have mooted the issue of latent trawl LLP licenses.

Response: NMFS agrees that the Council has considered modifying the LLP Program prior to this action. However, this action, which specifically addresses removing latent area endorsements from trawl LLP licenses, was first developed as a separate and distinct action beginning in 2007.

Changes From the Proposed to Final Rule

Based on public comment, NMFS clarified the regulations at ' 679.4 (k)(4)(ix)(C) and (D) for assigning AI endorsements.

NMFS made several minor changes in the final rule to clarify specific regulatory text. In § 679.7, NMFS clarified that the copy of the LLP license that may be on a vessel must be a legible copy. This change is consistent with other regulatory requirements that NMFS uses to ensure that copies can be verified by enforcement personnel who may be onboard the vessel.

NMFS made several minor corrections to the regulatory text for grammatical consistency that does not affect the intent of these provisions.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that Amendments 92 and 82 are necessary for the conservation and management of BSAI and GOA groundfish and are consistent with the MSA and other applicable law.

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

Final Regulatory Flexibility Analysis (FRFA)

A FRFA was prepared for this rule, as required by section 604 of the Regulatory Flexibility Act (RFA). Copies of the FRFA prepared for this final rule are available from NMFS (see **ADDRESSES**). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A summary of the FRFA follows.

Why Action by the Agency is Being Considered and Objectives of, and Legal Basis for, the Rule

The FRFA describes in detail the reasons why this action is being proposed, describes the objectives and legal basis for the rule, and discusses both small and non-small regulated entities to adequately characterize the fishery participants. The MSA provides the legal basis for the rule, as discussed in this preamble. The objectives of the rule are to remove trawl gear endorsements on LLP licenses in specific management areas if those LLP licenses have not been used on vessels

that met minimum recent landing requirements using trawl gear. This action provides exemptions to this requirement for licenses that are used in trawl fisheries subject to certain limited access privilege programs. This action issues new area endorsements for trawl catcher vessel LLP licenses in the Aleutian Islands if minimum recent landing requirements in the Aleutian Islands were met.

Number of Small Entities to Which the Final Rule Would Apply

The directly regulated entities under this proposed rule are holders of LLP licenses endorsed for trawl activity. For purposes of a FRFA, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and if it has combined annual gross receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied and continues to apply SBA's fish harvesting criterion for these businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations.

Information concerning ownership of vessels and processors, which would be used to estimate the number of small entities that are directly regulated by this action, is somewhat limited. NMFS estimated the number of small versus large entities based on earnings from all Alaskan fisheries for 2006, the most recent year of complete data, from vessels designated on LLP licenses used in the BSAI or GOA groundfish for that year.

Of the trawl catcher vessel licenses with AI, BS, CG, or WG endorsements, 102 are AFA licenses. These are categorized as large entities for the purpose of the RFA under the principles of affiliation, due to their being part of the AFA pollock harvest cooperatives. Of the remaining 130 trawl catcher vessel licenses that are not AFA licenses, 96 had groundfish landings in 2006, and all are identified as small entities for the purposes of the RFA. This likely overstates the true number of small entities because ownership of multiple vessels, co-ownership among vessels, and other economic and operational affiliations are commonplace in commercial fisheries off Alaska.

Of the trawl catcher/processor LLP licenses with AI, BS, CG, or WG endorsements, 27 are AFA licenses, and thus categorized as large entities, due to their AFA cooperative affiliation. Of the remaining 37 non-AFA trawl catcher/processor LLP licenses, 33 had groundfish landings in 2006. These 33 licenses are estimated to be held by 28 entities, and 24 of those had gross earnings from all fisheries in Alaska over $4 million, categorizing them as large entities. The remaining 4 are identified as small entities for the purposes of the RFA. Thus, this analysis estimates a total of 100 (96 + 4) small entities will be directly regulated by the action.

Public Comments Received on the IRFA

NMFS received no public comments on the IRFA. A general comment on the economic impacts of the rule is addressed in the Response to Comment section of this preamble (see response to Comment 6).

Projected Reporting, Recordkeeping, and Other Compliance Requirements

This rule modifies existing reporting, recordkeeping, and other compliance requirements. This rule modifies the Application to Transfer an LLP license to include provisions to track the transfer of AI trawl endorsements issued under this rule. It will cost the directly regulated industry an estimated $56 to complete each application to transfer an AI endorsement.

The Comparison of Alternatives

A FRFA requires a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule which affect the impact on small entities was rejected by the agency.

The Council identified three alternatives for this action. Alternative 1 is the status quo, which would result in no change to the existing area endorsements for trawl groundfish LLPs for the BSAI or GOA. Alternative 2 and Alternative 3 (Council preferred alternative) result in the application of landings criteria (the range includes one or two landings during 2000 through 2005 or 2000 through 2006) in order to retain the area endorsement (BS, AI, CG, or WG) on a license.

Under either action alternative, including the preferred alternative, the area endorsements on licenses not meeting the threshold would be extinguished. In effect, if the LLP license at issue has one or more area endorsement only for trawl gear and it does not meet the landing threshold for any area selected, the entire license is extinguished. If the LLP license at issue has multiple area endorsements and it does not meet the landing threshold for a specific area, the license would be reissued with only the area endorsements for which it qualifies. The area endorsement for which the license does not qualify would be removed. Note that this action does not affect a license's non-trawl area endorsements.

The primary intent of the amendment is to prevent future economic dislocation among license holders who have a demonstrated history of recent participation in the trawl groundfish fisheries in the BSAI and GOA. As previously noted, the great majority of the directly regulated entities under this action are considered ''small'' as defined under the RFA. Within the universe of small entities that are the subject of this FRFA, impacts may accrue differently (i.e., some small entities would be negatively affected and others positively affected.) Thus, the action represents tradeoffs in terms of impacts on small entities. However, the Council deliberately sought to provide options for the smallest of the small entities under this amendment through Component 4, Options 1 and 3.

Component 4, Option 1, awards an estimated eight new AI endorsements to non-AFA trawl catcher vessel LLP licenses with less than 60 foot MLOA that meet a specified landing threshold (greater than 500 mt) in the AI parallel Pacific cod fishery from 2000 through 2006. Component 4, Option 3 allows those new AI endorsements to be severable and transferable from the license on which they were earned, thus allowing new participation by non-AFA trawl catcher vessels less than 60 feet LOA. It is reasonable to assume that the same proportion of licenses assigned to vessels less than 60 feet LOA would be small entities.

Overall, it is unlikely that this action will result in extinguishing the licenses of vessels for which LLP license holders had a high degree of economic dependence upon the trawl groundfish

fisheries, as one would have to have had little to no participation in the fisheries since 2000 in order to forfeit an area endorsement under this action. Based upon the best available scientific data and information, and consideration of the objectives of this action, it appears that there are no alternatives to the action which have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the proposed rule on directly regulated small entities.

Collection-of-Information

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under Control Number 0648–0334. Public reporting burden is estimated to average two hours for the Application to Transfer an LLP license and four hours for an appeal of an initial administrative determination 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.

Notwithstanding any other provision of 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 Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Small Entity Compliance Guide

NMFS has posted a small entity compliance guide on its website at *http://www.alaskafisheries.gov* to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996 requirement for a plain language guide to assist small entities in complying with this rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 10, 2009.

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1540; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447.

■ 2. In § 679.4,

A. Paragraphs (k)(4)(vi) through (k)(4)(x) are added; and

B. Paragraphs (k)(7)(i), (k)(7)(ii) introductory text, (k)(7)(iii), (k)(7)(v), (k)(7)(vi), and (k)(7)(viii)(A) are revised.

The additions and revisions read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(4) * * *

(vi) *Trawl gear designation recent participation requirements.* (A) NMFS will revoke any trawl gear designation on a groundfish license with an Aleutian Island, Bering Sea, Central Gulf, or Western Gulf regulatory area unless one of the following conditions apply:

(*1*) A person made at least two legal landings using trawl gear under the authority of that groundfish license in that regulatory area during the period from January 1, 2000, through December 31, 2006; or

(*2*) That trawl gear designation endorsed in that area is exempt from the requirements of this paragraph (k)(4)(vi)(A) as described under paragraphs (k)(4)(vii) or (k)(4)(viii) of this section.

(B) NMFS shall assign a legal landing to a groundfish license for an area based only on information contained in the official record described in paragraph (k)(4)(x) of this section.

(vii) *Exemption to trawl gear recent participation requirements for the AFA, Amendment 80 Program, and Rockfish Program.* (A) Trawl gear designations with Bering Sea or Aleutian Islands area endorsements on a groundfish license that was derived in whole or in part from the qualifying fishing history of an AFA vessel are exempt from the landing requirements in paragraph (k)(4)(vi) of this section.

(B) Trawl gear designations with Bering Sea or Aleutian Islands area endorsements on a groundfish license are exempt from the landing requirements in paragraph (k)(4)(vi) of this section provided that all of the following conditions apply:

(*1*) The groundfish license was not derived in whole or in part from the qualifying fishing history of an AFA vessel;

(*2*) The groundfish license is assigned to an AFA vessel on August 14, 2009; and

(*3*) No other groundfish license with a Bering Sea or Aleutian Island area endorsement is assigned to that AFA vessel on August 14, 2009.

(C) Trawl gear designations with Bering Sea or Aleutian Islands area endorsements on a groundfish license that is listed in Column C of Table 31 to this part are exempt from the landing requirements in paragraph (k)(4)(vi) of this section.

(D) A trawl gear designation with Central Gulf area endorsement on a groundfish license that is assigned Rockfish QS is exempt from the landing requirements in paragraph (k)(4)(vi) of this section.

(viii) *Exemption to trawl gear recent participation requirements for groundfish licenses with a Central Gulf or Western Gulf area endorsement.* A trawl gear designation with a Central Gulf or Western Gulf area endorsement on a groundfish license is exempt from the landing requirements in paragraph (k)(4)(vi) of this section provided that a person made at least 20 legal landings under the authority of that groundfish license in either the Central Gulf or Western Gulf area using trawl gear during the period from January 1, 2005, through December 31, 2007.

(ix) *Aleutian Island area endorsements for non-AFA trawl catcher vessels.* (A) If a non-AFA catcher vessel that is less than 60 feet LOA was used to make at least 500 mt of legal landings of Pacific cod using trawl gear from the waters that were open by the State of Alaska for which it adopts a Federal fishing season adjacent to the Aleutian Islands Subarea during the period from January 1, 2000, through December 31, 2006, according to the official record, NMFS shall issue an Aleutian Island area endorsement with a trawl gear designation to a groundfish license assigned to the vessel owner according to the official record, provided that the groundfish license assigned to that non-AFA catcher vessel meets all of the following requirements:

(*1*) It was not derived in whole or in part from the qualifying fishing history of an AFA vessel;

(*2*) It has a trawl gear designation;

(*3*) It does not have a catcher/processor vessel designation; and

(*4*) That groundfish license has an MLOA of less than 60 feet.

(B) If a non-AFA catcher vessel that is equal to or greater than 60 feet LOA was used to make at least one legal landing in State of Alaska waters adjacent to the Aleutian Islands Subarea using trawl gear during the period from January 1,

2000, through December 31, 2006, or one landing of Pacific cod from the State of Alaska Pacific cod fishery during the period from January 1, 2000, through December 31, 2006, according to the official record, NMFS shall issue an Aleutian Island area endorsement with a trawl gear designation to a groundfish license assigned to the vessel owner according to the official record, provided that the groundfish license assigned to that non-AFA catcher vessel meets the following criteria:

(*1*) It was not derived in whole or in part from the qualifying fishing history of an AFA vessel;

(*2*) It has a trawl gear designation;

(*3*) It does not have a catcher/processor vessel designation; and

(*4*) At least 1,000 mt of legal landings of Pacific cod using trawl gear in the BSAI were made under the authority of that groundfish license during the period from January 1, 2000, through December 31, 2006, according to the official record.

(C) NMFS will assign the AI endorsement to an eligible groundfish license held and designated by the vessel owner beginning on August 14, 2009.

(D) If the vessel owner does not hold a groundfish license to which an AI endorsement may be assigned on August 14, 2009 according to the official record, the vessel owner will have the opportunity to amend the official record as described in paragraph (k)(4)(x) of this section to designate an otherwise eligible groundfish license. If the official record is subsequently amended, NMFS will assign the AI endorsement to the groundfish license specified in the amended official record.

(x) *Trawl gear recent participation official record.* (A) The official record will contain all information used by the Regional Administrator to determine the following:

(*1*) The number of legal landings assigned to a groundfish license for purposes of the trawl gear designation participation requirements described in paragraph (k)(4)(vi) of this section;

(*2*) The amount of legal landings assigned to a groundfish license for purposes of the AI endorsements described in paragraph (k)(4)(ix) of this section;

(*3*) The owner of a vessel that has made legal landings that may generate an AI endorsement as described in paragraph (k)(4)(ix) of this section; and

(*4*) All other relevant information necessary to administer the requirements described in paragraphs (k)(4)(vi) through (k)(4)(ix) of this section.

(B) The official record is presumed to be correct. A groundfish license holder has the burden to prove otherwise. For the purposes of creating the official record, the Regional Administrator will presume the following:

(*1*) A groundfish license is presumed to have been used onboard the same vessel from which that groundfish license was derived, the original qualifying vessel, during the calendar years 2000 and 2001, unless clear and unambiguous written documentation is provided that establishes otherwise;

(*2*) If more than one person is claiming the same legal landing, then each groundfish license for which the legal landing is being claimed will be credited with the legal landing;

(*3*) The groundfish license to which an AI endorsement described in paragraph (k)(4)(ix) of this section will be initially assigned.

(C) Only legal landings as defined in § 679.2 and documented on State of Alaska fish tickets or NMFS weekly production reports will be used to assign legal landings to a groundfish license.

(D) The Regional Administrator will specify by letter a 30–day evidentiary period during which an applicant may provide additional information or evidence to amend or challenge the information in the official record. A person will be limited to one 30–day evidentiary period. Additional information or evidence received after the 30–day evidentiary period specified in the letter has expired will not be considered for purposes of the initial administrative determination.

(E) The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30–day evidentiary period if the Regional Administrator determines that the information or evidence provided by the person fails to support a person's claims and is insufficient to rebut the presumption that the official record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 30–day evidentiary period. The IAD will indicate the deficiencies with the information, or the evidence submitted in support of the information. The IAD will also indicate which claims cannot be approved based on the available information or evidence. A person who receives an IAD may appeal pursuant to § 679.43. A person who avails himself or herself of the opportunity to appeal an IAD will receive a non-transferable license pending the final resolution of that appeal, notwithstanding the eligibility of that applicant for some claims based on consistent information in the official record.

* * * * *

(7) * * *

(i) *General.* The Regional Administrator will transfer a groundfish license, Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section, or a crab species license if a complete transfer application is submitted to Restricted Access Management, Alaska Region, NMFS, and if the transfer meets the eligibility criteria as specified in paragraph (k)(7)(ii) of this section. A transfer application form may be requested from the Regional Administrator.

(ii) *Eligibility criteria for transfers.* A groundfish license, Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section, or crab species license can be transferred if the following conditions are met:

* * * * *

(iii) *Contents of application.* To be complete, an application for a groundfish license, Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section transfer, or a crab species license transfer must be legible, have notarized and dated signatures of the applicants, and the applicants must attest that, to the best of the applicant's knowledge, all statements in the application are true. An application to transfer will be provided by NMFS, or is available on the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov.* The acceptable submittal methods will be specified on the application form.

* * * * *

(v) *Transfer by court order, operation of law, or as part of a security agreement.* The Regional Administrator will transfer a groundfish license, Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section, or a crab species license based on a court order, operation of law, or a security agreement if the Regional Administrator determines that the transfer application is complete and the transfer will not violate any of the provisions of this section.

(vi) *Voluntary transfer limitation.* A groundfish license, Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section, or a crab species license may be voluntarily transferred only once in any calendar year. A voluntary transfer is a transfer other than one pursuant to a court order, operation of law, or a

security agreement. An application for transfer that would cause a person to exceed the transfer limit of this provision will not be approved. A transfer of an Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section to another LLP license, or the transfer of a groundfish license with an Aleutian Island area endorsement as described under paragraph (k)(7)(viii)(A) of this section attached to it will be considered to be a transfer of that Aleutian Island area endorsement.

* * * * *

(viii) * * *

(A) Area endorsements or area/species endorsements specified on a license are not severable from the license and must be transferred together, except that Aleutian Island area endorsements on a groundfish license with a trawl gear designation issued under the provisions of paragraph (k)(4)(ix)(A) of this section and that are assigned to a groundfish license with an MLOA of less than 60 feet LOA may be transferred separately from the groundfish license to which that Aleutian Island area endorsement was originally issued to another groundfish license provided that the groundfish license to which that Aleutian Island endorsement is transferred:

(*1*) Was not derived in whole or in part from the qualifying fishing history of an AFA vessel;

(*2*) Has a catcher vessel designation;

(*3*) Has a trawl gear designation;

(*4*) Has an MLOA of less than 60 feet LOA; and

(*5*) A complete transfer application is submitted to the Regional Administrator as described under this paragraph (k)(7), and that application is approved.

* * * * *

■ 3. In § 679.7, paragraphs (i)(2) through (i)(5), and paragraph (i)(8)(i) are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(i) * * *

(2) Conduct directed fishing for license limitation groundfish without a legible copy of a valid groundfish license, except as provided in § 679.4(k)(2);

(3) Conduct directed fishing for LLP crab species without a legible copy of a valid crab license, except as provided in § 679.4(k)(2);

(4) Process license limitation groundfish on board a vessel without a legible copy of a valid groundfish license with a catcher/processor designation;

(5) Process LLP crab species on board a vessel without a legible copy of a valid crab species LLP license with a catcher/processor designation;

* * * * *

(8) * * *

(i) Without a copy of a valid scallop license on board;

* * * * *

[FR Doc. E9–19568 Filed 8–13–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 080630808–91192–03]

RIN 0648–AW97

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea/Aleutian Islands Crab Rationalization Program; Amendment 28

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations implementing Amendment 28 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). These regulations amend the Bering Sea/Aleutian Islands Crab Rationalization Program to allow post-delivery transfers of all types of individual fishing quota and individual processing quota to cover overages. This action is necessary to improve flexibility of the fleet, reduce the number of violations for overages, reduce enforcement costs, and allow more complete harvest of crab allocations. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Effective September 14, 2009.

ADDRESSES: This action was categorically excluded from the need to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act. Copies of Amendment 28, the categorical exclusion memorandum, and the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this action, as well as the Environmental Impact Statement prepared for the Crab Rationalization Program, may be obtained from the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill or Rachel Baker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). The FMP was prepared by the North Pacific Fishery Management Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendments 18 and 19 to the FMP implemented the BSAI Crab Rationalization Program (CR Program). Regulations implementing Amendments 18 and 19 were published on March 2, 2005 (70 FR 10174), and are located at 50 CFR part 680.

Background

Under the CR Program, NMFS issued quota share (QS) to persons based on their qualifying harvest histories in the BSAI crab fisheries during a specific time period. Each year, the QS issued to a person yields an amount of individual fishing quota (IFQ), which is a permit that provides an exclusive harvesting privilege for a specific amount of raw crab pounds, in a specific crab fishery, in a given season. The size of each annual IFQ allocation is based on the amount of QS held by a person in relation to the total QS pool in a crab fishery. For example, a person holding QS equaling 1 percent of the QS computation pool in a crab fishery receives IFQ to harvest 1 percent of the annual total allowable catch (TAC) in that crab fishery. Catcher/processor license holders were allocated catcher/processor vessel owner (CPO) QS for their LLP license's history as catcher/processors; catcher vessel license holders were issued catcher vessel owner (CVO) QS based on their LLP license's catcher vessel history.

Under the CR Program, 97 percent of the initial allocation of QS was issued to LLP license holders as CPO or CVO QS. The remaining three percent was issued to vessel captains and crew as ''C shares'' based on their harvest histories as crew members onboard crab fishing vessels. Of the CVO IFQ, 90 percent is issued as ''A shares,'' or ''Class A IFQ,'' which, in most fisheries, is subject to regional landing requirements and must be delivered to a processor holding unused individual processor quota (IPQ). This regional landing requirement is commonly referred to as ''regionalization.'' The remaining 10 percent of the annual vessel owner IFQ

is issued as ''B shares,'' or ''Class B IFQ,'' which may be delivered to any processor and is not subject to regionalization. C shares also are not subject to regionalization.

Processor quota shares are long term shares issued to processors. These processor quota shares yield annual IPQ, which represents a privilege to receive a certain amount of crab harvested with Class A IFQ. IPQ are issued for 90 percent of the CVO TAC, creating a one-to-one correspondence between Class A IFQ and IPQ.

NMFS can issue IFQ to the QS holder directly, or to a crab harvesting cooperative composed of multiple QS holders who have assigned their annual IFQ to the cooperative. Crab harvesting cooperatives have been used extensively by QS holders to allow them to receive a larger IFQ allotment and coordinate deliveries and price negotiations among numerous quota holders and vessel owners. Most QS holders joined cooperatives in the first four years of the CR Program and are likely to continue membership because of the economic and administrative benefits of consolidating their IFQs.

IFQ Overages Prior to this Final Rule Implementing Amendment 28

Prior to Amendment 28, IFQ permit holders, including QS holders, lessees, and cooperatives, were prohibited from exceeding the amount of IFQ that was issued to them (see § 680.7(e)(2)). If a harvester delivered more crab than the amount of IFQ that he held, he committed a violation of regulations, commonly referred to as an ''overage''. Overages occur either through deliberate actions, or more commonly through unintentional errors such as miscalculating the weight of catch to be delivered relative to the amount of IFQ available. Because harvesters do not know the precise weight of a delivery of crab, estimates made onboard the vessel using a sample of average weight may be lower than the actual delivery weight. If a harvester is making his or her last fishing trip for a season and insufficient IFQ is available in his or her account, an overage would occur. In most cases, harvesters attempted to account for potential overages by maintaining catch below their IFQ holdings, slightly underharvesting the maximum amount of crab.

Similarly, processors were prohibited from receiving more Class A IFQ than the amount of unused IPQ that they held (see regulations at § 680.7(a)(5)). Generally, processors establish relationships with specific harvesters before crab fishing begins and may not have unused IPQ available to receive crab from harvesters that do not have an established relationship with that processor. Under the provisions of the CR Program's Arbitration System, harvesters can choose to commit their Class A IFQ to match the IPQ held by processors (see regulations at § 680.20). Once IFQ shares are committed and matched with a specific amount of IPQ, that IPQ cannot be matched to another harvester's IFQ without first removing the match from the harvester who committed delivery of Class A IFQ crab to the IPQ held by that processor. Removing a match of Class A IFQ and IPQ requires the consent of the harvester. Therefore, it is possible that a processor holding IPQ may not have any available unmatched IPQ if a harvester were to deliver more Class A IFQ than the amount specified on his IFQ permit. For this reason, processors typically refuse to accept a delivery of Class A IFQ that is greater than the amount of available unmatched IPQ.

Although matching Class A IFQ and IPQ among the numerous harvesters and processors can be complicated, overages are uncommon. In the first two crab fishing years under the CR Program (2005–2006 and 2006–2007), most of the IFQs were harvested and few overages occurred. There were 16 overages in the first year and 25 in the second year under the CR Program. These overages represented less than 0.1 percent (1/1000) of the TAC in each year.

Effects of the Action

The following sections briefly describe the effects of allowing post-delivery transfers to cover overages of IPQ as well as Class A IFQ, Class B IFQ, C shares, and CPO IFQ. Additional discussion of the rationale for and effects of this action is provided in the preamble to the proposed rule published on December 12, 2008 (73 FR 75661), and is not repeated here.

Under this final rule, there is no limit on the size of a post-delivery transfer or on the number of post-delivery transfers a person could make. However, a person may not begin a new fishing trip for a crab QS fishery (e.g., snow crab) if any of the IFQ accounts of the IFQ permits available to be used on a vessel are zero or negative for that crab QS fishery, and no person may have a negative balance in an IFQ or IPQ account after June 30, the end of a crab fishing year. For IFQ holders, no person may begin a new fishing trip in a crab QS fishery until the overage is accounted for and the IFQ balances of the persons onboard that vessel for that crab QS fishery are positive.

The final rule defines the term ''fishing trip'' for crab QS fisheries as the period beginning when a vessel operator commences harvesting crab in a crab QS fishery and ending when the vessel operator offloads or transfers any crab, whether processed or unprocessed, from that crab QS fishery from that vessel. Under the definition in this final rule, a fishing trip starts with the first harvest in a crab QS crab fishery and continues until the beginning of a delivery of crab from a catcher vessel, or the beginning of offloading or transferring of processed crab from a catcher/processor. This definition ensures that a vessel operator cannot commence fishing for a crab QS fishery on any vessel until all the IFQ accounts of all IFQ permits used onboard that vessel are positive for that crab QS fishery. This provision is intended to discourage harvesters from continuing to debit crab against their IFQ account for numerous fishing trips and run an increasingly negative balance without ensuring that there is adequate available unused IFQ that can be transferred to cover that negative balance. This provision allows a vessel operator to begin a fishing trip for one crab QS fishery (e.g., snow crab) provided the harvester had unused IFQ in that fishery, even if that harvester had a negative balance in another crab QS fishery (e.g., Bristol Bay red king crab). However, in this example, if a vessel operator harvested (i.e., caught and retained) any Bristol Bay red king crab while fishing for snow crab, the harvester would be in violation of the regulations. This final rule does not modify existing regulations that require that IFQ issued to a cooperative may be transferred only between cooperatives, and that IFQ held outside of cooperatives may be transferred only to another person who holds that IFQ outside of a cooperative.

This action minimizes the risk of negative IFQ or IPQ accounts by prohibiting an IFQ or IPQ holder from maintaining a negative balance in an IFQ or IPQ account after the end of the crab fishing year for which that IFQ or IPQ account was issued. This final rule requires that all post-delivery transfers of IFQ or IPQ must be completed by June 30 of each year, the end of the crab fishing year. Overages that are not covered by June 30 of each year can be subject to a penalty or other enforcement action. Allowing post-delivery transfers will likely reduce the number of overages that result in forfeiture of catch and other penalties.

Overall, NMFS anticipates that the number of overages at the time of landing may increase slightly under this action, but overages subject to penalty should decline. Harvesters are likely to

realize production efficiency gains under this action, which allows greater flexibility in harvesting. Under the status quo, harvesters may be required to wait in port or remain idle on the fishing grounds until a transfer can be processed and a positive IFQ balance is available. Under this final rule, harvesters could finish their fishing trip and settle the balance when back in port. Some production efficiency gains should be realized by allowing harvesters to more precisely harvest the total IFQ allocation with fewer uncovered overages. Harvesters are also likely to benefit from a reduction in the number of overage violations, which should be reduced through post-delivery transfers. It is unlikely that harvesters will have excessive overages by unreasonable reliance on the provision for post-delivery transfers because the majority of all IFQ issued in crab QS fisheries is Class A IFQ, which harvesters can choose to match with IPQ held by processors before crab fishing begins (see IFQ Overages Prior to This Final Rule Implementing Amendment 28 section above). Persons holding IFQ outside of a cooperative may have a limited opportunity to make post-delivery transfers because most IFQ allocations are assigned to cooperatives.

This action has limited impacts on processors. Processors should have few overages, since overages can be avoided by simply refusing delivery of landings in excess of IPQ holdings. Only when a harvester has an IFQ overage that is covered by a post-delivery transfer of Class A IFQ might a processor need to obtain IPQ to cover an overage.

This action requires NMFS to debit IPQ accounts if a processor accepts delivery of Class A IFQ in excess of the amount of Class A IFQ that is matched with that processor. Prior to this action, NMFS has not debited an IPQ account if an excess of Class A IFQ was delivered because NMFS did not wish to encourage waste by having processors refuse delivery of Class A IFQ, or debit an IPQ account of a processor and potentially cause the processor to exceed his IPQ account due to the actions of a harvester. However, with this final rule, NMFS will debit the IPQ account of a processor that accepts Class A IFQ in excess of the amount in its IPQ account. At the time of landing, NMFS will assume the landing overage will be covered by a subsequent post-delivery transfer to balance the IPQ account.

Summary of Regulatory Changes

This action makes the following changes to the existing regulatory text at 50 CFR part 680:

- Add a new definition for the term ''fishing trip'' at § 680.2;
- Modify the existing prohibition at § 680.7(a)(5) to clarify that a person may not receive Class A IFQ greater than the amount of unused IPQ that person holds in a crab QS fishery unless they subsequently receive unused IPQ before the end of the crab fishing year to ensure their final yearly IPQ balance is not negative;
- Modify the existing prohibition at § 680.7(e)(2) to clarify that a person cannot begin a fishing trip with a vessel in a crab QS fishery if the total amount of unharvested crab IFQ that is currently held in the IFQ accounts of all crab IFQ permit holders or Crab IFQ Hired Masters onboard that vessel for that crab QS fishery is zero or less; and
- Add a prohibition at § 680.7(e)(3) to prohibit a person from having a negative balance in an IFQ or IPQ account for a crab QS fishery after the end of the crab fishing year for which that IFQ or IPQ permit was issued.

Notice of Availability and Proposed Rule

NMFS published the notice of availability for Amendment 28 on November 25, 2008 (73 FR 71598), with a public comment period that closed on January 24, 2009. NMFS published the proposed rule to implement Amendment 28 on December 12, 2008 (73 FR 75661), and the public comment period closed on January 26, 2009. Two public comments were received regarding Amendment 28 and the proposed rule. These are summarized and responded to below.

Response to Comments

Comment 1: The commenter raises general concerns about fisheries management, asserting that fishery policies have not been to the benefit of American citizens.

Response: The comment provided opinions of the federal government's general management of marine resources and was not specific to the proposed action. The comment did not raise new issues or concerns that have not been addressed in the RIR/IRFA prepared to support this action or the preamble to the proposed rule.

Comment 2: The commenter asserts that NMFS is biased and should not be allowed to manage fisheries.

Response: This comment is not specifically related to the proposed rule and recommends broad changes to fisheries management that are outside of the scope of this action.

Changes from the Proposed Rule

NMFS did not make any substantive changes from the proposed to the final rule but made one editorial change to the regulatory language at § 680.7(e)(2) for clarity.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that Amendment 28 is necessary for the conservation and management of the BSAI crab fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

A FRFA was prepared that describes the economic impact that this action has on small entities. The RIR/FRFA prepared for this final rule is available from NMFS (see ADDRESSES). The RIR/FRFA prepared for this final rule incorporates by reference an extensive RIR/FRFA prepared for Amendments 18 and 19 to the FMP that detailed the impacts of the CR Program on small entities.

The FRFA for this action describes the action, why this action is being proposed, the objectives and legal basis for the final rule, the type and number of small entities to which the final rule applies, and projected reporting, recordkeeping, and other compliance requirements of the final rule. It also identifies any overlapping, duplicative, or conflicting federal rules and describes any significant alternatives to the final rule that accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes, and that would minimize any significant adverse economic impact of the final rule on small entities. The description of the action, its purpose, and its legal basis are described in the preamble and are not repeated here.

The proposed rule for this action was published on December 12, 2008 (73 FR 75661). An IRFA was prepared and summarized in the classifications section of the preamble to the proposed rule. The public comment period ended on January 26, 2009. NMFS received two public submissions on Amendment 28 and the proposed rule. These comments did not address the IRFA.

For purposes of a FRFA, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of $4.0 million for all its

affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis at all its affiliated operations worldwide.

Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied and continues to apply SBA's fish harvesting criterion for those businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. NMFS currently is reviewing its small entity size classification for all catcher/processors in the United States. However, until new guidance is adopted, NMFS will continue to use the annual receipts standard for catcher/processors.

The FRFA contains a description and estimate of the number of small entities to which this final rule will apply. The FRFA estimates that 44 entities received IFQ allocations. Of these, 31 were considered small entities. Estimates of small entities holding IPQ are based on the number of employees of IPQ holding entities. Currently, 24 entities receive IPQ allocations. Of these, 13 are considered small entities.

This action directly regulates all holders of IFQ and IPQ, who could engage in post-delivery transfers to cover overages. Estimates of the number of small entities holding IFQ are based on estimates of gross revenues. Since many IFQs are held by cooperatives, landings data from the most recent season for which data are available in the crab fisheries (2006–2007) were used to estimate the number of small entities.

All of the directly regulated entities are expected to benefit from this action relative to the status quo alternative because the action allows greater flexibility and a period of time in which to reconcile overages. Class A IFQ holders are expected to benefit the most because Class A IFQ comprises the majority of all IFQ issued in crab QS fisheries, and this action will provide all IFQ holders greater flexibility to maximize harvests of their allocations without risking overages. Persons holding IFQ outside of a cooperative are expected to benefit the least from this action because only a small portion of the total IFQ issued is issued to persons who hold IFQ outside of cooperatives, and they have a limited pool of persons with whom to negotiate transfers.

Among the three alternatives considered for this action, Alternative 2 (implemented by this rule) would best minimize potential adverse economic impacts on the directly regulated entities. Under the status quo (Alternative 1), no post-delivery transfers would be allowed and small entities would continue to be penalized for overages. Alternative 3 would have allowed post-delivery transfers, but with more limitations and restrictions than Alternative 2, the alternative that provides small entities the most flexibility to cover overages.

Recordkeeping and Reporting Requirements

This final rule does not change existing reporting, recordkeeping, or other compliance requirements. Any person wishing to cover an overage will be required to engage in a transfer of IFQ (or IPQ, in the case of a processor). The required reporting and recordkeeping for a post-delivery transfer is the same as for any other transfer of IFQ (or IPQ). NMFS' Restricted Access Management (RAM) Division will continue to oversee share accounts and share use. At the time of landing, RAM will maintain a record of any overage, but instead of reporting overages to NOAA Office of Law Enforcement immediately, RAM will defer reporting until June 30, the end of the crab fishing year. RAM will use the same process for post-delivery transfers as currently used under regulations at § 680.41.

Small Entity Compliance Guide

NMFS has posted a small entity compliance guide on its website at *http://alaskafisheries.noaa.gov/sustainablefisheries/crab/rat/progfaq.htm* to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996 requirement for a plain language guide to assist small entities in complying with this rule.

List of Subjects in 50 CFR Part 680

Alaska, Fisheries.

Dated: August 10, 2009.

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 680 is amended as follows:

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

■ 2. In § 680.2, the term ''Fishing trip for purposes of § 680.7(e)(2)'' is added in alphabetical order to read as follows:

§ 680.2 Definitions.

* * * * *

Fishing trip for purposes of § 680.7(e)(2) means the period beginning when a vessel operator commences harvesting crab in a crab QS fishery and ending when the vessel operator offloads or transfers any processed or unprocessed crab in that crab QS fishery from that vessel.

* * * * *

■ 3. In § 680.7, paragraphs (a)(5) and (e)(2) are revised, and paragraph (e)(3) is added to read as follows:

§ 680.7 Prohibitions.

* * * * *

(a) * * *

(5) Receive any crab harvested under a Class A IFQ permit in excess of the total amount of unused IPQ held by the RCR in a crab QS fishery unless that RCR subsequently receives unused IPQ by transfer as described under § 680.41 that is at least equal to the amount of all Class A IFQ received by that RCR in that crab QS fishery before the end of the crab fishing year for which an IPQ permit was issued.

* * * * *

(e) * * *

(2) Begin a fishing trip for crab in a crab QS fishery with a vessel if the total amount of unharvested crab IFQ that is currently held in the IFQ accounts of all crab IFQ permit holders or Crab IFQ Hired Masters aboard that vessel in that crab QS fishery is zero or less.

(3) Have a negative balance in an IFQ or IPQ account for a crab QS fishery after the end of the crab fishing year for which an IFQ or IPQ permit was issued.

* * * * *

[FR Doc. E9–19567 Filed 8–13–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 156
Friday, August 14, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

[NRC–2008–0567]

RIN 3150–AI16

Export and Import of Nuclear Equipment and Material; Updates and Clarifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: reopening of comment period for information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) is reopening the comment period specific to the information collection aspects of a proposed rule published on June 23, 2009 (74 FR 29614), that would amend its regulations that govern the export and import of nuclear equipment and material. The comment period for comments specific to the information collection aspects of the proposed rule closed on July 23, 2009.

DATES: The comment period for the comments specific to the information collection aspects of the proposed rule is reopened and now closes on September 8, 2009. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for the comments received before this date.

ADDRESSES: Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on all issues mentioned in the June 23, 2009, rulemaking, by September 8, 2009, to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS.RESOURCE@NRC.GOV* and to Christine J. Kymn, the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0036), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail comments to *Christine_J._Kymn@omb.eop.gov* or comment by telephone at (202) 395–7345.

FOR FURTHER INFORMATION CONTACT: Brooke G. Smith, International Policy Analyst, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; *telephone:* (301) 415–2347; *e-mail: brooke.smith@nrc.gov.*

SUPPLEMENTARY INFORMATION: On June 23, 2009 (74 FR 29614), the Nuclear Regulatory Commission (NRC) published for public comment a proposed rule that would amend its regulations that govern the export and import of nuclear equipment and material. In addition to updating, clarifying and correcting several provisions, this proposed rule would allow Category 1 and 2 quantities of materials listed in 10 CFR Part 110, Appendix P to be imported under a general license. The proposed rule would also revise the definition of ''radioactive waste'' and remove the definition of ''incidental radioactive material'' in 10 CFR part 110. The NRC received a request from a stakeholder to extend the comment period on the information collection aspects of the proposed rule. That request is granted. The comment period for the information collection now closes on September 8, 2009.

Dated at Rockville, Maryland, this 6th day of August 2009.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. E9–19545 Filed 8–13–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27747; Directorate Identifier 2007–CE–030–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 150 and 152 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to revise Airworthiness Directive (AD) 2009–10–09, which applies to certain Cessna Aircraft Company (Cessna) 150 and 152 series airplanes. AD 2009–10–09 requires either installing a placard prohibiting spins and other acrobatic maneuvers in the airplane or replacing the rudder stop, the rudder stop bumper, and the attachment hardware with a new rudder stop modification kit and replacing the safety wire with jamnuts. Since we issued AD 2009–10–09, we became aware of a need to clarify certain model and serial number designations, remove the duplicate requirement of replacing the safety wire with jamnuts, and clarify the conditional acceptability of using Modification Kit part number (P/N) SK152–25 as a terminating action to this proposed AD. Consequently, this proposed AD would retain the actions currently required in AD 2009–10–09, correct model designation for certain serial numbers, remove the duplicate requirement of replacing safety wire with jamnuts, and clarify the conditional acceptability of using Modification Kit P/N SK152–25 as a terminating action to this proposed AD. We are proposing this AD to prevent the rudder from traveling past the normal travel limit. Operation in this non-certificated control position is unacceptable and could cause undesirable consequences, such as contact between the rudder and the elevator.

DATES: We must receive comments on this proposed AD by September 28, 2009.

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

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

For service information identified in this proposed AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, KS 67277; *telephone:* (316) 517–5800; *fax:* (316) 517–7271; *Internet: http://www.cessna.com.*

FOR FURTHER INFORMATION CONTACT: Ann Johnson, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; *telephone:* (316) 946–4105; *fax:* (316) 946–4107; *e-mail: ann.johnson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2007–27747; Directorate Identifier 2007–CE–030–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Discussion

Investigations of two spin accidents involving Cessna Model 152 airplanes revealed the rudder was found in the over-travel position with the stop plate hooked over the stop bolt heads. After examining the accident airplanes and other Cessna Models 150 and 152 airplanes, accident investigators determined that, under certain conditions, it is possible to jam the rudder past its normal travel limit. The jam occurs when the stop plate is forced aft of the stop bolt head. The forward edge of the stop plate can then become lodged under the head of the stop bolt causing the rudder to jam in this over-travel position. Recovery from a spin may not be possible with the rudder jammed beyond the normal rudder travel stop limits. This condition caused us to issue AD 2009–10–09, Amendment 39–15904 (74 FR 22429, May 13, 2009) on certain Cessna 150 and 152 series airplanes. AD 2009–10–09 currently requires the following:

- Installing a placard prohibiting spins and other acrobatic maneuvers in the airplane; or
- Replacing the rudder stop, the rudder stop bumper, and the attachment hardware with a new rudder stop modification kit; and
- Replacing the safety wire with jamnuts.

Since we issued AD 2009–10–09, we became aware of a need to clarify certain model and serial number designations and to remove the duplicate requirement to replace safety wire with jamnuts since this procedure is already included in the modification kit instructions. We also became aware of a need to clarify the conditional acceptability of using Modification Kit P/N S152–25 as a terminating action to this proposed AD.

This condition, if not corrected, could cause contact between the rudder and the elevator and result in loss of control.

Relevant Service Information

The service information referenced in AD 2009–10–09 is still applicable for this proposed AD.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would revise AD 2009–10–09 with a new AD that would retain the actions currently required in AD 2009–10–09, correct model designation for certain serial numbers, remove the duplicate requirement to replace the safety wire with jamnuts, and clarify the conditional acceptability of using the P/N SK152–25 kit as a terminating action to this proposed AD. This proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this AD affects 17,090 airplanes in the U.S. registry.

We estimate the following costs to do the proposed insertion of the operational limitation:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $80 per hour = $80	Not applicable	$80	$1,367,200

We estimate the following costs to do the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 work-hours × $80 per hour = $320	$90	$410	$7,006,900

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information 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 Docket Office (telephone (800) 647–5227) is located at the street address stated 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.

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 removing Airworthiness Directive (AD) 2009–10–09, Amendment 39–15904 (74 FR 22429, May 13, 2009), and adding the following new AD:

Cessna Aircraft Company: Docket No. FAA–2007–27747; Directorate Identifier 2007–CE–030–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by September 28, 2009.

Affected ADs

(b) This AD revises AD 2009–10–09, Amendment 39–15904.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

Models	Serial Nos.
(1) 150F	15061533 through 15064532.
(2) 150G	15064533 through 15064969 and 15064971 through 15067198.
(3) 150H	15067199 through 15069308 and 649.
(4) 150J	15069309 through 15071128.
(5) 150K	15071129 through 15072003.
(6) 150L	15072004 through 15075781.
(7) 150M	15075782 through 15079405.
(8) A150K	A1500001 through A1500226.
(9) A150L	A1500227 through A1500432 and A1500434 through A1500523.
(10) A150M	A1500524 through A1500734 and 15064970.
(11) F150F	F150–0001 through F150–0067.
(12) F150G	F150–0068 through F150–0219.
(13) F150H	F150–0220 through F150–0389.
(14) F150J	F150–0390 through F150–0529.
(15) F150K	F15000530 through F15000658.
(16) F150L	F15000659 through F15001143.
(17) F150M	F15001144 through F15001428.
(18) FA150K	FA1500001 through FA1500081.
(19) FA150L	FA1500082 through FA1500120.
(20) FA150L or FRA150L	FA1500121 through FA1500261 that are equipped with FKA150–2311 and FKA150–2316, or FRA1500121 through FRA1500261.
(21) FA150M or FRA150M	FA1500262 through FA1500336 that are equipped with FKA150–2311 and FKA150–2316, or FRA1500262 through FRA1500336.
(22) 152	15279406 through 15286033.
(23) A152	A1520735 through A1521049, A1500433, and 681.
(24) F152	F15201429 through F15201980.
(25) FA152	FA1520337 through FA1520425.

Note: This AD revision clarifies the applicability of AD 2009–10–09, eliminates a duplicate requirement for replacement of safety wire with jamnuts, and clarifies the intent of the conditional acceptability of using Modification Kit P/N SK152–25 as a terminating requirement to the AD. No further action is required for those already in compliance with AD 2009–10–09.

Unsafe Condition

(d) Aircraft in full conformity with type design can exceed the travel limits set by the rudder stops. We are issuing this AD to prevent the rudder from traveling past the normal travel limit. Operation in this non-certificated control position is unacceptable and could cause undesirable consequences, such as contact between the rudder and the elevator.

Compliance

(e) To address this problem, you must do either the actions in option 1 or option 2 of this AD, unless already done:

Actions	Compliance	Procedures
(1) *Option 1:* For all airplanes that do not have modification kits part number (P/N) SK152–25A or P/N SK152–24A installed, do the following: (i) Insert the following text into the Limitations section of the FAA-approved airplane flight manual (AFM), and pilots operating handbook (POH): ''INTENTIONAL SPINS AND OTHER ACROBATIC/AEROBATIC MANEUVERS PROHIBITED PER AD 2009–10–09. NOTE: THIS AD DOES NOT PROHIBIT PERFORMING INTENTIONAL STALLS''. (ii) Fabricate a placard (using at least 1/8-inch letters) with the following words and install the placard on the instrument panel within the pilot's clear view: ''INTENTIONAL SPINS AND OTHER ACROBATIC/AEROBATIC MANEUVERS PROHIBITED PER AD 2009–10–09.'' (iii) The AFM and POH limitations in paragraph (e)(1)(i) of the AD and the placard in paragraph (e)(1)(ii) of this AD may be removed after either paragraph (e)(2)(i) or paragraph (e)(2)(ii) of this AD is done.	Within the next 100 hours time-in-service (TIS) after June 17, 2009 (the effective date retained from AD 2009–10–09), or within the next 12 months after June 17, 2009 (the effective date retained from AD 2009–10–09), whichever occurs first.	A person authorized to perform maintenance as specified in 14 CFR section 43.3 of the Federal Aviation Administration Regulations (14 CFR 43.3) is required to make the AFM and POH changes, fabricate the placard required in paragraph (e)(1)(i) of this AD, and make an entry into the aircraft logbook showing compliance with the portion of the AD per compliance with 14 CFR 43.9.
(2) *Option 2:* Install a rudder stop modification kit: (i) For airplanes with a forged bulkhead, replace the rudder stops, rudder stop bumpers, and attachment hardware with the new rudder stop modification kit P/N SK152–25A, which includes replacing the safety wire with jamnuts. (ii) For airplanes with a sheet metal bulkhead, replace the rudder stops, rudder stop bumpers, and attachment hardware with the new rudder stop modification kit P/N SK152–24A, which includes replacing the safety wire with jamnuts.	Within the next 100 hours TIS after June 17, 2009 (the effective date retained from AD 2009–10–09), or within the next 12 months after June 17, 2009 (the effective date retained from AD 2009–10–09), whichever occurs first.	Follow Cessna Aircraft Company Service Bulletin SEB01–1, dated January 22, 2001; and, as applicable, either Cessna Aircraft Company Service Kit SK152–25A, Revision A, dated February 9, 2001, or Cessna Aircraft Company Service Kit SK152–24A, Revision A, dated March 9, 2001.

(f) Kit P/Ns SK152–24 and SK152–25, which are listed in SEB01–1, were superseded by kit P/Ns SK152–24A and SK152–25A. Cessna has not revised the service bulletin to reflect the new P/Ns. The kits P/Ns SK152–24 and SK152–25 will automatically be filled with P/Ns SK152–24A and SK152–25A, respectively.

(1) The P/N SK152–24 kit does not address the unsafe condition because the nutplate in the kit can not be used due to rivet spacing on the aft bulkhead. In addition, a note was added to kit P/N SK152–24A stating ''some airplanes in this serial range may have a forged bulkhead installed after leaving the factory. Service Kit SK152–25A or later revision must be used to modify these airplanes.'' Therefore, kit P/N SK152–24 is not allowed for installation for this AD.

(2) The P/N SK152–25 kit did not address the unsafe condition because a washer that was too small, P/N NAS1149FN832P, was included in the kit. This error was corrected in the P/N SK152–25A kit. If a P/N SK152–25 kit is installed using the correct washer P/N NAS1149F0332P (and this information is recorded in the maintenance log), credit will be given for installing P/N SK152–25A kit because this was the only difference between the kits.

(3) If you previously installed a kit P/N SK152–24 or a kit P/N SK152–25 with washer P/N NAS1149FN832P, and you choose the Option 2 kit installation to comply with this AD, then kit P/N SK152–24A or either kit P/N SK152–25 with washer P/N NAS1149F0332P or kit P/N SK152–25A, as applicable, must be installed.

(4) If a P/N SK152–25 kit was installed prior to this AD and the washer P/N used in the installation is unknown (not recorded in the maintenance log), and you wish to use Option 2 to comply with this AD, the washer installed in place of P/N NAS1149F0332P must be replaced with a washer P/N NAS1149F0332P, and this work must be recorded in the maintenance log.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, FAA, ATTN: Ann Johnson, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; *telephone:* (316) 946–4105; *fax:* (316) 946–4107; *e-mail: ann.johnson@faa.gov*, has the authority to approve AMOCs for this AD, if requested using the procedures found 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.

(h) AMOCs approved for AD 2009–10–09 are approved for this AD.

Related Information

(i) To get copies of the service information referenced in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, KS 67277; *telephone:* (316) 517–5800; *fax:* (316) 517–7271; *Internet: http://www.cessna.com*. To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov*.

Issued in Kansas City, Missouri, on August 7, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–19498 Filed 8–13–09; 8:45 am]

BILLING CODE 4910–13–P

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Proposed Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan To Revise the Human Health Water Quality Criteria for PCBs in the Delaware Estuary, To Apply the PCB Human Health Water Quality Criterion to Delaware Bay, and To Provide for the Use of Compliance Schedules To Implement Stream Quality Objectives Established by the Commission; Proposed Rulemaking and Public Hearing

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The Delaware River Basin Commission (DRBC or ''Commission'') will hold a public hearing to receive comments on proposed amendments to the Commission's *Water Quality Regulations, Water Code* and *Comprehensive Plan* to revise the human health water quality criteria for polychlorinated biphenyls (PCBs) in the Delaware Estuary (DRBC Water Quality Management Zones 2 through 5), extend application of the DRBC's PCB human health water quality criterion to Delaware Bay (DRBC Water Quality Zone 6) and provide for the use of compliance schedules where implementation of a stream quality objective established by the Commission requires a reduction of the pollutant concentration or loading of a discharge to Basin waters.

DATES: Written comments on the proposed revised human health water quality criterion for PCBs and accompanying implementation plan will be accepted and must be received by 5 p.m. on Monday, October 19, 2009. The public hearing will be held at 1:30 p.m. on Thursday, October 8, 2009. The hearing will continue until all those wishing to testify have had an opportunity to do so. Two informational meetings will be held in late September, 2009. The informational meeting dates will be posted on the Commission's Web site, *http://DRBC.net*, on or before August 17, 2009.

For more information regarding the procedures for the written comments and hearing, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The public hearing will be held at the Commission's office building located at 25 State Police Drive, West Trenton, NJ. As Internet mapping tools are inaccurate for this location, please use the driving directions posted on the Commission's Web site. The locations of the two informational meetings will be posted on the Commission's Web site, *http://DRBC.net*, on or before August 17, 2009.

SUPPLEMENTARY INFORMATION: Persons wishing to testify at the hearing are asked to register in advance by phoning Ms. Paula Schmitt at 609–883–9500, ext. 224. Written comments may be submitted as follows: If by e-mail, to *paula.schmitt@drbc.state.nj.us*; if by fax, to Commission Secretary at 609–883–9522; if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628–0360; or if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628–0360. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and ''PCB Rulemaking'' in the subject line.

Background. The current DRBC water quality criteria for PCBs in the Delaware Estuary were established in 1996. They pre-date the collection of site-specific bioaccumulation data for the Delaware Estuary and Bay and site-specific fish-consumption data for Zones 2 through 4 that are relevant to the development of human health water quality criteria. They are also inconsistent with current U.S. Environmental Protection Agency (EPA) guidance for the development of such criteria, and they vary by water quality zone. One consequence of the current varied criteria is that in order to ensure that the current water quality criterion of 7.9 picograms per liter in the downstream portion of Zone 5 can be achieved, the allowable PCB loading to Zones 2 and 3, where the applicable criterion currently is 44.4 picograms per liter, must be even lower than would be required if the proposed uniform criterion were in place. DRBC currently has no PCB water quality criteria for the Delaware Bay, a shared interstate water for which the States of New Jersey and Delaware have established a criterion of 64 picograms per liter.

By Resolution No. 2003–11 on March 19, 2003 the Commission directed its executive director to initiate rulemaking on a proposal to revise the Commission's human health water quality criteria, including those for PCBs, to reflect site-specific data on fish consumption, site-specific bioaccumulation factors, and current EPA guidance on development of human health criteria. Rulemaking was delayed, however, pending the completion of an effort by the Commission's Toxics Advisory Committee (TAC) to revise the criterion for PCBs and a separate effort to develop recommendations for achieving reductions in PCB loadings to the river that could be issued in conjunction with the criterion.

Rigorously applying the most current available data and methodology, including site-specific data on fish consumption, site-specific bioaccumulation factors, and the current EPA methodology for the development of human health criteria for toxic pollutants (*see* United States Environmental Protection Agency, *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000),* EPA–822–B–00–004, October 2000), the TAC in July 2005 completed development of a revised human health water quality criterion for PCBs for the Delaware Estuary and Bay of 16 picograms per liter. Accordingly, by Resolution No. 2005–19 on December 7, 2005, the Commission directed the executive director to proceed with rulemaking to establish the new criterion in DRBC Water Quality Zones 2 through 6.

Elevated levels of PCBs in the tissues of fish caught in the Delaware Estuary and Bay currently prevent the attainment of the designated uses ''maintenance and propagation of resident fish and other aquatic life'' (Zone 2, Zone 5 below River Mile 70 and Zone 6), ''passage of anadromous fish'' (Zones 2 through 6), and ''maintenance of resident fish and other aquatic life'' (Zones 3, 4 and 5 above River Mile 70). (*See DRBC Water Quality Regulations* (WQR), Art. 3, sec's 3.30.2 B.2, 3.30.3 B.2, 3.30.4 B.2, 3.30.5 B.2 and 3.30.6 B.2 for Zones 2 through 6, respectively). These uses are commonly referred to collectively as ''fishable'' and are deemed to include human consumption of resident fish. Accordingly, these waters are listed by the bordering States as impaired under Section 303(d) of the Clean Water Act (CWA), which requires that a total maximum daily load (TMDL) be established for them. A TMDL expresses the maximum amount of a pollutant that a water body can receive and still attain water quality standards. Once the load is calculated, it is allocated to all sources in the watershed—point and nonpoint—which may not discharge loads in excess of the share allocated to them in order to achieve and maintain the water quality standards. EPA established TMDLs for PCBs in December of 2003 for the Delaware Estuary and in December of 2006 for the Delaware Bay (''Stage 1 TMDLs''). It is anticipated that EPA will establish revised TMDLs (''Stage 2 TMDLs'') for the Delaware Estuary and Bay to attain

the revised PCB human health water quality criterion if approved.

When the Commission directed the executive director in 2005 to initiate rulemaking on updated PCB criteria, in accordance with a recommendation of the TAC, it also asked her to work with State regulatory agencies and EPA (collectively, ''co-regulators'') to develop recommendations for implementing criteria for bioaccumulative toxic pollutants such as PCBs that would be ''consistent with the existing Clean Water Act National Pollutant Discharge Elimination System (NPDES) framework while * * * reflecting principles of adaptive management'' and to solicit public comment on these recommendations (DRBC Resolution No. 2005–19 par's. 3–4). It is expected that Stage 2 TMDLs issued by EPA will include as an appendix a TMDL implementation plan developed by DRBC and its co-regulators. The implementation plan, which will take the form of a guidance document, will explain how the load allocations assigned by the TMDL to nonpoint sources and the wasteload allocations assigned to point sources can be achieved consistent with the Clean Water Act and principles of adaptive management.

According to the 2003 and 2006 TMDLs, actual loadings of PCBs to the Delaware Estuary and Bay respectively are in some cases orders of magnitude above those needed to allow attainment of the designated use. The EPA's 2003 Delaware Estuary TMDL report projects that ''due to the scope and complexity of the problem that has been defined through these TMDLs, achieving the estuary water quality standards for PCBs will take decades.'' (U.S. Environmental Protection Agency Regions II and III, *Total Maximum Daily Loads for Polychlorinated Biphenyls (PCBs) for Zones 2–5 of the Tidal Delaware River,* December 15, 2003, p. xiii). As required by Section 4.30.9 of the DRBC *Water Quality Regulations,* adopted by DRBC Resolution No. 2005–9 on May 18, 2005, the largest point source dischargers of PCBs to the Delaware Estuary and Bay have already undertaken pollutant minimization plans designed to locate the sources of PCBs entering their wastewater and stormwater systems and contain or remove them. The TMDL implementation plan developed by the co-regulators recognizes that many point source dischargers already have reduced their PCB loadings in an effort to meet their TMDL wasteload allocations assigned by the Stage 1 TMDLs. Some point source dischargers are expected to achieve their required reductions soon; however, others will require an extended period of time, including in some instances decades, to achieve the PCB loading reductions needed to meet their assigned wasteload allocations. The implementation plan developed by the co-regulators will accommodate these dischargers through the use of compliance schedules consistent with the Clean Water Act and applicable regulations. It is understood that those dischargers who cannot achieve their wasteload allocations within a single five-year permit cycle notwithstanding good faith efforts to do so as soon as possible will be given additional time, even if this requires compliance schedules extending well beyond a single five-year permit cycle.

Subjects on which Comment is Expressly Solicited. Public comment is solicited on all aspects of the proposed rule. Without limiting the foregoing, the Commission has identified certain subject matters on which it expressly seeks comment. First, comments are solicited on the assumptions applied in developing the criterion, including the appropriate cancer risk level. (*See* DRBC Resolution No. 2005–19, par. 2). In accordance with current DRBC regulations, that level is 10^{-6}, or one additional cancer in every one million humans exposed for 70 years. (*See* WQR, § 3.10.3 D.4). The assumptions applied in developing the revised PCB criterion of 16 picograms per liter are set forth in a basis and background document that is available on the DRBC Web site, *http://DRBC.net.* The second area on which the Commission expressly seeks comment is best approaches for implementing water quality criteria for bioaccumulative pollutants consistent with the NPDES framework and principles of adaptive management. (*See* DRBC Resolution No. 2005–19, par. 4). The third is the implementation plan developed by the co-regulators, which is posted on the Commission's Web site, *http://DRBC.net.*

FOR FURTHER INFORMATION CONTACT: The text of the proposed rule, relevant DRBC resolutions, the basis and background document and the co-regulators' implementation plan for the proposed criterion will be available on the DRBC Web site, *http://DRBC.net,* on or before August 17, 2009. For further information, please contact Commission Secretary Pamela M. Bush, 609–883–9500 ext. 203.

Dated: August 4, 2009.

Pamela M. Bush,

Commission Secretary.

[FR Doc. E9–19028 Filed 8–13–09; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 58

[Docket No: EOUST 103]

RIN 1105–AB16

Procedures Governing Administrative Review of a United States Trustee's Decision To Deny a Chapter 12 or Chapter 13 Standing Trustee's Claim of Actual, Necessary Expenses

AGENCY: Executive Office for United States Trustees (''EOUST''), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (''rule'') sets forth the procedures for a chapter 12 or chapter 13 standing trustee (''trustee'') to obtain administrative review of a United States Trustee's decision to deny a trustee's claim that certain expenses are actual and necessary for the administration of bankruptcy cases. Section 1231(b) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (''BAPCPA''), codified at 28 U.S.C. 586(e), requires that: Trustees exhaust all administrative remedies pertaining to a denial of a claim of actual, necessary expenses before seeking judicial review; and the Attorney General prescribe procedures for administrative review of such denials. This rule ensures that the process for administratively reviewing a United States Trustee's denial of a trustee's request for expenses is fair and effective.

DATES: Submit comments on or before October 13, 2009.

ADDRESSES: Comments on the rule may be submitted via *http://www.regulations.gov,* by telefax to (202) 307–2397, or by postal mail to EOUST, 20 Massachusetts Ave., NW., 8th Floor, Washington, DC 20530. To ensure proper handling of comments, please reference ''Docket No. EOUST 103—Trustee Expenses'' on all written and electronic correspondence.

FOR FURTHER INFORMATION CONTACT: Ramona D. Elliott, General Counsel, or Larry Wahlquist, Office of General Counsel, at (202) 307–1399 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. If you want to submit

personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov*.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph. Comments filed after the end of the comment period may be considered to the extent feasible.

Discussion of Rule

The administration of all chapter 12 and 13 bankruptcy cases is entrusted to private persons who are case or standing trustees under the supervision and oversight of a regional United States Trustee. As distinguished from case or standing trustees, United States Trustees are employees of the Department of Justice. A standing trustee is appointed by the United States Trustee under 28 U.S.C. 586 and administers more than one chapter 13 or chapter 12 case, as opposed to a case trustee who is appointed under 11 U.S.C. 1302 or 11 U.S.C. 1202 and who administers only the case to which the trustee is appointed. This rule addresses the right, conferred by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (''BAPCPA''), of a standing trustee to obtain administrative review when the trustee's request for projected expenses, referred to as a ''claim of actual, necessary expenses'' in 28 U.S.C. 586(e)(3), is denied by the United States Trustee.

When a debtor files for bankruptcy relief under chapter 12 or chapter 13, the debtor proposes a plan to pay his or her creditors a percentage of the amounts owed to creditors over a specified period of time and obtains court approval of this plan. This process is termed confirming a chapter 12 or chapter 13 plan. Once the bankruptcy court confirms the plan, the trustee will oversee the payment of creditors pursuant to the plan. The debtor pays plan payments to the trustee and the trustee then disburses the appropriate amounts to creditors.

As part of the process of administering debtors' cases, a trustee incurs expenses. A trustee is authorized to collect a specified percentage of disbursed funds from debtors' plan payments to pay for these expenses. However, before incurring expenses, a trustee obtains approval from the United States Trustee. As the first step in obtaining United States Trustee approval for expenses, the United States Trustee requires that the trustee submit a budget for the anticipated expenses for the fiscal year ending each September 30th. Next, these projected expenses are evaluated by the United States Trustee who will either approve the expenses or require modifications to the proposed budget. Once the United States Trustee approves the trustee's budget, the trustee is notified of this approval, and pursuant to 28 U.S.C. 586(e), the trustee's compensation, and a specified percentage fee that the trustee may collect from debtors' plan payments, is authorized. This fee is to be used for payment of the approved expenses incurred during the fiscal year.

When a trustee realizes that expenses for the current year might exceed the approved amount, a trustee must submit a request to the United States Trustee, and obtain approval, before incurring expenses above the approved amount. This request must be submitted when the increase to an individual expense line item is greater than both 10% of the budgeted amount and $5,000.00. Expenses for certain items require prior United States Trustee approval regardless of amount. These expenses currently are increases in the amount budgeted for employee expenses, increases in office lease obligations, payments to the standing trustee or relative of the standing trustee, and expenses for any item not originally contained in the approved budget. These expenses are set forth in the Chapter 13 Trustee Handbook, which is posted on the EOUST web site. If any other expenses are added to this list, the United States Trustee will notify trustees via email or regular mail at least 30 days before including the new expenses in a revision to the Handbook.

If a trustee disagrees with the United States Trustee's denial of the trustee's request for expenses, the trustee may seek administrative review of the denial under the procedures identified in this rule. The Director of the EOUST will conduct a de novo review of the United States Trustee's decision to determine whether the record supports the United States Trustee's decision and whether the decision was an appropriate exercise of the United States Trustee's discretion or contrary to law.

With the passage of BAPCPA, Congress directed the Attorney General to prescribe procedures implementing administrative review for trustees when a claim of actual, necessary expenses is denied. The Attorney General delegated this authority to the Director, Executive Office for United States Trustees. In response to this congressional mandate, the Director publishes this rule, which establishes such procedures. This rule imposes requirements only upon standing trustees who are supervised by United States Trustees. In addition, this rule addresses only the United States Trustee's denial of a trustee's claim of actual, necessary expenses. This rule does not address the suspension or termination of trustees. EOUST will publish another notice of proposed rulemaking that addresses the suspension or termination of trustees with a RIN number of 1105–AB12.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'' section 1(b), The Principles of Regulation. This rule is not a ''significant regulatory action'' as defined by Executive Order 12866 and, accordingly, this rule has not been reviewed by the Office of Management and Budget.

The Department has also assessed both the costs and benefits of this rule as required by section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. The costs considered in this regulation include the costs for prosecuting an administrative appeal of the United States Trustee's denial of a trustee's claim of actual, necessary expenses. The anticipated costs are the compiling, photocopying and mailing of the requested records. However, none of these costs are new. This rule simply codifies the current practice for obtaining administrative review of the United States Trustee's decision.

The benefits of this rule include the codification of the process for a trustee to obtain administrative review of the United States Trustee's denial of a

trustee's claim of actual, necessary expenses. These benefits justify its costs in complying with Congress' mandate to prescribe procedures to implement 28 U.S.C. 586(e).

Executive Order 13132

This rule 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. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This rule does not contain an information collection under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). If a trustee wishes to appeal a United States Trustee's decision, the trustee submits a request for review to the Director detailing the specific factual circumstances supporting the trustee's argument.

Regulatory Flexibility Act

In accordancewith the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Director has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that this rule does not impose any new costs upon trustees that did not already exist under the current administrative review process. In addition, the costs of compiling, photocopying and mailing records are de minimis.

Unfunded Mandates Reform Act of 1995

This rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a federal mandate that may result in the annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act ($100 million). Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.* This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, and innovation; or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 58

Administrative practice and procedure, Bankruptcy, Credit and debts.

Accordingly, for the reasons set forth in the preamble, Part 58 of chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 58—[AMENDED]

1. The authority citation for part 58 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 11 U.S.C. 109(h), 111, 521(b), 727(a)(11), 1141(d)(3), 1202; 1302, 1328(g); 28 U.S.C. 509, 510, 586, 589b.

2. Add § 58.11 to read as follows:

§ 58.11 Procedures Governing Administrative Review of a United States Trustee's Decision to Deny a Chapter 12 or Chapter 13 Standing Trustee's Claim of Actual, Necessary Expenses.

(a) The following definitions apply to § 58.11 of this Part. These terms shall have these meanings:

(1) The term ''claim of actual, necessary expenses'' means the request by a chapter 12 or chapter 13 standing trustee for the United States Trustee's approval of the trustee's projected expenses for each fiscal year budget, or for an amendment to the current budget when an increase in an individual expense line item is greater than both 10% of the budgeted amount and $5,000.00. Expenses for certain items require prior United States Trustee approval regardless of amount;

(2) The term ''Director'' means the person designated or acting as the Director of the Executive Office for United States Trustees;

(3) The term ''final decision'' means the determination issued by the Director based upon the review of the United States Trustee's decision to deny all or part of a trustee's claim of actual, necessary expenses;

(4) The term ''notice'' means the written communication from the United States Trustee to a trustee that the trustee's claim of actual, necessary expenses has been denied in whole or in part;

(5) The term ''request for review'' means the written communication from a trustee to the Director seeking review of the United States Trustee's decision to deny, in whole or in part, the trustee's claim of actual, necessary expenses;

(6) The term ''trustee'' means an individual appointed by the United States Trustee under 28 U.S.C. 586(b) to serve as the standing trustee for chapter 12 or chapter 13 cases in a particular region; and

(7) The term ''United States Trustee'' means, alternatively:

(i) The Executive Office for United States Trustees;

(ii) A United States Trustee appointed under 28 U.S.C. 581;

(iii) A person acting as a United States Trustee;

(iv) An employee of a United States Trustee; or

(v) Any other entity authorized by the Attorney General to act on behalf of the United States under this rule.

(b) The United States Trustee may issue a decision to deny a trustee's claim of actual, necessary expenses. Reasons for denial include, but are not limited to, finding any of the following:

(1) The trustee failed to provide to the United States Trustee sufficient justification for the expense;

(2) The trustee failed to demonstrate to the United States Trustee that the expense is a cost effective use of funds;

(3) The trustee failed to demonstrate to the United States Trustee that the expense is reasonably related to the duties of the trustee;

(4) The trustee failed to obtain authorization from the United States Trustee prior to making an expenditure that was not provided for in the current budget;

(5) The trustee failed to provide the United States Trustee with documents, materials, or other information pertaining to the expense;

(6) The trustee failed to timely submit to the United States Trustee accurate budgets or requests for amendment of budgets to cover the additional expense; or

(7) The trustee failed to demonstrate to the United States Trustee that the expense is directly related to office operations.

(c) Before issuing a notice of denial, the United States Trustee shall communicate in writing with the trustee in an attempt to resolve any dispute over a claim of actual, necessary expenses:

(1) For disputes involving the trustee's projected expenses for the upcoming fiscal year budget, the United States Trustee shall either resolve the dispute or issue a written notice of denial no later than October 31 of the

current calendar year, or, if the United States Trustee has requested additional information, 30 days from the deadline for submission of the additional information if such deadline is after October 1, unless the trustee and United States Trustee agree to a longer period of time. Any projected expenses not specifically disputed shall be approved in the ordinary course and the trustee's fee shall be set on an interim basis;

(2) For disputes over amendments to the current year budget, the United States Trustee shall either resolve the dispute or issue a written notice of denial within 30 days of the trustee's amendment request, or, if the United States Trustee has requested additional information, 30 days from the deadline for submission of the additional information, unless the trustee and United States Trustee agree to a longer period of time. Any portion of the amendment not specifically disputed shall be approved in the ordinary course;

(3) If the United States Trustee does not resolve the dispute or issue a written notice of denial within the time-frames identified in (c)(1) or (c)(2) of this section, the trustee's claim of actual, necessary expenses shall be deemed denied.

(d) The United States Trustee shall notify a trustee in writing of any decision denying a trustee's claim of actual, necessary expenses. The notice shall state the reason(s) for the decision and shall reference any documents or communications relied upon in reaching the decision. The United States Trustee shall provide to the trustee copies of any such non-privileged documents that were not supplied to the United States Trustee by the trustee. The notice shall be sent to the trustee by overnight courier, for delivery the next business day.

(e) The notice shall advise the trustee that the decision is final and unreviewable unless the trustee requests in writing a review by the Director no later than 30 calendar days from the date of the notice to the trustee.

(f) The decision to deny a trustee's claim of actual, necessary expenses shall take effect upon the expiration of a trustee's time to seek review from the Director or, if the trustee timely seeks such review, upon the issuance of a written final decision by the Director.

(g) The trustee's request for review shall be in writing and shall fully describe why the trustee disagrees with the United States Trustee's decision, and shall be accompanied by all documents and materials the trustee wants the Director to consider in reviewing the United States Trustee's decision. The trustee shall send the original and one copy of the request for review, including all accompanying documents and materials, to the Office of the Director by overnight courier, for delivery the next business day. In order to be timely, a request for review shall be received at the Office of the Director no later than 30 calendar days from the date of the notice to the trustee. The trustee shall also send a copy of the request for review to the United States Trustee by overnight courier, for delivery the next business day.

(h) The United States Trustee shall have 30 calendar days from the date of the trustee's request for review to submit to the Director a written response regarding the matters raised in the trustee's request for review. The United States Trustee shall provide a copy of this response to the trustee by overnight courier, for delivery the next business day.

(i) The Director may seek additional information from any party, in the manner and to the extent the Director deems appropriate.

(j) In reviewing the decision to deny a trustee's claim of actual, necessary expenses, the Director shall determine:

(1) Whether the decision is supported by the record; and

(2) Whether the decision constitutes an appropriate exercise of discretion.

(k) The Director shall issue a written final decision no later than 90 calendar days from the receipt of the trustee's request for review, or, if the Director has requested additional information, 30 days from the deadline for submission of the additional information, unless the trustee agrees to a longer period of time. The Director's final decision on the trustee's request for review shall constitute final agency action.

(l) In reaching a final decision the Director may specify a person to act as a reviewing official. The reviewing official may not be under the supervision of the United States Trustee who denied the trustee's claim of actual, necessary expenses. The reviewing official's duties shall be specified by the Director on a case-by-case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, and such other duties as the Director shall prescribe in a particular case.

(m) This rule does not authorize a trustee to seek review of any decision to change maximum annual compensation, to decrease or increase appointments of trustees in a region or district, to change the trustee's percentage fee, or to suspend, terminate, or remove a trustee.

(n) A trustee must exhaust all administrative remedies before seeking redress in any court of competent jurisdiction.

Dated: August 6, 2009.

Clifford J. White III,

Director, Executive Office for United States Trustees.

[FR Doc. E9–19456 Filed 8–13–09; 8:45 am]

BILLING CODE 4410–40–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0474; FRL–8945–8]

Revisions to the California State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVAPCD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) and particulate matter (PM) emissions from boilers of various capacities. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by September 14, 2009.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0474, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov*.

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know

your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Idalia Perez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVAPCD	4306	Boilers, Steam Generators and Process Heaters—Phase 3	10/16/08	03/17/09
SJVAPCD	4307	Boilers, Steam Generators and Process Heaters—2.0 MMbtu/hr to 5.0 MMbtu/hr.	10/16/08	03/17/09

On April 20, 2009, these rule submittals were found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved a version of Rule 4306 into the SIP on May 18, 2004 and of Rule 4307 on May 30, 2007. There are no outstanding submittals of these Rules.

C. What is the purpose of the submitted revisions?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_X emissions. PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control PM emissions. Rule 4306 limits NO_X and Carbon Monoxide (CO) emissions from boilers, steam generators and process heaters fired on gaseous or liquid fuel with a total rated heat input larger than 5 MMBtu/hour. This Rule was amended to address an EPA concern. Rule 4307 limits NO_X, SO_2, PM_{10} and CO emissions from boilers, steam generators and process heaters fired on gaseous or liquid fuel with a total rated heat input between 2 and 5 MMBtu/hour. Rule 4307 was amended to include requirements to regulate SO_2 and PM_{10} emissions as well as to strengthen the emission limits for NO_X. EPA's technical support document (TSD) has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The SJVAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rules 4306 and 4307 must fulfill RACT. In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), in nonattainment areas (see CAA sections 172(c)(1)). The SJVAPCD regulates a PM–2.5 nonattainment area (see 40 CFR part 81), so Rules 4306 and 4307 must implement a RACM level of control.

Guidance and policy documents that we use to help evaluate enforceability, RACT and RACM requirements consistently include the following:

1. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

4. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498, April 16, 1992; 57 FR 18070, April 28, 1992.

5. ''Clean Air Fine Particle Implementation Rule'' 72 FR 20586, April 25, 2007.

6. ''Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters'', CARB, July 18, 1991.

7. ''Alternative Control Techniques Document—NO_X Emissions from Industrial/Commercial/Institutional (ICI) Boilers'', US EPA 453/R–94–022, March 1994.

8. ''Alternative Control Techniques Document—NO_X Emissions from Utility Boilers'', US EPA 452/R–93–008, March 1994.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, RACM and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations to Further Improve the Rules

The TSDs describe additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

III. 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 3, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9–19514 Filed 8–13–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1770; MB Docket No. 09–142; RM–11552]

Television Broadcasting Services; Boston, MA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by WHDH–TV, the licensee of station WHDH–TV, DTV channel 7, Boston, Massachusetts. WHDH–TV requests the substitution of its pre-transition DTV channel 42 for its post-transition DTV channel 7 at Boston.

DATES: Comments must be filed on or before August 31, 2009, and reply comments on or before September 8, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Charles R. Naftalin, Esq., Holland & Knight LLP, 2099 Pennsylvania Avenue, NW., Suite 100, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *joyce.bernstein@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–142, adopted August 5, 2009, and released August 7, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for

rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Massachusetts, is amended by adding DTV channel 42 and removing DTV channel 7 at Boston.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau, Federal Communications Commission.

[FR Doc. E9–19526 Filed 8–13–09; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 74, No. 156
Friday, August 14, 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

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Food Distribution Forms

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this information collection. This collection is an extension, without change, of a currently approved collection which FNS employs to determine public participation and the distribution of foods in the Food Distribution Programs.

DATES: Written comments must be received on or before October 13, 2009.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Laura Castro, Branch Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 500, Alexandria, VA 22302–1594. Comments may also be submitted via fax to the attention of Theresa Geldard at 703–305–2420 or via e-mail to *Theresa.Geldard@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 500, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Laura Castro at 703–305–2694.

SUPPLEMENTARY INFORMATION:

Title: Food Distribution Forms.

Form Numbers: FNS–7, 52, 53, 57, 152, 153, 155, 663 and 667.

OMB Number: 0584–0293.

Expiration Date: August 31, 2009.

Type of Request: Extension, without change, of a currently approved collection.

Abstract: The Food Distribution Programs of the Department of Agriculture (USDA) assist American farmers and needy people by purchasing and delivering food to State agencies that, in turn, distribute them to organizations that assist those in need. Effective administration of Food Distribution Programs is dependent on the collection and submission of information from State and local agencies to FNS. This information includes, for example, the number of households served in the programs; the quantities of foods ordered, and where the food is to be delivered; verification of the receipt of a food order; and the amounts of USDA foods in inventory. FNS employs this information collection activity to obtain the data necessary to make those calculations.

Affected Public: Respondent groups include: (1) Individuals and households; (2) businesses or other for-profit agencies; (3) not for profit organizations; and (4) State, local, and tribal governments.

Estimated Number of Respondents: The total estimated number of respondents is 468,808. This includes 457,000 individuals and households, 500 businesses and other for-profit companies, 11,211 private not-for-profit organizations, and 97 State, local, and tribal governments.

Estimated Number of Responses per Respondent: The total estimated average number of responses is 2.53 per respondent.

Estimated Total Annual Responses: 1,366,928.39.

Estimated Time per Response: The average response time is 0.28 hours per response.

Estimated Total Annual Burden on Respondents: See the table below for estimated total annual burden for each type of respondent.

Affected public	Est. number of respondents	Number of responses per respondent	Total annual responses	Est. total hours per response	Est. total burden
Reporting					
State, Local, and Tribal Governments	97.00	1,034.85	100,380.13	0.25	24,623.34
Private For-Profit	500.00	11.00	4,560.00	3.00	4,740.00
Private Not-for-Profit	11,211.00	6.31	70,740.26	0.41	29,128.87
Individual	457,000.00	2.21	1,009,172.00	0.27	276,086.00
Total Estimated Reporting Burden	468,808.00	2.53	1,184,852.39	0.28	334,578.21

Affected public	Est. number of respondents	Number of responses per respondent	Total annual responses	Est. total hours per response	Est. total burden
Recordkeeping					
State, Local, and Tribal Governments	0.00	0.00	0.00	0.20	1,611.97
Private For-Profit	0.00	0.00	182,076.00	0.25	45,536.25
Private Not-for-Profit	0.00	0.00	0.00	2.89	691,974.80
Individual	0.00	0.00	0.00	0.00	0.00
Total Estimated Recordkeeping Burden	0.00		182,076.00		739,123.02
Total of Reporting and Recordkeeping					
Reporting	468,808.00	2.53	1,184,852.39	0.28	334,578.21
Recordkeeping	0.00	0.00	182,076.00	0.00	739,123.02
Total	468,808.00	2.53	1,366,928.39	0.28	1,073,701.23

Dated: August 11, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9–19538 Filed 8–13–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses for the 2010 Tariff-Rate Import Quota Year

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces a fee of $150 to be charged for the 2010 tariff-rate quota (TRQ) year for each license issued to a person or firm by the U.S. Department of Agriculture (USDA) authorizing the importation of certain dairy articles, which are subject to tariff-rate quotas set forth in the Harmonized Tariff Schedule (HTS) of the United States.

DATES: *Effective Date:* August 14, 2009.

FOR FURTHER INFORMATION CONTACT: Jorge Martinez, Dairy Import Licensing Program, Import Policies and Export Reporting Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1021 or telephone at (202) 720–9439 or e-mail at *jorge.martinez@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: The Dairy Tariff-Rate Import Quota Licensing Regulation promulgated by USDA and codified at 7 CFR 6.20–6.37 provides for the issuance of licenses to import certain dairy articles that are subject to TRQs set forth in the HTS. Those dairy articles may only be entered into the United States at the in-quota TRQ tariff-rates by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The use of such licenses is monitored by the Dairy Import Licensing Program, Import Policies and Export Reporting Division, Foreign Agricultural Service, USDA, and the U.S. Customs and Border Protection, U.S. Department of Homeland Security.

The regulation at 7 CFR 6.33(a) provides that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to defray USDA's costs of administering the licensing system under this regulation.

The regulation at 7 CFR 6.33(a) also provides that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be published in the **Federal Register.** Accordingly, this notice sets out the fee for the licenses to be issued for the 2010 calendar year.

Notice: The total cost to USDA of administering the licensing system for 2010 has been estimated to be $333,000, and the estimated number of licenses expected to be issued is 2,300. Of the total cost, $280,000 represents staff and supervisory costs directly related to administering the licensing system, and $53,000 represents other miscellaneous costs, including travel, postage, publications, forms, and Automated Data Processing system support.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 2010 calendar year, in accordance with 7 CFR 6.33, will be $150 per license.

Issued at Washington, DC, the 13th day of July 2009.

Ronald Lord,

Licensing Authority.

[FR Doc. E9–19530 Filed 8–13–09; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

RIN 0578–AA48

Conservation Practice Technical Assistance

AGENCY: Natural Resources Conservation Service, United States Department of Agriculture.

ACTION: Notice; reopening of public comment period.

SUMMARY: On June 12, 2009, the Natural Resources Conservation Service (NRCS) published in the **Federal Register** a notice for the purpose of: (1) Notifying the public about the results of NRCS compliance with section 1242(h) of the Food Security Act of 1985, as amended; and (2) to solicit public comment about how to improve agency conservation practice standards. The public comment period closed on August 11, 2009. NRCS is hereby reopening the public comment period and amending the closing date September 14, 2009 to ensure the agency has received comments from a broad segment of the agriculture sector.

DATES: Submit comments on or before September 14, 2009.

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

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending comments electronically.
- Mail: Norman Widman, National Agronomist, Ecological Sciences

Division, Department of Agriculture, Natural Resources Conservation Service, Conservation Practice Standard Comments, PO Box 2890, Washington, DC 20013.

- Fax: (202) 720–5334.
- E-mail: *nrcscpta2008@wdc.usda.gov.*
- Hand Delivery: USDA South Building, 1400 Independence Avenue, SW., Room 5234, Washington, DC 20250, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. Please ask the guard at the entrance to the South Building to call (202) 720–4630 in order to be escorted into the building.
- This notice may be accessed via Internet. Users can access the NRCS homepage at: *http://www.nrcs.usda.gov/;* select the Farm Bill link from the menu; select the Notices link under the heading Farm Bill Public Comments Links. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Norman Widman, National Agronomist, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue SW., Washington, DC 20250; Phone: (202) 720–3783; Fax: (202) 720–2646; or e-mail: *norman.widman@wdc.usda.gov.*

Signed this 7th day of August, 2009, in Washington, DC.

Virginia L. Murphy,

Acting Chief, Natural Resources Conservation Service.

[FR Doc. E9–19484 Filed 8–13–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Sanders County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lolo and Kootenai National Forests' Sanders County Resource Advisory Committee will meet on August 20 at 7 p.m. in Thompson Falls, Montana for a business meeting. The meeting is open to the public.

DATES: August 20, 2009.

ADDRESSES: The meeting will be held at the Thompson Falls Courthouse, 1111 Main Street, Thompson Falls, MT 59873.

FOR FURTHER INFORMATION CONTACT: Randy Hojem, Designated Federal Official (DFO), District Ranger, Plains Ranger District, Lolo National Forest at (406) 826–3821.

SUPPLEMENTARY INFORMATION: Agenda topics include recommendations on new RAC project proposals, reviewing progress on current projects, and receiving public comment. If the meeting location is changed, notice will be posted in the local newspapers, including the Clark Fork Valley Press, and Sanders County Ledger.

Dated: July 30, 2009.

Randy Hojem,

DFO, Plains Ranger District, Lolo National Forest.

[FR Doc. E9–19464 Filed 8–13–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Rehabilitation of Floodwater Retarding Structure No. 6 of the Calaveras Creek Watershed, Bexar County, TX

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Floodwater Retarding Structure No. 6 of the Calaveras Creek Watershed, Bexar County, Texas.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 101 South Main, Temple, Texas 76501–7682, Telephone (254) 742–9800.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project. The project will rehabilitate Floodwater Retarding Structure No. 6 to maintain the present level of flood control benefits and comply with the current performance and safety standards.

Rehabilitation of the site will require the dam to be modified to meet current performance and safety standards for a high hazard dam. The modification will consist of raising the top of dam 2.0 feet, extending the back toe of the embankment and flatten the back slope to a 3:1 slope, replace the existing principal spillway and plunge pool with a new principal spillway and impact basin, installation of a foundation drain system along the back toe of the embankment, realign and extend both auxiliary spillways, widen both auxiliary spillways by 55 feet and installing a splitter dike in both auxiliary spillways. All disturbed areas will be planted to adapted native and/or introduced species. The proposed work will not have a significant effect on any prime farmland, endangered or threatened species, wetlands, or cultural resources.

Federal assistance will be provided under authority of the Small Watershed Rehabilitation Amendments of 2000 (Section 313, Pub. L. 106–472). Total project cost is estimated to be $1,821,900, of which $1,293,800 will be paid from the Small Watershed Rehabilitation funds and $528,100 from local funds.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: August 7, 2009.

Donald W. Gohmert,

State Conservationist.

[FR Doc. E9–19483 Filed 8–13–09; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

August 11, 2009.

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

EFFECTIVE DATE: August 14, 2009.

SUMMARY: The Committee for the Implementation of Textile Agreements (''CITA'') has determined that certain polyester/rayon/wool fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482 3651.

FOR FURTHER INFORMATION ON-LINE: http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf. Reference number: 126.2009.07.06.Fabric.SharrettsPaley forFishman&Tobin

SUPPLEMENTARYINFORMATION:

Authority: The CAFTA-DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Implementation Act), Pub. Law 109-53; the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Implementation Act; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25 of the CAFTA-DR Agreement; see also section 203(o)(4)(C) of the CAFTA-DR Implementation Act.

The CAFTA-DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Implementation Act for modifying the Annex 3.25 list. On September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA-DR (Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement, 73 FR 53200) (''procedures'').

On July 6, 2009, the Chairman of CITA received a Request for a Commercial Availability Determination (''Request'') from Sharretts, Paley, Carter & Blauvelt, P.C. on behalf of Fishman & Tobin for certain polyester/rayon/wool fabrics. On July 8, 2009, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated website for CAFTA-DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by July 20, 2009, and any Rebuttal Comments to a Response (''Rebuttal'') must be submitted by July 24, 2009. No interested entity submitted a Response to the Request advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA-DR Implementation Act, and Section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response objecting to the Request and demonstrating its ability to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA-DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated website for CAFTA-DR Commercial Availability proceedings.

Specifications: Certain Polyester/Rayon/Wool Fabric

HTSUS: 5515.11.00; 5515.19.00; 5516.92.00; 5516.93.00

Fiber Content: 30-65% polyester/ 25-65% rayon; 1-20% wool

Configuration:

Fabric #1 -
Warp - Spun yarn, either plied or single of various sizes, of intimately blended rayon and polyester staple fibers.
Fill - Spun yarn, either plied or single of various sizes, of intimately blended polyester and wool staple fibers.

Fabric #2 -
Warp - Spun yarn, either plied or single of various sizes, of intimately blended rayon and polyester staple fibers.
Fill - Spun yarn, either plied or single of various sizes, of intimately blended polyester, rayon and wool staple fibers.

Fabric #3 -
Warp - Spun yarn, either plied or single of various sizes, of intimately blended polyester, rayon and wool staple fibers.
Fill - Spun yarn, either plied or single of various sizes, of intimately blended polyester, rayon and wool staple fibers.

NOTE: ''Intimately blended'' refers to situations where the fibers are wound together to form that yarn.

Construction: Various

Weight:
English - 5 to 7.4 oz/sq. yd.
Metric - 170 to 250 gm/sq. meter

Width:
English - 56 to 64 inches
Metric - 142 to163 cm

Weave: Various, including plain and twill

Coloration: Piece dyed or of yarns of different colors

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E9–19558 Filed 8–13–09; 8:45 am]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States - Peru Trade Promotion Agreement Implementation Act and Estimate of Burden for Collection of Information

August 11, 2009.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice and Request for Comments.

SUMMARY: This notice sets forth the interim procedures the Committee for the Implementation of Textile Agreements (''CITA'') will follow in implementing certain provisions of the United States - Peru Trade Promotion Agreement Implementation Act (''US-PERU TPA''), which implemented into U.S. law the United States - Peru Trade Promotion Agreement (''Agreement''). Section 203(o)(2) of the US-PERU TPA provides that the President shall establish procedures to govern the submission of requests to modify the list of fabrics, yarns, or fibers not available

in commercial quantities in a timely manner in either the United States or Peru as set out in Annex 3-B of the Agreement. The President has delegated to CITA the authority to determine whether fabrics, yarns, or fibers are not available in commercial quantities in a timely manner in either the United States or Peru and has directed CITA to establish procedures that govern the submission of a request and provide the opportunity for interested entities to submit comments and supporting evidence in any such determination pursuant to the US-PERU TPA.

DATES: The interim procedures are effective as of August 14, 2009.

CITA solicits public written comments on the Interim Procedures. Comments must be received no later than September 14, 2009 of this notice in either hard copy or electronically. If submitting comments in hard copy, an original, signed document must be submitted to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. If submitting comments electronically, an electronic copy, via electronic mail (''email'') must be submitted to **OTEXA__PERU@ita.doc.gov**. Additional instructions regarding the submission of comments may be found at the end of this notice.

In accordance with the Paperwork Reduction Act, this notice further provides an estimate of the burden to the public to collect and submit information as required by Section 203(o) of the US-PERU TPA and CITA's Interim Procedures. CITA hereby gives notice of the estimated burden to the public, and provides the opportunity for the public to submit comments on those estimates. Written comments and recommendations for the estimate of the burden to the public should be sent to Wendy Liberante, OMB Desk Officer, via the Internet at **Wendy__L.__Liberante@omb.eop.gov** or fax (202) 395-7285 by September 14, 2009.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o) of the US-PERU TPA and Proclamation No. 8341, 74 FR 4105 (Jan. 22, 2009).

Background:

The US-PERU TPA provides a list in Annex 3-B for fabrics, yarns, and fibers that the Parties have determined are not available in commercial quantities in a timely manner from producers in the United States or Peru. A textile and apparel good containing fabrics, yarns, or fibers that are included in Annex 3-B of the US-PERU TPA will be treated as if it is an originating good for purposes of the specific rules of origin in Annex 4.1 of the US-PERU TPA, regardless of the actual origin of those inputs. However, all other fabrics, yarns, or fibers of the component that determine the classification of the good must satisfy the specific rules of origin in Annex 4.1 of the US-PERU TPA. The US-PERU TPA provides that the President will establish procedures governing the submission of requests under Section 203(o) (''the commercial availability provision'') set forth in the US-PERU TPA and may determine whether additional fabrics, yarns, or fibers are available or are not available in commercial quantities in a timely manner in the United States or Peru. In addition, the US-PERU TPA establishes that the President may remove a fabric, yarn, or fiber from the list, if it has been added to the list in an unrestricted quantity or has had a restriction eliminated, if he determines that the fabric, yarn, or fiber has become available in commercial quantities in a timely manner.

In Proclamation No. 8341, 74 FR 4105, 4107 (January 22, 2009), the President delegated to CITA his authority under the commercial availability provision to establish procedures for modifying the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner, as set out in Annex 3-B of the US-PERU TPA. Set forth below are the Interim Procedures implementing the commercial availability provisions set forth in the US-PERU TPA.

INTERIM PROCEDURES:

1. Introduction

The intent of these procedures is to foster the use of U.S. and Peruvian products by allowing such products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. To this end, these procedures are intended to facilitate the transmission, on a timely basis, of requests for commercial availability determinations and offers to supply such requests; have the market indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and parties, information regarding the requests for products and offers to supply received; ensure wide participation by interested entities and parties; provide careful scrutiny of information provided to substantiate order requests and response to supply offers; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

2. Definitions

(a) Commercial Availability Request. A ''Commercial Availability Request'' or ''Request'' is a request for a commercial availability determination submitted by an interested entity requesting that CITA place a good on the Commercial Availability List in Annex 3-B of the Agreement because that fiber, yarn, or fabric is not available in commercial quantities in a timely manner from a US-PERU TPA supplier.

(b) Commercial Availability List. The Commercial Availability List is the list of products (fibers, yarns, and/or fabrics) in Annex 3-B of the US-PERU TPA that have been determined to be not commercially available from US-PERU TPA suppliers in commercial quantities in a timely manner.

(c) Fiber, Yarn, or Fabric. The terms ''fiber, yarn, or fabric'' mean a single product or a range of products, which meet the same specifications provided in a submission, and which may be only part of a Harmonized Tariff Schedule of the United States (''HTSUS'') provision.

(d) Interested Entity. An ''interested entity'' means the government of Peru, a potential or actual purchaser of a textile or apparel good, or a potential or actual supplier of a textile or apparel good. CITA recognizes that a legal or other representative may act on behalf of an interested entity. See Section 203(o)(4)(B)(i) of the US-PERU TPA.

(e) Interested Party. An ''interested party'' means any interested person that requests to be included on the email notification list for commercial availability proceedings. Any interested person may become an interested party by contacting CITA either by sending an email to **OTEXA__PERU@ita.doc.gov**, or through the website dedicated to commercial availability proceedings under the US-PERU TPA (''US-PERU TPA commercial availability website'' or ''website''). The website is located on the U.S. Department of Commerce's Office of Textile and Apparel website, under ''Commercial Availability''/ ''Peru.''

(f) Official Receipt. The ''official receipt'' is CITA's email confirmation that it has received both the email version and the original submission signed by the interested entity delivered via express courier.

(g) Rebuttal Comment. A ''Rebuttal Comment'' (''Rebuttal'') is a submission from an interested entity providing information in response to evidence or

arguments raised in a Response. A Rebuttal must be limited to evidence and arguments provided in a Response.

(h) Request to Remove or Restrict. A ''Request to Remove or Restrict'' is a submission from an interested entity, made no sooner than six months after a product has been added to the Annex 3-B list in an unrestricted quantity pursuant to Section 203(o)(4) of the US-PERU TPA, requesting that CITA either remove a product or that a quantity restriction be introduced.

(i) Requestor. The ''Requestor'' refers to the interested entity that files a Request or a Request to Remove or Restrict, under the commercial availability provision of the US-PERU TPA, for CITA's consideration.

(j) Response with an Offer to Supply. A ''Response with an Offer to Supply'' (''Response'') is a submission from an interested entity to CITA objecting to the Request and asserting its ability to supply the subject product by providing an offer to supply the subject product described in the Request.

(k) U.S. Business Day. A ''U.S. business day'' is any calendar day other than a Saturday, Sunday, or a legal holiday observed by the Government of the United States. See section 203(o)(4)(B)(ii) of the US-PERU TPA.

(l) US-PERU TPA Supplier. A ''US-PERU TPA Supplier'' is a potential or actual supplier of a textile or apparel good of a producer. See section 203(n)(16) of the US-PERU TPA (''The term 'producer' means a person who engages in the production of a good in the territory of Peru or the United States.'').

3. Submissions for Participation in a US-PERU TPA Commercial Availability Proceeding.

(a) Filing a Submission. All submissions in a US-PERU TPA commercial availability proceeding (e.g., Request, Response, Rebuttal, and Request to Remove or Restrict) must be in English. If any attachments are in a language other than English, then a complete translation must be provided. Each submission must be submitted to the Chairman of CITA, in care of the U.S. Department of Commerce's Office of Textiles and Apparel (''OTEXA'') in two forms: electronic mail and an original signed submission.

(1) An electronic mail (''email'') version of the submission must be either in PDF, Word, or Word-Perfect format and must contain an adequate public summary of any business confidential information and the due diligence certification, sent to **OTEXA__PERU@ita.doc.gov**. The email version of the submission will be posted for public review on the US-PERU TPA commercial availability website. No business proprietary information should be submitted in the email version of any document.

(2) The original signed submission must be received via express courier to -- Chairman, Committee for the Implementation of Textile Agreements, Room H3100, U.S. Department of Commerce, 14th and Constitution Ave., N.W., Washington, DC 20230. Any business confidential information upon which an interested entity wishes to rely must be included in the original signed submission only. Except for the inclusion of business confidential information and corresponding public summary, the two versions of a submission should be identical.

(3) Brackets must be placed around all business confidential information contained in submissions. Documents containing business confidential information must have a bolded heading stating ''Confidential Version.'' Attachments considered business confidential information must have a heading stating ''Business Confidential Information.'' Documents, including those submitted via email, provided for public release, must have a bolded heading stating ''Public Version'' and all the business confidential information must be deleted and substituted with an adequate public summary.

(4) Generally, details such as quantities and lead times for providing the subject product can be treated as business confidential information. However, the names of US-PERU TPA suppliers who were contacted, what was asked generally about the capability to manufacture the subject product, and the responses thereto should be included in public versions, which will be made available to the public.

(b) Due Diligence Certification. Due Diligence Certification. An interested entity must file a certification of due diligence as described in subsection (b)(1) with each submission, both email and original signed versions, containing factual information. If the interested entity has legal counsel or other representative, the legal counsel or other representative must also file a certification of due diligence as described in subsection (b)(2) with each submission, both email and original signed versions, containing factual information. Accurate representations of material facts submitted to CITA for the US-PERU TPA commercial availability proceeding are vital to the integrity of this process and are necessary for CITA's effective administration of the statutory scheme. Each submission containing factual information for CITA's consideration must be accompanied by the appropriate certification regarding the accuracy of the factual information. Any submission that lacks the applicable certifications will be considered an incomplete submission that CITA will reject and return to the submitter. CITA may verify any factual information submitted by interested entities in a US-PERU TPA commercial availability proceeding.

(1) For the person responsible for presentation of the factual information: I, (name and title), currently employed by (interested entity), certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.

(2) For the person's legal counsel or other representative: I, (name), of (law or other firm), counsel or representative to (interested entity), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (person), I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

(c) Official Receipt. A submission will be considered officially submitted to CITA only when both the email version and the original signed submission have been received by CITA. For Requests, CITA will confirm to the requestor that both versions of the Request were received through an email confirmation. CITA's email confirmation shall be considered the ''official receipt'' of the Request, and also begins the statutory 30 U.S. business-day process for CITA consideration of Requests. CITA will confirm official receipt of any Response and Rebuttal by posting the submissions on the US-PERU TPA commercial availability website.

4. Submitting a Request for Consideration in a Commercial Availability Proceeding.

(a) Commercial Availability Request. An interested entity may submit a Request to CITA alleging that a fiber, yarn, or fabric is not available in commercial quantities in a timely manner from a US-PERU TPA supplier.

(b) Contents of a Commercial Availability Request.

(1) Detailed Product Information. The Request must provide a detailed description of the subject product,

including, if applicable, fiber content, construction, yarn size, and finishing processes; and the classification of the product under the HTSUS. All measurements in the entire submission must be stated in metric units. If the English count system is used in any part, then a conversion to metric units must be provided. The description must include reasonable product specifications, including, if applicable, fiber content, construction, yarn size, and finishing processes, as well as timelines and quantities. Reasonable product specifications include the use of accepted terminology and standards, such as those used by the American Society for Testing and Materials (''ASTM'') or the American Association of Textile Chemists and Colorists (''AATCC'').

If any aspect of the Request is outside the normal course of business (e.g., tight deadline, higher standards of performance, requirements to match existing specifications), requestors must provide US-PERU TPA suppliers with detailed explanations and measurable criteria for the specification or term at issue. In the course of its review of the Request, CITA will consider record evidence to determine whether such specifications and terms are reasonable.

The requestor must clearly describe the unique characteristics of the subject product that distinguishes it from other similar or potentially substitutable products. In addition, the requestor must also explain why such characteristics are required for the purposes of the end-use of the product and cannot be substituted by another product. However, all characteristics and specifications must be supported by measurable criteria.

(2) Quantity. The Request must provide the specific quantity of the product needed by the requestor, in standard units of quantity for production of the subject product in the United States or Peru.

(3) Due Diligence. The Request must provide a complete description of the due diligence undertaken by the requestor to determine the subject product's availability in the United States or Peru. Due diligence for the requestor means it has made reasonable efforts to obtain the subject product from US-PERU TPA suppliers.

(i) Generally: The requestor must provide the names and addresses of suppliers contacted, who (by name and position) was specifically contacted, the exact request that was made, the dates of those contacts, whether a sample of the subject product was provided for review, and the exact response given for the supplier's inability to supply the subject product under the same conditions as contained in the Request submitted to CITA, in addition to any other information the requestor believes is relevant. The requestor must submit copies or notes of relevant correspondence, both inquiries and responses, with these suppliers. Relevant correspondence includes notes of telephone conversations.

(ii) Identification of US-PERU TPA suppliers: Requestors must make reasonable efforts to identify US-PERU TPA suppliers in the United States or Peru. Requestors should identify US-PERU TPA suppliers through a number of means, including the requestor's knowledge of the industry, industry directories, and industry association memberships. However, an email from a requestor with a general inquiry to all manufacturers in the United States or Peru may not constitute due diligence. Rather, reasonable efforts must be taken to identify US-PERU TPA suppliers who are generally known to produce the class or type of product at issue. Requestors must provide an explanation in their Request as to why their efforts to identify US-PERU TPA suppliers were reasonable given the product at issue.

(iii) Use of Third Parties and Business-to-Business Contact: Due diligence includes substantive and direct contact, indicating a legitimate intent to do business, between requestors and US-PERU TPA suppliers. Third party communications are no substitutes for meaningful dialogue between appropriate officials. Once interest is expressed between requestors and US-PERU TPA suppliers, subsequent communications should be conducted by appropriate officials of the requestor and US-PERU TPA supplier based on normal business practice. A lack of appropriate business-to-business contact may be deemed as insufficient due diligence.

(iv) Description of the Subject Product: In undertaking due diligence, requestors must provide a detailed description of the product to US-PERU TPA suppliers. The description must include reasonable product specifications, including, if applicable, fiber content, construction, yarn size, and may include a finishing process or operation, as well as timelines and quantities. Reasonable product specifications include the use of accepted terminology and standards, such as those used by ASTM or AATCC. If any aspect of the Request is outside the normal course of business (e.g., tight deadline, higher standards of performance, requirements to match existing specifications), requestors must provide US-PERU TPA suppliers with detailed explanations and measurable criteria for the specification or term at issue that would render such aspects as reasonable for the product in question. CITA will consider record evidence to determine whether such specifications and terms are reasonable.

(v) Provision of Samples: In undertaking its due diligence, a requestor must clearly communicate to US-PERU TPA suppliers its standard business practice with respect to the provision of samples. While requestors may request a sample, a US-PERU TPA supplier is not required to provide a sample under CITA's procedures. However, CITA notes that US-PERU TPA suppliers must meet certain requirements with respect to the provision of samples and/or information demonstrating their ability to supply the subject product in commercial quantities in a timely manner. See Section 6(b)(3) and Section 6(b)(4).

(vi) Substitutability of Products: In undertaking its due diligence, a requestor must clearly communicate information regarding the substitutability of the product in question to US-PERU TPA suppliers. In its inquiries to US-PERU TPA suppliers, the requestor must clearly describe the unique characteristics of the subject product that distinguishes it from other similar or potentially substitutable products. In addition, the requestor must provide US-PERU TPA suppliers with information why such characteristics are required for the purposes of the end-use of the product and cannot be substituted by another product. However, all characteristics and specifications

must be supported by measurable criteria. If, in the course of due diligence, a US-PERU TPA supplier proposes a substitutable product, the requestor must provide reasonable justifications to the US-PERU TPA supplier for rejecting potentially substitutable products.

(vii) Treatment of Business Confidential Information: Specific details of correspondence with suppliers, such as quantities and lead times for providing the subject product, can be treated as business confidential information. However, the names of US-PERU TPA suppliers who were contacted, what was asked generally about the capability to manufacture the subject product, and the responses thereto should be available for public review to ensure proper public participation in the process. ''Lead times'' refers to supplying the subject product within normal business time frames for the subject product once an order is received. Specific delivery dates are not necessary. Required delivery dates that fall within the time needed to complete the commercial availability determination process are not acceptable.

(4) Substitutable Products. The Request must provide information on whether the requestor believes that other products supplied by the US-PERU TPA supplier are not substitutable in commercial quantities in a timely manner for the product(s) that is (are) the subject of the Request for purposes of the intended use. Clearly describe the unique characteristics of the subject product that distinguishes it from other similar or potentially substitutable products. Describe why such characteristics are required for the purposes of the end-use of the product and cannot be substituted by another product available from a US-PERU TPA supplier.

*(5) Additional Information.*The Request may provide any additional evidence or information believed to be relevant for CITA to determine whether a fiber, yarn, or fabric is not available in commercial quantities in a timely manner from a producer in the United States or Peru.

5. Consideration and Acceptance of a Request.

In considering whether to accept a Request, CITA will consider and determine whether it provides all the required information specified in Sections 3 and 4 of these Procedures. CITA will determine whether to accept the Request for consideration and investigation not later than two U.S. business days after the official receipt of a Request.

(a) Request Rejected. If CITA determines that the Request does not contain the required information, the requestor will be notified promptly by email that the Request has not been accepted and the reasons for the rejection. A Request may be resubmitted with additional information for the subject product and CITA will reevaluate it as a new Request.

(1) Requests for Downstream Products with Inputs Not Commercially Available. If, in its initial review of a Request, CITA determines that a subject product would be commercially available but for the commercial unavailability of a certain input of the subject product, CITA will reject the Request. The requestor may submit a Request for the input in question rather than the downstream product.

(2) Requests for Products with Prohibited Inputs, Specifications, and/or Processes. If, in its initial review of a Request, CITA determines that the subject product requires inputs, specifications, and/or processes that are prohibited under the laws and regulations of the United States, CITA will reject the Request if there is a substitute product that does not require such prohibited inputs, specifications, or processes.

(b) Request Accepted. If CITA determines that the Request contains the required information, CITA will notify interested parties by email that a Request has been accepted and filed and will assign a File Number. CITA will post the accepted Request on its website for public notice. The email notification and the website posting will indicate the calendar date deadlines for submitting Responses and Rebuttals.

6. Submitting a Response with an Offer to Supply.

Responses must meet the requirements outlined in Section 3 of these Procedures. General comments in support of or opposition to a Request do not meet the requirements of a Response. A Due Diligence Certification must accompany a Response.

(a) Response With an Offer to Supply Submission. An interested entity (a US-PERU TPA supplier) may file a Response to a Request CITA accepted advising CITA of its objection to the Request and its ability to supply the subject product by providing an offer to supply the subject product as described in the Request. An interested entity will have 10 U.S. business days after official receipt of a Request to respond to a Request. If good cause is shown, CITA may extend this deadline, but CITA will still meet the statutory deadline for making a determination.

(b) Contents of a Response with an Offer to Supply.

(1) File Number. The Response must reference the CITA File Number assigned to the particular Request being addressed.

(2) Quantity. The Response must supply the quantity of the subject product that the respondent is capable of currently supplying, in standard units of quantity. All measurements must be in metric units. If the English count system is used in any part, then a conversion to metric units must be provided.

(3) Production Capability/ Demonstration of Ability to Supply. A Response must contain information supporting the claim to supply the subject product, or one substitutable, in commercial quantities in a timely manner.

(i) The Response must report the quantity, in metric units, that the US-PERU TPA supplier produced of the subject product, or a substitutable product, in the preceding 24-month period.

(ii) For products that have experienced cyclical demand or are not currently produced, the US-PERU TPA supplier must indicate the quantity that has been supplied or offered commercially in the past, with an explanation of the reasons it is not currently produced or offered.

(iii) If the subject product involves a new style, weight, or other variation that is new to the market or new to the US-PERU TPA supplier, then the supplier must provide detailed information on its current ability to make the subject product in commercial quantities in a timely manner. Such information could include current production capacity, current loom availability, and standard timetables to produce.

(iv) A US-PERU TPA supplier may support its claim to be able to produce the subject product through provision of a sample meeting exactly the specifications as presented in the Request. However, the provision of a sample is not required. Regardless of whether a sample is provided, a respondent must demonstrate its ability to produce the subject product by providing sufficient relevant information regarding their production capability. Such

information could include past production of similar products and/or descriptions of equipment and identification of suppliers necessary to produce the subject product. If some operations, such as finishing, will be completed by other entities, the name of the facility and contact information must be provided.

(v) The Response may provide, if relevant, the basis for the US-PERU TPA supplier's rationale that other products that are supplied by the US-PERU TPA supplier in commercial quantities in a timely manner are substitutable for the subject product(s) for purposes of the intended use, supported by measurable criteria.

(vi) In its review of a Response, CITA will consider whether the US-PERU TPA supplier was responsive to the efforts employed by the requestor to obtain the subject product in the course of due diligence. In the event that a US-PERU TPA supplier was not responsive, a US-PERU TPA supplier must provide a reasonable explanation in its Response as to why it did not respond to earlier inquiries by the requestor in the course of due diligence. CITA will reject a Response if it does not include such explanation.

(4) Due Diligence. The Response must provide a complete description of the due diligence undertaken by the US-PERU TPA supplier to substantiate the ability to supply the subject product. If a US-PERU TPA supplier has participated in the requestor's undertaking of due diligence, the supplier must provide certain information in response to the requestor's inquiries.

(i) If a US-PERU TPA supplier has been responsive to a requestor in the undertaking of due diligence, the US-PERU TPA supplier must have stated its ability to supply or not supply the subject product. If the product can be supplied, the response to the inquiry must contain information supporting the US-PERU TPA supplier's claim to supply the subject product, or one substitutable, in commercial quantities in a timely manner.

(ii) If a US-PERU TPA supplier offers to supply the subject product, the supplier may support its offer by reporting the quantity, in metric units, that it has produced of the subject product, or a substitutable product, in the preceding 24-month period. If the US-PERU TPA supplier does not provide such information, it must, subject to section 6(b)(4)(vii), explain why the information it has provided sufficiently supports its offer to supply.

(iii) In response to a requestor's inquiry, for products that have experienced cyclical demand or are not currently produced, the US-PERU TPA supplier must provide the requestor the quantity that has been supplied or offered commercially in the past, with an explanation of the reasons it is not currently produced or offered.

(iv) If the subject product involves a new style, weight, or other variation that is new to the market or new to the US-PERU TPA supplier, then the supplier must provide detailed information on its current ability to make the subject product in commercial quantities in a timely manner. Such information could include current production capacity, current loom availability, and standard timetables to produce the subject product.

(v) A US-PERU TPA supplier may support its claim to be able to produce the subject product through provision of a sample meeting the specifications as presented in an inquiry. However, the provision of a sample is not required. Regardless of whether a sample is provided, the US-PERU TPA supplier must demonstrate its ability to produce the subject product by providing sufficient relevant information regarding their production capability. Such information could include past production of similar products and/or descriptions of equipment and identification of suppliers necessary to produce the subject product. If some operations, such as finishing, will be completed by other entities, the name of the facility and contact information must be provided.

(vi) A response to a requestor's inquiry must provide, as applicable, the basis for the US-PERU TPA supplier's rationale that other products that are supplied by the US-PERU TPA supplier in commercial quantities in a timely manner are substitutable for the subject product for purposes of the intended use, supported by measurable criteria.

(vii) Nothing in these procedures shall require any US-PERU TPA supplier to provide business confidential or other commercially sensitive information to a requestor. However, a US-PERU TPA supplier must provide the requestor a reasonable explanation why such information was not provided and why the information it has provided sufficiently supports its offer to supply.

(5) Location of the US-PERU TPA supplier. The Response must provide the name, address, phone number, and email address of a contact person at the facility claimed to be able to supply the subject product.

7. Submitting a Rebuttal Comment.

A Rebuttal must meet the requirements outlined in Section 3 of these procedures. General comments in support of or opposition to a Request or a Response do not meet the requirements of a Rebuttal. A Due Diligence Certification must accompany a Rebuttal.

(a) Rebuttal Comment. Rebuttal Comment. Any interested entity may submit a Rebuttal to a Response. An interested entity must submit its Rebuttal not later than 4 U.S. business-days after the deadline for Response. If good cause is shown, CITA may extend the time limit, but CITA will still meet the statutory deadline for making a determination.

(b) Contents of a Rebuttal. The Rebuttal Comment may respond only to evidence or arguments raised in the Response and must identify the Response, evidence and/or arguments to which it is responding. The Rebuttal must reference the CITA File Number assigned to the particular Request being addressed.

8. Determination Process.

(a) Not later than 30 U.S. business days after official receipt of a Request (or not later than 44 U.S. business days where an extension is provided), CITA will notify interested entities by email and interested parties and the public by a posting on its Web site whether the subject product is available in commercial quantities in a timely manner in the United States or Peru and whether an interested entity has objected to the Request.

(b) CITA will notify the public of the determination by publication in the **Federal Register** when the determination results in a change to the Commercial Availability List in Annex 3-B of the Agreement.

(c) Types of Determinations.

(1) Denial. A denial means that CITA has determined that the subject product is available in commercial quantities in a timely manner in the United States or Peru. If a Request is denied, notice of the denial will be posted on the US-PERU TPA Commercial Availability Web site.

(i) Denial of Requests for Downstream Products with Inputs Not Commercially Available: If, during

the course of its review of a Request, CITA determines that the subject product is commercially available but for the commercial unavailability of a certain input of the subject product, CITA will deny the Request. The requestor may submit a Request for the input in question rather than the downstream product.

(ii) Denial of Requests for Products with Prohibited Inputs, Specifications, and/or Processes: If, during the course of its review of a Request, CITA determines that the subject product requires inputs, specifications, and/or processes that are prohibited under the laws and regulations of the United States, CITA will deny the Request if there is a substitute product that does not require such prohibited inputs, specifications, or processes.

(2) Approval in Unrestricted Quantity. An approval in unrestricted quantities means that CITA has determined that the subject product is not available in commercial quantities in a timely manner in the United States or Peru or that no interested entity has objected to the Request.

If a Request is approved without restriction, a notice will be published in the U.S. **Federal Register** not later than 30 U.S. business days (or not more than 44 U.S. business days where an extension is provided) after the official receipt of a Request, adding the subject product to the Commercial Availability List in Annex 3-B of the Agreement. The effective date of the determination is the date of publication of the notice in the U.S. **Federal Register**.

(3) Approval in a Restricted Quantity.

(i) Approval in a Restricted Quantity: An Approval in a Restricted Quantity means that CITA has determined to add the subject product to the Commercial Availability List in Annex 3-B of the Agreement with a specified restricted quantity. CITA may approve the Request in a restricted quantity if CITA determines that a US-PERU TPA supplier(s) can partially fulfill the Request for the subject product. The restricted quantity specifies the amount of the subject product that can be provided by a US-PERU TPA supplier(s).

(A) If a Request is approved in a restricted quantity, a notice will be published in the **Federal Register** not later than 30 U.S. business days (or not more the 44 U.S. business days where an extension is provided) after official receipt of the Request, adding the subject product to the Commercial Availability List in Annex 3-B of the Agreement with a specified restricted quantity. The restricted quantity specifies the amount of the subject product that can be provided by a US-PERU TPA supplier(s).

(B) The effective date of the determination will be the date of publication in the U.S. **Federal Register**.

(ii) Elimination of a restricted quantity: Elimination of a restricted quantity: Not later than six months after adding a product to the Commercial Availability List in Annex 3-B of the Agreement in a restricted quantity, CITA may eliminate the restriction if it determines that the subject product is not available in commercial quantities in a timely manner in the United States or Peru. See Section 203(o)(4)(E) of the US-PERU TPA.

(A) The determination that the subject product is not available in commercial quantities in a timely manner will be based upon whether the restricted quantity has been provided by a US-PERU TPA supplier(s). CITA will solicit comments and information from the US-PERU TPA supplier(s) and the requestor.

(B) If the US-PERU TPA supplier(s) are still capable of providing the restricted quantity, the restriction will remain.

(C) If the US-PERU TPA supplier(s) are unable to provide the restricted quantity, CITA will eliminate the restricted quantity. CITA will publish a notice in the U.S. **Federal Register**, and post on the Web site, that the restricted quantity is eliminated and the subject product is added to the Commercial Availability List in Annex 3-B of the Agreement in an unrestricted quantity. The effective date of the determination will be the date of publication in the U.S. **Federal Register**.

(4) Insufficient Information to Determine. CITA will extend its time period for consideration of the Request by an additional 14 U.S. business days in the event that CITA determines, not later than 30 U.S. business days after official receipt of a Request, that it has insufficient information to make a determination regarding the ability of a US-PERU TPA supplier to supply the subject products of the Request based on the submitted information. CITA will normally determine that it does not have sufficient information to make a determination on a Request when CITA finds there is inconsistency in material information contained in the Request, one or more Responses, and/or the Rebuttal(s). CITA will notify interested parties via email that it has extended the time period for CITA's consideration by 14 U.S. business-days. CITA also will announce the extension on the Web site for US-PERU TPA commercial availability proceedings.

(i) Process during Extension Period: During the extended time period, CITA will request that interested entities provide additional evidence to substantiate the information provided, and may initiate a meeting with interested entities. Such evidence may include, inter alia, product samples, lab tests, detailed descriptions of product facilities, and comparisons of product performance in the intended end-use of the subject product. Any samples, if requested, of fibers, yarns, or fabrics, that are provided to CITA will be made available for public inspection at the Office of Textiles and Apparel, Room 3110, U.S. Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, DC 20230. All written submissions must follow instructions described in Section 3 of these procedures. Samples should be identified with a cover sheet that describes the specifications of the sample and be identical to the specifications of the Request. If CITA conducts a meeting, it will comply with requirements to conduct proceedings in an open manner.

(ii) CITA also will consider evidence in support of claims that US-PERU TPA supplier(s) can supply a substantially similar product to that specified in the Request.

(iii) CITA will make a determination, not later than 44 U.S. business days after the official receipt of a Request whether to approve, approve with restriction, or deny the Request and will follow the notification process accordingly.

(5) Deemed Approval. In the event that CITA does not make a determination in response to a Request to add a product to Annex 3-B of the Agreement within the statutory deadlines provided, not later than 45 U.S. business-days after the official receipt of the Request or not later than 60 U.S. business-days after the official

receipt of the Request that was determined to lack sufficient information pursuant to Section 8(c)(4) of these Procedures, the requested subject product shall be added to the Commercial Availability List in Annex 3-B, in an unrestricted quantity, in accordance with the requirements of section 203(o)(4)(D) of the US-PERU TPA. CITA will notify the public of the deemed approval by publication in the U.S. **Federal Register** and posting on OTEXA's Web site.

9. Submitting a Request to Remove or Restrict

(a) Request to Remove or Restrict. No earlier than six months after a product has been added to the Commercial Availability List in Annex 3-B in an unrestricted quantity pursuant to Section 203(o)(4)(C)(iii) or (vi) of the US-PERU TPA, an interested entity may submit a request to CITA requesting that a product be either removed or that a quantity restriction be introduced. See Section 203(o)(4)(E)(i) of the US-PERU TPA.

(b) Content of a Request to Remove or Restrict. The Request to Remove or Restrict must provide the substantive information set forth in Section 6(b) (Contents of a Response with an Offer to Supply) of these procedures.

(c) Procedures.

(1) In considering whether to accept a Request to Remove or Restrict, CITA will follow procedures set forth in Section 5 (Consideration and Acceptance of a Request) of these procedures.

(2) If CITA determines to accept the Request to Remove or Restrict, CITA and any responding interested entity shall follow applicable procedures and contents set forth in subsection 6(a) (Response with an Offer to Supply) and Section 7 (Submitting a Rebuttal Comment) of these procedures.

(3) As set forth in subsections 8(a) and (b) (Determination Process) of these procedures, CITA will determine whether the subject product of the Request to Remove or Restrict is available in commercial quantities in a timely manner from a US-PERU TPA supplier not later than 30 U.S. business days after the official receipt of the Request to Remove or Restrict.

(i) If CITA determines that the product is available in commercial quantities in a timely manner in the United States or Peru, e.g., that a US-PERU TPA supplier is capable to supply the entire subject product requested originally, then that product will be removed from the Commercial Availability List in Annex 3-B of the Agreement.

(ii) If CITA determines that the product is available in restricted quantities in a timely manner in the United States or Peru, e.g., that a US-PERU TPA supplier is capable to supply part of the subject product requested originally then a restricted quantity will be introduced for that product.

(iii) If the Commercial Availability List changes as a result of CITA's determination for the Request to Remove or Restrict, CITA will notify interested parties by email of its determination and will publish a notice of its determination for the Request to Remove or Restrict in the U.S. **Federal Register**.

(A) For removal, the notice of determination will state that textile and apparel articles containing the subject product are not to be treated as originating in either the United States or Peru if the subject product is obtained from sources outside the United States or Peru, effective for goods entered into the United States on or after six months (i.e., 180 calendar days) after the date of publication of the notice. See Section 203(o)(4)(E)(iv) of the US-PERU TPA.

(B) For restriction, the notice of determination will specify the restricted quantity for the subject product that is to be effective on or after six months (i.e., 180 calendar days) after the publication date of the notice. See Section 203(o)(4)(E)(iv) of the US-PERU TPA.

Request for Comment on the Interim procedures

Comments on the above Interim Procedures must be received no later than September 14, 2009, and in the following format:

(1) Comments must be in English.

(2) Comments must be submitted electronically or in hard copy, with original signatures.

(3) Comments submitted electronically, via an electronic mail (''email''), must be either in PDF, Word, or Word-Perfect format, and sent to the following email address: **OTEXA__PERU@ita.doc.gov**. The email version of the comments must include an original signature. Further, the comments must have a bolded heading stating ''Public Version'', and no business confidential information may be included. The email version of the comments will be posted for public review on the Web site dedicated to US-PERU TPA commercial availability proceedings.

(4) Comments submitted in hard copy must include original signatures and must be mailed to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, D.C. 20230. All comments submitted in hard copy will be made available for public inspection at the Office of Textile and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, D.C., between the hours of 8:30 a.m. and 5:00 p.m. on business days.

(5) Any business confidential information upon which an interested person wishes to rely may only be included in a hard copy version of the comments. Brackets must be placed around all business confidential information. Comments containing business confidential information must have a bolded heading stating ''Confidential Version.'' Attachments considered business confidential information must have a heading stating ''Business Confidential Information''. The Committee will protect from disclosure any business confidential information that is marked ''Business Confidential Information'' to the full extent permitted by law.

Classification

Administrative Procedure Act

These procedures are not subject to the requirement to provide prior notice and opportunity for public comment, pursuant to 5 U.S.C. 553(a)(1) (''Administrative Procedures Act'').

Paperwork Reduction Act

This document contains collection of information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The information collection has been approved by OMB under Control Number: 0625-0265.

Estimate of Burden to the Public for Collection of Information and Request for Public Comment: In accordance with Section 203(o) of the US-PERU TPA and as reflected in the Interim Procedures for commercial availability proceedings, CITA must collect certain information about the technical specifications of a fabric, yarn, or fiber and the production capabilities of Peruvian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in

commercial quantities in a timely manner in the United States or Peru. CITA submitted to the Office of Management and Budget (''OMB'') for Clearance its Interim Procedures requiring the collection of information under the emergency provisions of the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. Chapter 35). In accordance with the PRA, CITA has estimated the ''burden'' (in number of hours) on the public to submit information required by CITA under its Interim Procedures. In a **Federal Register** notice published on July 31, 2009, (74 FR 38169), CITA solicited public comment on its estimated burden. CITA hereby provides the public further opportunity to provide comment on its estimates of the burden on the public to submit information to CITA under the Interim Procedures.

Estimate of Burden as a Result of Information Collection: Based on estimates on the number of Requests, Rebuttals and Responses filed per year, and the average amount of time required to submit a Request, Rebuttal, and Response, CITA estimates that the total annual burden to the public is 89 hours. A further breakdown of its estimates for the number of hours to collect and provide information to CITA for Requests, Responses and Rebuttals is provided in detail below.

Requests: CITA estimates that 10 Requests will be filed per year under the US-PERU TPA commercial availability provision. Based on the following activities required to submit a Request, CITA estimates that the total time to collect and present information in a Request is 8 hours, for a total of 80 hours per year.

Activity: Request	Time Required
Due Diligence	5 hours
Summarizing Due Diligence and Preparing Request	2 hours
Preparing Supporting Documentation	1 hour
Total Time per Request	8 hours
Times 10 Requests per Year	80 hours

Responses: CITA estimates that 3 Requests will be filed per year under the US-PERU TPA commercial availability provision. Based on the following activities required to submit a Request, CITA estimates that the total time to collect and present information in a Response is 2 hours, for a total of 6 hours per year.

Activity: Response	Time Required
Preparing Response	1 hours and 30 minutes
Preparing Supporting Documentation	30 minutes
Total Time per Response	2 hours
Times 3 Responses per Year	6 hours

Rebuttals: CITA estimates that 3 Rebuttals will be filed per year. The average amount of time required to prepare each Rebuttal is estimated at 1 hour, for a total annual burden for all Rebuttals of 3 hours.

Activity: Rebuttal	Time Required
Preparing Rebuttal	1 hour
Total Time per Response	1 hour
Times 3 Responses per Year	3 hours

Combined, these three information collections represent an annual burden of 89 hours. CITA hereby requests public comment on its estimates for the burden to the public to collect and submit information in the course of a commercial availability proceeding under Section 203(o) of the US-PERU TPA and the Interim Procedures provided above. Copies of the above estimate can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 7845, 14th & Constitution Avenue, NW, Washington, DC 20230 or via the Internet at **DHynek@doc.gov**. Written comments and recommendations for the estimate of the burden to the public should be sent to Wendy Liberante, OMB Desk Officer, via the Internet at **Wendy__L.__Liberante@omb.eop.gov** or fax (202) 395-7285 by September 14, 2009.

Notwithstanding any other provision of 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 Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E9–19559 Filed 8–13–09; 8:45 am]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Short Supply Petition under the North American Free Trade Agreement (NAFTA)

August 11, 2009.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for Public Comments concerning a request for modification of the NAFTA rules of origin for articles of apparel and clothing accessories, not knitted or crocheted made from certain yarn-dyed poplin fabric.

SUMMARY: On August 5, 2009, the Chairman of CITA received a request from Sorini Samet & Associates LLC, on behalf of Cintas Corporation (''Cintas''), alleging that certain yarn-dyed poplin fabric, as specified below, classified under subheading 5513.31 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the North American Free Trade Agreement (NAFTA) rule of origin for articles of apparel and clothing accessories, not knitted or crocheted, classified under HTSUS Chapter 62, should be modified to allow the use of certain non-North American yarn-dyed poplin fabric, as specified below. The President may proclaim a modification to the NAFTA rules of origin only after reaching an agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this request, in particular with regard to whether certain yarn-dyed poplin fabric, as specified below, can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by September 14, 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: Maria Dybczak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3651.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

BACKGROUND:

Under the North American Free Trade Agreement (NAFTA), NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. See

Section 202(q) of the NAFTA Implementation Act. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The Statement of Administrative Action (SAA) that accompanied the NAFTA Implementation Act stated that any interested person may submit to CITA a request for a modification to a particular rule of origin based on a change in the availability in North America of a particular fiber, yarn or fabric and that the requesting party would bear the burden of demonstrating that a change is warranted. NAFTA Implementation Act, SAA, H. Doc. 103-159, Vol. 1, at 491 (1993). The SAA provides that CITA may make a recommendation to the President regarding a change to a rule of origin for a textile or apparel good. SAA at 491. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA country on such a modification. See section 202(q) of the NAFTA Implementation Act.

CITA is soliciting public comments regarding this request, particularly with respect to whether the certain yarn-dyed poplin fabric, as specified below, can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be received no later than September 14, 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 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that the specified yarn-dyed poplin fabric can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

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.

Specifications: Certain Poplin Fabric

HTSUS: 5513.31
Fabric Type: Yarn-Dyed Plaid Poplin
Fiber Content: 64-67% polyester, 33 to 36% cotton
Yarn Size:
Warp: Ring spun 49/1 to 53/1 metric; 64 to 67% polyester, 33 to 36% cotton
Filling: Ring spun 49/1 to 53/1 metric; 64 to 67% polyester, 33 to 36% cotton
Thread Count: 34.5 to 38 ends x 21 to 23 picks per centimeter
Weave Type: Plain
Fabric Weight: 127 to 140 grams per square meter
Fabric Width: 156 to 170 centimeters, cuttable
Coloration: Warp stripes, filling yarns dyed multiple colors
Finishing Process: Moisture management (see performance criteria), pre-cure permanent press, 10% mechanical stretch in filling direction
Performance Criteria: Moisture management test method is AATCC Test Method 79-2007, and the pass/fail standard is 10 seconds.

Janet E. Heinzen,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E9–19556 Filed 8–13–09; 8:45 am]

BILLING CODE 3510–DS

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

Correction

In notice document E9–18474, beginning on page 38397, in the issue of Monday, August 3, 2009, make the following correction:

On page 38398, at the end of the chart, in the section that reads ''Countervailing Duty Proceedings,'', the table is corrected to read as follows:

	Period
Countervailing Duty Proceedings	
Republic of Korea:	
Corrosion-Resistant Carbon Steel Plate C–580–818	1/1/08—12/31/08
Dynamic Random Access Memory Semiconductors C–580–851	1/1/08—8/10/08
Stainless Steel Sheet and Strip in Coils C–580–835	1/1/08—12/31/08
The People's Republic of China:	
Laminated Woven Sacks C–570–917	12/3/07—12/31/08
Sodium Nitrite C–570–926	4/11/08—12/31/08
Light-Walled Rectangular Pipe and Tube C–570–915	11/30/07—12/31/08

[FR Doc. Z9–18474 Filed 8–13–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

International Trade Administration

A–475–818

Certain Pasta From Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 2, 2009, the Department of Commerce (''the Department'') published a notice of initiation and preliminary results of a changed circumstances review and intent to revoke, in part, the antidumping duty order of certain pasta from Italy.[1] The Department gave

[1] *See Certain Pasta from Italy: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review, and Intent to Revoke Order in Part*, 74 FR 31696 (July 2, 2009) (''Preliminary Results'').

interested parties an opportunity to comment on the preliminary results and notice of intent to revoke, but received no comments. Therefore, the final results do not differ from the preliminary results of review and we are revoking the order, in part, with respect to gluten–free pasta.

EFFECTIVE DATE: July 1, 2008.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4161.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published in the **Federal Register** an antidumping duty order on certain pasta from Italy.[2] On May 22, 2009, Pasta Lensi S.r.L. (''Pasta Lensi'') requested that the Department initiate a changed circumstances review and revoke, in part, the antidumping duty order on certain pasta from Italy with respect to gluten–free pasta based on a lack of interest in maintaining the order by petitioners. *See* May 22, 2009, letter from Pasta Lensi to the Secretary of Commerce. On June 1, 2009, petitioners expressed a lack of interest in maintaining the order with respect to gluten–free pasta.[3] On July 2, 2009, the Department published a notice of initiation and preliminary results and intent to revoke, in part, a changed circumstances review of the antidumping order.[4] We received no comments.

Scope of Review

Imports covered by this review are shipments of certain non–egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white.

As a result of this review, also excluded from the scope of this order is gluten–free pasta.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States (''HTSUS'')*. Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Final Results of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.216, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. In its May 22, 2009, submission Pasta Lensi stated that petitioners have no interest in the antidumping duty order with respect to gluten–free pasta. Further, the petitioners expressed a lack of interest in maintain the antidumping duty order with respect to gluten–free pasta.[5] No party submitted any evidence to the contrary. Therefore, In accordance with 19 CFR 351.221(c)(3)(i), we determine that the petitioners have no interest in the antidumping duty order with respect to gluten–free pasta.

Pasta Lensi requested that the Department retroactively revoke the order and cited to Wooden Bedroom Furniture for support.[6] Consistent with Department practice, we have determined to revoke the order, in part, retroactive to July 1, 2008, (the date following the last day of the most recently completed administrative review) for unliquidated entries in light of Pasta Lensi's request and the fact that entries after this date are not subject to a final determination by the Department. Accordingly, the Department will revoke, in part, the antidumping duty order on certain pasta from Italy with respect to gluten–free pasta, effective July 1, 2008.

We will instruct U.S. Customs and Border Protection (''CBP'') to liquidate without regard to antidumping duties all unliquidated entries of gluten–free pasta, not currently subject to an administrative review of certain pasta from Italy, entered, or withdrawn from warehouse, for consumption on or after July 1, 2008. The Department will further instruct CBP to refund with interest any estimated antidumping duties collected with respect to unliquidated entries of gluten–free pasta entered, or withdrawn from warehouse for consumption on or after the publication date of the final results of this changed circumstances review, in accordance with section 778 of the Act and 19 CFR 351.222(g)(4).

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751(b) and (d), 777(i), and 782(h) of the Act and section 351.216(e) and 351.222(g) of the Department's regulations.

Dated: August 7, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–19562 Filed 8–13–09; 8:45 am]

BILLING CODE 3510–DS–S

[2] *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996).

[3] *See* Memo from Christopher Hargett, Case Analyst, AD/CVD Operations 3, to Melissa Skinner, Office Director, AD/CVD Operations 3 entitled ''Phone Conversation with Counsel for Petitioners,'' dated June 2, 2009.

[4] *See Preliminary Results*, 74 FR 31696 (July 2, 2009).

[5] *See* memorandum from Christopher Hargett, Case Analyst, to Melissa Skinner, Office Director, entitled ''Phone Conversation with Counsel for Petitioners,'' dated June 2, 2009.

[6] *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part*, 74 FR 8506 (February 25, 2009)(''Wooden Bedroom Furniture'').

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–836

Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 8, 2009, the Department of Commerce (''Department'') published the preliminary results of the 2007–2008 administrative review of the antidumping duty order on glycine from the People's Republic of China (''PRC''). *See Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 15930 (April 8, 2009) (''*Preliminary Results*''). We gave interested parties an opportunity to comment on the *Preliminary Results*. Based upon our analysis of the comments and information received, we made changes to the margin calculation

for the final results. We find that certain manufacturers/exporters sold subject merchandise at less than normal value during the period of review (''POR''), *i.e.*, March 1, 2007, through February 29, 2008.

EFFECTIVE DATE: August 14, 2009.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Dena Crossland, 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) 482–3019 or (202) 482–3362, respectively.

SUPPLEMENTARY INFORMATION:

Background

The following events have occurred subsequent to the publication of the *Preliminary Results*. On April 28, 2009, Geo Specialty Chemicals Inc. (''GSC''), a domestic interested party, and respondent, Baoding Mantong Fine Chemistry Co., Ltd. (''Baoding Mantong''), submitted additional surrogate value (''SV'') information for the Department to consider for these final results. On May 8, 2009, GSC submitted comments on Baoding Mantong's April 28, 2009, SV submission and requested a hearing. On May 8, 2009, GSC and Baoding Mantong timely submitted case briefs. On May 13, 2009, GSC and Baoding Mantong timely submitted rebuttal briefs. On May 19, 2009, GSC withdrew its request for hearing. At the request of both parties, the Department met separately with counsel for Baoding Mantong and counsel for GSC on May 28, 2009. *See* Memoranda to the File from Dena Crossland, Analyst, through Angelica L. Mendoza, Program Manager, Office 7, Regarding the Antidumping Duty Administrative Review of the Order on Glycine from the People's Republic of China: Meeting with Counsel for Domestic Interested Party, dated May 29, 2009; and Meeting with Counsel for Respondent, dated May 29, 2009.

Scope of the Order

The product covered by the order is glycine, which is a free–flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. This review covers glycine of all purity levels. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Analysis of Comments Received

All issues raised in the briefs and rebuttal briefs are addressed in the ''Issues and Decision Memorandum for the Final Results of the 2007–2008 Antidumping Duty Administrative Review: Glycine from the People's Republic of China'' from John M. Andersen, Acting Deputy Assistant Secretary, to Ronald K. Lorentzen, Acting Assistant Secretary, dated August 6, 2009 (''I&D Memo''), which is hereby adopted by this notice. A list of the issues raised, all of which are addressed in the I&D Memo, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and rebuttal briefs and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 1117 of the main Department building. In addition, a complete version of the I&D Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the I&D Memo are identical in content.

Separate Rates

Baoding Mantong requested a separate, company–specific antidumping duty rate. In the *Preliminary Results*, we found that Baoding Mantong met the criteria for the application of a separate antidumping duty rate. *Preliminary Results*, 74 FR at 15933. Therefore, the Department has applied a rate to Baoding Mantong separate from the rate established for the PRC–wide entity. Also in the *Preliminary Results*, the Department found that Nantong Dongchang Chemical Industry Corporation (''Nantong Dongchang'') did not participate in the administrative review and, thus, did not demonstrate its entitlement to a separate rate. *Id.* at 15933–34. Accordingly, for these final results, Nantong Dongchang does not qualify for separate rate status, but rather is appropriately considered to be part of the PRC–wide entity which is assigned a rate of 155.89 percent based on facts otherwise available with an adverse inference (''AFA''). *Id.* The Department did not receive comments on this issue prior to these final results.

Use of Facts Otherwise Available and the PRC–Wide Rate

As noted above, the Department found that Nantong Dongchang did not establish its eligibility for separate rate status, and thus is deemed to be part of the PRC–wide entity. Also, in the *Preliminary Results*, the Department noted that Nantong Dongchang did not participate in the administrative review, and did not respond to any portions of the Department's questionnaires. As the Department found that the PRC–wide entity, which includes Nantong Dongchang, failed to cooperate to the best of its ability in responding to the Department's requests for information and thereby impeded the Department's proceeding, the Department assigned the PRC–wide entity a rate based on AFA pursuant to sections 776(a)(2)(A), (B), and (C) and section 776(b) of the Tariff Act of 1930, as amended (''the Act''). *See Preliminary Results*, 74 FR at 15934. The Department did not receive any comments regarding its preliminary application of AFA to the PRC–wide entity. *See Preliminary Results*, 74 FR at 15933–35. Therefore, for these final results, the Department has not altered its analysis or decision to apply total AFA to the PRC–wide entity.

Changes Since the Preliminary Results

Based on our analysis of information on the record of this review, and comments received from the interested parties, we have made changes to the margin calculations for Baoding Mantong.

In particular, we have made modifications to our selection of certain SVs used in the *Preliminary Results*. The values that were modified for these final results are those for formaldehyde, steam coal, and chlorine. For further details, see the accompanying I&D Memo at Comments 3, 5, and 6.

We determine that the following antidumping duty margins exist for the period of March 1, 2007, through February 29, 2008:

Final Results of Review

Exporter	Margin
Baoding Mantong Fine Chemistry Co., Ltd.	33.67%
PRC–Wide Rate (including Nantong Dongchang Chemical Industry Corporation)	155.89%

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of glycine from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) For Baoding Mantong, which has a separate rate, the cash deposit rate will be the company–specific rate shown above; (2) for previously reviewed or investigated companies not listed above that have a separate rate, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters (including Nantong Dongchang) will be 155.89 percent, the current PRC–wide rate; and (4) the cash deposit rate for all non–PRC exporters will be the rate applicable to the PRC exporter that supplied that exporter. These cash deposit requirements shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This notice of final results is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 6, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

List of Issues

Comment 1: Surrogate Financial Ratios
Comment 2: Surrogate Value for Sulfur
Comment 3: Surrogate Value for Formaldehyde
Comment 4: Surrogate Value for Liquid Ammonia
Comment 5: Surrogate Value for Steam Coal
Comment 6: Surrogate Value for Chlorine
Comment 7: Comments on Draft U.S. Customs and Border (''CBP'') Instructions

[FR Doc. E9–19563 Filed 8–13–09; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–851)

Certain Preserved Mushrooms From the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review:

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Fujian Yu Xing Fruit and Vegetable Foodstuff Development Co., Ltd. (Yu Xing), the U.S. Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China for the period February 1, 2008, through January 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 19042 (April 27, 2009) *(Initiation Notice)*. No other interested party requested an administrative review for this period. On July 24, 2009, Yu Xing withdrew its request for an administrative review. The withdrawal request was filed in a timely manner. Therefore, as discussed below, the Department is rescinding this administrative review.

EFFECTIVE DATE: August 14, 2009.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold 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) 482–1121 or (202) 482–0649 respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2009, the Department published in the **Federal Register** its notice of opportunity to request an administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 6013 (February 4, 2009). On March 2, 2009, Yu Xing requested an administrative review in accordance with 19 CFR 351.213(b)(1). No other interested party requested an administrative review for this period.

On April 27, 2009, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of certain preserved mushrooms from the PRC for the period February 1, 2008, through January 31, 2009, with respect to Yu Xing. *See Initiation Notice*.

Yu Xing filed its section A response on June 2, 2009 and its section C and D responses on June 16, 2009. On July 24, 2009, pursuant to 19 CFR 351.213(d)(1), Yu Xing withdrew its requests for an administrative review.

Rescission of Administrative Review

Section 351.213(d)(1) of the Department's regulations provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. The Department initiated the administrative review of the antidumping duty order on April 27, 2009. Yu Xing withdrew its request for an administrative review on July 24, 2009. The withdrawal was timely filed and as the rescission was requested within 90 days of the publication of the initiation of the administrative review. See 19 CFR 351.213(d)(1). Accordingly, the Department is rescinding this administrative review. Yu Xing has a separate rate, and we intend to issue liquidation instructions for Yu Xing 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification Regarding APO's

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 10, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–19561 Filed 8–13–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Freedom of Information Act Requests for Photographs and Videos Collected by the National Institute of Standards and Technology for Its Investigation Into the Failures of the World Trade Center Buildings

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: Photographers whose photographs and videos were provided to NIST for use in its investigation into the failures of World Trade Center (WTC) Buildings 1, 2 and 7 must provide NIST with a written response explaining how disclosure of their images would likely cause substantial competitive harm to their competitive position and/or impair the Government's ability to obtain similar information in the future if you believe that some or all of the images you submitted to NIST should be withheld in response to requests received by NIST under the Freedom of Information Act.

DATES: All written responses must be received by NIST by c.o.b., August 24, 2009.

ADDRESSES: All written responses must be sent to NIST Freedom of Information Act Officer, 100 Bureau Drive, Mail Stop 1710, Gaithersburg, Maryland 20899–1710 or by e-mail to *Catherine.fletcher@nist.gov*.

FOR FURTHER INFORMATION CONTACT: NIST FOIA Officer by telephone at (301) 975–4074, or by e-mail at *Catherine.fletcher@nist.gov*.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology (NIST) has received requests made under the Federal Freedom of Information Act (Title 5 U.S.C. 552) (FOIA) for the photographs and videos NIST collected as part of its investigation of the collapse of the World Trade Center Towers (Buildings 1 and 2) and World Trade Center Building 7. The FOIA requests are located at: *http://wtc.nist.gov/FOIA/FOIArequests09_15_42_63_88.pdf.* During the course of its investigation NIST received thousands of photographic and video images from hundreds of photographers.

Under the FOIA, the Government is required to release to a requester copies of documents it maintains that are not otherwise protected by an exemption to the FOIA. One particular exemption, exemption (b)(4), protects from disclosure any records, or portions thereof, which contain ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' 5 U.S.C. § 552(b)(4).

If you submitted photographic or video images to NIST for its World Trade Center investigation and if you believe that some or all of the images should be withheld, you must notify NIST in writing within ten (10) working days (*i.e.,* excluding Saturday, Sunday, and legal public holidays) from the date of publication of this **Federal Register** notice. Your written response must specifically identify which images you submitted to NIST for which you are asserting privilege under exemption (b)(4). You should include copies of your images with your written response to help identify your images. If you do not positively identify your image(s), your written response will not be considered. Your written response must indicate that you are responding to this **Federal Register** notice. Your written response must explain why the images are commercial or financial information that is privileged or confidential. In order to protect information under exemption (b)(4), your written response must explain, in detail, how disclosure of your images would likely cause substantial harm to your competitive position and/or how disclosure of your images will impair the Government's ability to obtain similar information in the future. A conclusory statement, to the effect that the information is confidential because releasing it could cause substantial competitive harm, will not suffice. Your written response must include your full name and complete address. You may notify the NIST FOIA Officer of your position by sending an e-mail to *Catherine.fletcher@nist.gov* or by mailing a letter to: NIST Freedom of Information Act Officer, 100 Bureau Drive, Mail Stop 1710, Gaithersburg, Maryland 20899–1710.

NIST does not have current contact information for all of the photographers whose images were submitted for the NIST WTC Investigation. If you know a photographer whose images were submitted to NIST, please notify them of this notice.

FOIA lawsuits were filed for these records on May 28, 2009 and June 15, 2009. Therefore, time is of the essence in processing this request. If we do not receive a response from you within 10 working days from the date of publication of this **Federal Register** notice, your images might be released to the FOIA requester.

Dated: August 11, 2009.

Katharine Gebbie,

Director, Physics Laboratory.

[FR Doc. E9–19535 Filed 8–13–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ81

Incidental Taking of Marine Mammals; Taking of Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

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

ACTION: Notice; issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that NMFS has a issued one-year Letter of Authorization (LOA) to take marine mammals incidental to the explosive removal of offshore oil and gas structures (EROS) in the Gulf of Mexico.

DATES: The authorization is effective from August 11, 2009, through August 10, 2010.

ADDRESSES: The application and LOA is available for review by writing to P. Michael Payne, Chief, Permits,

Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3235 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Ken Hollingshead, Office of Protected Resources, NMFS, 301–713–2289.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the NMFS to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt capture, or kill marine mammals.

Authorization for incidental taking, in the form of an annual LOA, may be granted by NMFS for periods up to five years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat (i.e., mitigation), and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating rounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking incidental to EROS were published on June 19, 2008 (73 FR 34889), and remain in effect through July 19, 2013. For detailed information on this action, please refer to that **Federal Register** notice. The species that applicants may take in small numbers during EROS activities are bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), pantropical spotted dolphins (*Stenella attenuata*), Clymene dolphins (*Stenella clymene*), striped dolphins (*Stenella coeruleoalba*), spinner dolphins (*Stenella longirostris*), rough-toothed dolphins (*Steno bredanensis*), Risso's dolphins (*Grampus griseus*), melon-headed whales (*Peponocephala electra*), short-finned pilot whales (*Globicephala macrorhynchus*), and sperm whales (*Physeter macrocephalus*).

Pursuant to these regulations, NMFS has issued an LOA to EOG Resources, Inc. Issuance of the LOA is based on a finding made in the preamble to the final rule that the total taking by these activities (with monitoring, mitigation, and reporting measures) will result in no more than a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on subsistence uses. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and LOA, including monitoring, mitigation, and reporting requirements.

Dated: August 10, 2009.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–19546 Filed 8–13–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Medical Trade Mission to India

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is organizing a Medical Trade Mission to New Delhi, Chennai and Mumbai, India, March 8–13, 2010. The Medical Trade Mission to India will include representatives of U.S. medical/healthcare industry manufacturers (equipment and devices including laboratory, emergency, diagnostic, physiotherapy, and orthopedic equipment, and healthcare information technology) and service providers. The mission will introduce U.S. suppliers to prospective end-users and partners whose needs and capabilities are targeted to each U.S. participant's business objectives. The delegates will meet with Indian government officials to obtain first-hand information about regulations, policies and procedures and will visit healthcare facilities. The Commercial Service in India (CS India) will organize appointments and briefings in New Delhi, Chennai and Mumbai, India's major healthcare industry hubs. U.S. participants will have the opportunity to interact with U.S. Embassy and Consulate officials and CS India healthcare specialists to discuss industry developments, opportunities, and marketing strategies.

Medical Fair India, one of the largest medical tradeshows in India, coincides in time and location with the last stop of the Trade Mission. Trade Mission participants, therefore, can exhibit at the tradeshow, in the U.S. Pavilion, as part of their program. Companies wishing to exhibit in the U.S. pavilion at the Medical Fair can register through the CS India office to receive a discount.

Commercial Setting

The Indian healthcare industry is experiencing a rapid transformation and is emerging as a promising market for U.S. suppliers of high-end products. The Indian healthcare market, currently at $35 billion annually, is expected to reach more than $75 billion annually by 2012. The growth in affluence of more than 300 million middle-income consumers is creating demand for higher standards of healthcare. The changing demographic profile and the rise of lifestyle-related diseases have altered the health seeking behavior of the consumer. While private insurance covers only 10% of the population, coverage is growing at 40% per year.

The medical infrastructure in India is insufficient for the population, with demand for hospitals and beds far exceeding supply. The problem is acute in rural India, which accounts for over half of India's population, while about 80 percent of available hospital beds are located in the urban centers. Both government and private operators have major expansion plans to meet demand and increase quality. Healthcare in India is provided through primary care facilities and secondary and tertiary care hospitals. While the public sector provides primary and secondary care, tertiary care hospitals are owned and managed by both government and private sector. Over the next 5–6 years, 150–200 tertiary hospital projects are expected to be constructed, including hospitals of varying capacities. Most Indian healthcare facilities use imported medical equipment for diagnosis, treatment and surgery with over 35% of the imports coming from the U.S. New specialty and super-specialty hospitals depend on the import of high-end medical equipment for over 65 percent

of their needs, and this sector is growing at a rate of 15 percent annually.

Medical tourism is one of the major external drivers of growth in India's healthcare sector. India treated 450,000 foreign patients in 2007 and the expected increase in this sector is contributing to improved quality controls. India's National Accreditation Board for Hospitals (NABH) operates accreditation programs for healthcare organizations. Some private hospitals are also applying for certification from international accreditation organizations such as the Joint Commission International (JCI). Accreditation by NABH and JCI has ensured better standards of healthcare in hospitals.

Mission Goals

The goal of the Medical Trade Mission to India is to (1) familiarize the U.S. companies with the current healthcare situation as well as the developments taking place; (2) introduce U.S. companies to appropriate government officials in India to learn about various regulatory procedure and policies; and (3) introduce companies to potential end-users, representatives and partners.

Mission Scenario

The first stop on the mission itinerary is New Delhi, the capital. In meetings with representatives of the Ministry of Health, Drug Controller General Office, and Department of Pharmaceuticals, the U.S. mission members will learn about policies, regulations and opportunities in the country's healthcare industry, such as expansion plans of the Fortis and Max hospital groups.

Chennai and Mumbai are the second and third stops of the mission, located in southern and western India respectively. Several corporate hospital chains have their headquarters in these cities. These include the Apollo Group in Chennai, and Wockhard and the Tata Institute of Fundamental Research in Mumbai.

The three cities on the mission itinerary are the regional hubs for the Indian medical/healthcare industry. End-users often prefer to be serviced by regional distributors/agents based in these cities, rather than country-wide distributors. In all three cities the delegates will attend U.S. Embassy or Consulate industry briefings and take part in networking events and business matchmaking appointments.

Participation in the mission will include the following:

- Pre-travel briefings/webinars on subjects including business practices in India and specifics on the medical/healthcare industry;
- Embassy/Consulate briefings on the business climate, political scenario, and medical/healthcare industry in New Delhi, Chennai and Mumbai;
- Pre-scheduled meetings with potential partners, distributors, end-users, or local industry contacts in New Delhi, Chennai and Mumbai;
- Meetings with Indian Government officials;
- Tour of public and private hospitals and interaction with senior hospital staff;
- Networking receptions in three cities of the trade mission;
- Built-up 9-sq meter exhibitor booth* in the U.S. Pavilion at Medical Fair India, Mumbai.

(*Option two only*) *Contact us for price of booth.

Proposed Mission Timetable

Mission participants will be encouraged to arrive Saturday, March 6, 2010 to allow time to adjust to their new surroundings before the mission program begins on Monday, March 8.

Monday, March 8	New Delhi
	Embassy briefing by U.S. Departments of Commerce and State.
	Meetings with Government of India ministries.
	One-on-one business appointments.
	Evening: Networking reception.
Tuesday, March 9	New Delhi/Chennai
	Industry briefing.
	One-on-one business appointments.
	Hospital or other site visit.
	Check-out of the hotel.
	Evening flight to Chennai.
Wednesday, March 10	Chennai
	Breakfast briefing by the U.S. Commercial Service at hotel.
	Hospital visit and meeting with senior management, including the procurement executives.
	One-on-one business appointments.
	Evening: Networking reception.
Thursday, March 11	Chennai/Mumbai
	One-on-one business appointments.
	Check-out of the hotel.
	Afternoon flight to Mumbai.
Friday, March 12	Mumbai
	Breakfast briefing by the U.S. Commercial Service at hotel.
	One-on-one business appointments or exhibition at Medical Fair India.
	Evening: Networking reception.
Saturday, March 13	Mumbai
	Hospital chain visit and meeting with senior management.
	Medical Fair India 2010.
	Evening: Check-out of the hotel or remain in Mumbai for Medical Fair India.
	Depart for Mumbai International airport for onward travel.

Participation Requirements

All parties interested in participating in the Medical Trade Mission to India must complete and submit an application for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. The mission is open on a first come first served basis to 15 qualified U.S. companies. Additional applications will be considered as time and space permit.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to

the Department of Commerce in the form of a participation fee is required. The participation fees reflect two options:

Option 1: March 8–13, 2010. Participation in the Trade Mission in all three cities: New Delhi, Chennai, and Mumbai. The participation fee will be $4,600 for large firms and $3,900 for a small or medium-sized enterprise (SME),* this includes one principal representative. The fee for each additional firm representative (large firm or SME) is $500.

Option 2: March 8–11, 2010 participate in the Trade Mission in two cities: New Delhi and Chennai and March 12–14, exhibit at the Medical Fair India 2010 in Mumbai. The participation fee for New Delhi-Chennai and exhibiting in the Fair in Mumbai $6,800 ($3,600 Trade Mission fee + $3,200 for 9-sq meter booth space**) for large firms and $6,100 ($2,900 Trade Mission fee + $3,200 for 9-sq meter booth space) for an SME,* which includes one principal representative. The fee for each additional firm representative (large firm or SME) is $250.

Expenses for lodging, some meals, incidentals, and travel (except for transportation to and from meetings) will be the responsibility of each mission participant.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

Selection Criteria for Participation

Selection will be based on the following criteria:

- Suitability of a company's products or services to the mission's goals.
- Applicant's potential for business in India, including likelihood of exports resulting from the trade mission.
- Consistency of the applicant's goals and objectives with the stated scope of the trade mission.

Any partisan political activities (including political contributions) of an applicant are entirely irrelevant to the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including posting in the **Federal Register**, the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*), and other Internet Web sites; press releases to general and trade media; direct mail; notices by industry trade associations and other multiplier groups; and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than January 8, 2010.

Contacts

U.S. Commercial Service; Healthcare Team

Ms. Jetta DeNend, International Trade Specialist, U.S. Commercial Service, 33 Whitehall St. 22nd Floor, New York, NY 10004. *Ph:* 212–809–2644/Fax: 212–809–268. *E-mail: Jetta.DeNend@mail.doc.gov*.

U.S. Commercial Service in India

Mr. Srimoti Mukherji, U.S. Commercial Service, New Delhi. *Ph:* 91–11–23472000, ext 2226. *Fax:* 91–11–23315172. *Srimoti.Mukherji@mail.doc.gov*.

Lisa Huot,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. E9–19565 Filed 8–13–09; 8:45 am]

BILLING CODE 3510–DS–P

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (*see http://www.sba.gov/services/contractingopportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing schedule reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (for additional information *see http://www.export.gov/newsletter/march2008/initiatives.html*).

** Minimum booth space is 9-sq meters. Companies can take larger space for which cost will be calculated accordingly.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Modifications for the GOES Data Collection Platform Radio Set (DCPRS) Certification Standards at 300 bps and 1200 bps

SUMMARY: NOAA is making a change to the certification standards for the transmitters that participate in the GOES Data Collection System (DCS). The primary purpose of this change is to enhance the flexibility of the system, to provide better messaging capabilities, additional system capacity, improve timing and frequency stability, and conform to the regulations for out-of-band emissions specified by the National Telecommunication and Information Administration (NTIA). The GOES DCS will operate under new certification procedures that will allow new data collection platforms to use a frequency channel with half the current bandwidth (.75 Hz), though existing platforms will continue to use frequency channels with 1.5 Hz bandwidth until suitable replacements are ascertained. The owners of the existing platforms are invited to upgrade their units as soon as possible. New data collection platforms will be assigned a narrow band channel in the restructured GOES DCS. These new certification standards may be reviewed on the NOAA Web site: *http://noaasis.noaa.gov/DCS/docs/DCPR_CS2final.doc.*

DATES: Start of service [October 1, 2009].

FOR FURTHER INFORMATION CONTACT: Comments may be provided to the NOAA GOES DCS Program Manager, at *Kay.Metcalf@noaa.gov* or you can contact her at 301–817–4558.

SUPPLEMENTARY INFORMATION: Since the advent of the Geostationary Operational Environmental Satellites (GOES) and the on-board transponder, environmental data from remote platforms has been collected and relayed in real time to federal and international environmental managers and scientists. Known as the GOES Data Collection System (DCS), this satellite transmission technology consists of over 20,000 Data Collection Platforms (DCPs), dedicated satellite receive and transmit capability, and ground/satellite processing and distribution equipment. Data collected from DCPs measures or monitors such varied parameters as rainfall, river stage levels, soil conditions, seismic or tsunami conditions, aircraft flight environment and fire conditions. These data are also used to verify and serve as ''ground truth'' for other types of remotely sensed data such as NEXRAD and satellite-derived precipitation estimates. DCS data provides fast, reliable information for flood, fire, tsunami and other disaster forecasts and warnings amounting to incalculable savings in lives and property damage.

This system provides critical support to the U.S. Corp of Engineers, U.S. Geological Survey, the Bureau of Land Management, the National Weather Service and other federal and state agencies to monitor and forecast the flood stages in the upper Mississippi

Valley. Starting in 1975, the GOES DCS opened a vast new capability to acquire the needed data in real or near-real time. Many Federal Agencies started their own systems for collecting and telemetering their data for their own use. In the recent two decades and a half, these Federal Agencies have come together to improve the tools and the system for better collection, and to modernize the storage and dissemination of the in-situ observations to all the users who desired them. This GOES Data Collection System (DCS) has become the conduit through which remotely sensed observations, the life-blood of the Agencies' operations, must pass. The GOES DCS is now a critical Infrastructure for most of these Agencies, contributing to billions of dollars in damages being averted through flood control measures.

As the demand for remotely sensed in-situ data has increased, certain segments of the system have been threatened with saturation. The Federal Agencies as users, and the National Environmental Satellite, Data, and Information Service (NESDIS) as the system operator, consistently strive to improve the capabilities of the GOES DCS.

Mary E. Kicza,

Assistant Administrator for Satellite and Information Services.

[FR Doc. E9–19500 Filed 8–13–09; 8:45 am]

BILLING CODE P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 9/14/2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/15/2009 (74 FR 28221–28222) and 6/19/2009 (74 FR 29187–29189), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN: 7530–00–NIB–0841—Label, Pressure Sensitive Adhesive.
NSN: 7530–00–NIB–0898—Label, Pressure Sensitive Adhesive.
NSN: 7530–00–NIB–0896—Label, Pressure Sensitive Adhesive.
NSN: 7530–00–NIB–0892—Label, Pressure Sensitive Adhesive.
NSN: 7530–00–NIB–0893—Label, Pressure Sensitive Adhesive.
NSN: 7530–00–NIB–0895—Label, Pressure Sensitive Adhesive.
NSN: 7530–00–NIB–0899—Label, Pressure Sensitive Adhesive.
NSN: 7530–00–NIB–0900—Label, Pressure Sensitive Adhesive.
COVERAGE: A-list for the total Government requirement as aggregated by the General Services Administration.
NSN: 7530–00–NIB–0840—Label, Pressure Sensitive Adhesive.
NSN: 7530–00–NIB–0894—Label, Pressure Sensitive Adhesive.
NSN: 7530–00–NIB–0897—Label, Pressure Sensitive Adhesive.
COVERAGE: B-list for the broad Government requirement as aggregated by the General Services Administration.
NPA: North Central Sight Services, Inc., Williamsport, PA.
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS OFC SUP CTR—PAPER PRODUCTS, NEW YORK, NY.
NSN: 3990–00–NSH–0075—Pallet, Demo, 24″ x 48″.
NPA: Bona Vista Programs, Inc., Kokomo, IN.
Contracting Activity: DEPT OF THE ARMY, SR W39Z STK REC ACCT–CRANE AAP, Crane, IN.
COVERAGE: C-list for the requirements of the Department of the Army—Crane Ammunition Activity.
NSN: 7520–00–NIB–2033—PEN, RETRACTABLE, BIODEGRADABLE.
NSN: 7520–00–NIB–2034—PEN, RETRACTABLE, BIODEGRADABLE.
NSN: 7520–00–NIB–2035—PEN, RETRACTABLE, BIODEGRADABLE.
NSN: 7520–00–NIB–2036—PEN, RETRACTABLE, BIODEGRADABLE.
NSN: 7520–00–NIB–2037—PEN, RETRACTABLE, BIODEGRADABLE with GRIP.
NSN: 7520–00–NIB–2038—PEN, RETRACTABLE, BIODEGRADABLE with GRIP.
NSN: 7520–00–NIB–2039—PEN, RETRACTABLE, BIODEGRADABLE with GRIP.
NSN: 7520–00–NIB–2040—PEN, RETRACTABLE, BIODEGRADABLE with GRIP.
NPA: West Texas Lighthouse for the Blind, San Angelo, TX.
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS OFC SUP CTR —PAPER PRODUCTS, NEW YORK, NY.
COVERAGE: A-list for total Government requirement as aggregated by the General Services Administration.
NSN: 7520–00–NIB–2021—Pencil, Mechanical, .5 MM HB Lead.
NSN: 7520–00–NIB–2022—Pencil, Mechanical, .7 MM HB Lead.
NSN: 7510–00–NIB–0875—Refill, 12 Lead Cartridge, 0.5 mm HB.
NSN: 7510–00–NIB–0876—Refill, 12 Lead Cartridge, 0.7 mm HB.

NPA: San Antonio Lighthouse for the Blind, San Antonio, TX.

Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS OFC SUP CTR—PAPER PRODUCTS, NEW YORK, NY.

COVERAGE: B-list for the broad Government requirement as aggregated by the General Services Administration.

NSN: 891500NSH0145—Diced Green Peppers.

NSN: 891500NSH0147—Cole Slaw with Carrots.

NSN: 891500NSH0146—Sliced Yellow Onions.

NPA: Employment Solutions, Inc., Lexington, KY.

Contracting Activity: FEDERAL PRISON SYSTEM, LEXINGTON, FMC, LEXINGTON, KY.

COVERAGE: C-list for the total Federal Prison System requirement.

Services

Service Type/Location:

Grounds Maintenance Services, Ellington Field, 14555 Scholl Street, Houston, TX.

NPA: On Our Own Services, Inc., Houston, TX.

Contracting Activity: DEPT OF THE ARMY, XR W6BB ACA PRESIDIO OF MONTEREY, CA.

Service Type/Location:

Laundry Services, Naval Hospital & Dental Clinic, 100 Bresster Blvd, Camp Lejeune, NC.

Dental Clinic, Bldg 4389, Cherry Point, NC.

NPA: Chesapeake Service Systems, Inc., Chesapeake, VA.

Contracting Activity: DEPT OF THE NAVY, FISC, NORFOLK, VA.

Service Type/Location:

Grounds Maintenance.

Coast Guard Island/Yerba Buena Island, Alameda, CA.

Sector San Francisco/Yerba Buena Island, San Francisco, CA.

Senior Officer's Quarters/Yerba Buena Island, San Francisco, CA.

NPA: Rubicon Programs, Inc., Richmond, CA.

Contracting Activity: U.S. COAST GUARD, MLC PACIFIC (VPL), ALAMEDA, CA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–19493 Filed 8–13–09; 8:45 am]

BILLING CODE 6353–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8596–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated July 17, 2009 (74 FR 34754).

Draft EISs

EIS No. 20090048, ERP No. D–AFS–J65530–MT, Montanore Project, Proposes to Construct a Copper and Silver Underground Mine and Associated Facilities, Including a New Transmission Line, Plan-of-Operation Permit, Kootenai National Forest, Sanders County, MT.

Summary: EPA identified potential adverse environmental impacts from the preferred action to wetlands, water quality, groundwater and stream flows that are unacceptable and of sufficient magnitude that action must not proceed as proposed. In addition, the analysis of water quality impacts, and measures for mitigation, financial assurance and remediation are inadequate. Rating EU3.

EIS No. 20090098, ERP No. D–NPS–J65537–WY, Jackson Hole Airport Use Agreement Extension Project, To Enable Continued Air Transportation Services, Grand Teton National Park, Teton County, WY.

Summary: EPA expressed environmental objections to the predicted major, long-term and adverse noise impacts as well as the narrow range of alternatives and lack of an air quality analysis. EPA requested additional noise analysis and mitigation be evaluated. Rating EO2.

EIS No. 20090113, ERP No. D–AFS–J65539–00, Ashley National Forest Motorized Travel Plan, To Improve Management of Public Summer Motorized Use by Designating Roads and Motorized Trails and Limiting Dispersed Camping to Areas, Duchesne, Daggett, Uintah Counties, Utah and Sweetwater County, WY.

Summary: EPA expressed environmental concerns about water quality impacts. EPA suggested that travel management plan decisions should be based on a broader analysis of impacted resources on route designations. Rating EC1.

EIS No. 20090157, ERP No. D–AFS–J65540–WY, Upper Greys Vegetation Management Project, Proposes to Conduct Timber Harvest on 362 Acres in Upper Greys River Watershed, Greys River Ranger District, Bridger-Teton National Forest, Lincoln County, WY.

Summary: EPA expressed environmental concerns about the lack of a water quality monitoring protocol to document existing conditions and recommends the Final EIS include one to track effectiveness of the management approach. Rating EC1.

EIS No. 20090173, ERP No. D–CGD–C50017–00, Goethals Bridge Replacement Project, Construction of Bridge across the Arthur Kill between Staten Island New York and Elizabeth, New Jersey, Funding and USCG Bridge Permit, NY and NJ.

Summary: EPA expressed environmental concerns about impacts to wetlands. Rating EC1.

Final EISs

EIS No. 20090165, ERP No. F–AFS–J65515–UT, Dixie National Forest Motorized Travel Plan, Implementation, Dixie National and the Teasdale portion of the Fremont River Ranger District on the Fishlake National Forest, Garfield, Iron, Kane, Piute, Washington and Wayne Counties, UT.

Summary: EPA does not object to the proposed project.

EIS No. 20090168, ERP No. F–AFS–J65525–00, Hermosa Landscape Grazing Analysis Project, Proposes to Continue to Authorize Livestock Grazing Cascade Reservoir, Dutch Creek, Elbert Creek, Hope Creek South Fork, and Upper Hermosa Allotments, Columbine Ranger District, San Juan National Forest, LaPlata and San Juan Counties, CO.

Summary: EPA recommends the implementation plan include a more rigorous adaptive management plan with thresholds more clearly addressed. EPA also encouraged the Forest Service to consider establishing a water quality monitoring effort.

EIS No. 20090202, ERP No. F–AFS–J65524–MT, Ashland Ranger District Travel Management Project, Proposing to Designate Routes for Public Motorized Use, Ashland Ranger District, Custer National Forest, Rosebud and Power River Counties, MT.

Summary: EPA supported the preferred alternative, since it would

result in reduced adverse effects from motorized routes.

EIS No. 20090204, ERP No. F–AFS–J65523–00, Sioux Ranger District Travel Management Project, To Designate the Road and Trail and Areas Suitable for Public Motorized Travel, Sioux Ranger District, Custer National Forest, Carter County of MT and Harding County of SD.

Summary: EPA supported the preferred alternative, since it would result in reduced adverse effects from motorized routes.

EIS No. 20090215, ERP No. F–AFS–J65534–MT, Miller West Fisher Project, Proposes Land Management Activities, including Timber Harvest, Access Management, Road Storage and Decommissioning, Prescribed Burning and Precommercial Thinning, Miller Creek, West Fisher Creek and the Silver Butte Fisher River, Libby Ranger District, Kootenai National Forest, Lincoln County, MT.

Summary: EPA expressed environmental concerns about erosion and sediment production/transport and associated water quality impacts during logging activities.

EIS No. 20090219, ERP No. F–USA–E11069–GA, Maneuver Center of Excellence at Fort Benning Project, Proposed Community Services, Personnel Support, Classroom Barracks, and Dining Facilities would be Constructed in three of the four Cantonment Areas, Fort Benning, GA.

Summary: EPA expressed environmental concerns about impacts to aquatic habitats, water resources, and wetlands.

Dated: August 11, 2009.

Kenneth Mittelholtz,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–19502 Filed 8–13–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8945–9]

Proposed Amendment to Administrative Order on Consent, Index No. CERCLA–02–2001–2020, Containing a Covenant Not To Sue Under CERCLA Section 122(h), Shenandoah Road Groundwater Contamination Superfund Site, East Fishkill, New York

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed settlement embodied in an amendment to an Administrative Order on Consent, Index No. CERCLA–02–2001–2020 (''Order''). The Order was issued to the International Business Machines Corporation (''IBM'') in connection with the Shenandoah Road Groundwater Contamination Superfund Site, East Fishkill, Dutchess County, New York (''Site''). The amendment to the Order was signed by the U.S. Environmental Protection Agency (''EPA'' or the ''Agency'') on June 15, 2009, and contains a covenant not to sue under Section 122(h) of CERCLA, 42 U.S.C. 9622(h). Under the proposed amendment, EPA is covenanting not to sue IBM for $50,000 of response costs, conditioned upon IBM's assistance to the Town of East Fishkill in acquiring waterline easements to properties at the Site, and upon IBM's performance of its obligations under the Order, including construction of an alternate water supply. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the amendment. EPA will consider all comments received and may modify or withdraw its consent to the covenant not to sue if comments received disclose facts or considerations that indicate that the proposed covenant not to sue is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA, Region 2, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before September 14, 2009.

ADDRESSES: The amendment is available for public inspection at the United States Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866. Comments should reference the Shenandoah Road Groundwater Contamination Superfund Site, East Fishkill, Dutchess County, New York, Index No. CERCLA–02–2001–2020. To request a copy of the amendment, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Carol Y. Berns, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3177.

Dated: July 31, 2009.

John S. Frisco,

Acting Director, Emergency and Remedial Response Division, EPA, Region 2.

[FR Doc. E9–19536 Filed 8–13–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8945–7]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by Sierra Club (''Plaintiff'') in the United States District Court for the Western District of Wisconsin: *Sierra Club* v. *Jackson,* No.3:09-cv-00122-slc (W.D. WI). Sierra Club filed a deadline suit to compel the Administrator to respond to an administrative petition seeking EPA's objection to a CAA Title V operating permit issued by the Wisconsin Department of Natural Resources to Wisconsin Power & Light Company's Columbia Generating Station (''CGS''), near Pardeeville, Wisconsin. Under the terms of the proposed consent decree, EPA has agreed to respond to the petition by September 18, 2009, or within 20 days of the entry date of this Consent Decree, whichever date is later.

DATES: Written comments on the proposed consent decree must be received by *September 14, 2009.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2009–0604, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: John Rowland, Office of General Counsel (Mail Code 2344A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5467; fax number (202) 564–5603; e-mail address: *rowland.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit seeking a response to an administrative petition to object to a CAA Title V permit issued by the Wisconsin Department of Natural Resources to Wisconsin Power & Light Company's Columbia Generating Station (''CGS'') near Pardeeville, Wisconsin. Under the proposed consent decree, EPA has agreed to respond to the petition by September 18, 2009, or within 20 days of the entry date of this Consent Decree, whichever date is later. The proposed consent decree further states that within 15 days following signature of such response, EPA shall deliver notice of such action on the petition to the Office of the Federal Register for prompt publication and, if EPA's response contains an objection in whole or in part, transmit the signed response to the Wisconsin Department of Natural Resources. The proposed consent decree sets the attorneys' fees at $2,057.54.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2009–0604) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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 OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 7, 2009.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E9–19506 Filed 8–13–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: AGM CALIFORNIA, Station KGFM, Facility ID 36234, BPH–20090710ASB, From BAKERSFIELD, CA, To WASCO, CA; AMY MEREDITH, Station NONE, Facility ID 160577, BMP–20090630AFY, From DALHART, TX, To VEGA, TX; ANDERSON RADIO BROADCASTING, INC., Station KZXT, Facility ID 164302, BMPH–20080904ABB, From EUREKA, MT, To HUNGRY HORSE, MT; BRANTLEY BROADCAST ASSOCIATES, LLC, Station WEZZ, Facility ID 40900, BP–20081216BKH, From MONROEVILLE, AL, To BRANTLEY, AL; CALVARY CHAPEL

OF COSTA MESA, INC., Station WCJL, Facility ID 91951, BPED–20090422AAD, From MORGANTOWN, IN, To PARAGON, IN; CALVARY CHAPEL OF CRAWFORDSVILLE, INC., Station WDVL, Facility ID 92984, BMPED–20090612AJO, From DANVILLE, IN, To WAYNETOWN, IN; CHAPIN ENTERPRISES, LLC, Station KRKR, Facility ID 54707, BMPH–20081120AFR, From VALLEY, NE, To WAVERLY, NE; COCHISE MEDIA LICENSES LLC, Station KCYA, Facility ID 166055, BPH–20090702ABF, From KAYCEE, WY, To ROLLING HILLS, WY; CSN INTERNATIONAL, Station WJIK, Facility ID 90846, BMPED–20090520ACR, From MONROEVILLE, AL, To FULTON, AL; EDUCATIONAL MEDIA FOUNDATION, Station WORI, Facility ID 38459, BPED–20090715AAI, From DELHI HILLS, OH, To HARRISON, OH; FAMILY LIFE MINISTRIES, INC., Station WCOU, Facility ID 20634, BPED–20090615AFA, From WARSAW, NY, To ATTICA, NY; GOLD COAST BROADCASTING LLC, Station KFYV, Facility ID 7744, BPH–20090710ASH, From OJAI, CA, To CARPINTERIA, CA; HAWKEYE COMMUNICATIONS, INC., Station KCSI, Facility ID 26456, BMPH–20081020AGI, From TREYNOR, IA, To VILLISCA, IA; HOLY FAMILY COMMUNICATIONS, Station WLOF, Facility ID 31812, BPH–20090615AFG, From ATTICA, NY, To ELMA, NY; LINDA C. CORSO, Station KRDE, Facility ID 37577, BPH–20070502AFL, From GLOBE, AZ, To SAN CARLOS, AZ; POLNET COMMUNICATIONS, LTD., Station WEEF, Facility ID 72957, BMJP–20050118AEC, From HIGHLAND PARK, IL, To DEERFIELD, IL; RINCON BROADCASTING LS LLC, Station KSBL, Facility ID 35592, BPH–20090710ASO, From CARPINTERIA, CA, To OJAI, CA; ROY E. HENDERSON, Station WBNZ, Facility ID 57414, BPH–20090713AAG, From BEULAH, MI, To FRANKFORT, MI,; ROY E. HENDERSON, Station WOUF, Facility ID 14646, BPH–20090713AAH, From FRANKFORT, MI, To BEULAH, MI; SOVEREIGN CITY RADIO SERVICES, LLC, Station WZRK, Facility ID 61389, BP–20090721ABY, From LAKE GENEVA, WI, To NORTHBROOK, IL; STEPHEN R. PETERS, Station WHAW, Facility ID 63489, BP–20090715ACT, From WESTON, WV, To LOST CREEK, WV; STEPHEN R. PETERS, Station WOTR, Facility ID 1103, BPH–20090715ADB, From LOST CREEK, WV, To WESTON, WV; TED W. AUSTIN, JR., Station KRID, Facility ID 164126, BMPH–20080404AEF, From ASHTON, ID, To UCON, ID; VERNON R. BALDWIN, INC., Station WNLT, Facility ID 69986, BPH–20090715AAL, From HARRISON, OH, To DELHI HILLS, OH; WESTERN FAMILY TELEVISION, INC., Station NEW, Facility ID 177234, BMPED–20090722ACK, From GARDINER, MT, To ASHTON, ID.

DATES: Comments may be filed through October 13, 2009.

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

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. E9–19527 Filed 8–13–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 31, 2009.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. David L. Schultz, Luana, Iowa; to acquire additional voting shares of Luana Bancorporation, and thereby indirectly acquire additional voting shares of Luana Savings Bank, both of Luana, Iowa.

Board of Governors of the Federal Reserve System, August 11, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–19495 Filed 8–13–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: August 19, 2009—10 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session

Matters To Be Considered

Open Session

1. *Docket No. 08–04: Tienshan, Inc.* v. *Tianjin Hua Feng Transportation Agency Co., Ltd.*—Request for Extension of Time.

2. FY 2009 Budget Status Update.

Closed Session

1. *Docket No. 08–05:* City of Los Angeles, California, Harbor Department of the City of Los Angeles, Board of Harbor Commissioners of the City of Los Angeles, City of Long Beach, California, Harbor Department of the City of Long Beach, and the Board of Harbor Commissioners of the City of Long Beach—Possible Violations of the Sections 10(b)(10), 10(d)(1) and 10(d)(4) of the Shipping Act of 1984.

2. Internal Administrative Practices and Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Karen V. Gregory,

Secretary.

[FR Doc. E9–19656 Filed 8–12–09; 4:15 pm]

BILLING CODE 6730–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0060]

Federal Acquisition Regulation; Submission for OMB Review; Accident Prevention Plans and Recordkeeping

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

ACTION: Notice of request for reinstatement of an information collection requirement regarding 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 previously approved information collection requirement concerning accident prevention plans and recordkeeping. A request for public comments was published in the **Federal Register** at 74 FR 24854, May 26, 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 September 14, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, 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. Please cite OMB Control No. 9000–0060, Accident Prevention Plans and Recordkeeping, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ernest Woodson, Procurement Analyst, GSA (202) 501–3775 or *e-mail ernest.woodson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR clause at 52.236–13, Accident Prevention requires Federal construction contractors to provide and maintain work environments and procedures which will safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities; avoid interruptions of Government operations and delays in project completion dates; and control costs in the performance of its contract.

For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor is required to provide appropriate safety barricades, signs, and signal lights; comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

B. Annual Reporting Burden

Respondents: 2,106.
Responses per Respondent: 2.
Annual Responses: 4,212.
Hours per Response: 2.
Total Burden Hours: 8,424.
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, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0060, Accident Prevention Plans and Recordkeeping, in all correspondence.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–19553 Filed 8–13–09; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2009–B2]

Guidelines for Public Access Defibrillation Programs in Federal Facilities

AGENCY: Department of Health and Human Services and General Services Administration.

ACTION: Notice.

SUMMARY: On May 23, 2001, the Department of Health and Human Services (HHS) and the General Services Administration (GSA) jointly issued *''Guidelines for Public Access Defibrillation Programs in Federal Facilities.''* 66 FR 28495–28501. These guidelines were prepared, in part, in response to a May 19, 2000, Presidential Memorandum directing HHS and GSA to issue guidelines for the placement of automated external defibrillator (AED) devices in Federal buildings. In addition, section 7 of the Healthcare Research and Quality Act of 1999, Public Law 106–129 (December 6, 1999), 42 U.S.C. 241 note, and section 247 of the Public Health Service Act, 42 U.S.C. 238p (as added by section 403 of the Public Health Improvement Act, Pub. L. 106–505 (November 13, 2000)), directed the Secretary of HHS to establish and publish the guidelines.

This bulletin cancels and replaces the May 23, 2001, notice and provides updated information for establishing public access defibrillation (PAD) programs in Federal facilities.

The revised guidelines provide a general framework for initiating a design process for PAD programs in Federal facilities and provide basic information to familiarize facilities leadership with the essential elements of a PAD program. The guidelines do not exhaustively address or cover all aspects of AED or PAD programs. They are aimed at outlining the key elements of a PAD program so that facility-specific, detailed plans and programs can be developed in an informed manner.

PAD programs are voluntary and are not mandatory for Federal facilities. The costs and expenses to establish and operate a PAD program are the responsibility of the agency sponsoring the program and not GSA or HHS.

DATES: *Effective Date:* August 14, 2009.

FOR FURTHER INFORMATION CONTACT: For further clarification of content, contact Stanley C. Langfeld, Director, Regulations Management Division (MPR), General Services Administration, Washington, DC 20405; or s*tanley.langfeld@gsa.gov.*

Dated: August 7, 2009.

Stanley Kaczmarczyk,

Acting Associate Administrator for Governmentwide Policy, General Services Administration.

Howard Koh,

Assistant Secretary for Health, Department of Health and Human Services.

Public Buildings and Space

To: Heads of Executive Agencies.

Subject: Guidelines for Public Access Defibrillation Programs in Federal Facilities.

1. Purpose. The primary purpose of these guidelines is to provide a general framework for initiating a design process for a public access defibrillation (PAD) program in Federal facilities. A secondary purpose is to familiarize Federal agencies with the essential elements of such a program. The design of a PAD program for any Federal facility will be unique and depends on many factors, including the population demographics of the facility and the surrounding area, and the size and location of the facility and the surrounding area. The design process and key elements of a PAD program described in these guidelines are intended to provide a foundation upon which individually tailored programs are developed and implemented.

This document is not intended to be a comprehensive summary of all aspects of automated external defibrillator (AED) use or establishing and operating PAD programs. Rather, it provides sufficient information to understand the basic key elements of a program and to launch an effective planning and implementation process. There are numerous sources for training and education programs as well as model protocols that can be used at various stages in the process. The required medical consultation can be obtained from Federal sources (see, for example, Federal Occupational Health—*http://www.foh.dhhs.gov/services/AED/AED.asp*) or private contractors.

It is important to note that PAD programs are voluntary and are not mandatory for Federal facilities. The costs and expenses to establish and operate a PAD program are the responsibility of the agency sponsoring the program and not the General Services Administration (GSA) or the Department of Health and Human Services.

2. Expiration Date. This bulletin contains information of a continuing nature and will remain in effect until canceled.

3. General. Over the past several years, advances in technology have provided several innovative opportunities to prevent unnecessary disability and death. One of the most important of these advances is the AED. The ease of use of AEDs by the trained lay public has led to the increasing development of PAD programs. The decreased cost of acquisition and upkeep of AEDs now makes it possible to increase further the availability and access to these lifesaving devices.

Ventricular fibrillation (VF) is a common arrhythmia leading to cardiac arrest and death. VF is unorganized electrical activity of the heart, resulting in no blood flow or pulse that will lead to death. Defibrillation is the only technique that is effective in returning a heart in VF to its normal rhythm. Although defibrillation has been shown to be effective in correcting this abnormality in most cases, up until the advent of AEDs defibrillation has been a medical intervention only available to be performed by credentialed health professionals and trained emergency medical service personnel. While it is difficult to use an AED improperly, AEDs are not without risks, if used improperly. AEDs are generally prescription devices that are intended to be operated only by individuals who have received proper training and within a system that integrates all aspects from first responder care to hospital care. Hence, a significant emphasis on proper training and linkage (notification or transfer) to emergency medical services (EMS) systems is critical. The value of the AED technology is that an AED will not energize unless an appropriate shockable cardiac rhythm is detected.

The efficacy of defibrillation is tied directly to how quickly it is administered. Although the outside limit of the ''window of opportunity'' in which to respond to a victim and take rescue actions is approximately 10 minutes, the sooner the AED is applied within that time period, the more likely it is that it will be effective and that a patient will have a normal heart beat restored and recover fully. As the length of time between the onset of Sudden Cardiac Arrest (SCA) and defibrillation increases, the less the chance of restoration of heart beat and full recovery. In general, for every minute that passes between the event and defibrillation, the probability of survival decreases by 7 to 10 percent. After 10 minutes, the probability of survival is extremely low.

Today's AEDs are relatively inexpensive and usable by persons with limited training. The advantage of well structured PAD programs is that they provide better trained individuals and increase accessibility and, as a result, increase the potential to reduce response times and markedly increase the probability of survival and full recovery.

The importance of rapid and positive intervention is reflected in the American Heart Association's (AHA's) ''Chain of Survival'' concept. The ''Chain of Survival'' is designed to optimize a patient's chance for survival of SCA. There are four links in the chain: (1) Early access, (2) early cardiopulmonary resuscitation (CPR), (3) early defibrillation, and (4) early advanced cardiac life support.

Early access is the first link in the chain of survival and means that members of the workplace have been trained to recognize possible cardiac arrest quickly and notify EMS (*i.e.,* call 911) of the event resulting in activation of an EMS response.

The second link in the chain of survival is to begin CPR immediately. CPR is the critical link that buys time between the first link (notification of EMS) and the third link (use of the AED). The earlier you administer CPR to a person in cardiac or respiratory arrest, the greater their chance of survival. CPR keeps oxygenated blood flowing to the brain and heart until defibrillation or other advanced care can restore normal heart activity. CPR may be administered by a trained responder or an untrained bystander who has witnessed an individual experiencing SCA. In a witnessed SCA situation, trained responders may use either conventional CPR or ''hands-only'' CPR. Untrained responders may use ''hands-only'' CPR in a witnessed SCA situation. In an unwitnessed SCA situation, conventional or ''hands only'' CPR may be used by trained responders. The AHA clarified this approach to CPR in an SCA situation in March 2008, when it updated previous CPR guidelines for witnessed adult SCA to include ''hands-only'' CPR (see, *http://handsonlycpr.eisenberginc.com/faqs.html#a*). These guidelines noted that there was a need to increase the prevalence and quality of bystander CPR. The use of ''hands-only'' CPR is meant to encourage earlier CPR intervention by untrained bystanders and trained bystanders who are not confident that they can perform conventional CPR. Early CPR by trained or untrained bystanders provides precious minutes for trained AED responders as well as EMS teams to arrive.

Early defibrillation (use of the AED) is the third link in the chain of survival. Many SCA victims are in VF, experiencing a lethal, chaotic heart rhythm that prevents the heart from effectively pumping blood. You must defibrillate a victim immediately to stop VF and allow a normal heart rhythm to resume. The sooner you provide defibrillation with the AED device, the better the victim's chances of survival. Several studies have documented the effects of time to defibrillation and the effects of bystander CPR on the chances of survival from SCA. For every minute that passes between collapse and

defibrillation, survival rates from witnessed VF SCA decrease 7 to 10 percent, if no CPR is administered.

The fourth link in the chain of survival is early advanced care. This link is provided by highly trained EMS personnel. EMS personnel give basic life support and defibrillation as well as more advanced care that can help the heart respond to defibrillation and maintain a normal rhythm after a successful defibrillation.

The material in these guidelines is based upon the recommendations, programs and literature on AEDs from the AHA and the American Red Cross (ARC), leaders in the encouragement of AED installation, training and usage. The AHA and ARC cooperate with other organizations in developing and improving standards for AEDs. Users of this guidance should check the latest AHA, ARC and National Safety Council (NSC) information for updates or changes to the recommendations.

Special Note: As is the case with most clinical developments, the science-supporting efficacy in controlled settings usually precedes evidence of effectiveness when implemented large-scale in real world settings. The science surrounding the effectiveness of AEDs, as well as the technology of AEDs themselves, is evolving.

For Federal agencies in space under the jurisdiction, custody or control of GSA, the Designated Official under the facility's Occupant Emergency Plan (as defined in 41 CFR 102–71.20) is responsible for oversight of the facility's PAD program. As provided in 41 CFR 102–71.20, the Designated Official is the highest-ranking official of the primary occupant agency of a Federal facility, or, alternatively, a designee selected by mutual agreement of occupant agency officials (see). AED programs should evolve based on the best available science to assure the most efficient use of resources and the best outcomes possible.

4. The Concept of Public Access Defibrillation. Until recently, AEDs and other defibrillation devices had to be brought to locations by the local EMS system. The size, cost and complexity of these devices, as well as other factors, served to limit their use. With recent advances in technology, many of the previous constraints have been reduced or eliminated. Increasingly, AEDs are being deployed in public facilities, such as sports arenas, shopping malls and airports, or in police and fire units, thus potentially decreasing the time between cardiac arrest and access to defibrillation.

However, optimal improvement in survival from SCA that occurs in a non-medical setting may require a program that relies upon community lay (*i.e.,* non-medical) responders or rescuers (LRRs) who have been trained in CPR and in the appropriate use of AEDs. A comprehensive, well integrated community approach to the use of AEDs would serve a large proportion of that community (*e.g.,* a facility, a campus, etc.). LRRs could quickly respond to, identify and treat a cardiac arrest patient and activate the formal EMS system.

''Public access'' to AEDs does not mean that any member of the public who witnesses an event should be able to use an AED. ''Public access'' refers to the accessibility of the device itself. While AEDs are reasonably uncomplicated to use, the AED should be used only by persons who have received proper training and education from a nationally recognized training institution or association. Persons without these basic credentials should not use the device.

5. Establishing a Public Access Defibrillation Program in a Federal Facility. Before establishing a program in a Federal facility, each agency should enlist the assistance of not only the personnel at that location, but also local training, medical and emergency response resources. These partnerships are fundamental to any successful PAD program. In some instances, a facility may be large enough to have training, medical and emergency response resources integral to Federal operations. For the most part, this will be the exception rather than the rule, but the same principles apply. The more closely the PAD program is connected to such resources and the more visibility and support given to the program by the facility leadership, the more the program will be effective and successful.

Each PAD program should include the following major elements:

- Support of the program by each of the facility's occupant agencies
- Training and retraining personnel in CPR and the use of the AED and accessories
- Obtaining medical direction and medical oversight from nationally recognized institutions or agencies (for example, medical oversight can be obtained through existing federal resources such as Federal Occupational Health—*http://www.foh.dhhs.gov/services/AED/AED.asp*)
- Understanding legal aspects
- Development and regular review of the PAD program and standard operational protocols (SOPs)
- Development of an emergency response plan and protocols, including a notification system to activate responders
- Integration with facility security and EMS systems
- Maintaining hardware and support equipment on a regular basis and after each use (Note: AEDs are not building equipment and, as such, are not inventoried or maintained by GSA or property management personnel)
- Educating all employees regarding the existence and activation of the PAD program
- Development of quality assurance and data/information management plans
- Development of measurable performance criteria, documentation and periodic program review
- Review of new technologies

It is important to emphasize that PAD programs are not isolated ''one-time events.'' PAD programs should be reviewed on a regular basis and improved, where possible. Additionally, after every incident involving the use of the PAD system, a thorough post-event review of system performance should be undertaken.

A key element in assuring that the PAD program will be clearly understood and will function well is the development of SOPs for the major components of the program. SOPs, as well as the program as a whole, should be periodically revisited and revised, where appropriate.

6. Designing a Public Access Defibrillation Program. Given the wide variety of Federal work facilities, there will be significant variation in the complexities associated with PAD program design. Not all Federal facilities are appropriate for PAD programs. The decision to develop a PAD program for a particular Federal facility should include all major stakeholders in the potential PAD program, including consultation with a physician (consultation with a physician can be obtained through existing federal resources such as Federal Occupational Health—*http://www.foh.dhhs.gov/services/AED/AED.asp*). Facility leadership should take steps to assure that all stakeholders, including those who are external to the facility, are afforded the opportunity to participate in planning and design. Small, physically compact offices will require different levels of planning and design than large, multi-building facilities spread over campus environments. Although it is possible to have the full range of planning and design activities performed by a consultant or contractor, it should be kept in mind that the actual responders at a facility typically will be those who work there and that both individual

employees and union interests, in accordance with collective bargaining agreements, should be considered in any process. Officials in the facility's management ''chain of command'' must have close involvement at every step, as provided in 41 CFR 102–74.230 through 102–74.260, entitled ''Occupancy Emergency Program,'' for occupants of facilities under GSA's jurisdiction, custody or control.

While many Federal agencies' facilities are single-tenant buildings or may have several tenants under the clear command or leadership of a ranking official, other GSA facilities contain multiple tenants that are not under the direction of a single agency official. For guidance on establishing, coordinating and implementing a comprehensive Occupancy Emergency Program, see 41 CFR 102–74.230 through 102–74.260, entitled ''Occupancy Emergency Program.'' For these purposes, the definition of ''emergency'' includes medical emergencies (see 41 CFR 102–71.20). In facilities that are multi-tenant, special attention should be paid to avoid confusion about decision-making processes and authority for the development and operation of a PAD program. It is recommended that the Federal agencies in multi-tenant facilities follow the guidelines described in 41 CFR 102–74.230 through 102–74.260 to assure clarity of responsibility and accountability.

We further recommend that AED response orders be included as part of each facility's Occupant Emergency Plan. See ATTACHMENT A, entitled ''SAMPLE AED PROTOCOL AND RESPONSE ORDER ELEMENTS.''

7. Selecting Your Automated External Defibrillator. Only commercially available AEDs that have been cleared for marketing by the U.S. Food and Drug Administration (FDA) should be considered for use in a PAD program. Prior to purchasing, it is important for facility leadership to seek assistance in the selection of a device for deployment in the facility. Because technology is developing quite rapidly, seeking the advice of an individual or organization with current knowledge about AEDs is essential. Involving a medical oversight provider(s) is crucial.

All AEDs in PAD programs should be consistent with current AHA Guidelines for CPR and Emergency Cardiac Care. This includes the audio and visual commands of the AED as well as the electrocardiographic analysis and defibrillation algorithms.

Additionally, as there are some differences in the devices currently on the market, an expert can help to explain the relative advantages and disadvantages of AEDs for a particular location. Utilizing a single brand of AED within a facility will greatly simplify training, maintenance and data management.

Currently, there are Federal Acquisition Service supply contracts for AEDs. However, most AEDs require a prescription from a physician for purchase. At the present time, there is only one AED cleared for over-the-counter-sale. The selection of a particular AED and associated equipment are integral components of a PAD program and, in such a program, plans and protocols that are approved by a supervising physician are considered a prescription. Once the physician has approved and signed off on AED selection and placement, if required, this becomes the authorizing prescription for procurement of the device(s). An agency's procurement office can assist in locating current contract information and prices. The physician providing medical oversight for a PAD program can advise on prescription requirements for the AED.

In the future, additional products are likely to receive clearance for marketing from the FDA. Program designers should take steps to confirm that all devices that are acquired have received FDA clearance and that the use of AEDs in their respective facilities fully complies with FDA labeling requirements.

Emergency response and AED usage protocols signed by a physician constitute legal authorization for properly trained and certified individuals to use AEDs in a particular manner as outlined in the protocol. Responders must be familiar with and trained in the context of the approved procedures in the facility and strictly adhere to these procedures when an emergency occurs.

The actual selection and procurement of AEDs should be one of the last steps in the design of a facility's PAD program and should be done under the guidance and written authorization of the PAD program's supervising physician. The protocol for AED usage that is developed as part of a facility's PAD program is an integral part of the physician's medical oversight and serves as the authorizing document for AED use. Protocols should be reassessed periodically in accordance with a regular schedule of reviews as determined in consultation with the PAD's supervising physician. A current protocol that takes into consideration both new treatment recommendations and any changes in the FDA labeling of the AED should be integrated into the PAD training and education and re-training programs.

Essentially, the protocols that are signed by the supervising physician set the medical standards and criteria for the operation of the PAD program and all of its components. Systems operated within the boundaries and criteria of these signed protocols are considered to be under a physician's supervision, whether or not the physician is physically present in the facility. As noted in this guidance, PAD programs should be reviewed on a regular basis (after each activation and on a regular basis) with changes made, as needed, under the direction of the supervising physician. Revised protocols should be in accordance with current AHA Guidelines for CPR and Emergency Cardiovascular Care.

8. Medical Oversight of a Public Access Defibrillation Program. AEDs are medical devices that are to be used under the advice and consent of a physician only by individuals with the proper training and certification. Therefore, medical oversight is an essential component of PAD programs. This oversight can be provided either by a facility's own physician, through existing federal resources (including Federal Occupational Health—*http://www.foh.dhhs.gov/services/AED/AED.asp*) or by a contracting physician, in accordance with applicable federal, state and local laws. It is best to seek medical input from the very beginning of the program. A physician should be involved as a consultant in all aspects of the program.

Medical and physician oversight does not mean that a physician is required to be present to manage the PAD program on a day-to-day basis. However, it is prudent for facility leadership to develop management and oversight protocols of lay program overseers so that quality is consistently maintained. Additionally, a central role for the physician is conducting assessment of the PAD system's performance after the use of an AED, including review of the AED data and the electrocardiograph tracing of a victim.

9. Legal Issues. Any PAD program should be reviewed by agency legal counsel, so that the program, as designed, is in compliance with all applicable federal, state and local laws. PAD programs establish procedures for dealing with emergent medical situations that present an appreciable risk of serious bodily injury and death regardless of the degree of care exercised by those involved in responding to the situation. These situations are often the subject of regulation by various authorities. The

risk of liability for failing to comport with applicable regulations, and for acts or omissions that result in harm, are important and ever-present concerns that should be addressed in the PAD program. Though federally owned facilities generally are not subject to state and local authority, federal law can incorporate or adopt specific state and local authorities or otherwise make them applicable to federal facilities.

One of the most important legal concerns with any PAD program will be the potential liability of those who respond to the emergent situation, including, potentially, Federal employees. The following legal principles should be considered in developing a PAD program:

• As a general rule, the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2401(b), 2671–80 (FTCA), immunizes Federal employees acting within the scope of their employment from personal liability for most tortious conduct. Whether an individual Federal employee is acting within the scope of his or her employment is, under the FTCA, determined by the substantive law of the state where the act or omission occurred. Employees whose use of an AED is outside the scope of employment may not be entitled to either immunity from liability under the FTCA or representation by the Department of Justice, in the event suit is filed challenging their conduct in operating an AED system. However, other immunity provisions may apply as discussed below.

• The liability of the Federal Government for injuries caused by Federal employees acting within the scope of their employment also is determined by the FTCA. The FTCA provides that liability is determined according to the law of the place where the wrongful or negligent act or omission occurred. Under the FTCA, the Federal Government is not liable for the wrongful acts of any person who is not a ''Federal employee'' as defined in 28 U.S.C. 2671.

• Under the FTCA, the United States is subject to liability for the negligence of an independent contractor only if it can be shown that the government had authority to control the detailed physical performance and exercised substantial supervision over the day-to-day operations of the contractor. Thus, a PAD program should consider placing responsibility for responding to emergency medical situations on a contractor over whom the Federal Government does not exercise day-to-day control. The PAD program should, however, include criteria to assure that the contractor has the requisite expertise, training and resources.

• Many states have enacted legislation to provide some degree of immunity to lay individuals who provide assistance to people in distress. The laws are called ''Good Samaritan'' laws. Since these laws vary from state to state, management of individual facilities should be aware of the law applicable to their facility.

• Congress provided additional protection from civil liability for AED use in the Public Health Improvement Act, Public Law 106–505 (November 13, 2000). Subtitle A of Title IV of the Public Health Improvement Act, referred to as the Cardiac Arrest Survival Act of 2000, provides persons who use or attempt to use an AED, and persons who acquire an AED, immunity from civil liability for harms resulting from the use or attempted use of the AED, subject to a number of important exceptions. The statute provides default immunity only. The federal immunity supersedes state law only to the extent that a state has no statute or regulation that provides users or acquirers with immunity for civil liability arising from the use of an AED in an emergency situation. The statute explicitly states that its provisions are not intended to waive any protections from liability for Federal officers and employees provided in the FTCA or the Westfall Act. Nothing in these guidelines or in any PAD program established pursuant to these guidelines should be read as creating a duty for Federal employees or contractors not otherwise existing under applicable state or Federal law to provide assistance to persons in medical distress.

10. Lay Responder and Rescuer Training. Even in the case where large facilities have self-contained emergency medical services systems, it is still advisable to devise a training program for LRRs. The greater the number of well trained LRRs that are available, the more effective a PAD program will be. Overall effectiveness will be improved as the number of personnel who are fully trained and willing to respond increases. As a general matter, in facilities where there are sufficient numbers of personnel to permit in-house training programs, a routine training schedule should be established. An additional benefit of in-house training is that training in groups that correspond closely with work groups tends to build a better sense of team and responsibility than would individual, separate training.

Nationally recognized training organizations, such as AHA, ARC and NSC, provide materials and guidance through a variety of courses that include combined CPR and AED training. These programs provide comprehensive materials for the training of LRRs and are targeted toward providing lay persons all of the information and training necessary to assess the status of a victim competently, administer CPR, if necessary, and to operate an AED properly. Some PAD programs may require additional training in pediatric CPR, if there are children in the facility, *i.e.,* a daycare facility. It is important for LRRs to be trained in the maintenance and operation of the specific AED model that will be used in their PAD program.

Although universal precautions are taught in CPR and AED classes, additional bloodborne pathogen training is highly recommended for LRRs. Federal agencies utilizing LRRs should develop an ''Exposure Control Plan for Bloodborne Pathogens,'' which may be incorporated into the Occupancy Emergency Program for the facility.

Agencies should organize their responses around a team approach using either LRRs or existing emergency response resources, such as security.

All PAD training programs should include a component that describes and explains the facility specific program. All retraining or refresher programs should, likewise, include this component to assure that LRRs are aware of the most current information regarding their specific PAD program.

Training is not a one-time event. Leadership should seek to maintain and improve the LRRs' skills and abilities. Formal CPR and AED training should be conducted at the frequency as recommended by the nationally recognized training organization used by the agency, but at least every two years. Mock drills and refresher sessions engage teams in periodic ''scenario'' practice sessions to maintain LRRs skills and rehearse protocols. Computer-based programs, video teaching materials and AED trainer devices permit more frequent review of basic CPR and AED skills. Mock drills and refresher practice sessions will be important to maintain current knowledge and a reasonable comfort level among LRRs and response teams. Mock drills are recommended on an annual basis and the mock drill results should be reviewed by the program's medical director. The frequency of sessions will vary from facility to facility. Refresher sessions should be held at least every six months and established in consultation with the physician providing medical oversight.

11. Placement of and Access to Automated External Defibrillators. While there is no single ''formula'' to determine the appropriate number,

placement, and access system for AEDs, there are several major elements that should be considered. However, all considerations are based upon (1) an optimal response time of 3 minutes or less and (2) an assessment of the level of risk in a facility's environment. Factors that should be considered include:

• *Response Time:* The optimal response time is 3 minutes or less. This interval begins from the moment a person is identified as needing emergency care to when the AED is at the side of the victim. Survival rates decrease by 7 to 10 percent for every minute that defibrillation is delayed. Therefore, it is recommended that Federal agencies train as many employees as possible on the use of AEDs.

• *Demographics of the Facility's Workforce:* Leadership should examine the composition of the resident workforce. Since the likelihood of an event occurring increases with age, special consideration should be given to the age profile of the workforce.

• *Visitors:* Facilities (including Federal areas, such as Wilderness Areas and National Parks) that host large numbers of visitors are more likely to experience an event, and an appraisal of the demographics of visitors should be included in an assessment.

• *Specialty Areas:* Facilities where strenuous work is conducted are more likely to experience an event. Additionally, specialty areas within facilities, such as exercise and work out rooms, should be considered to have a higher risk of an event than areas where there is minimal physical activity.

• *Physical Layout of Facility:* Response time should be calculated based upon how long it will take an LRR with an AED walking at a rapid pace to reach a victim. Large facilities and buildings with unusual designs, elevators, campuses with several separate buildings, and physical impediments all present unique challenges to LRRs. In some larger facilities, it may be necessary to incorporate the use of properly equipped ''golf cart'' style conveyances to accommodate time and distance conditions.

• *Physical Placement of AEDs:* Facilities that have large open areas present unique challenges.

• GSA should be notified of any alterations necessary to accommodate the placement of AEDs in GSA-controlled facilities.

12. Characteristics of Proper Automated External Defibrillator Placement. There are several elements that contribute to the proper placement of AEDs. The major elements are:

• An easily accessible position (*e.g.,* placed at a height so those shorter individuals can reach and remove the device, unobstructed access).

• A secure location that prevents or minimizes the potential for tampering, theft or misuse, and precludes access by unauthorized users. Facilities should take additional steps to assure that an AED has not been stolen or improperly removed.

• A location that is well marked, publicized and known among trained staff. Periodic ''tours'' of locations are recommended.

• A nearby telephone that can be used to call backup, security, EMS, or 911 to be sure that additional help is dispatched.

• Protocols should clearly address procedures for activating local EMS personnel. These protocols should include notification of EMS personnel of the quantity, brands and locations of AEDs within the facility. This information will enhance dispatch and the EMS responder protocol, enabling proper planning and scene management once EMS personnel arrive at the victim's side. Equipment stored in a manner in which the removal of the AED automatically notifies security, EMS or a central control center is ideal.

• Where automatic notification of the opening of an AED storage cabinet or removal of an AED from a cabinet is not implemented, emphasis should be placed on notification procedures and equipment placement in close proximity to a telephone.

Equipment To Be Placed With AEDs

It is recommended that additional items that may be necessary to a successful rescue be placed in a bag and stored and accessible with the AED. Keep in mind that CPR is an essential element of an effective rescue and that, as a victim collapses, other physical injury may occur concurrently:

• A set of simplified directions for CPR and the use of the AED

• Non-latex protective gloves (several pairs in small, medium and large sizes)

• Appropriate sizes of CPR face masks with detachable mouthpieces, plastic or silicone face shields (preferably clear), with one-way valves, or other type of barrier device that can be used in mouth to mouth resuscitation

• Disposable razor to dry shave a victim in chest areas, if needed, as well as a supply of 4x4 gauze pads to clear and dry an area, to assure proper electrode-to-skin contact

• A pair of medium size bandage or blunt end scissors

• Spare battery and electrode pads

• Two biohazard or medical waste plastic bags for waste or for transport of the AED should it become contaminated

• Pad of paper and writing tools

• One absorbent towel

In large or complex facilities, access routes should be given careful consideration. Such facilities may demand the use of a designated responder or team approach, in which at least one responder has keys or passes to allow for the use of a more direct route or elevator override key to expedite access and transport by appropriate medical or EMS personnel.

13. Follow-up After an Automated External Defibrillator Is Used. All AEDs are equipped with a credit card size device (*i.e.,* data card), or have the capacity to internally store data for later downloading, that will record and contain information about the patient's heart rhythm, AED assessment functioning, and the characteristics of the shock(s) administered. Depending on the design of a particular PAD, the AED will either accompany the victim to the hospital or will be retained on site for the medical advisor as part of the PAD's program review. The proper disposition of the AED and its electronic recorder module must be addressed in a PAD program's protocols.

After an event, the PAD medical director should be promptly notified, and a review and assessment of performance should be performed. This process is best led by the PAD's physician overseer. A copy of the full report should be provided to and reviewed by the Designated Official and any other authorities, as required by applicable state and local laws.

Incident reports and follow-up should be performed as soon as possible, and restocking of supplies and returning the AED to service should be accomplished promptly. All aspects of the performance of the system, people, device, and protocols should be addressed in a non-judgmental manner with an eye toward verifying or improving effectiveness and to identify problem areas that must be resolved. Responsibility for each step should be clearly articulated in protocols. The results of routinely scheduled and post-event reviews should be shared and discussed with facility management and other interested parties, as deemed appropriate in a particular facility. Individuals with responsibility for facility oversight are also responsible for the PAD program and should remain informed about their program's performance.

Post-event reviews should be arranged and conducted with sensitivity to issues

of medical and patient record confidentiality. As such, the physician overseeing the PAD program should conduct a thorough medical documentation review prior to the ''process'' evaluation that will be conducted by or for individuals with responsibility for facility management. The physician should be responsible for assuring that privileged or confidential patient information is shielded.

An essential post-event consideration is the psychological effect on LRRs and others. It is not at all uncommon for LRRs, witnesses and co-workers to have psychological or stress reactions to an event. These people may have both emotional and physical reactions that need to be addressed, but for which there is a reluctance to come forward to ask for help. Facility leadership has a positive obligation to reach out and offer help to these individuals, affirming that such responses are normal and to a large extent to be expected. Post-event support is especially important in cases where a rescue is unsuccessful. Post-event support should be available and offered promptly after an event, and the invitation to seek assistance should remain open. This type of psychological care is best provided by trained professionals with expertise in the area of critical incident stress management. Provision of these psychological services should be addressed in the PAD program design and protocols.

Attachment A

Sample AED Protocol and Response Order Elements

Activation of the Automated External Defibrillator Response Team

1. During Health Unit Duty Hours: 7 a.m. to 12 a.m. Monday through Friday; weekends and Federal holidays, the Health Unit is closed. In any potentially life-threatening cardiac emergency:

(a) The first person on the scene will:

(i) Call the Security Console by dialing ''0000'' and inform them of the location and nature of the emergency.

(ii) Remain with the victim, send a co-worker to meet the emergency team at a visible location and escort to the site.

(iii) Initiate CPR.

(b) Security Personnel immediately upon receiving the call will:

(i) Notify the AED response team by dialing the group notification number for the AED team pagers and enter the code for the location of the emergency.

(ii) Notify local EMS 911.

(iii) Inform the EMS operator of location and nature of emergency and that an AED unit is on site.

(iv) Notify Federal Police Officer(s) to meet the EMS personnel and escort them to the site of the emergency.

(v) Notify Federal Police Officer(s) to respond to the site and offer any assistance needed (if staffing allows).

(c) Health Unit staff immediately upon receiving the notification will proceed directly to the scene with the Health Unit AED and other emergency equipment (2 nurses will respond, if available).

(d) Other AED responders immediately upon receiving the notification will:

(i) (The team member previously designated to transport the AED unit) obtain the AED unit closest to them or to the site of the emergency and proceed with it to the emergency site.

(ii) (All other AED responders) go directly to the site of the emergency.

Emergency Site Protocol

—Whichever AED responder arrives on the scene first will assess the victim. If AED use is indicated, the AED trained personnel will administer the AED and assist with CPR according to established protocols (see AED Treatment Algorithm).

—When the Health Unit Nurse is on the scene, he or she shall be in charge of directing the activities until the local EMS arrives and assumes care of the victim.

—Any additional AED responders shall assist with CPR, recording of data and time, notifications, crowd control, and escorting of EMS, as needed. Any additional AED units will remain on site as a back-up.

2. Non-Health Unit Hours: 12 a.m. to 7 a.m. Monday through Friday, and All Hours Saturday, Sunday and Federal holidays. In any potentially life-threatening cardiac emergency:

(a) The first person on the scene will:

(i) Call the Security Console by dialing ''0000'' and inform them of the location and nature of the emergency.

(ii) Remain with the victim, send a co-worker to meet the emergency team at a visible location and escort to the site.

(iii) Initiate CPR.

(b) Security Personnel immediately upon receiving the call will:

(i) Notify the AED response team by dialing the group notification number for the AED team pagers and enter the code for the location of the emergency.

(ii) Notify local EMS 911.

(iii) Notify Federal Police Officer(s) to meet the EMS personnel and escort them to the site of the emergency.

(iv) Notify Federal Police Officer(s) to respond to the site and offer any assistance needed (if staffing allows).

(c) AED Responders immediately upon receiving the notification will:

(i) (The team member previously designated to transport the AED unit) obtain the AED unit closest to them or to the site of the emergency and proceed with it to the emergency site.

(ii) (All other AED responders) go directly to the site of the emergency.

(iii) (Whichever AED responder arrives on the scene first) assess the victim. If AED use is indicated, the AED trained personnel will administer the AED and assist with CPR according to established protocols (see AED Treatment Algorithm) until local EMS professionals arrive and assume care of the victim.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0208; 30-day notice]

Agency Information Collection Request. 30–Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Applicant Background Survey—OMB No. 0990–0208- Extension- Assistant Secretary for Administration and Management.

Abstract: The Applicant Background Survey form will be used for the next three years by the Operating Divisions (OPDIVs). The major sub-organizations within the Department of Health and Human Services (HHS), will collect and analyze data on race, sex, national origin, and disability from applicants for employment. Information will be collected by each of the personnel offices in the Department. The form will be used routinely by the OPDIVs when recruiting for all positions, including senior level positions and for selected job series where workforce analysis has shown evidence of low representation of minorities, women, or persons with disabilities. The results of the collection will assist the Department to determine if present recruitment sources yield qualified minority and female applicants and applicants with disabilities as required by EEOC MD 715.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Individuals	30,000	1	2 minutes	1,000

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E9–19513 Filed 8–13–09; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–; 30-Day Notice]

Agency Information Collection Request; 30–Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

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To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office at (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Evaluate the Advancing Systems Improvements to Support Targets for Healthy People 2010 (ASIST2010) Program—OMB No. 0990–NEW—Office on Women's Health.

Abstract: The Office on Women's Health is collecting data from 13 funded grantees and clients participating in ASIST2010, a three-year, cooperative agreement program. ASIST2010 uses a public health systems approach to improve performance on two or more of seven Healthy People 2010 (HP 2010) objectives that target women and/or men in six focus areas—cancer, diabetes, heart disease and stroke, access to quality health services, educational and community-based programs, nutrition and overweight, and physical activity and fitness. The goals of the ASIST2010 program are to: (1) Provide additional support to existing public health systems/collaborative partnerships to enable them to add a gender focus to HP 2010 objectives that track the health status of women and/or men, to help improve gender outcome in the targeted population and/or geographic area; (2) improve surveillance/information systems that allow tracking of program progress on HP 2010 objectives at the grantee level; and (3) develop and implement a plan to sustain the program after OWH funding ends. The sites participating in the ASIST2010 program represent four academic medical centers, three community-based organizations, two hospitals, two state health departments, one county health department, and one foundation.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total burden (in hours)
Grantee Staff	Grantee Telephone Interview Protocol (Round 1). Site Visit Advance Letter. Site Visit Protocol. Grantee Telephone Interview Protocol (Round 2).	65	3	1	195
Partner Organization Staff (In-person interviews).	Site Visit Protocol	52	1	1	52
Consumers (In-person interviews)	Site Visit Protocol	18	1	1	18
Consumers (Focus groups)	Focus Group Advance Letter Focus Group Flyer.	40	1	1.5	60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total burden (in hours)
Comparison Organization Staff (Telephone Interviews).	Consumer Focus Group Discussion Guide. 10 ..... Comparison Organization Interview Protocol.	1	1	10	Advance Letter for Comparison Organizations
Total	.....	.....	.....	.....	335

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E9–19515 Filed 8–13–09; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10050, CMS–1450(UB–04), CMS–276 and CMS–R–254]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of the currently approved collection; *Title of Information Collection:* New Enrollee Survey; *Use:* The New Enrollee survey was developed to gather information from newly enrolled Medicare beneficiaries about their Medicare knowledge and needs. CMS is seeking understanding about what types of information new enrollees need and what they know about Medicare. Included in the survey are questions regarding how well informed new enrollees are about Medicare and what information they have received about the Medicare program. Information gathered in this survey will be used only for purposes of targeting and improving communications with newly eligible Medicare beneficiaries. *Form Number:* CMS–10050 (OMB#: 0938–0869); *Frequency:* Reporting—Quarterly; *Affected Public:* Individuals or Households; *Number of Respondents:* 1200; *Total Annual Responses:* 1200; *Total Annual Hours:* 300. (For policy questions regarding this collection contact Renee Clarke at 410–786–0006. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Uniform Institutional Provider Bill and Supporting Regulations in 42 CFR 424.5; *Use:* Section 42 CFR 424.5(a)(5) requires providers of services to submit a claim for payment prior to any Medicare reimbursement. Charges billed are coded by revenue codes. The bill specifies diagnoses according to the International Classification of Diseases, Ninth Edition (ICD–9–CM) code. Inpatient procedures are identified by ICD–9–CM codes, and outpatient procedures are described using the CMS Common Procedure Coding System (HCPCS). These are standard systems of identification for all major health insurance claims payers. Submission of information on the CMS–1450 permits Medicare intermediaries to receive consistent data for proper payment. *Form Numbers:* CMS–1450 (UB–04)(OMB#: 0938–0997); *Frequency:* Reporting—On occasion; *Affected Public:* Not-for-profit institutions, Business or other for-profit; *Number of Respondents:* 53,111; *Total Annual Responses:* 181,909,654; *Total Annual Hours:* 1,567,455. (For policy questions regarding this collection contact Matt Klischer at 410–786–7488. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Prepaid Health Plan Cost Report; *Use:* Health Maintenance Organizations and Competitive Medical Plans (HMO/CMPs) contracting with the Secretary under Section 1876 of the Social Security Act are required to submit a budget and enrollment forecast, four quarterly reports and a final certified cost report. Health Care Prepayment Plans (HCPPs) contracting with the Secretary under Section 1833 of the Social Security Act are required to submit a budget and enrollment forecast, mid-year report, and final cost report. An HMO/CMP is a health care delivery system that furnishes directly or arranges for the delivery of the full spectrum of health services to an enrolled population. A HCPP is a health care delivery system that furnishes directly or arranges for the delivery of certain physician and diagnostics services up to the full spectrum of non-provider Part B health services to an enrolled population. These reports will be used to establish the reasonable cost of delivering covered services furnished to Medicare enrollees by an HMO/CMP or HCPP.; Form Numbers: CMS–276 (OMB#: 0938–0165); *Frequency:* Recordkeeping, Reporting—Quarterly and Annually; Affected Public: Business or other for-profit; *Number of Respondents:* 35; *Total Annual Responses:* 128; *Total Annual Hours:* 5,285. (For policy questions regarding this collection contact Temeshia Johnson at 410–786–8692. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Reinstatement of a currently approved collection; *Title of*

Information Collection: National Medicare & You Education Program (NMEP) Survey of Medicare Beneficiaries *Use:* The Centers for Medicare and Medicaid Services is requesting a reinstatement of this information collection request to continue to collect information from Medicare beneficiaries, caregivers, health care providers, and health information providers. The collection of information was inadvertently discontinued in December 2008; however, as stated earlier, we are currently seeking a reinstatement with change as we have revised the collection instrument. It is critical for this agency to obtain feedback from the aforementioned groups so that the agency can accurately assess the needs of the Medicare audience. Using random digit dial and/or an administrative sample, members of the Medicare audience will be called and asked to complete the survey via telephone. The results of this survey will be compiled and studied so that communication may be amended to benefit Medicare's audience. The survey has the following objectives: to assess satisfaction with and knowledge of the Medicare program; to gather information on health behaviors and quality of health care; to determine the most used source for Medicare information; and to gather information from health care provider and health information providers. *Form Number:* CMS–R–254 (OMB# 0938–0738); *Frequency:* Once; *Affected Public:* Individuals and Households, Private Sector—Business or other for-profits; *Number of Respondents:* 7,000; *Total Annual Responses:* 7,000; *Total Annual Hours:* 1,750.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on September 14, 2009: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Dated: August 7, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–19537 Filed 8–13–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–284 and CMS–10190]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Medicaid Statistical Information System; *Use:* State data are reported by the Federally mandated electronic process, known as (MSIS) Medical Statistical Information System. These data are the basis of actuarial forecasts for Medicaid service utilization and costs; of analysis and cost savings estimates required for legislative initiatives relating to Medicaid and for responding to requests for information from CMS components, the Department, Congress and other customers.

Form Number: CMS–R–284 (OMB#: 0938–0345); *Frequency:* Reporting—Quarterly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 204; *Total Annual Hours:* 2,040. (For policy questions regarding this collection contact Denise Franz 410–786–6117. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Section 1901 of the Act (42 U.S.C. 1396) requires that States must establish a State plan for medical assistance that are approved by the Secretary to carry out the purposes of title XIX. The DRA provides States with numerous flexibilities in operating their State Medicaid programs. The intent of these flexibilities is to provide States with program alternatives that allow them to provide the most appropriate health care coverage that meets beneficiary needs, while at the same time curtailing State and Federal spending. Except for the documentation of citizenship requirements, States can submit SPAs to CMS to effectuate these changes to their Medicaid programs. CMS provided State Medicaid Directors letters providing guidance on these provisions and the implementation of the DRA and associated SPA templates for use by States to modify their Medicaid State plans if they choose to implement these flexibilities. Under this process, the end result is the State burden will be reduced significantly. To implement these flexibilities, a collection of information to effectuate these changes is required. Therefore, State Medicaid agencies will complete the templates to effectuate the changes. CMS will review the information to determine if the State has met all of the requirements of the DRA provisions the States choose to implement. If the requirements are met, CMS will approve the amendments to the State's Title XIX plan giving the State the authority to implement the flexibilities. For a State to receive Medicaid Title XIX funding, there must be an approved Title XIX State plan. Five templates were created to assist States in effectuating these flexibilities through modifications to the State plan. The Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009, enacted on February 4, 2009, corrected language in section 6044 (Alternative Benefit Packages) of the DRA as if these amendments were included in the DRA, and subsequently amended section 1937 ''State Flexibility for Medicaid Benefit Packages.'' We have modified the preprints to reflect these statutory changes. *Form Number:* CMS–10190 (OMB#: 0938–0993); *Frequency:* Reporting—Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 16; *Total*

Annual Hours: 699. (For policy questions regarding this collection contact Fran Crystal at 410–786–1195. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by October 13, 2009:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number (CMS–R–284 and CMS–10190), Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 7, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–19539 Filed 8–13–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0342]

International Conference on Harmonisation; Draft Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex 10 on Polyacrylamide Gel Electrophoresis General Chapter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 10: Polyacrylamide Gel Electrophoresis General Chapter.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance provides the results of the ICH Q4B evaluation of the Polyacrylamide Gel Electrophoresis General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The draft guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The draft guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. This draft guidance is the tenth annex to the core Q4B guidance, which was made available in the **Federal Register** of February 21, 2008 (73 FR 9575).

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 October 13, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling the Center for Biologics Evaluation and Research at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. 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:

Regarding the guidance: Robert H. King, Sr., Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4150, Silver Spring, MD 20993–0002, 301–796–1242; or

Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–0373.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is

provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In June 2009, the ICH Steering Committee agreed that a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 10: Polyacrylamide Gel Electrophoresis General Chapter'' should be made available for public comment. The draft guidance is the product of the Q4B Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Q4B Expert Working Group.

The draft guidance provides the specific evaluation results from the ICH Q4B process for the Polyacrylamide Gel Electrophoresis General Chapter harmonization proposal originating from the three-party PDG. This draft guidance is in the form of an annex to the core ICH Q4B guidance. Once finalized, the annex will provide guidance to assist industry and regulators in the implementation of the specific topic evaluated by the ICH Q4B process.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on 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 the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. 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.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm*.

Dated: July 31, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–19522 Filed 8–13–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0343]

International Conference on Harmonisation; Draft Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex 9 on Tablet Friability General Chapter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 9: Tablet Friability General Chapter.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance provides the results of the ICH Q4B evaluation of the Tablet Friability General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The draft guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The draft guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. This draft guidance is the ninth annex to the core Q4B guidance, which was made available in the **Federal Register** of February 21, 2008 (73 FR 9575).

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 October 13, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling the Center for Biologics Evaluation and Research at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. 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:

Regarding the guidance: Robert H. King, Sr., Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4150, Silver Spring, MD 20993–0002, 301–796–1242; or

Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–0373.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance

harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In June 2009, the ICH Steering Committee agreed that a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 9: Tablet Friability General Chapter'' should be made available for public comment. The draft guidance is the product of the Q4B Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Q4B Expert Working Group.

The draft guidance provides the specific evaluation results from the ICH Q4B process for the Tablet Friability General Chapter harmonization proposal originating from the three-party PDG. This draft guidance is in the form of an annex to the core ICH Q4B guidance. Once finalized, the annex will provide guidance to assist industry and regulators in the implementation of the specific topic evaluated by the ICH Q4B process.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on 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 the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. 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.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm*.

Dated: July 31, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–19528 Filed 8–13–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

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–P), RFA–DP09–101SUPP09, Initial Review

Cancellation: The notice was originally published in the **Federal Register** on July 21, 2009 (Volume 74, Number 138] [page 35877]. The following panels are cancelled: N, O and P.

Contact Person for More Information: Brenda Colley-Gilbert, Ph.D., Director, Extramural Research Program Office, CCCH, 4770 Buford Highway, MS K–92, Atlanta, GA 30341, Telephone (770) 488–6295.

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.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–19501 Filed 8–13–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0333]

Delaware River and Bay Oil Spill Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Delaware River and Bay Oil Spill Advisory Committee (DRBOSAC) will meet in Lewes, DE to discuss various issues to improve oil spill prevention and response strategies for the Delaware River and Bay. This meeting will be open to the public.

DATES: The Committee will meet on Wednesday, September 9, 2009, from 2 p.m. to 4 p.m. This meeting may close early if all business is finished. Written material, requests to make oral presentations, and requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before September 2, 2009.

ADDRESSES: The Committee will meet at Virden Retreat Center, University of Delaware (the Harbor Room), 700 Pilottown Road, Lewes, DE 19958. Send written material and requests to make oral presentations to Gerald Conrad, Liaison to the Designated Federal Officer (DFO) of the DRBOSAC, Coast Guard Sector Delaware Bay, 1 Washington Ave., Philadelphia, PA 19147. This notice and any documents identified in the Supplementary Information section as being available in the docket may be viewed online, at *http://www.regulations.gov*, using docket number USCG–2008–0333.

FOR FURTHER INFORMATION CONTACT: Gerald Conrad, Liaison to the DFO of the DRBOSAC, telephone 215–271–4824.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of the Meeting

The agenda for the September 9 meeting will be as follows:

(1) Opening comments.

(2) Introductions.

(3) Administrative announcements.

(4) Pre-approved presentations from the public.

(5) Debriefs from each DRBOSAC Sub-committee.

(6) Public comments.

(7) Future Committee business.

(8) Closing.

More information and detail on the meeting will be available at the committee Web site, located at *https://homeport.uscg.mil/drbosac*. Additional detail may be added to the agenda up to September 2, 2009.

Procedural

This meeting is open to the public. All persons entering the Harbor Room will need to sign in at the door. Please note that the meeting may close early if all business is finished.

The public will be able to make oral presentations during the meeting when given the opportunity to do so. Members of the public may seek pre-approval for their oral presentations by contacting the Coast Guard no later than September 2, 2009. The public may file written statements with the committee; written material should reach the Coast Guard no later than September 2, 2009. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 35 copies to the Liaison to the DFO no later than September 2, 2009, and indicate that the material is to be distributed to committee members in advance of the September 9 meeting.

Please register your attendance with the Liaison to the DFO no later than September 2, 2009.

Information on Services for Individuals with Disabilities

For information on facilities, or services for individuals with disabilities, or to request special assistance at the meeting, contact the Liaison to the DFO as soon as possible.

Dated: August 6, 2009.

Nakeisha B. Hills,

Lieutenant Commander, U.S. Coast Guard, Preparedness Officer, Sector Delaware Bay Acting Designated Federal Officer.

[FR Doc. E9–19550 Filed 8–13–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5337–N–01]

Additional Allocations and Waivers Granted to and Alternative Requirements for 2008 Community Development Block Grant (CDBG) Disaster Recovery Grantees

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of allocations, waivers, and alternative requirements.

SUMMARY: This Notice advises the public of the second allocation for grant funds for CDBG disaster recovery grants for the purpose of assisting in the recovery in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of recent natural disasters. As described in the **SUPPLEMENTARY INFORMATION** section of this Notice, HUD is authorized by statute and regulations to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantees. This Notice also describes: (1) How the allocatees may implement the common application, eligibility, and administrative waivers and the common alternative and statutory requirements for the grants; and (2) additional waivers and alternative requirements for certain earlier grants.

DATES: *Effective Date:* August 19, 2009.

FOR FURTHER INFORMATION CONTACT: Scott Davis, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at telephone number 800–877–8339. Facsimile inquiries may be sent to Mr. Davis at facsimile number 202–401–2044. (Except for the ''800'' number, these telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329, approved September 30, 2008) (hereinafter, ''Second 2008 Act'' to differentiate it from the earlier 2008 Supplemental Appropriations Act) (Pub. L. 110–252 approved June 30, 2008) (hereinafter ''First 2008 Act''), appropriated $6.5 billion, to remain available until expended, in CDBG funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by hurricanes, floods, and other natural disasters occurring during 2008, for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*). To date, $377,139,920 has been rescinded, $6,500,000 was set-aside for HUD administrative costs, and $2,145,000,000 was allocated by HUD in November 2008. This Notice allocates the remaining $3,971,360,080.

The First 2008 Act also appropriated funds for 2008 disaster recovery grantees, although it only provided funds for disasters occurring in May and June 2008. Both the First 2008 Act and the Second 2008 Act authorize the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use of these funds and guarantees by the recipient, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including requirements concerning lead-based paint), upon a request by the state explaining why such waiver is required to facilitate the use of such funds or guarantees, and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of title I of the Housing and Community Development Act of 1974 (HCD Act). Additionally, regulatory waiver authority is provided by 24 CFR 5.110, 91.600, and 570.5. The following application and reporting waivers and alternative requirements are in response to requests from the states receiving an allocation under today's **Federal Register** Notice.

The Secretary finds that the following waivers and alternative requirements, as described below, are necessary to facilitate use of the funds for the statutory purposes and are not inconsistent with the overall purpose of title I of the HCD Act or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the First 2008 Act and the Second 2008 Act, statutory and regulatory waivers must be published in the **Federal Register**. Except as described in this Notice, statutory and regulatory provisions governing the CDBG program for states, including those at 24 CFR part 570,

shall apply to the use of these funds. In accordance with the First and Second 2008 Acts, HUD will reconsider every waiver in today's **Federal Register** Notice on the 2-year anniversary of the day this Notice is published.

Additional Waivers

Each state receiving an allocation may request additional waivers from the Department as needed to address the specific needs related to that state's recovery activities. The Department will respond separately to the state's requests for waivers of provisions not covered in this Notice, after working with the state to tailor the program to best meet the unique disaster recovery needs in its impacted areas. HUD has included some additional waivers and alternative requirements for individual states in this Notice.

Allocations

Today's Notice makes available the remainder of the Second Act's supplemental appropriation, $3,971,360,080 for the CDBG program for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by hurricanes, floods, and other natural disasters occurring in 2008, for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

The Second 2008 Act notes:

> That funds provided under this heading shall be administered through an entity or entities designated by the Governor of each state * * * Provided further, that funds allocated under this heading shall not adversely affect the amount of any formula assistance received by a state under the Community Development Fund: Provided further, that each state may use up to five percent of its allocation for administrative costs.

HUD computes allocations based on data that are generally available covering all the eligible affected areas. The 11 states receiving an allocation in today's Notice are indicated in Table 1, below. Their estimated unmet needs represent more than 97 percent of the estimated unmet needs across all 76 disasters that occurred in 2008. The allocation was based on two factors: (i) The sum of estimated unmet housing, infrastructure, and business needs, adjusted by (ii) a HUD calculated risk level for recovery challenge. More detailed information about the data reviewed, the formula process, and the possible risks affecting recovery can be found in Appendix 1 of this Notice. Initial allocations made under the Second 2008 Act were announced by HUD on November 26, 2008, and published in the **Federal Register** on February 13, 2009 (74 FR 7244). Initial allocations are included in Table 1. The states of Kentucky, Georgia, and Mississippi, and the Commonwealth of Puerto Rico received allocations in the February 13, 2009, **Federal Register** Notice, but are not receiving additional funds under today's Notice, bringing to 15 the total number of grantees allocated funding from the Second 2008 Act. Table 2 is a reprint from the initial allocation notice that shows what the allocations were under the First 2008 Act. Unlike funds allocated under the Second 2008 Act, which may be used for recovery from any disaster occurring during Calendar Year 2008, funds under the First 2008 Act are available only for use in areas covered by specific declarations, so these are also noted.

TABLE 1—SECOND 2008 ACT DISASTER RECOVERY ALLOCATIONS

State	This Notice's Second 2008 Act allocation	Initial Second 2008 Act allocation (Notice 74 FR 7244)	Total Second 2008 Act allocation	Minimum amount for affordable rental housing
Texas	$1,743,001,247	$1,314,990,193	$3,057,991,440	$342,521,992
Louisiana	620,467,205	438,223,344	1,058,690,549	118,582,672
Iowa	516,713,868	125,297,142	642,011,010	71,910,891
Indiana	253,340,079	95,042,622	348,382,701	39,021,933
Illinois	127,207,128	41,984,121	169,191,249	18,950,911
Missouri	78,625,549	13,979,941	92,605,490	10,372,631
Wisconsin	75,200,572	25,039,963	100,240,535	11,227,823
Tennessee	71,881,834	20,636,056	92,517,890	10,362,819
Arkansas	70,181,041	20,294,857	90,475,898	10,134,098
Florida	63,606,850	17,457,005	81,063,855	9,079,866
California	39,531,784	0	39,531,784	4,427,908
Kentucky	0	3,217,686	3,217,686	341,943
Georgia	0	4,570,779	4,570,779	485,736
Mississippi	0	6,283,404	6,283,404	667,737
Puerto Rico	0	17,982,887	17,982,887	1,911,040

TABLE 2—FIRST 2008 ACT DISASTER RECOVERY ALLOCATIONS

State	Disaster No.	Incident date	Declared date	Allocation
Mississippi	1753	3/20 to 5/19	5/8/08	$2,281,287
Maine	1755	4/28 to 5/14	5/9/08	2,187,114
Oklahoma	1756	5/10 to 5/13	5/14/08	1,793,876
Arkansas	1758	5/2 to 5/12	5/20/08	4,747,501
South Dakota	1759	5/1	5/22/08	1,987,271
Missouri	1760	5/10 to 5/11	5/23/08	3,519,866
Colorado	1762	5/21	5/26/08	589,651
Iowa	1763	5/25 and continuing	5/27/08	156,690,815
Indiana	1766	5/30 to 6/27	6/8/08	67,012,966
Montana	1767	5/1	6/13/08	666,672
Wisconsin	1768	6/5 and continuing	6/14/08	24,057,378
West Virginia	1769	6/3 to 6/7	6/19/08	3,127,935
Nebraska	1770	5/22	6/20/08	5,557,736

TABLE 2—FIRST 2008 ACT DISASTER RECOVERY ALLOCATIONS—Continued

State	Disaster No.	Incident date	Declared date	Allocation
Illinois	1771	6/1 to 7/22	6/24/08	17,341,434
Minnesota	1772	6/7 to 6/12	6/25/08	925,926
Missouri	1773	6/1 to 8/13	6/25/08	7,512,572

Congress required that states devote ''not less than $650,000,000'' of the total Second 2008 Act to support ''repair, rehabilitation, and reconstruction (including demolition, site clearance and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas where there is a demonstrated need as determined by the Secretary.'' Table 1 above shows the minimum amount each grantee must spend on affordable rental housing from its total combined allocation of first and second round funding under the Second 2008 Act.

Disaster Recovery Enhancement Allocations. As stated above, HUD calculates CDBG disaster recovery allocations, including the above allocations, to each grantee based on unmet needs data (see Appendix 1). These data largely represent an estimate of the costs for repairs to a pre-disaster condition. Often, this data does not adequately reflect the full recovery costs associated with a disaster. Also, because of cost considerations, state disaster recovery grantees may not always choose recovery activities that are the most advantageous for long-term recovery and resilience from a federal perspective. For example, relocating a repetitively flooded community from a floodplain limits future calls on the National Flood Insurance program and other federal recovery programs. From a federal perspective, flood buyouts are frequently a good idea; locally, they can be politically difficult and somewhat more costly to administer than a traditional rehabilitation program.

Therefore, the Secretary has created a $311,602,923 Disaster Recovery Enhancement Fund (DREF) for secondary allocations to grantees that anticipate that they will still have unmet disaster recovery needs after developing and undertaking forward-thinking recovery strategies and activities in a timely manner. To be eligible to receive an additional allocation, a grantee must budget its allocated Second 2008 Act funds for the specific activities listed in this Notice by programming the funds in an Action Plan for Disaster Recovery (or an amendment thereof) submitted to HUD by June 30, 2010. A state receiving an additional allocation may use the funds for any activity eligible for assistance under the Second 2008 Act in accordance with this Notice.

Note that the Stafford Act and the Second 2008 Act prohibit use of these funds as a substitute or match for Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant Program (HMGP) funds. Also note that CDBG disaster recovery funds must be used in the counties declared in the applicable covered disaster(s) for each state, while HMGP funds may generally be used statewide.

By setting a specific deadline for the Action Plan submissions for this DREF allocation, HUD is signaling that the Department intends to assist grantees that will implement these forward-thinking approaches to long-term recovery in a timely manner. Funds will be allocated dollar-for-dollar for the first $15 million budgeted for enhanced disaster recovery activities for an individual state and on a pro rata basis for amounts budgeted above $15 million as measured by funds budgeted by grant recipients by June 30, 2010, on the following specific enhanced disaster recovery activities that reduce the risk of damage from a future disaster:

1. Development and adoption of a forward-thinking land-use plan that will guide use of long-term recovery efforts and subsequent land-use decisions throughout the community and that reduces existing or future development in disaster-risk areas;

2. Floodplain or critical fire or seismic hazard area buyouts programs under an optional relocation plan that includes incentives so that families and private sector employers move out of areas at severe risk for a future disaster;

3. Individual mitigation measures (IMM) to improve residential properties and make them less prone to damage. If such activities are incorporated into the grantee's rehabilitation or new construction programs generally, the cost increment attributed to IMM will be the amount considered for the additional allocation, not the total construction amount budget; or

4. Implementation of modern disaster resistant building codes, including, but not limited to, training on new standards and code enforcement.

A grantee must include start and end dates for each activity in its Action Plan. A grantee must demonstrate in its Action Plan submission for any additional allocation that it still has eligible unmet needs to receive assistance from the DREF before HUD will add the additional allocation to the state's line of credit. Furthermore, the Secretary reserves the right to allocate more or less than $311,602,923 under this fund, depending on the amount grantees actually budget on such activities and any amounts available for reallocation.

A grantee may reprogram funds from one of the listed enhanced disaster recovery activities to another, but if the grantee reprograms grant funds to any other activity, HUD may recapture the DREF allocation, in whole or in part, in accordance with section 111 of the HCD Act, 24 CFR part 570, subpart O, and this Notice.

The Second 2008 Act requires funds to be used in accordance with its specific purposes. The statute directs that each grantee will describe in its Action Plan for Disaster Recovery criteria for eligibility and how the use of grant funds will address long-term recovery and infrastructure restoration, housing, and economic revitalization in the affected areas. HUD will monitor compliance with this direction and may be compelled to disallow expenditures if it finds uses of funds do not meet the statutory purposes, or duplicate other benefits. HUD encourages grantees to contact their assigned HUD offices for guidance in complying with these requirements during development of their Action Plans for Disaster Recovery or if they have any questions regarding meeting these requirements.

As provided for in the Second 2008 Act, the funds may not be used for activities reimbursable by or for which funds are made available by FEMA or the Army Corps of Engineers. Further, none of the funds may be used as the required match, share, or contribution for another federal program.

Prevention of Fraud, Abuse, and Duplication of Benefits

Additionally, the Second 2008 Act directs the Secretary to:

Establish procedures to prevent recipients from receiving any duplication of benefits and report quarterly to the Committees on

Appropriations with regard to all steps taken to prevent fraud and abuse of funds made available under this heading, including duplication of benefits.

To meet this directive, HUD is pursuing four courses of action. First, the **Federal Register** Notice published February 13, 2009 (74 FR 7244), includes specific reporting, written procedures, monitoring, and internal audit requirements for grantees. Second, to the extent its resources allow, HUD will institute risk analysis and on-site monitoring of grantee management of the grants and of the specific uses of funds. Third, HUD will be extremely cautious in considering any waiver related to basic financial management requirements. The standard, time-tested CDBG financial requirements will continue to apply. Fourth, HUD is collaborating with the HUD Office of Inspector General to plan and implement oversight of these funds.

Waiver Justification

The waivers, alternative requirements, and statutory changes described in the February 13, 2009, **Federal Register** Notice (74 FR 7244) apply to all of the CDBG supplemental disaster recovery funds appropriated in the Second 2008 Act (Pub. L. 110–329), but not to funds provided under the regular CDBG program. Similarly, the waivers, alternative requirements, and statutory changes described in the September 11, 2008, **Federal Register** Notice (73 FR 52870) apply to the CDBG supplemental disaster recovery funds appropriated in the First 2008 Act, not to funds provided under the regular CDBG program. These actions, below, provide additional flexibility in program design and implementation and implement statutory requirements. The previous notices, referenced above, provide further justification for the waivers.

Common Waivers

Previously published waivers to streamline application and program launch. Funds allocated by today's **Federal Register** Notice will be subject to the waivers, alternative requirements, and statutory changes described in this Notice and those previously published in the February 13, 2009, **Federal Register** Notice (74 FR 7244).

General planning activities use entitlement presumption, all grantees. Today's **Federal Register** Notice notifies Congress and the public that the states receiving funds under the First 2008 Act and/or the Second 2008 Act have requested this waiver and HUD is granting the waiver. The annual State CDBG program requires that local government grant recipients for planning-only grants must document that the use of funds meets a national objective. In the State CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include nonproject specific plans such as functional land-use plans, historic preservation plans, comprehensive plans, development of housing codes, and neighborhood plans related to guiding long-term community development efforts comprising multiple activities funded by multiple sources. In the annual entitlement program, these more general stand-alone planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). The Department notes that almost all effective CDBG disaster recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore, the Department is removing the eligibility requirement that CDBG disaster recovery-assisted planning-only grants or state directly administered planning activities that will guide recovery in accordance with the appropriations act must comply with the State CDBG program rules at 24 CFR 570.483(b)(5) or (c)(3). Instead, 24 CFR 570.208(d)(4) will apply.

State-Specific Waivers

National Objective Documentation for Economic Development Activities—States of Iowa, Louisiana, and Texas. For the national objective documentation for business assistance activities, the states of Iowa, Louisiana and Texas, which have received funds under the First 2008 Act and Second 2008 Act, have asked to apply individual salaries or wages-per-job and the income limits for a household of one, rather than the usual CDBG standard of total household income and the limits by total household size. The states have asserted that this proposed documentation would be simpler and quicker for participating lenders to administer, easier to verify, and would not misrepresent the amount of low- and moderate-income benefit provided. Upon consideration, HUD is granting this waiver, which also was granted for recovery in lower Manhattan following September 11, 2001, and in certain states following the Gulf Coast hurricanes of 2005. Due to the significant breadth of many states' economic development programs, this waiver will play a key role in streamlining the documentation process because it allows collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

Section 414 of the Stafford Act—States of Louisiana and Texas. In addition to the above, the states of Louisiana and Texas have also requested a waiver of section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, for their disaster recovery programs. Section 414 directs that persons who were displaced by a disaster be considered to be displaced by a federal action, as defined under the Uniform Relocation Act (URA), if the property in which they were living prior to the disaster is assisted with certain federal funds. Today's **Federal Register** Notice grants, in part, the request that the Secretary waive that section and provides alternative requirements more consistent with the purpose of the Second 2008 Act, which is to assist and support disaster recovery in the areas most affected by the effects of the disasters in 2008.

Several states suffered significant destruction in the wake of Hurricanes Ike and Gustav, and the reconstruction will likely last for many years to come—much like in the Gulf Coast states affected by the hurricanes in 2005. For programs or projects covered by this waiver (''covered programs or projects'') that are initiated within 3 years after the applicable disaster, each state receiving this wavier must comply with one of the two alternative requirements (for programs or projects initiated after the 3-year period, the alternative requirements would not apply; only the waiver would be applicable):

Alternative One

The state may provide relocation assistance to a former residential occupant whose former dwelling is acquired, rehabilitated, or demolished for a covered program or project initiated within 3 years after the disaster, even though the actual displacements were caused by the effects of the disaster. To the extent practicable, such relocation assistance should be offered in a manner consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended, and its implementing regulations, except as modified by applicable waivers and alternative requirements.

Alternative Two

If the state determines that the first alternative would substantially conflict

with meeting the disaster recovery purposes of the Second 2008 Act, the state may establish a re-housing plan for a covered program or project initiated within 3 years after the disaster. Such determinations must be made on a program or project basis (not person or household). The re-housing plan must include, at minimum, the following:

1. A description of the class(es) of persons eligible for assistance, including all persons displaced from their residences by particular, enumerated, or by all, effects of the disaster, and including all persons still receiving temporary housing assistance from FEMA for the covered disaster(s);

2. A description of the types and amount of financial assistance to be offered, if any;

3. A description of other services to be made available, including, at minimum, outreach efforts to eligible persons and housing counseling providing information about available housing resources. Outreach efforts and housing counseling information should be provided in languages other than English to persons with limited English proficiency; and

4. Contact information and a description of any applicable application process, including any deadlines.

5. If the program or project involves rental housing, the re-housing plan must also include the following:

(i) Placement services for former and prospective tenants;

(ii) A public registry of available rental units assisted with CDBG disaster recovery and/or other funds; and

(iii) Application materials, award letters, and operating procedures requiring property owners to make reasonable attempts to contact their former residential tenants and offer a unit, upon completion, to those tenants meeting the program's eligibility requirements.

(iv) Persons in physical occupancy who are displaced by a HUD-assisted disaster recovery project will continue to be eligible for URA assistance.

Justification for Waiver

The reasons for granting this waiver are several, and are ably represented by the states in their requests. The principal reasons are highlighted here:

• Hurricanes Ike and Gustav caused significant destruction that resulted in massive displacements and decimated the region's affordable housing stock. Continued ambiguity on section 414's applicability may cause substantial delays in long-term recovery, particularly in Texas and Louisiana; and

• Simplify the administration of disaster recovery projects or programs initiated years following the disaster.

Persons displaced by the effects of the disaster may continue to apply for assistance under the states' approved disaster recovery programs, which are designed to bring affordable housing to the affected areas. This waiver does not address programs or projects receiving other HUD funding, or funding from other federal sources.

A state may already be performing some elements of a re-housing plan, such as providing a public rental registry or undertaking outreach and placement services to those former residents still receiving FEMA housing assistance. A description in the re-housing plan of how those existing efforts will be available for covered programs or projects may be used in satisfying the requirements of this Notice.

Eligibility—buildings for the general conduct of government—States of Indiana, Louisiana, and Texas. The states of Indiana, Louisiana, and Texas requested a limited waiver of the prohibition on funding buildings for the general conduct of government. HUD has considered the request and agrees that it is consistent with the overall purposes of the 1974 Act for requesting states to be able to use the grant funds under this notice to repair or reconstruct buildings used for the general conduct of government and that the states have selected in accordance with the method described in their Action Plans for Disaster Recovery and that they have determined have substantial value in promoting disaster recovery. However, as stated by the Second 2008 Act, funds allocated under today's **Federal Register** Notice, or the February 13, 2009, **Federal Register** Notice (74 FR 7244), may not be used for activities reimbursable by or for which funds are made available by FEMA or the Army Corps of Engineers. Further, none of the funds may be used as the required match, share, or contribution for another federal program.

Public benefit for certain economic development activities—States of Iowa, Louisiana, and Texas. The states of Iowa, Louisiana, and Texas have requested a waiver of the public benefit standards for their economic development activities. The public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the annual aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity. Essentially, the public benefit standards are a proxy for all the other possible public benefits provided by an assisted activity. These dollar thresholds were set more than a decade ago and, under disaster recovery conditions (which often require a larger investment to achieve a given result), can be too low and, thus, impede recovery by limiting the amount of assistance the grantee may provide to a critical activity. States requesting this waiver have made public in their Action Plans the disaster recovery needs each activity is addressing and the public benefits expected.

After consideration, today's **Federal Register** Notice waives the public benefit standards for the cited activities, except that each requesting state shall report and maintain documentation on the creation and retention of: (a) Total jobs, (b) number of jobs within certain salary ranges, (c) the average amount of assistance per job and activity or program, and (d) the types of jobs. As a conforming change for the same activities or programs, HUD is also waiving paragraph (g) of 24 CFR 570.482 to the extent its provisions are related to public benefit.

Housing incentives to encourage housing resettlement consistent with local recovery plans; States of Louisiana and Texas. The states of Louisiana and Texas may offer disaster recovery or mitigation housing incentives to promote suitable housing development or resettlement in particular geographic areas. By ''resettlement,'' HUD is referring to resettling the community as a whole, which may include buyouts and relocation, as well as repopulation initiatives if part of a recovery plan. In the past, the state of New York successfully used an incentive program to induce rapid and stable resettlement of lower Manhattan following September 11, 2001. Also, the city of Grand Forks, North Dakota, provided a very affordable soft-second loan as an incentive to help induce households to resettle within the city during its recovery. Any state choosing to provide incentives must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable. Generally, incentives are offered in addition to other programs or funding (such as insurance), to try to influence individual residential location decisions, when these decisions are in doubt. For example, a grantee may offer an incentive payment (possibly in

addition to buyouts) for households that volunteer to relocate within a particular period of time, or who choose to resettle outside a 100- or 500-year floodplain. Note, however, that if the grantee requires the funds to be used for a particular purpose by the household receiving the assistance, then the activity will be that required use, not an eligible incentive. The Department is waiving 42 U.S.C. 5305(a) and associated regulations to make these uses of grant funds eligible.

Compensation for disaster-related losses. The states of Louisiana and Texas plan to provide compensation to certain homeowners whose homes were affected during the covered disasters, if the homeowners agree to meet the stipulations of the state's or subawardee's published program design. Such stipulations may not include requirements related to how the homeowner may use the funds, because then the assisted activity would be that required use, not compensation. Such programs were carried out by the states of Louisiana and Mississippi following the 2005 hurricanes. A strength of these compensation programs is that they may be able to disburse funding more quickly than traditional CDBG rehabilitation programs. However, a major weakness is the lack of certainty about whether an assisted homeowner will use the granted assistance in a way that supports the community's long-term recovery goals. Very little data exists to verify the degree to which compensation funds have been used for reconstruction or rehabilitation. Existing data suggest that a certain percentage of those receiving assistance fail to comply with the program stipulations. By contrast, a rehabilitation program is typically able to demonstrate that all or nearly all of its assisted households reside (after receiving assistance) in reconstructed or rehabilitated homes, according to the grantee's standards. Therefore, HUD is granting this compensation waiver together with alternative requirements. HUD will disapprove an action plan if a compensation program is not adequately justified in accordance with these alternative requirements. Any state deciding to assist a compensation activity must address in its action plan and program design:

(1) How the state will ensure that compensation payments will result in disaster recovery or economic revitalization;

(2) Why a housing rehabilitation or reconstruction or buyouts program is not a more appropriate choice; and

(3) How the state determined the appropriate compensation amount(s). Further, any state choosing to provide compensation assistance must also carry out an evaluation of outcomes of the program, for a statistically valid sample of the program participants, within a year of providing the final payment.

Three-month limitation on emergency grant payments. In response to the state of Iowa's request, HUD is waiving 42 U.S.C. 5305(a) to allow it to extend interim mortgage assistance to qualified individuals for up to 20 months. The state is currently operating an Interim Mortgage Assistance Program, limited to a maximum of 3 months and a maximum of $1,000 per month. It has now been almost 12 months since the original flooding event occurred but many families still require this assistance. Furthermore, it will still be several months before FEMA buyout decisions will be made and implemented. Therefore, to permit the state of Iowa to adequately assist households through this period, and to be consistent with the state funding that has been supplied separately for this purpose, HUD will waive the normal 3-month limitation, to provide a total of 20 months of Interim Mortgage Assistance to qualified individuals.

Summary of States Receiving Waivers

Texas. Texas has requested and HUD has approved the following waivers and alternative requirements for funds provided to the state under the Second 2008 Act (Pub. L. 110–329): (1) Documentation of job retention, (2) section 414 of the Stafford Act, (3) eligibility of buildings for the general conduct of government, (4) public benefit for certain economic development activities, and (5) compensation for disaster-related losses or housing incentives to resettle in disaster-affected communities. Texas has justified each request and documented the need for each waiver.

Iowa. Iowa has requested and HUD has approved the following waivers and alternative requirements: (1) Documentation of job retention, (2) public benefit for certain economic development activities, and (3) three-month limitation on emergency grant payments. Iowa has justified each request and documented the need for each waiver. The waivers granted by this Notice will apply to funds received under the First 2008 Act (Pub. L. 110–252), and to all funds received under the Second 2008 Act (Pub. L. 110–329).

Louisiana. Louisiana has requested and HUD has approved the following waivers and alternative requirements for funds provided to the state under the Second 2008 Act: (1) Documentation of job retention, (2) section 414 of the Stafford Act, (3) eligibility of buildings for the general conduct of government, (4) public benefit for certain economic development activities, and (5) compensation for disaster-related losses or housing incentives to resettle in disaster-affected communities. Louisiana has justified each request and documented the need for each waiver.

Indiana. Indiana has requested and HUD has approved a waiver regarding the eligibility of buildings for the general conduct of government for all funds received under the First 2008 Act, 2008 (Pub. L. 110–252). Note, this waiver has been neither requested nor approved for funds received under the Second 2008 Act (Pub. L. 110–329).

Application for Allocations Under the Second 2008 Act

The waivers and alternative requirements streamline the pre-grant process and set the guidelines for states' applications for their allocations. Each grantee receiving an allocation under the Second 2008 Act (which includes allocations made under this Notice, as well as those made under the February 13, 2009, Notice) is required, with the exception of California, to submit and/or amend its Action Plan for Disaster Recovery to program all of each state's allocations by September 30, 2009. The state of California (which did not receive an allocation under the February 13, 2009, Notice) is required to submit an Action Plan for Disaster Recovery by December 30, 2009. Any allocation not applied for by these dates may be added to the funds available under the DREF and reallocated. If any grantee fails to meet the requirement to program its allocations within the relevant timelines, HUD, on the first business day after that deadline, will commence an action to recapture the funds.

Applicable Rules, Statutes, Waivers, and Alternative Requirements

1. *General note.* Prerequisites to a grantee's receipt of CDBG disaster recovery assistance include adoption of a citizen participation plan; publication of its proposed Action Plan for Disaster Recovery; public notice and comment; and submission to HUD of an Action Plan for Disaster Recovery, including certifications. Except as described in this Notice, statutory and regulatory provisions governing the CDGB program for states, including those at 42 U.S.C. 5301 *et seq.* and 24 CFR part 570, shall apply to the use of these funds.

2. The waivers provided in the February 13, 2009, **Federal Register** Notice (74 FR 7244) are granted and the alternative requirements of that Notice apply to all the states receiving an

allocation of grant funds under this Notice. Each of the states has requested, in writing, that HUD grant it the waivers and alternative requirements of that Notice.

3. *Planning activities.* For CDBG disaster recovery-assisted general planning activities that will guide recovery in accordance with the First 2008 Act (Pub. L. 110–252) and the Second 2008 Act (Pub. L. 110–329), the State CDBG program rules at 24 CFR 570.483(b)(5) and (c)(3) are waived and the presumption at 24 CFR 570.208(d)(4) applies for all First 2008 Act and Second 2008 Act grantees.

4. *National Objective Documentation for Economic Development Activities.* 24 CFR 570.483(b)(4)(i) is waived to allow the states of Texas, Iowa, and Louisiana to establish low- and moderate-income jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family.

5. *Section 414 of the Stafford Act.* Section 414 of the Stafford Act, 42 U.S.C. 5181 (including its implementing regulation at 49 CFR 24.403(d)), is waived to the extent that it would apply to CDBG disaster recovery-funded programs or projects initiated within 3 years of the incident-date of Hurricane Ike or Hurricane Gustav (as applicable) by the states of Texas and Louisiana under an approved Action Plan for Disaster Recovery for its grants under the Second 2008 Act, provided that such program or project was not planned, approved, or otherwise under way prior to the disaster.

a. For all programs or projects covered by this waiver (''covered programs or projects'') that are within 3 years after the applicable disaster, the states of Texas and Louisiana must comply with one of the following two alternative requirements (for programs or projects initiated after the 3-year period, the alternative requirements would not apply; only the waiver would be applicable): (1) Relocation Assistance. The state may provide relocation assistance to a former residential occupant whose former dwelling is acquired, rehabilitated, or demolished for a covered program or project initiated within 3 years after the disaster, even though the actual displacements were caused by the effects of the disaster. To the extent practicable, such relocation assistance must be offered in a manner consistent with the URA, as amended, and its implementing regulations, except as modified by prior waivers and alternative requirements granted to the states. (2) Re-housing Plan. If the state determines that the first alternative would substantially conflict with meeting the disaster recovery purposes of the Second 2008 Act, the grantee may establish a re-housing plan for a covered program or project initiated within 3 years after the disaster. Such a determination must be made on a program or project basis (not person or household). The re-housing plan must include, at minimum, the following:

(i) A description of the class(es) of persons eligible for assistance, including all residents displaced from their residences by either certain enumerated or all effects of the covered disaster, and including all disaster-displaced residents still receiving temporary housing assistance from FEMA for the covered disasters;

(ii) A description of the types and amount of financial assistance to be provided, if any;

(iii) A description of other services to be made available, including, at a minimum, outreach efforts to eligible persons and housing counseling, that provide information about available housing resources;

(iv) Contact information for additional program information;

(v) A description of any applicable application process, including any deadlines; and

(vi) If the program or project covered by this waiver involves rental housing, the grantee shall establish procedures for the following:

A. Application materials, award letters, and operating procedures that require property owners to make reasonable attempts to contact their former tenants and to offer a unit, upon completion, to those tenants meeting the program's eligibility requirements;

B. Placement services for former and prospective tenants; and

C. A public registry of available rental units assisted with CDBG disaster recovery and/or other funds.

b. Eligible Project Costs. The costs of relocation assistance and the reoccupancy plan are eligible project costs in the same manner and to the same extent as other project costs authorized under the Second 2008 Act. For covered programs or projects involving affordable rental housing, the relocation and planning costs required by this Notice may be paid from funds reserved for the affordable rental housing stock in the impacted areas under the Second 2008 Act.

c. Persons in physical occupancy who are displaced by a HUD-assisted disaster recovery project will continue to be eligible for URA assistance.

6. *Buildings for the general conduct of government.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow the states of Texas and Louisiana to fund the rehabilitation or reconstruction of public buildings that are otherwise ineligible and that the state selects in accordance with its approved Action Plan for Disaster Recovery and that the state has determined have substantial value in promoting disaster recovery. The state of Indiana may use funds allocated under the September 11, 2008, **Federal Register** Notice (73 FR 52870) or December 19, 2008, **Federal Register** Notice (73 FR 77818) to fund the rehabilitation or reconstruction of public buildings that are otherwise ineligible.

7. *Public benefit for certain economic development activities.* For economic development activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and infrastructure projects), the public benefit standards at 42 U.S.C. 5305(e)(3) and 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6) are waived for the states of Texas, Louisiana, and Iowa, except that these states shall report and maintain documentation on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; and the types of jobs. Paragraph (g) of 24 CFR 570.482 is also waived for these states to the extent its provisions are related to public benefit.

8. *Compensation for disaster-related losses.* HUD is granting a compensation waiver together with alternative requirements for the states of Louisiana and Texas. Either state deciding to assist a compensation activity must address the following in its action plan and program design:

a. How the state will ensure that compensation payments will result in disaster recovery or economic revitalization;

b. Why a housing rehabilitation or reconstruction or buyouts program is not a more appropriate choice than providing housing compensation. The state must compare and contrast schedules, delivery costs, and projected recovery resulting from each type of activity; and

c. How the state determined the appropriate compensation amount(s). Further, any state choosing to provide compensation assistance must also carry out and publish an evaluation of outcomes of the program for a statistically valid sample of the program participants within a year of providing

the final compensation payment. If the state also provides rehabilitation assistance, it must include in its evaluation a comparison of the results of the compensation and rehabilitation activities.

9. *Housing incentives to encourage housing resettlement consistent with local recovery plans.* The states of Louisiana and Texas may offer disaster recovery or mitigation housing incentives to promote suitable housing development or resettlement in particular geographic areas. Any state choosing to provide incentives must maintain documentation at least at a programmatic level describing how the amount of assistance was determined to be necessary and reasonable. Note that if the grantee requires the funds to be used for a particular purpose by the household receiving the assistance, then the activity will be that required use, not an eligible incentive. The Department is waiving 42 U.S.C. 5305(a) and associated regulations to make these uses of grant funds eligible.

10. *Three-month limitation on emergency grant payments.* 42 U.S.C. 5305(a) is waived so that Iowa may extend interim mortgage assistance to qualified individuals for up to 20 months. This waiver applies to funds received under the First 2008 Act (Pub. L. 110–252), and to funds received under the Second 2008 Act (Pub. L. 110–329).

Duration of Funding

Availability of funds provisions in 31 U.S.C. 1551–1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510), limit the availability of certain appropriations for expenditure. This limitation may not be waived. However, the Second 2008 Act directs that these funds be available until expended unless, in accordance with 31 U.S.C. 1555, the Department determines that the purposes for which the appropriation has been made have been carried out and no disbursement has been made against the appropriation for 2 consecutive fiscal years. In such a case, the Department shall close out the grant prior to expenditure of all funds.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.219; 14.228.

Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at telephone number 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Dated: July 20, 2009.

Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

Appendix 1—Allocation Methodology Detail

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329), enacted on September 30, 2008, appropriated $6.5 billion through the CDBG program for ''necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by hurricanes, floods, and other natural disasters occurring during 2008 for which the President declared a major disaster.''

It went on to say that ''such funds may not be used for activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency or the Army Corps of Engineers'' and that ''none of the funds * * * may be used * * * as a matching requirement, share, or contribution for any other Federal program.'' It also stated that ''not less than $650,000,000 from funds made available on a pro-rata basis according to the allocation made to each State'' shall be used for affordable rental housing.

Finally, the statute called for ''not less'' than 33 percent of the funds to be allocated within 60 days of enactment (that is, by November 28th) based ''on the best estimates available of relative damage and anticipated assistance from other Federal sources.''

Schedule for Allocations

While Congress appropriated $6.5 billion, $377,139,920 has been rescinded, $6.5 million has been set aside for HUD administrative costs, and $2,145,000,000 was allocated in November 2008. This allocation distributes the remaining $3,971,360,080, with a $311,603,923 set-aside to the Disaster Recovery Enhancement Fund.

Disasters in 2008

There were 76 major disasters that occurred in 2008 in 35 states, Puerto Rico, and the Virgin Islands. Data on damaged housing are available for 36 disasters from FEMA and Small Business Administration (SBA); business loss data are available for 39 disasters from SBA; and 72 disasters have data on the cost FEMA and states are estimated to spend on infrastructure and other Public Assistance costs.

Available Data

The data HUD staff have identified as being available to calculate ''relative damage and anticipated assistance from Federal sources'' at this time for the targeted disasters come from the following data sources:

- FEMA Individual Assistance program data concerning housing unit damage;
- SBA for management of its disaster assistance loan program for housing repair and replacement;
- SBA for management of its disaster assistance loan program for business real estate repair and replacement, as well as content loss; and
- FEMA estimated and obligated amounts under its Public Assistance program, including the federal and state cost share.

Formula

This formula ''allocates'' the full $6,116,360,080 available for allocation under this appropriation and then subtracts out the $2,145,000,000 that was previously allocated and the $311,602,923 set-aside reserve fund (on a pro-rata basis). HUD has adopted this practice to adjust grants to reflect better data than were available at the time of the November 2008 allocation and to treat disasters occurring after November equally with disasters that occurred earlier in the year.

The formula mechanics are as follows: $6,116,360,080

$$* \left[\frac{(\text{State sum of HUD-calculated unmet housing, business, and infrastructure needs})}{(\text{All disaster sum of HUD-calculated unmet housing, business, and infrastructure needs})} \right.$$

$$\left. * \frac{(\text{State Per Seriously Damaged Home Challenge Score})^{a}}{(\text{Basic Allocation National Weighted Challenge Score})} * (20\% \text{ power})^{b} \right]$$

—State total: November $2.145 billion allocation
* Pro-rata adjustment after minimum grant threshold and reserve grant set-aside

[a] No state can have its grant adjusted up or down by more than 10 percent using this factor.

[b] Mathematically, each state's challenge factor is divided by the weighted national rate (14.7) and multiplied by 0.2 (that is, if a state's ratio was above 1; for example, 1.5 would become 1.10, [1 + ((1 − 0.5) * 0.2)]; if the ratio was below 1, for example, 0.5 would become 0.9 [1 – ((1 − 0.5) * 0.2)].

This allocation does not duplicate funding already provided under the Supplemental Appropriations Act of 2008 (Pub. L. 110–252, 122 Stat. 2323), enacted on June 30, 2008, which appropriated $300 million for disasters that were declared and occurred in May and June of 2008. This current allocation subtracts out of the unmet housing and business need estimates the amount of funds allocated for housing and business under the 2008 June appropriation.

Calculating Unmet Housing Needs

The core data on housing damage for both the unmet housing needs calculation and the concentrated damage are based on home inspection data for FEMA's Individual Assistance program. For unmet housing needs, the FEMA data are supplemented by SBA data from its Disaster Loan Program. HUD calculates ''unmet housing needs'' as the number of housing units with unmet needs, multiplied by the estimated cost to repair those units, minus the amount of repair funding already provided by FEMA, where:

- The number of owner-occupied units with unmet needs are units FEMA housing inspectors determined would require more than $3,000 to become habitable and were determined by FEMA to be eligible for a repair or replacement grant (now up to $30,300, earlier disasters in the year had a cap of $28,800). In general, when HUD refers to units ''seriously damaged,'' it is referring to units with a FEMA damage assessment of $3,000 or greater.
- The number of rental units with unmet needs are units FEMA housing inspectors determined would require more than $3,000 to become habitable AND are occupied by households with an income reported to FEMA of less than $20,000. The use of the $20,000 income cut-off for calculating rental unmet needs is in response to the statutory language that emphasized the use of the funds for affordable rental housing.
- Each of the FEMA inspected units are categorized by HUD into one of five categories:
  - Minor-Low: Less than $3,000 of FEMA-inspected damage
  - Minor-High: $3,000 to $7,999 of FEMA-inspected damage
  - Major-Low: $8,000 to $14,999 of FEMA-inspected damage
  - Major-High: $15,000 to $28,800 of FEMA-inspected damage
  - Severe: Greater than $28,800 of FEMA-inspected damage or -determined destroyed.

Note: FEMA has recently raised its maximum grant to $30,300. For this first round allocation, HUD continues to use the $28,800 as the threshold, because it applied for most of the declared disasters.

- The average cost to fully repair a home for a specific disaster within each of the damage categories noted above is calculated using the average real property damage repair costs determined by the SBA for its disaster loan program for the subset of homes inspected by both SBA and FEMA. Because SBA is inspecting for full repair costs, it is presumed to reflect the full cost to repair the home, which is generally more than FEMA estimates on the cost to make the home habitable. If fewer than 100 SBA inspections are made for homes within a FEMA damage category, the estimated damage amount in the category for that disaster has a cap applied at the 75th percentile of all damaged units for that category for all disasters and has a floor applied at the 25th percentile.
- The base amount of unmet housing needs is then increased by 20 percent to reflect an assumed premium associated with the additional costs needed to run a repair program with CDBG funding.

Calculating Infrastructure Needs

As noted above, the statute for this allocation states that ''such funds may not be used for activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency or the Army Corps of Engineers'' and that ''none of the funds * * * may be used * * * as a matching requirement, share, or contribution for any other Federal program.'' In past disasters, unmet infrastructure need has been calculated at the required match portion for the public assistance program. Because these funds cannot be used as match, we must identify a proxy for what infrastructure activities are likely to require funding beyond FEMA's Public Assistance funding and the state match requirement. To best proxy unmet needs that would exceed what FEMA and state match will pay for under the Public Assistance program, this allocation uses only a subset of the Public Assistance damage estimates reflecting the categories of activities most likely to require CDBG funding above the Public Assistance and State Match requirement. Those activities are the following categories: C—Roads and Bridges; D—Water Control Facilities; E—Public Buildings; F—Public Utilities; and G—Recreational—Other. Categories A (Debris Removal) and B (Protective Measures) are largely expended immediately after a disaster and reflect interim recovery measures, rather than the long-term recovery measures the CDBG funds are generally used for. ''Unmet'' infrastructure needs assume that the subset categories of Public Assistance needs will have state aggregate costs 25 percent higher than that covered by FEMA or the state match requirement.

	Disasters with project(s)	Total estimate	Percent
Public Assistance Total	75	$5,322,992,430	
A_Debris_Removal	71	1,185,035,209	22

	Disasters with project(s)	Total estimate	Percent
B_Protective_Measures	75	995,171,090	19
C_Roads_Bridges	73	494,369,300	9
D_Water_Control_Facilities	43	57,455,582	1
E_Public_Buildings	69	1,509,980,683	28
F_Public_Utilities	74	837,448,078	16
G_Recreational_Other	64	243,532,488	5

FEMA Extract: April 14, 2009.

Calculating Economic Revitalization Needs

Based on SBA disaster loans to businesses, HUD used the sum of real property and real content loss of small businesses not receiving an SBA disaster loan. This is adjusted upward by the proportion of applications that were received for a disaster for which content and real property loss were not calculated because the applicant had inadequate credit or income. For example, if a state had 160 applications for assistance, and if 150 had calculated needs and 10 were denied in the pre-processing stage for not enough income or poor credit, the estimated unmet need calculation would be increased as (1 + 10/160), multiplied by the calculated unmet real content loss.

SBA business loan data shows that verified real estate damage and content loss not approved for an SBA loan equaled $972 million. Across all of the disasters there were 17,157 applications for a business disaster loan from SBA. No inspections were done (and loss calculated) for 14 percent of those applications. SBA maintains information on why an application was denied. There are dozens of reasons for such denials, but the most common relate to income and credit. Of those denied at the pre-processing stage 59 percent were denied because of a low credit score and 10 percent for not being able to establish repayment ability. The remaining applications denied in pre-processing are largely denied for being ineligible for the program or similar reasons. For the applications that get processed and a loss determined but are subsequently not approved, the reasons for not being approved are 38 percent for inability to repay, 2 percent for poor credit, and dozens of other reasons, but mostly because the applications are withdrawn by the applicant.

Because applications denied for poor credit or inadequate income are the most likely measure of requiring the type of assistance available with CDBG recovery funds, the calculated unmet business needs for each state are adjusted upwards by the proportion of total applications that were denied at the pre-process stage because of poor credit or inability to show repayment ability.

Calculating Challenge To Recover

The 2005 hurricanes damaged more than 1.2 million homes. One year after the disaster, 90 percent of those homes were occupied. It is in the areas that homes were vacant a year after the storms that the recovery has been especially slow, and a large number of those homes vacant a year after the storms continue to remain vacant. As described in more detail below, two variables are very strong predictors of whether a home becomes vacant and remains vacant over an extended period of time. Those variables are the percent of homes with serious damage within the neighborhood (Census Tract is the proxy) and if a home received very severe damage.

The vast majority of households impacted by a disaster are able to return to their homes within a relatively short time frame. For those households displaced longer than a year and for the neighborhoods where that displacement occurs, the recovery challenges are much more pronounced. For example, areas may decide not to build back and to build elsewhere, using buyout programs and other strategies. Alternatively, homes built back might need to be built to a higher standard of construction to better resist future disasters. These are factors not accounted for in the basic repair costs calculated in the needs calculations for housing, infrastructure, and economic revitalization. To account for these above normal recovery needs that are associated with only the most severe of disasters, HUD has used data from Hurricanes Katrina, Rita, and Wilma to develop a model for estimating if a home is at a high or low risk for overcoming these recovery challenges. There are many reasons why a recovery might not happen for a particular house, but just two factors can predict 34 percent of the variance between homes. According to the model, any home with serious damage (FEMA-estimated damage of greater than $5,200 in a 2005 disaster) had about a one percent risk for being vacant for some period during the 43 months following the disaster. A home with severe damage (more than 50 percent damaged) had an additional 20 percent risk, and if that home was in a Census Tract where many other homes had major or severe damage, it had an additional risk of that proportion of homes affected, multiplied by 34 percent. Such a risk factor can be a useful tool for adjusting grants so that states with a higher per-damaged home risk score get relatively more than states with a relatively lower per-damaged home risk score.

	Unstandardized coefficients	Std. Error	Standardized coefficients	t	Sig.
	B		Beta		
(Constant)	0.010695	0.000909	.....	11.76848	5.77E–32
Percent of homes in Census Tract with serious damage	0.347154	0.001615	0.375916	214.9506	0
Home with severe damage	0.195913	0.001158	0.295827	169.1555	0

Dependent Variable: A time weighted average vacancy risk due to the 2005 Hurricanes =

[16 * (1 − ratio of 12–2006 active address rate to 2005 pre-storm active address rate)

14 * (1 − ratio of 2–2008 active address rate to 2005 pre-storm active address rate)

10 * (1 − ratio of 12–2008 active address rate to 2005 pre-storm active address rate)
3 * (1 − ratio of 3–2009 active address rate to 2005 pre-storm active address rate)]
Divided by 43 months. (the longer the vacancy the higher the average score)

R-square: 0.340
N: 287,190

To adjust for this greater recovery challenge, the results of the analysis above are used in the following model for 2008:

Vacancy Risk Score =
0.010695 (Constant)
+ 0.347154 Percent of homes in Census Tract with serious damage
+ 0.195913 Home with major-high or severe damage

The risk score is then aggregated for each disaster and divided by the total number of housing units with more than very minor damage. That is, we determine a per-damaged home recovery challenge risk score. Such a risk factor can be a useful tool for adjusting grants so that states with a higher risk for long-term recovery challenges get a somewhat higher grant because of this risk.

[FR Doc. E9–19488 Filed 8–13–09; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5282–N–04]

Notice of Proposed Information Collection: Comment Request; Community Development Block Grant Recovery (CDBG–R) Program

AGENCY: Office of Community Planning and Development, Department of Housing and Urban Development.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: October 13, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4176, Washington, DC 20410; telephone 202–402–8048 (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian.L.Deitzer@hud.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Steve Johnson, Director, Entitlement Communities Division, Office of Block Grant Assistance, 451 7th Street, SW., Room 7282, Washington, DC 20410; telephone (202) 708–1577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Department submitted to OMB for emergency processing a proposed information collection for the Community Development Block Grant Recovery (CDBG–R) program. It was approved by OMB on April 17, 2009 and expires on October 31, 2009. Since HUD will be using the form (SF 424) beyond the emergency clearance time period, this is a resubmission to OMB under the normal paperwork clearance process for a three-year approval.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Community Development Block Grant Recovery Program.

OMB Control Number, if Applicable: 2506–0184.

Description of the Need for the Information and Proposed Use: This request identifies the estimated reporting burden associated with information that CDBG–R grantees will report in IDIS for CDBG–R assisted activities, recordkeeping requirements, and reporting requirements. Section 1512 of the Recovery Act requires that not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains: (1) The total amount of recovery funds received from that agency; (2) the amount of recovery funds received that were expended or obligated to projects or activities; and (3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including the name of the project or activity; a description of the project or activity; an evaluation of the completion status of the project or activity; an estimate of the number of jobs created and the number of jobs retained by the project or activity; and for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under the Recovery Act and name of the person to contact at the agency if there are concerns with the infrastructure investment. Not later than 30 calendar days after the end of each calendar quarter, each agency that made Recovery Act funds available to any recipient shall make the information in reports submitted publicly available by posting the information on a Web site.

Agency Form Numbers: Not applicable.

Members of the Affected Public: Eligible CDBG grantees (metropolitan cities, urban counties, nonentitlement counties in Hawaii, and States).

Estimation of the total numbers of hours needed to prepare the information collection including number of responses, frequency of responses, and hours of responses: The number of respondents is 1,196. The proposed frequency of the response to the collection is on a quarterly basis. The total estimated burden is 28,704 quarterly hours.

Status of the proposed information collection: This submission is an extension of a previously approved emergency information collection. The current OMB approval expires on October 31, 2009.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 6, 2009.

Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. E9–19485 Filed 8–13–09; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–31]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date: August 14, 2009.*

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 6, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E9–19244 Filed 8–13–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI02000. L71220000.EO0000.LVTFD0980300]

Notice of Availability of Draft Environmental Impact Statement for the Proposed Blackfoot Bridge Mine, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*), the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (DEIS) for the proposed Blackfoot Bridge Mine and by this Notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Blackfoot Bridge Mine DEIS within 45 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media news releases, and/or mailings.

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

- E-mail: *Blackfoot.Bridge@arcadis-us.com.*
- Fax: (720) 344–3535.
- Mail: Blackfoot Bridge Project, ARCADIS, 630 Plaza Drive, Highlands Ranch, CO 80129.

Copies of the Blackfoot Bridge Mine DEIS are available in the BLM Pocatello Field Office at the following address: 4350 Cliffs Drive, Pocatello, ID 83204. In addition, an electronic copy of the DEIS is available at the following Web address: *http://www.blm.gov/id/st/en/prog/0.html.*

FOR FURTHER INFORMATION CONTACT: Kyle Free, Bureau of Land Management, Pocatello Field Office, 4350 Cliffs Drive, Pocatello, Idaho 83204, phone (208) 478–6368, fax (208) 478–6376.

SUPPLEMENTARY INFORMATION: P4 Production, LLC (P4), a subsidiary of Monsanto Company, holds mineral leases issued by the United States granting them exclusive rights to develop phosphate minerals in the Blackfoot Bridge area. P4 has submitted a Mine and Reclamation Plan (MRP) for BLM to consider the environmental impacts that may occur from implementation of the MRP, including the possible modification of existing leases. P4 must receive approval of the MRP and obtain additional Federal and state permits prior to mining under the proposed mine plan. The BLM has prepared a DEIS to evaluate effects of the Blackfoot Bridge Mine upon the human environment, including the potential effects of selenium and other contaminants, and to consider appropriate mitigation measures.

As required by the Mineral Leasing Act of 1920 and 43 CFR Part 3590, the BLM is to evaluate and respond to the MRP from P4 that proposes the recovery of phosphate ore reserves contained within Federal Phosphate Leases I–05613 and I–013709. The BLM is required to evaluate the MRP, considering the no action alternative and other reasonable alternatives, and issue decisions related to development of the phosphate leases and whether to modify the existing leases. The U.S. Army Corps of Engineers is required to evaluate and respond to P4's application for a permit under Section 404 of the Clean Water Act that is needed to implement the MRP. The DEIS provides the analysis upon which the BLM and other involved agencies can base such decisions. The Proposed Action is needed to ensure economically viable development of the phosphate resources, as required by Federal law and the Federal leases, and to allow the lessee to exercise its right to develop the leases mentioned above.

The Proposed Action consists of P4's MRP as revised in 2008. The Blackfoot Bridge Mine would be developed using open pit mining methods to extract phosphate ore that would be hauled about 8 miles to P4's existing Soda Springs elemental phosphorus plant for processing. Ore would be recovered from three separate mine pits called the North, Mid and South Pits. Mining would begin in the Mid Pit, followed by the North Pit and South Pit. Mining of the North Pit and portions of the Mid Pit are predicted to extend below groundwater level and would require dewatering during portions of the 17-year mine life. All overburden would either be backfilled into mined-out portions of the mine pits or placed in the external East Overburden Pile (EOP) or Northwest Overburden Pile (NWOP). Other mine-related facilities would include an ore stockpile, a tipple (truck loading facility), an ore truck turnaround loop, an equipment yard, two water management ponds, topsoil stockpiles, roads and sediment control structures. Approximately 739 acres of surface are expected to be disturbed over the life of the project, with about 640 acres (85 percent) planned to be re-vegetated. Fifteen percent of the mine site would involve residual highwalls that cannot be re-vegetated.

As phosphate mining has developed in southeast Idaho, increasing concern for surface and groundwater contamination has led to the development of various Best Management Practices (BMPs) to control potential selenium migration from the mines. An impermeable or low-permeability cover over external overburden piles and over pit backfilled areas is a way to reduce infiltration into the materials, and thus, reduce the potential leaching of selenium from the materials.

In the Proposed Action, pit backfills and overburden piles are to be covered with at least 4 feet of chert or limestone, overlaid by 18 inches of topsoil. A cover called the Simple 1 cover, consisting of 18 inches of topsoil overlying 1 foot of weathered alluvium and 2 feet of chert, is proposed for capping of seleniferous portions of the EOP. As part of the DEIS analysis, groundwater modeling has been used to estimate the potential effects of the proposed action on groundwater and surface water resources in the project area. Model results indicate that the Proposed Action, as designed, has the potential to release selenium concentrations to groundwater and ultimately surface water in excess of the applicable water quality standard. To address this potential excess, alternative capping designs (Alternatives 1A and 1B) were developed to reduce the amount of meteoric water that would infiltrate through the backfilled pits and external overburden piles. The reduction in infiltration would result in a reduction in the volume of water that would leach through mine overburden thereby reducing the volume of water containing constituents of concern that could potentially affect the quality of area groundwater and surface water.

Alternatives 1A and 1B would be comprised of all components of the Proposed Action but would require P4 to install a layer of impermeable material (a laminated Geosynthetic Clay Liner or GCLL) between the seleniferous materials and the applied growth media to reduce the volume of water infiltrating into the backfill. The GCLL cover system would be comprised of the following materials (from surface to base):

- 18 inches of topsoil;
- 1 foot of weathered alluvium cover material;
- Approximately 6 inches of drainage/protective layer material (actual thickness is dependent on slope and aspect);
- GCLL;
- 6 inches of a protective sub-grade layer (weathered alluvium or other earthen material); and
- Run of Mine (ROM) overburden.

The GCLL itself includes a thin layer of powdered sodium bentonite clay sandwiched between two geotextile layers. A geotextile is a woven or nonwoven sheet material that is resistant to penetration damage. The top geotextile layer is laminated with a polyethylene geomembrane layer, providing an additional layer of protection (hence the name, Geosynthetic Clay Liner Laminate).

While Alternatives 1A and 1B primarily address water quality issues, additional alternatives to address other issues are also considered in the DEIS.

A Notice of Intent (NOI) to prepare this EIS was published in the **Federal Register** on February 3, 2006. Publication of the NOI in the **Federal Register** initiated a 56 day public scoping period for the Proposed Action that provided for acceptance of written comments. The scoping process identified concerns that included potential effects of the project on water resources; socioeconomic conditions; livestock grazing; reclamation and restoration; wildlife and vegetation; soils; threatened, endangered, and sensitive species; air quality; aesthetics; land use; visual resources; hazardous and solid wastes; tribal interests and cumulative effects.

It is currently expected that P4's existing South Rasmussen Mine will be depleted sometime in 2012. Because of operating requirements at the Soda Springs processing plant, it is necessary to bring Blackfoot Bridge Mine online in 2010. In years 1 through 4, a blend of ores from both South Rasmussen Mine and Blackfoot Bridge Mine would be required.

Three public meetings will be held, each an open house, from 7 p.m. to 9 p.m. The open houses will include displays explaining the project and a forum for commenting on the project. Public meetings will be held in the Soda Springs City Office Building, 9 West 2nd South, Soda Springs, Idaho; in the BLM Pocatello Field Office, 4350 Cliffs Drive, Pocatello, Idaho; and in the Tribal Business Center, Pima Avenue, Fort Hall, Idaho. Each of these meetings will be held within 30 days of this Notice. Alternatively, interested parties may contact the BLM Project Lead listed above for specific information regarding the public meetings. Written and electronic comments regarding the DEIS should be submitted within 45 days of the date of publication of the EPA's Notice in the **Federal Register**.

Please note that public comments and information submitted including names, street addresses and e-mail addresses of respondents will be available for public review and disclosure at the above BLM address during regular business hours (8 a.m. to 4 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.

Karen Rice,

Associate District Manager.

[FR Doc. E9–19416 Filed 8–13–09; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

U.S. Forest Service

[LLMTC0400000 L51010000.ER0000 LVRWE0420000]

Notice of Availability of a Draft Environmental Impact Statement for the Dewey Conveyor Project, Custer County, SD

AGENCIES: Bureau of Land Management, Interior (BLM); and United States Forest Service, Agriculture (USFS).

ACTION: Notice of availability.

SUMMARY: In accordance with section 102 of the National Environmental Policy Act of 1969, the BLM and the USFS have jointly prepared a Draft Environmental Impact Statement (DEIS) to analyze the Dewey Conveyor Project, Custer County, South Dakota, and by this Notice are announcing the opening of the comment period.

DATES: To ensure that your written comments on the Dewey Conveyor Project DEIS will be considered, the BLM or USFS must receive them by September 14, 2009, which is 45 days after July 31, 2009, the date the Environmental Protection Agency (EPA) published its Notice of Availability in the **Federal Register** [74 FR 38187]. The BLM and the USFS will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media news releases, and/or mailings.

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

- *Web site: http://www.blm.gov/mt/st/en/fo/south_dakota_field.html.*
- *E-mail: Marian_Atkins@blm.gov.* Include Docket number SDM–96415 in the subject line of the message.
- *Fax:* (605) 892–7015.
- *Mail or hand delivery:* Marian Atkins, South Dakota Field Manager, Bureau of Land Management, 310 Roundup Street, Belle Fourche, South Dakota 57717.

Copies of the Dewey Conveyor Project DEIS are available at the BLM State Office located at 5001 Southgate Drive, Billings, Montana, and at the South Dakota Field Office located at 310 Roundup Street, Belle Fourche, South Dakota. Electronic copies in pdf format are available on CD–ROM and may be obtained by contacting Marian Atkins of BLM in Belle Fourche, South Dakota, at the address above. A copy of the Draft EIS is also available for review via the Agency Web site: *http://www.blm.gov/mt/st/en/fo/south_dakota_field.html.*

FOR FURTHER INFORMATION CONTACT: Marian Atkins, South Dakota Field Manager, Bureau of Land Management, 310 Roundup Street, Belle Fourche, South Dakota 57717; (605) 892–7000; *Marian_Atkins@blm.gov*; or Laura Burns, FS Lands Program Manager, Hell Canyon District, Black Hills National Forest, 330 Mount Rushmore Road, Custer, South Dakota 57730; (605) 673–4853; *lburns@fs.fed.us.*

Or visit the BLM's Web site and access the Dewey Conveyor Project information at the following link *http://www.blm.gov/mt/st/en/fo/south_dakota_field.html.*

SUPPLEMENTARY INFORMATION:

GCC Dacotah, Inc., has located a limestone deposit several miles north of the town of Dewey, South Dakota, in a geologically favorable area where the limestone lies at, or close to, the surface, making mining economically feasible. The nearby town of Dewey is located along an existing rail transportation corridor.

The surface of the land currently proposed for mining is mostly private property, largely owned by GCC Dacotah, Inc. Within the area proposed for mining, all of the mineral rights are controlled by GCC Dacotah, Inc., either by direct ownership, leasing of privately-owned lands, or through the staking of mining claims on lands underlain by federally-owned minerals. GCC Dacotah, Inc., has a license to mine limestone in the State of South Dakota issued by the South Dakota Department of Environment and Natural Resources.

The Dewey Conveyor Project was proposed by GCC Dacotah, Inc., as a means to transport limestone from the future quarry location to a rail load-out facility near Dewey. GCC Dacotah, Inc., has submitted an Application for Transportation and Utility Systems and Facilities on Federal Lands. If the application is approved, a special use permit would be required from the USFS and a right-of-way (ROW) grant would be required from the BLM for the conveyor to cross Federal lands. The BLM and the USFS have prepared this DEIS to consider the effects of the proposed action to permit a transportation facility on Federal lands.

On October 2, 2007, the BLM published a Notice of Intent (NOI) to prepare an environmental impact statement in the **Federal Register** (72 FR 56083). Publication of the NOI began a 60-day public comment period on the scope of the EIS. The comment period was further extended to January 11, 2008, to allow for additional project-related comments. The BLM provided a Web site with project information that also described the various methods of providing public comment on the scope of the proposed action, including an e-mail address for comments to be sent electronically.

The BLM and USFS scheduled four public meetings in towns near the project area to facilitate information exchange and to gather public comments regarding the scope of the proposed Dewey Conveyor Project. A total of 51 attendees signed in voluntarily at meetings held in Edgemont, South Dakota, on November 5, 2007; Custer, South Dakota, on November 6, 2007; Newcastle, Wyoming, on November 7, 2007; and Dewey, South Dakota, on December 3, 2007.

The public meetings used an ''open house'' format. Information on the project was provided on poster boards showing the project location (including maps), a list of preliminary issues identified by the agencies, and photographic simulations of the proposed conveyor belt. The public scoping comments mainly addressed the appearance of the covered elevated conveyor belt and concerns about the increased use of the county road.

The BLM also contracted with Mr. Donovin Sprague, a member of the federally-recognized Minnicoujou Lakota Tribe, to conduct interviews with tribal members on their interest and concerns in the proposed Dewey Conveyor Project.

The BLM and USFS have jointly prepared a Draft EIS for the Dewey Conveyor Project. The DEIS considers four alternatives. Alternative A is the Proposed Action, which includes a 6.6 mile long, above-ground, enclosed conveyor system beginning at the quarry and terminating at a new railroad load-out facility. The route would cross 1.5 miles of the Black Hills National Forest and 1.0 mile of public land administered by the BLM.

Alternative B is the No Action Alternative. Under the No Action alternative, the proposed action to grant a ROW or issue a special use permit authorizing construction of a conveyor system would not be approved. The analysis for this alternative assumes GCC Dacotah, Inc., would not choose to haul limestone in trucks over the existing Dewey County Road.

Alternative C is an alternative to the proposed action and involves hauling limestone by truck from the quarry to the proposed load-out facility using an improved Dewey County road. Public safety concerns call for the county road to be widened and straightened over approximately 7.2 miles. Widening and straightening the county road where it crosses Federal lands would require a special use permit and a right-of-way (ROW) grant from the USFS and BLM.

Alternative D calls for the construction of another road generally following the route of the proposed conveyor that would only be used for hauling limestone by truck and eliminate the potential visual impact from the proposed conveyor. This would allow for local traffic to be largely separated from the hauling traffic. Approximately 1.4 miles of the existing county road would need to be straightened and widened over the pass that crosses the Elk Mountains on the National Forest. Both a ROW grant and a special use permit would be required for new road construction across Federal lands. The BLM and the USFS will decide whether or not to approve the Application for Transportation and Utility Systems and Facilities on Federal Lands and grant a 100-foot-wide ROW for a conveyor crossing and a special use permit or some alternative thereto.

The BLM and the USFS will also decide what stipulations or mitigation will be attached to any ROW grant or special use permit. Mining of the limestone resource to be produced and transported to a proposed rail load-out facility near Dewey, either by the proposed conveyor belt or one of the trucking action alternatives haul routes, is considered by the agencies in the DEIS.

Based on public scoping comments and subsequent analysis in the DEIS, the BLM and the USFS have identified Alternative A, the Proposed Action, as the agencies' preferred alternative.

Please note that public comments and information submitted including names, street addresses, and e-mail addresses of respondents will be available for public review and disclosure at the above addresses during regular business hours (8 a.m. to 4 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.

Marian M. Atkins,

Field Manager, South Dakota Field Manager.

Craig Bobzien,

Forest Supervisor, Black Hills National Forest.

[FR Doc. E9–19520 Filed 8–13–09; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ956000.L14200000.BJ0000.241A]

Notice of Filing of Plats of Survey; AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey; Arizona.

SUMMARY: The plats of survey of the described lands were officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, on dates indicated.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona:

The plat representing the dependent resurvey of a portion of the east boundary and the Red Sky Mill Site, Mineral Survey No. 1532B, Township 15 North, Range 1 East, accepted February 27, 2009, and officially filed March 4, 2009, for Group 1041, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the north boundary and a metes-and-bounds survey in section 5, Township 5 North, Range 2 East, accepted May 27, 2009, and officially filed June 3, 2009, for Group 1054, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the north boundary of the Salt River Pima-Maricopa Indian Community, Township 3 North, Range 5 East, accepted December 10, 2008, and officially filed December 17, 2008, for Group 1050, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The supplemental plat of sections 35 and 36, Township 3 North, Range 6 East, accepted May 20, 2009, and officially filed May 29, 2009, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat (2 sheets) representing the dependent resurvey of a portion of the Fifth Standard Parallel North (north boundary), a portion of the subdivisional lines, and Amended HES 619, Tracts A and B, and a metes-and-bounds survey in section 3, Township 20 North, Range 7 East, accepted March 9, 2009, and officially filed March 13, 2009, for Group 1018, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the Fifth Standard Parallel North (south boundary), a portion of the subdivisional lines, the subdivision of section 33 and the metes-and-bounds surveys in section 33, Township 21 North, Range 7 East, accepted March 9, 2009, and officially filed March 13, 2009, for Group 1018, Arizona.

This plat was prepared at the request of the United States Forest Service.

The supplemental plat of the SW¼ of section 33, Township 21 North, Range 7 East, accepted May 20, 2009, and officially filed May 29, 2009, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of the east, west and north boundaries, Township 33 North, Range 10 East, accepted July 28, 2009, and officially filed July 31, 2009, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of the Eighth Standard Parallel North (south boundary), Township 33 North, Range 12 East, accepted July 28, 2009, and officially filed July 31, 2009, for Group 1059, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (2 sheets) representing the survey of the Ninth Standard Parallel North (south boundary), the east, west and north boundaries, the subdivisional lines, the subdivision of certain sections and metes-and-bounds surveys of Tracts 37 and 38, Township 37 North, Range 12 East, accepted December 4, 2008, and officially filed December 11, 2008, for Group 1028, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the survey of the Third Guide Meridian East (east boundary), the south, west and north boundaries, the subdivisional lines, and the subdivision of sections 13, 14 and 15, Township 22 North, Range 12½ East, and the survey of a portion of the Third Guide Meridian East (east boundary), Township 23 North, Range 12½ East, accepted November 17, 2008, and officially filed November 20, 2008, for Group 1025, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the survey of a portion of the Third Guide Meridian East (west boundary), Township 36 North, Range 13 East, the survey of the Third Guide Meridian East (west boundary), Township 37 North, Range 13 East, the survey of the Ninth Standard Parallel North (south boundary), the north boundary, the subdivisional lines and the subdivision of certain sections, Township 37 North, Range 12½ East, accepted January 29, 2009, and officially filed February 6, 2009, for Group 1033, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (2 sheets) representing the survey of the south, east and north boundaries, the subdivisional lines, the subdivision of certain sections and a metes-and-bounds survey in section 19, Township 22 North, Range 13 East, accepted November 17, 2008, and officially filed November 20, 2008, for Group 1025, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the survey of a portion of the Tenth Standard Parallel North (south boundary), Township 41 North, Range 19 East, the Fifth Guide Meridian East (east boundary), the west boundary, the subdivisional lines, the subdivision of section 6 and a metes-and-bounds survey of a portion of the Monument Valley Tribal Park (MVTP) boundary, Township 40 North, Range 20 East, accepted January 29, 2009, and officially filed February 6, 2009, for Group 1043, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (3 sheets) representing the dependent resurvey of portions of the west boundary, the Hopi-Navajo Partition Line, Segment ''C'', and the boundary of Management District No. 6, Hopi Indian Reservation, and the survey of a portion of the Fifth Guide Meridian East (east boundary), the south boundary and a portion of the subdivisional lines, Township 30 North, Range 20 East, accepted June 24, 2009, and officially filed July 2, 2009, for Group 1044, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the survey of the Sixth Guide Meridian East (east boundary), Township 23 North, Range 24 East, the dependent resurvey of the north boundary, Township 22 North, Range 25 East and the survey of the north boundary, a Sectional Correction Line and the subdivisional lines, Township 23 North, Range 25 East, accepted January 29, 2009, and officially filed February 6, 2009, for Group 1039, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the south boundary, Township 26 North, Range 28 East, and the dependent resurvey of the east boundary, and the survey of the subdivisional lines, Township 25 North, Range 27 East, accepted June 3, 2009, and officially filed June 10, 2009, for Group 1048, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (2 sheets) representing the dependent resurvey of the Seventh Guide Meridian East (east boundary), the west and north boundaries, and the survey of the subdivisional lines, the subdivision of certain sections, Tracts 37 and 38, and Informative Traverses, Township 41 North, Range 28 East, accepted June 3, 2009, and officially filed June 10, 2009, for Group 1045, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (4 sheets) representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of certain sections and metes-and-bounds surveys, Township 21 North, Range 29 East, accepted July 28, 2009, and officially filed July 31, 2009, for Group 1042, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (2 sheets) representing the dependent resurvey of a portion of the Tenth Standard Parallel North (south boundary), Township 41 North, Range 29 East, the survey of the east boundary, a portion of the west boundary, and a portion of the subdivisional lines, the subdivision of certain sections, the metes-and-bounds surveys of Tracts 37 and 38, Township 40 North, Range 30 East, and a metes-and-bounds survey of Tract 37, Township 41 North, Range 30 East, accepted July 1, 2009, and officially filed July 10, 2009, for Group 1047, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The supplemental plat of Tract 37 in the SE¼ of section 34 and the SW¼ of section 35, Township 41 North, Range 30 East, accepted July 1, 2009, and officially filed July 10, 2009, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the original 1875 survey of the western boundary of New Mexico Territory and the dependent resurvey of the 1904 survey between the 136th and 149th mile corners, Townships 17, 18 and 19 North, Range 31 East, accepted November 5, 2008, and officially filed November 20, 2008, for Group 687, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the Arizona-New Mexico State Line between the 24 mile corner and the 31 mile corner, Townships 37 and 38 North, Range 31 East, and unsurveyed Township 36 North, Range 31 East, accepted June 10, 2009, and officially filed June 24, 2009, for Group 1061, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the survey of Tract 37 in section 6, Township 12 North, Range 1 West, accepted April 17, 2009, and officially filed April 23, 2009, for Group 1053, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat (2 sheets) representing the dependent resurvey of a portion of the Third Standard Parallel North (south boundary), a portion of the subdivisional lines, a portion of the Fort Whipple Timber Reserve, and Patented Mining Claims, Mineral Survey Nos. 2129 and 4226, and the subdivision of sections 27, 28, 34 and 35, Township 13 North, Range 2 West, accepted June 8, 2009, and officially filed June 12, 2009, for Group 1022, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the corrective dependent resurvey of a portion of Tract 37 in section 16, Township 4 North, Range 3 West, accepted June 24, 2009, and officially filed July 2, 2009, for Group 674, Arizona.

This plat was prepared at the request of the Salt River Project.

The plat representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and the subdivision of sections 5 and 6, Township 18 North, Range 5 West, accepted April 17, 2009, and officially filed April 23, 2009, for Group 1029, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, and the subdivision of sections 30 and 32, Township 19 North, Range 5 West, accepted April 17, 2009, and officially filed April 23, 2009, for Group 1030, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the east boundary and subdivisional lines, and the subdivision of section 1, Township 18 North, Range 6 West, accepted March 9, 2009, and officially filed March 13, 2009, for Group 1031, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the south and east boundaries and a portion of the subdivisional lines and the subdivision of section 36, Township 19 North, Range 6 West, accepted April 17, 2009, and officially filed April 23, 2009, for Group 1032, Arizona.

This plat was prepared at the request of the United States Forest Service.

The supplemental plat of section 28, Township 15 North, Range 9 West, accepted May 20, 2009, and officially filed May 29, 2009, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the subdivisional lines and Lot 37 (General Number 215), Township 34 North, Range 14 West, accepted May 27, 2009, and officially filed June 3, 2009, for Group 1051, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the Colorado River Indian Reservation Boundary, portions of the west and north boundaries and a portion of the subdivisional lines, Township 3 North, Range 20 West, accepted February 5, 2009, and officially filed February 12, 2009, for Group 1034, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of a portion of the Colorado River Indian Reservation Boundary and

a portion of the subdivisional lines, Township 4 North, Range 20 West, accepted February 5, 2009, and officially filed February 12, 2009, for Group 1036, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat (3 sheets) representing the dependent resurvey of a portion of the Colorado River Indian Reservation Boundary, portions of the west and north boundaries, a portion of the subdivisional lines and the subdivision of section 2, Township 3 North, Range 21 West, accepted February 5, 2009, and officially filed February 12, 2009, for Group 1035, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of a portion of the east boundary and the subdivision of section 36, Township 4 North, Range 21 West, accepted February 5, 2009, and officially filed February 12, 2009, for Group 1037, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of a portion of the subdivisional lines, Township 13 South, Range 11 East, accepted June 8, 2009, and officially filed June 12, 2009, for Group 1065, Arizona.

This plat was prepared at the request of the National Park Service.

The plat representing the dependent resurvey of a portion of the Second Guide Meridian East (west boundary), a portion of the north boundary, a portion of the Sectional Correction Line, a portion of the subdivisional lines and the subdivision of section 9, Township 14 South, Range 11 East, accepted June 24, 2009, and officially filed July 2, 2009, for Group 1056, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of a portion of the subdivisional lines, Township 3 South, Range 12 East, accepted April 6, 2009, and officially filed April 9, 2009, for Group 1040, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, Township 4 South, Range 12 East, accepted April 6, 2009, and officially filed April 9, 2009, for Group 1040, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the subdivisional lines, Township 4 South, Range 13 East, accepted April 6, 2009, and officially filed April 9, 2009, for Group 1040, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona, 85004–4427.

Dated: August 6, 2009.

Stephen K. Hansen,

Chief Cadastral Surveyor of Arizona.

[FR Doc. E9–19503 Filed 8–13–09; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Advisory Board for Exceptional Children

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Bureau of Indian Education (BIE) is announcing that the Advisory Board for Exceptional Children will hold its next meeting in San Diego, California. The purpose of the meeting is to meet the mandates of the Individuals with Disabilities Education Act of 2004 (IDEA) on Indian children with disabilities.

DATES: The Advisory Board will meet on Wednesday, September 16, 2009, from 4 p.m. to 5 p.m. Pacific Time and on Thursday, September 17, 2009, from 12:30 p.m. to 1:30 p.m. Pacific Time.

ADDRESSES: The meetings will be held at the Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, California, 92109. Telephone: (858) 488–0551; Reservations: (858) 576–4229.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Hamley, Designated Federal Official, Bureau of Indian Education, (505) 563–5260; or Sue Bement, Education Specialist Bureau of Indian Education, (505) 563–5274.

SUPPLEMENTARY INFORMATION: The Advisory Board is meeting in conjunction with the Bureau of Indian Education Special Education Academy, which will take place at the Bahia Resort Hotel in San Diego, California, September 15–19, 2009. The Advisory Board was established to advise the Secretary of the Interior, through the Assistant Secretary—Indian Affairs, on the needs of Indian children with disabilities, as mandated by the Individuals with Disabilities Act of 2004 (Pub. L. 108–446). The meetings are open to the public.

The following items will be on the agenda:

- Advisory Board Committee Reports.
- Report from Gloria Yepa, Supervisory Education Specialist, Bureau of Indian Education, Division of Performance and Accountability.
- Public Comments (via conference call, September 17, 2009, meeting only*).
- Discussion of Board Annual Report due November 1, 2009.
- Next Advisory Board Meeting Date and Place.

*During the September 17, 2009, meeting, time has been set aside for public comment via conference call from 1–1:30 p.m. Pacific Time. The call-in information is: Conference Number 1–888–387–8686, Passcode 4274201.

Dated: August 6, 2009.

Paul Tsosie,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. E9–19505 Filed 8–13–09; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 1, 2009. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic

Places, National Park Service,1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 31, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ALABAMA

Covington County

J.W. Shreve Addition Historic District, 115–300 6th Ave., 302–425 College St., 403–505 E. Three Notch St., Andalusia, 09000692.

Mobile County

Garrison, Charles Denby, Sr., House, Co. Rd. 55, approx. 1 mi. NW. of jct. AL 158, Prichard, 09000693.

ARIZONA

Maricopa County

Town and Country Scottsdale Residential Historic District, Bounded by 72nd Place on the W., 74th St. on the E., Oak St. on the N., and Monte Vista on the S., Scottsdale, 09000694.

CONNECTICUT

New Haven County

Hooker, Elizabeth R., House, 123 Edgehill Rd., New Haven, 09000695.

Windham County

Quinebaug River Prehistoric Archeological District, Between Rt. 169 and the Quinebaug River, Canterbury, 09000696.

MASSACHUSETTS

Norfolk County

Canton Corner Historic District, Roughly Washington St. from Pecunit St. to SW. of Dedham St., and Pleasant St. from Washington St. to Reservoir Rd., Canton, 09000697.

Plymouth County

Hatch Homestead and Mill Historic District, 385 Union St., Marshfield, 09000698.

NEW YORK

Jefferson County

Hubbard, Hiram, House, 34237 NY 126, Champion, 09000699.

Nassau County

Manhasset Monthly Meeting of the Society of Friends, 1421 Northern Boulevard, Manhasset, 09000700.

Onondaga County

New York Central Railroad Passenger and Freight Station, 815 Erie Blvd. E. and 400 Burnet Ave., Syracuse, 09000701.

NORTH CAROLINA

Harnett County

Dunn Commercial Historic District, Roughly Bounded by Harnett St., Cumberland St., Clinton Ave. & Fayetteville Ave., Dunn, 09000702.

Rowan County

Griffith-Sowers House, 5050 Statesville Boulevard, Salisbury, 09000703.

Sherrill, John Carlyle and Anita, House, 14175 NC 801, Mount Ulla, 09000704.

OREGON

Clackamas County

Upper Sandy Guard Station Cabin, 4.5 mi. E. of jct. FS Rds. 18 and 1825, Mt. Hood National Forest, Government Camp, 09000705.

Multnomah County

Hotel Alma, (Downtown Portland, Oregon MPS) 1201–1217 SW Stark St., Portland, 09000706.

Memorial Coliseum, 1401 N. Wheeler Ave./ 300 N. Winning St., Portland, 09000707.

RHODE ISLAND

Newport County

Stonybrook Estate Historic District, 501–521 Indian Ave. and 75 Vaucluse Ave., Middletown, 09000708.

[FR Doc. E9–19534 Filed 8–13–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36CFR60.13(b,c)) and (36CFR63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from June 15, to June 19, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280 National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th floor, Washington, DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov.*

Dated: August 11, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

KEY: State, County, Property Name, Address/ Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

Arkansas, Washington County, Butterfield Overland Mail Route Fayetteville Segments Historic District, W. of AR 265 in Lake Fayetteville Park, Fayetteville, 09000456, LISTED, 6/18/09

Connecticut, New Haven County, Christ Church New Haven, 70 Broadway, New Haven, 09000420, LISTED, 6/19/09

Indiana, Boone County, Traders Point Hunt Rural Historic District, Roughly bounded by IN 334, I–865, Old Hunt Club Rd. & CR 850 E., Zionsville vicinity, 09000421, LISTED, 6/17/09 (Eagle Township and Pike Township, Indiana MPS)

Indiana, Clinton County, South Frankfort Historic District, Roughly between Walnut St., Prairie Creek, Meredith and Columbia Sts., Frankfort, 09000422, LISTED, 6/17/09

Indiana, Franklin County, Turrell, Salmon, Farmstead, 3051 Snow Hill Rd., West Harrison vicinity, 09000423, LISTED, 6/17/09

Indiana, Hancock County, Lincoln Park School, 600 W. N. St., Greenfield, 09000424, LISTED, 6/17/09 (Indiana's Public Common and High Schools MPS)

Indiana, Hendricks County, Adams, Ora, House, 301–303 E. Main St., Danville, 09000425, LISTED, 6/17/09

Indiana, Huntington County, Chenoweth-Coulter Farm, 7067 S. Etna Rd., LaFontaine vicinity, 09000426, LISTED, 6/17/09

Indiana, Lake County, American Sheet and Tin Mill Apartment Building, 633 W. 4th Ave., Gary, 09000427, LISTED, 6/17/09 (Concrete in Steel City: The Edison Concept Houses of Gary Indiana MS)

Indiana, Lake County, Jackson-Monroe Terraces Historic District, 404–423 Jackson St. and 408–426 Monroe St., Gary, 09000428, LISTED, 6/17/09 (Concrete in Steel City: The Edison Concept Houses of Gary Indiana MS)

Indiana, Lake County, Monroe Terrace Historic District, 304–318 Monroe St., Gary, 09000429, LISTED, 6/17/09 (Concrete in Steel City: The Edison Concept Houses of Gary Indiana MS)

Indiana, Lake County, Polk Street Terraces Historic District, 404–422 and 437–455 Polk St., Gary, 09000430, LISTED, 6/17/09 (Concrete in Steel City: The Edison Concept Houses of Gary Indiana MS)

Indiana, Marion County, Gibson Company Building, 433–447 N. Capitol Ave., Indianapolis, 09000431, LISTED, 6/17/09

Indiana, Marion County, HCS Motor Car Company, 1402 N. Capitol Ave., Indianapolis, 09000432, LISTED, 6/17/09

Indiana, Marion County, Traders Point Eagle Creek Rural Historic District, Roughly between I–865, I–465 and Lafayette Rd., Indianapolis vicinity, 09000433, LISTED, 6/17/09 (Eagle Township and Pike Township, Indiana MPS)

Indiana, Switzerland County, Switzerland County Courthouse, 212 W. Main St., Vevay, 09000435, LISTED, 6/17/09

Kansas, Sedgwick County, Broadview Hotel, 400 W. Douglas Ave., Wichita, 09000460, LISTED, 6/19/09

Kansas, Sedgwick County, McLean, Elizabeth, House, 2359 N. McLean Blvd., Wichita, 09000461, LISTED, 6/19/09 (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957)

Massachusetts, Essex County, Merrimack Associates Building, 25 Locust St., Haverhill, 09000436, LISTED, 6/17/09

Massachusetts, Plymouth County, South Middleborough Historic District, Locust,

Spruce, and Wareham Sts., Middleborough, 09000438, LISTED, 6/19/09

Missouri, Cape Girardeau County, Vasterling, Julius, Building, 633–637 Broadway, Cape Girardeau, 09000439, LISTED, 6/17/09 (Cape Girardeau, Missouri MPS)

Missouri, St. Louis Independent City, Liggett & Myers Historic District, Roughly bounded by Vandeventer, Park, Thurman and Lafayette Aves., St. Louis, 09000441, LISTED, 6/18/09

Missouri, St. Louis Independent City, Tiffany Neighborhood Historic District (Boundary Decrease), Roughly bounded by 39th St., Lafayette Ave., Vandeventer Ave. and Folsom Ave., St. Louis (Independent City), 05001120, LISTED, 6/18/09

Ohio, Franklin County, Born Capital Brewery Bottling Works, 570 S. Front St., Columbus, 09000442, LISTED, 6/18/09

Ohio, Hamilton County, Hotel Metropole, 609 Walnut St., Cincinnati, 09000443, LISTED, 6/18/09

Ohio, Lawrence County, Selby Shoe Company Building, 1603 S. 3rd St., Ironton, 09000444, LISTED, 6/18/09

South Dakota, Davison County, Hill, W.S., House, 520 E. 6th Ave., Mitchell, 09000445, LISTED, 6/19/09

South Dakota, Lincoln County, Hudson Boy Scout Cabin, 416 Wheelock, Hudson, 09000448, LISTED, 6/18/09

Texas, El Paso County, Mesa Pump Plant, 4901 Fred Wilson Ave., El Paso, 09000450, LISTED, 6/19/09

Texas, Fayette County, Sengelmann Hall and City Meat Market Building, 527 and 529–533 N. Main St., Schulenburg, 09000451, LISTED, 6/18/09

Virginia, Charlottesville Independent City, Fifeville and Tonsler Neighborhoods Historic District, Bounded by Cherry Ave., to the S., the railway to the N., 4th St., SW to the E., and Spring St., to the W., Charlottesville, 09000452, LISTED, 6/18/09

Wisconsin, Buffalo County, Harmonia Hall, S2119 Co. Hwy. E., Waumandee, 09000453, LISTED, 6/18/09

Wyoming, Natrona County, Odd Fellows Building, 136 S. Wolcott St., Casper, 09000455, LISTED, 6/18/09

Wyoming, Sublette County, Sommers Ranch Headquarters Historic District, 734 Co. Rd. 23–110, Pinedale, 09000454, LISTED, 6/18/09

[FR Doc. E9–19533 Filed 8–13–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–675]

In the Matter of Certain Wireless Communications Devices and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation Based on Withdrawal of the Complainant; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 10) of the presiding administrative law judge (''ALJ'') granting a joint motion by complainant and respondents to terminate the investigation based on withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On May 4, 2009, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, based on a complaint filed by SPH America, LLC of Vienna, VA (''SPH'') on March 25, 2009, and amended on April 17, 2009. 74 FR 20500 (May 4, 2009). The amended complaint alleged violations of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wireless communications devices and components thereof by reason of infringement of certain claims of United States Patent Nos. RE 40,385 and 5,960,029. The amended complaint named nine respondents: Kyocera Corporation of Kyoto, Japan; Kyocera Wireless Corporation of San Diego, CA; Kyocera Sanyo Telecom, Inc. of Woodland Hills, CA; MetroPCS Communications, Inc. of Richardson TX; Metro PCS Wireless of Dallas, TX; Sprint Nextel Corporation of Overland Park, KS; América Móvil of Mexico; TracFone Wireless, Inc., of Miami FL; and Virgin Mobile USA, Inc., of Warren, NJ.

On July 2, 2009, SPH and respondents filed a joint motion to terminate the investigation in its entirety based on withdrawal of the complaint by SPH as to all respondents. On July 15, 2009, the Commission investigative attorney filed a response in support of the joint motion to terminate the investigation.

On July 20, 2009, the ALJ issued Order No. 10 granting the joint motion to terminate the investigation. None of the parties petitioned for review of Order No. 10.

The Commission has determined not to review the ID. Accordingly, this investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

Issued: August 7, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–19511 Filed 8–13–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 5–09]

Issuance of Proposed Decisions in Claims Against Albania and Libya

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Thursday, August 20, 2009, at 11 a.m.

Subject Matter: Issuance of Proposed Decisions in claims against Albania and Libya.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. *Telephone:* (202) 616–6975.

Mauricio J. Tamargo,

Chairman.

[FR Doc. E9–19552 Filed 8–13–09; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

Application of State-Wide Personnel Actions to Unemployment Insurance Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration provided guidance to States explaining the Department's position concerning the application of State-wide personnel actions to the unemployment compensation program. The original guidance, UIPL No. 09–98, was published in the **Federal Register** on February 10, 1998, as continuing guidance. This guidance had not been rescinded. However, to remind States of the Department's position, on March 11, 2009, the Department issued UIPL No. 18–09, with UIPL No. 09–98 as an attachment. UIPL No. 18–09 is published below to inform the public and is available at: *http://wdr.doleta.gov/directives/attach/UIPL/UIPL18–09.pdf.*

SUPPLEMENTARY INFORMATION:

UIPL 18–09—*Application of State-Wide Personnel Actions, including Hiring Freezes, to the Unemployment Insurance Program*

1. Purpose. To advise states that Unemployment Insurance Program Letter (UIPL) 09–98 expresses the Department's position concerning the application of state-wide personnel actions such as hiring freezes, shutdowns, and furloughs to the unemployment insurance (UI) program.

2. References. Section 303(a)(1) of the Social Security Act (SSA) and UIPL 09–98, issued on January 12, 1998 (63 FR 6774, 6779 (February 10, 1998)).

3. Background. During economic downturns, State revenues decline while demands for UI services increase. As a result of declines in State revenues, States face budget constraints and some may impose hiring freezes or other personnel actions such as furloughs on a state-wide basis. When applied to the UI program, these actions will likely have a detrimental effect on unemployed workers and businesses and result in decreased performance against Federal standards.

UIPL 09–98 expresses the Department's interpretation of the Federal UI law requirements as applied to these state-wide personnel actions. In brief, UIPL 09–98 provides that any state-wide personnel action that does not take into account the needs of the UI program is not a ''method of administration'' for assuring the proper and prompt delivery of UI services consistent with Section 303(a)(1), SSA. If the UI program is not exempted from such state-wide actions, the UIPL requires States to demonstrate to the Department that it has adequately addressed the UI program's needs.

A copy of UIPL 09–98 is attached.

4. Action. States are to address state-wide personnel actions applied to the UI program consistent with UIPL 09–98.

5. Inquiries. Inquiries should be directed to your Regional Office.

6. Attachment. UIPL 09–98.

Attachment I

UIPL 09–98

UIPL 09–98 was published in the **Federal Register**, Volume 63, No. 27 on February 10, 1998 and may be found at: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?IPaddress=frwais.access.gpo.gov&dbname=1998_register&docid=98–3341-filed.pdf.*

Dated: This 11th day of August, 2009.

Jane Oates,

Assistant Secretary of Labor, Employment and Training Administration.

[FR Doc. E9–19523 Filed 8–13–09; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Extended Unemployment Compensation Act of 1970—Temporary Changes in Extended Benefits

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) has provided guidance to State workforce agencies in response to the enactment of temporary changes to the extended benefits (EB) program as a result of recent Congressional enactments.

The first guidance, issued on January 2, 2009, as Unemployment Insurance Program Letter (UIPL) No. 7–09, advised State workforce agencies of the temporary change, enacted by Public Law 110–449, in Federal sharing for the first week of extended benefits (EB) under the Federal-State Extended Unemployment Compensation Act of 1970 (FSEUCA) and is available at *http://wdr.doleta.gov/directives/attach/UIPL/UIPL7-09.pdf.*

UIPL No. 12–09, issued on February 23, 2009, provided guidance related to temporary changes in the EB program as a result of Public Law 111–5. The UIPL (available at: *http://wdr.doleta.gov/directives/attach/UIPL/UIPL12-09.pdf*) addressed questions related to Federal sharing for cost benefits, benefit eligibility provisions, amendments to State law and reporting requirements.

On May 4, 2009, ETA issued additional guidance with UIPL No. 12–09, Change 1 (available at: *http://wdr.doleta.gov/directives/attach/UIPL/UIPL12-09_ch1.pdf*) to address general questions about the EB program, work search requirements, submission of tangible evidence, suspension of work search requirements, interstate claims, terminating disqualifications using work, entitlement during high unemployment periods, beginning and ending dates of EB periods, and draft language for the Total Unemployment Rate (TUR) trigger.

These three guidance documents are published below to inform the public.

SUPPLEMENTARY INFORMATION:

UIPL No. 7–09: Federal-State Extended Unemployment Compensation Act of 1970—Temporary Change in Federal Sharing for First Week of Extended Benefits

1. *Purpose.* To advise States of the temporary change in Federal sharing for the first week of extended benefits (EB) under the Federal-State Extended Unemployment Compensation Act of 1970 (FSEUCA).

2. *References.* The Unemployment Compensation Extension Act of 2008, Public Law (Pub. L.) 110–449 enacted on November 21, 2008; FSEUCA (26 U.S.C. 3304 note); 20 CFR 615.14; and Unemployment Insurance Program Letter No. 14–81.

3. *Background.* In general, the benefit costs of EB, as well as certain weeks of ''regular'' State unemployment compensation (known as ''sharable regular compensation''), are shared equally by the States and the Federal

government. However, Federal law prohibits Federal sharing of benefit costs for the first week of EB or the first week of sharable regular compensation if the State compensates beneficiaries for the first week of regular State benefit eligibility ''at any time or under any circumstances.'' *See* section 204(a)(2) of FSEUCA; 20 CFR 615.14(c)(3). As a result, States with no waiting week or States that, under certain conditions, pay what would otherwise be a waiting week are ineligible for Federal sharing for the first week of EB or sharable regular compensation.

4. *Temporary Change.* Section 5 of Public Law 110–449 temporarily suspends this prohibition on Federal sharing of the costs of the first week of EB or sharable regular compensation for weeks of unemployment beginning after November 21, 2008, and ending on or before December 8, 2009. As a result, as long as States continue to meet all other applicable conditions in FSEUCA, all States qualify for Federal sharing for the first week of EB or sharable regular compensation occurring during this period.

5. *Action.* Administrators are to provide this information to the appropriate staff.

6. *Inquiries.* Direct questions to the appropriate Regional Office.

UIPL No. 12–09—Extended Benefits Program—Temporary Changes Made by the Assistance for Unemployed Workers and Struggling Families Act

1. *Purpose.* To advise States of temporary changes to the permanent Federal-State Extended Benefits (EB) program.

2. *References.* Section 2005 of Division B, Title II, the Assistance for Unemployed Workers and Struggling Families Act, of Public Law 111–5, enacted February 17, 2009; the Unemployment Compensation Extension Act of 2008, Public Law 110–449; the Federal-State Extended Unemployment Compensation Act of 1970 (''EB law''), 26 U.S.C. 3304(a)(11) note; 20 CFR Part 615; and Unemployment Insurance Program Letter (UIPL) No. 45–82 and UIPL No. 7–09.

3. *Background.* Section 2005 made several temporary changes to the EB program provided for under the EB law. One change is intended to encourage States experiencing high unemployment to enact the program's optional total unemployment rate (TUR) trigger by providing that the Federal government will, in most cases, pay 100 percent of the benefit costs of EB for a specified period. This 100 percent reimbursement also applies to States triggering ''on'' under other EB triggers and is available to States that already have the TUR trigger in their laws. Under another change, States may allow additional individuals to qualify for EB.

Attachment I discusses the temporary changes in greater detail. Attachment II contains the text of the EB provisions.

4. *Action.* State administrators should distribute this advisory to appropriate staff.

5. *Inquiries.* Questions should be addressed to your Regional Office.

6. *Attachments.*

Attachment I—Temporary Changes to Federal-State EB Program

Attachment II—Text of Section 2005 of Public Law 111–5

Attachment I

Temporary Changes to Federal-State EB Program

Federal Sharing for Benefit Costs

1. *Question:* How do the changes made by Section 2005 affect Federal sharing for EB?

Answer: With certain exceptions, the permanent EB law provides that one-half of EB benefit costs will be paid by the Federal government. (*See* Section 204(a) of the EB law and 20 CFR 615.14.) This Federal share is also paid for certain weeks of regular State unemployment compensation known as ''sharable regular compensation.'' (For purposes of this UIPL, all references to EB benefits include sharable regular compensation.)

Section 2005 amended the EB law to provide that the Federal government will pay 100 percent of EB benefit costs for weeks of unemployment beginning after the date of enactment (that is, after February 17, 2009) and before January 1, 2010.

Q&As 3, 4, and 5 discuss three exceptions to this Federal sharing. Also, *see* Q&A 7 for an optional exception to the January 1, 2010, ending date.

2. *Question:* My State was already in an EB period when the amendments were enacted. What is the first week of unemployment for which 100 percent Federal funding is available?

Answer: The State is entitled to obtain 100 percent of eligible EB costs for weeks of unemployment beginning after February 17, 2009.

3. *Question:* How do the changes affect Federal sharing for the first week of EB?

Answer: The permanent EB law prohibits Federal sharing of benefit costs for the first week of EB if the State compensates individuals for the first week of regular State benefit eligibility ''at any time or under any circumstances.'' (*See* Section 204(a)(2)(B) of the EB law and 20 CFR 515.14(c)(3).) As explained in UIPL 7–09, this prohibition on Federal sharing of the first week of EB was suspended for weeks of unemployment beginning after November 21, 2008, and ending on or before December 8, 2009.

Section 2005 extended this suspension through weeks of unemployment ending before May 30, 2010. As a result, even if a State does not have a waiting week for regular State unemployment compensation or permits payment of a waiting week under certain circumstances, the costs of the first week of EB will be paid as follows:

- The entire cost will be paid by the Federal government if the first week of EB begins after February 17, 2009, and before January 1, 2010.
- 50 percent of the cost will be paid by the Federal government if the first week of EB begins after January 1, 2010, and ends before May 30, 2010.

4. *Question:* How do the changes affect Federal sharing for amounts that are not rounded down?

Answer: They have no effect. As a result, the prohibition on Federal sharing for situations where States round up (rather than down) remains in effect. For example, an individual is eligible for $99.50 and the State rounds the payment up to $100.00. For the period of time specified in the amendments, the Federal government will pay $99.00 while the State will pay the $1.00 attributable to rounding up. (*See* Section 204(a)(2)(C) of the EB law and 20 CFR 615.14(c)(5) regarding this rounding requirement.)

5. *Question:* How do the changes affect Federal sharing for EB based on employment with State and local governments and Federally-recognized Indian Tribes?

Answer: They have no effect. The EB law's prohibition on Federal sharing based on such employment remains in effect. (*See* Section 204(a)(3) of the EB law and 20 CFR 615.14(c)(6).)

Benefit Eligibility Provisions

6. *Question:* What changes does Section 2005 permit to EB eligibility requirements?

Answer: To initially qualify for EB under the permanent EB law, an individual must have at least one week in his/her benefit year that begins in an EB period. (*See* Section 203(c) of the EB law and 20 CFR 615.2(h).) For example, if the final week of the individual's benefit year is also the first week of the State's EB period, the individual will qualify for EB. If otherwise eligible, this individual may receive EB until his/her

EB account is exhausted or the State's EB period ends. Treatment of these individuals is unchanged.

Section 2005 provides for a State to, at its option, permit certain individuals to qualify for EB in cases where there is no overlap between the individual's benefit year and the EB period. Specifically, the State may permit individuals to qualify for EB when the individuals have exhausted Emergency Unemployment Compensation (EUC08) during an EB period that began *on or before* the date the individual exhausted. For example, an individual's benefit year ends during Week 7 of a calendar year and the individual is receiving EUC08, the State triggers ''on'' EB during Week 10, and the individual exhausts EUC08 during Week 13. The State may determine the individual to be eligible for EB beginning Week 14, because the individual exhausted all rights to EUC08 at Week 13 during an EB period. The individual may, if otherwise eligible, collect EB until that benefit is exhausted or, if earlier, the EB period ends.

This option is available to States for weeks of unemployment beginning after February 17, 2009, and before January 1, 2010.

7. *Question:* Is there any phase-out for individuals who have established EB eligibility as of the January 1, 2010, end date?

Answer: Yes. If an individual has received EB with respect to one or more weeks of unemployment beginning after February 17, 2009, and before January 1, 2010, the State may continue to pay EB to the individual (if otherwise eligible) for weeks of unemployment ending before June 1, 2010.

The Federal government will pay 100 percent of eligible EB benefit costs based on such claims during this phase-out period. Note this phase-out for Federal sharing applies to payments to individuals who established EB eligibility (1) under the rules pertaining to the permanent EB program as well as (2) as a result of the special rule described in the previous Q&A.

8. *Question:* Do the amendments affect the requirement that an individual must conduct a systematic and sustained work search?

Answer: No. States must require EB claimants (with exceptions in current law) to conduct a systematic and sustained search for work, and to submit tangible evidence of such search, as a condition of being eligible for EB for a week. States must administer these work search provisions (and all other EB eligibility requirements) to receive Federal sharing under both permanent EB law and under the temporary amendments. (*See* Section 202(a)(3)(A)(ii) and 20 CFR 615.8(g)(2).)

Amendments to State Law

9. *Question.* Do the provisions of Section 2005 require my State to amend its law?

Answer: States paying EB under current provisions of State law will automatically qualify for increased Federal sharing. Whether a State needs to amend its law to trigger ''on'' using the optional TUR trigger, and thereby obtain the increased Federal payments under Section 2005, is a matter determined under State law. Draft language for implementing the optional TUR trigger is found in UIPL 45–92.

Reporting Requirements

10. *Question.* Are there any changes for reports required by the Department of Labor?

Answer: No. However, States should note that, for purposes of the ETA 2112 report (OMB No. 1205–0154), any payment fully funded by the Federal government should be reported in its entirety on line 38 (pertaining to the Federal share of EB).

Attachment II

Text of Section 2005 of Public Law 111–5

Text of the law may be found at: *http://wdr.doleta.gov/directives/attach/UIPL/UIPL12-09a2.pdf.*

UIPL No. 12–09, Change 1—Extended Benefits Program—Temporary Changes Made by the Assistance for Unemployed Workers and Struggling Families Act

1. *Purpose.* To respond to questions about the permanent Federal-State extended benefits (EB) program, including temporary changes made by Public Law 111–5.

2. *References.* Section 2005 of Division B, Title II, the Assistance for Unemployed Workers and Struggling Families Act, of Public Law 111–5, enacted February 17, 2009; the Unemployment Compensation Extension Act of 2008, Public Law 110–449; the Federal-State Extended Unemployment Compensation Act of 1970 (''EB law''), 26 U.S.C. 3304(a)(11) note; 20 CFR Part 615; Unemployment Insurance Program Letter (UIPL) No. 45–92; UIPL No. 7–09; and UIPL No. 12–09.

3. *Background.* UIPL No. 12–09 provided guidance to States on the provisions of Public Law 111–5 regarding temporary changes to the EB program. This UIPL provides:

- Question and Answers (Q&As) responding to questions received from States about these temporary changes and about permanent EB law.
- Draft legislation that States can use when enacting the EB program's optional total unemployment rate (TUR) trigger.

Attachment I addresses the temporary changes and other questions in greater detail. Attachment II contains the draft language for enacting the TUR trigger.

4. *Action.* State administrators should distribute this advisory to appropriate staff.

5. *Inquiries.* Questions should be addressed to your Regional Office.

6. *Attachments.*

Attachment I—Extended Benefits—Questions and Answers

Attachment II—Draft Legislation—TUR Trigger

Attachment I

Extended Benefits

Questions and Answers

In General

CH 1–1. Question: Section 2005(c) of Public Law 111–5 includes a six-month phase-out of the temporary 100-percent Federal financing for Extended Benefits (EB) that the Public Law establishes. For individuals who received EB for a week of unemployment beginning before Friday, January 1, 2010, EB payments made for weeks ending before June 1, 2010, will continue to be eligible for 100-percent Federal financing. However, payments to individuals who first received EB for weeks of unemployment beginning after January 1, 2010, would be funded through a 50-percent Federal share and a 50-percent State share. After January 1, 2010, can a State limit EB to only those individuals who were covered by full Federal funding?

Answer: No. If the State is in an EB period, it must pay all individuals who qualify for EB, regardless of Federal sharing. Conversely, if a State is not in an EB period, it may not pay any EB.

CH 1–2. Question: My State is in the process of adding the Total Unemployment Rate (TUR) trigger to its law. May my State law provide that the EB period will begin prior to the date of enactment?

Answer: Assuming that the requirements for an EB period are met, nothing in Federal law or regulation prohibits the retroactive EB period described in the question.

CH 1–3. Question: To follow-up on the preceding question, how will eligibility for any retroactive weeks be determined, particularly with respect to backdating claims and to the EB program's requirement that an

individual engage in a ''systematic and sustained'' search for work?

Answer: For purposes of backdating claims, State law applies. *See* 20 CFR 615.8(a)(1). The EB work search requirements do not apply to retroactive weeks. The EB work search requirements only apply after individuals are notified in writing that their prospects of finding employment are ''not good''. *See* Q&A CH 1–7.

CH 1–4. Question: Q&A 5 in UIPL No. 12–09 states that the changes made by Public Law 111–5 do not affect Federal sharing for EB based on service performed in the employ of State and local governments and Federally-recognized Indian Tribes. How should the State charge EB based on service for these entities?

Answer: The answer differs for reimbursing employers and contributing employers:

- Because Section 204(a)(3) of the EB law denies Federal reimbursement for EB based on service for State and local governments and Federally-recognized Indian Tribes, 20 CFR 615.10(b) requires these employers, when they elect the reimbursement option, to reimburse 100 percent of these EB costs. Public Law 111–5 does not change this result because it does not change the fact that there is no Federal reimbursement for these costs.
- State law dictates whether or not contributory employers are charged for EB. (However, States must continue to charge contributing employers for their share of sharable regular compensation.) *See* 20 CFR 615.10(a).

EB Work Search Requirements

CH 1–5. Question: Where can I find more information on the EB work search requirements?

Answer: Regulations governing the EB work search requirements, and other matters related to the EB program, are available at 20 CFR Part 615. The core provisions are summarized in Q&As CH 1–6 through CH 1–14.

CH 1–6. Question: When must individuals begin the EB work search?

Answer: Individuals must begin a work search after the State provides notification that their prospects for obtaining work within a reasonably short period of time are ''good'' or ''not good.'' The State must provide this notification no later than the end of the week in which individuals file their first EB claim. Individuals whose job prospects are ''not good'' must be notified of the EB work search requirements at the same time. The work search requirements apply to the week following the week in which the individual receives such notice. *See* 20 CFR 615.8(d)(1).

CH 1–7. Question: How does the State determine whether an individual's prospects for obtaining work within a reasonably short period of time are ''good'' or ''not good''?

Answer: State law specifies what constitutes a reasonably short period of time. *See* 20 CFR 615.2(o)(3). Since individuals claiming EB have exhausted regular compensation and Emergency Unemployment Compensation (EUC08), they have been unemployed for a long time. There is a presumption that their prospects of obtaining work within a reasonably short period of time generally will be considered ''not good.'' Individuals can rebut this presumption by furnishing to the State satisfactory evidence to the contrary.

CH 1–8. Question: What are the work search requirements for an individual who is claiming EB?

Answer: The answer depends on whether the individual's prospects for obtaining work within a reasonable time are ''good'' or ''not good.'' Individuals whose prospects are ''good'' must conduct the same search for suitable work as is required of individuals claiming regular compensation under State law. Many State laws allow such individuals to establish eligibility if they limit their work search to their usual occupation. In other words, many State laws do not require individuals to immediately search for any kind of work available.

The EB law and regulations set forth the work search requirements that States must require for individuals whose work prospects are ''not good.'' Taken together, this authority requires a ''systematic and sustained effort'' to search for ''suitable work'' for each week of EB claimed. (*See* Sections 202(a)(3)(C)–(E) of the EB law and 20 CFR 615.8(d)(4), and 615.2(o)(8).) A ''systematic and sustained effort'' means, among other things, that the search is ''not limited to the classes of work or rates of pay to which the individual is accustomed or which represent the individual's higher skills, and which includes all types of work within the individual's physical and mental capabilities * * *'' 20 CFR 615.2(o)(8)(iv).

CH 1–9. Question: How do the work search requirements relate to individuals participating in a short-time compensation (STC) program?

Answer: The job prospects for individuals participating in a STC program are considered ''good'' because they are working, although at reduced hours. Moreover, Section 401(d)(1) of Public Law 102–318 defines STC as a program under which, among other things, ''eligible employees are not required to meet * * * work search requirements while collecting'' STC. Thus, individuals are not required to seek work as a condition of receiving STC, regardless of whether the individual is claiming regular compensation or EB.

Submission of Tangible Evidence

CH 1–10. Question: What tangible evidence of seeking work must the individual submit?

Answer: The individual must supply information which includes the (1) actions taken, (2) methods of applying for work, (3) type(s) of work sought, (4) dates and places where work was sought, (5) name of the employer or person contacted, and (6) outcome of the contact. *See* 20 CFR 615.2(o)(9).

CH 1–11. Question: Must the individual actually submit the tangible evidence of work search to the State prior to the State issuing payment? Alternatively, may States issue payment based on the individual's certification, via Interactive Voice Response (IVR) or other means, that the tangible evidence has been transmitted to the State?

Answer: It is preferable that a State require an individual to submit the tangible evidence with each claim. However, the Department of Labor (Department) will permit States to make payment based on the individual's certification that s/he has conducted the required work search and transmitted the evidence to the State.

Section 615.8(g)(1) of 20 CFR requires the submission of tangible evidence of actively seeking work ''with each claim,'' suggesting that the State must receive the evidence at the same time as other claims materials. However, that section was drafted when simultaneous submittal of work-search data was more practical since claims were filed either in–person or through the mail. The current use of technologies such as IVR generally allows the States to process claims quickly and efficiently, but does not readily permit a claimant to submit ''tangible evidence,'' that is, ''a written record'' (20 CFR 615.2(o)(9)), ''with each claim.'' Accordingly, the Department interprets section 615.8(g) as permitting a State to make payment upon the individual certifying, ''with each claim,'' that s/he has conducted the required work search and is submitting the tangible evidence. At a minimum, a State must periodically audit reasonable samples of the tangible evidence submitted to ensure that it has received these ''written records'' and that they are complete.

CH 1–12. Question: Must the State review the tangible evidence before making each payment?

Answer: No. It is not practical for States to review all tangible evidence before making payments. However, States must, at a minimum, periodically review for completeness a reasonable sample of such evidence after payment.

CH 1–13. Question: How may the tangible evidence of an active search be submitted?

Answer: No single method of submission is required. What is essential is that the individual provide the necessary information in a verifiable form. As a result, States may require submission through paper, on-line, IVR, fax, or any other method that assures the State obtains the information. (For audit purposes, the State is required to maintain the individuals' responses for the same length of time as any written record(s). *See* 20 CFR 615.15(b).)

Suspension of Work Search Requirements

CH 1–14. Question: May a State suspend the EB work search requirement?

Answer: The work search requirements for individuals whose job prospects are ''not good'' may be suspended when:

• ''[S]evere weather conditions or other calamity forces suspension of such activities by most members of the community.'' (*See* 20 CFR 615.2(o)(8)(vi).) High unemployment is not a ''calamity'' which ''forces'' suspension of work search.

• Individuals are on jury duty or ''[h]ospitalized for treatment of an emergency or life- threatening condition.'' However, such suspension criteria only apply when State law authorizes suspension for both EB and regular UC. (*See* 20 CFR 615.8(g)(3).) Any illnesses or disabilities not requiring hospitalization for the reasons described are not permissible reasons to suspend the EB work search requirements.

In addition, ''State law applies regarding whether members of labor organizations shall be required to seek nonunion work in their customary occupations.'' *See* 20 CFR 615.8(g)(4).

Interstate Claims

CH 1–15. Question: Federal law limits EB eligibility to two weeks for certain individuals who file from a State that is not in an EB period. Does this limitation pertain to commuter claims?

Answer: No. The two-week limitation applies only to claims filed under the Interstate Benefit Payment Plan (IBPP). Commuter claims are made by individuals who regularly traveled across a State line from home to work, and file for UC with the State of employment. Because commuter claims are not filed through the IBPP, the two-week limitation does not apply. *See* EB law, Section 202(c) and 20 CFR 615.9(c).

Terminating Disqualifications Using Work

CH 1–16. Question: My State law provides that individuals are not required to return to work to terminate certain disqualifications. Instead, they must only wait a certain number of weeks to qualify. To be eligible for EB, an individual must terminate a disqualification using employment. How, in practice, does this work?

Answer: The Department's regulations provide that, for EB purposes, a State ''shall require that the individual be employed again subsequent to the date of the disqualification before it may be terminated.'' (20 CFR 615.8(c)(2).) Under this rule, when the individual first files for EB, the State will apply the EB provisions of its UC law which require employment to terminate a disqualification. If the State finds that the individual has performed the employment required by its law prior to filing for EB, the disqualification will be terminated and initial EB eligibility may be established. If the State finds that such employment has not been performed, the State will issue an appealable determination specifying the amount of employment required for EB eligibility.

Entitlement During High Unemployment Periods

CH 1–17. Question: My State has triggered ''off'' the 8 percent high unemployment period (HUP) provided for under the TUR trigger. It remains triggered ''on'' under the 6.5 percent TUR trigger. How does my State treat individuals with remaining HUP entitlement?

Answer: In general, when a State triggers ''on'' to a HUP, an individual's maximum entitlement to EB will equal up to 20 weeks of benefits, as opposed to up to 13 weeks of benefits for ''basic'' EB. These additional weeks of benefits are payable only for weeks of unemployment occurring in a HUP. As a result, when a State triggers ''on'' a HUP, the State will redetermine amounts payable for an otherwise eligible individual. However, when a State triggers ''off'' a HUP and the individual has not exhausted all entitlement, the State must redetermine the individual's remaining entitlement.

Specifically, when a HUP triggers ''off,'' the State must redetermine entitlement based upon the ''basic'' EB monetary determination, minus benefits paid. For example, if an individual first becomes EB-eligible during a HUP, the individual will initially be entitled to 20 weeks. If the individual is paid six weeks and the HUP ends, the individual's remaining entitlement will be recalculated based on the current 13-week maximum entitlement minus any weeks of EB paid. In this case, the individual's remaining entitlement would equal seven weeks. (13 − 6 = 7.)

As another example, assume the above individual was paid 15 weeks of EB and the HUP ends. In this case, the individual would have no remaining entitlement because the individual's current entitlement is capped at 13 weeks and an amount exceeding 13 weeks has already been paid.

Beginning and Ending Dates of EB Periods

CH 1–18. Question: When does my State's EB period begin and end if it triggers ''on'' and ''off'' under different triggers? For example, my State:

• Triggers ''on'' EB under the TUR trigger.

• While still meeting the TUR trigger, also meets the mandatory insured unemployment rate (IUR) ''on'' trigger.

• While still meeting the IUR trigger, stops meeting the TUR trigger.

• Finally, stops meeting the IUR trigger.

Answer: The State's EB period will begin with the first week payable under the TUR trigger and end with the last week payable under the IUR trigger. In this case, although there are different triggers for determining when an EB period may begin and end, there is only one EB period. As long as EB remains triggered ''on'' throughout this period under any trigger, the EB period continues. (*See* UIPL No. 45–92.)

The answer would be different if the ''on'' triggers do not overlap. For example, if the last week payable under the TUR trigger is week 14 of the calendar year and the first week payable under the IUR trigger is week 15, then the EB period would not be continuous. Instead, the TUR EB period would end. In this case, even though the State is continuing to experience high unemployment, the State must trigger ''off'' EB for a minimum of 13 weeks as required by EB law, Section 203(b)(1)(B), and 20 CFR 625.11(d).

CH 1–19. Question: An EB period based on the TUR trigger begins the third week following the Department's EB trigger notice identifying that the State meets the ''on'' indicator. For the IUR trigger, the EB period begins the week immediately following the release

of the trigger notice with an ''on'' notice. What is the reason for this difference?

Answer: Under Federal law, an EB period based on either the IUR or the TUR trigger begins the ''third week after the first week for which there is a State 'on' indicator.'' (EB law, Section 203(a)(1).) However, since the ''on'' indicators for the IUR and TUR triggers are based upon different events, the EB periods they trigger begin at different times following the trigger notices:

• Under the IUR trigger, the week of the ''on'' indicator is the last week of a 13-week period when the State's IUR reaches the levels specified in law and regulation. (*See* Section 203(d)(1) of the EB law and 20 CFR 615.12(a).) Under Section 203(a)(1) of the EB law, the EB period begins the third week after this ''on'' indicator week. The week that the EB period begins is the week after the trigger notice is published because the process proceeds as follows:

—Week 1 is the week when individuals submit benefit claims for the prior week. That prior week will be deemed the ''on'' indicator week if these benefit claims meet the IUR trigger requirements.

—Week 2 is the week the State compiles the benefit claims submitted during Week 1, the State reports its IUR to the Department, and the Department issues the EB trigger notice based on the State report.

—Week 3 is the beginning of the EB period.

• Under the TUR trigger, the week of the ''on'' indicator is the week ''the average rate of total unemployment in [a] State (seasonally adjusted) for the period consisting of the most recent 3 months for which data for all States are published'' meets certain criteria. (EB law, Section 203(f)(1)(A)(i).) Thus, the statute ties the TUR ''on'' indicator to the week of publication, and the EB period begins the third week following this indicator week. As a result, for example, when data for the month of February for all States was published on March 27, 2009, the EB period for States triggering ''on'' using this data began April 12, 2009.

Similarly, the end dates of EB periods in relation to the Department's EB trigger notice depend on whether the State triggers ''off'' an EB period based on the TUR trigger or the IUR trigger.

Attachment II

Draft Legislation—Tur Trigger

Discussion

Below is suggested legislative language for States that choose to add a TUR EB trigger and make the first week of EB payable the week beginning February 22, 2009. (This is the first week most EB payments qualify for 100 percent Federal sharing. The exceptions to 100 percent Federal sharing are discussed in Q&As 4 and 5 in Attachment I to UIPL No. 12–09.) This language is identical to the suggested provisions in UIPL No. 45–92, Attachment II, with two exceptions. First, the date provided in paragraph (a)(2)(C) for the start of the TUR trigger differs. Second, two unnecessary words were deleted. States that choose to adopt a later date should edit the dates as appropriate.

States that do *not* want to make the TUR EB trigger permanent have requested assistance in developing two termination options. The first end date would be the last week that 100 percent Federal sharing is available for most EB payments (*i.e.,* the last week beginning before January 1, 2010). The second would be the last week of the phase-out (*i.e.,* the last week ending before June 1, 2010). As discussed above, the phase-out allows 100 percent Federal sharing to continue for individuals who were paid EB for a week of unemployment ending before January 1, 2010. The bolded language in the draft legislation offers two dates, depending on when the State chooses to terminate the TUR trigger. (The earlier date relates to the first option; the later to the second option.)

An alternative approach is based on the possibility that Congress will extend the termination dates for Federal sharing. Under this option, the expiration date is tied to the date that Congress selects. If the State chooses this approach, then, as above, it has two options.

• Under the first option, EB would terminate the last week 100 percent Federal sharing is available for most EB payments. State law could provide that the EB trigger will remain in effect ''until the week ending four weeks prior to the last week of unemployment for which 100 percent Federal sharing is available under Section 2005(a) of Public Law 111–5, without regard to the extension of Federal sharing for certain claims as provided under Section 2005(c) of such law.''

• Under the second option, EB would terminate the last week 100 percent Federal sharing is available under the phase-out. State law could provide that the trigger will remain in effect ''until the week ending four weeks prior to the last week of unemployment for which 100 percent Federal sharing is available for any claim under Section 2005(c) of Public Law 111–5.''

The draft language also implements the HUP trigger of 8 percent TUR (with lookback). States implementing the optional 6.5 percent TUR trigger must also implement the HUP trigger, which has the effect of increasing EB eligibility from 13 to 20 weeks. (*See* UIPL No. 45–92, Attachment 1, section I.B.2.)

States should consider whether it is necessary to enact amendments expanding EB eligibility provisions to cover certain individuals who have exhausted EUC08, as authorized under Public Law 111–5. (*See* UIPL No. 12–09, Q&As 6 and 7.) States choosing to enact such amendments may add language indicating that, notwithstanding anything in State law, an individual's eligibility period shall include any eligibility period provided for in section 2005(b) of Public Law 111–5.

Draft Language

The draft language for legislation is available at: *http://wdr.doleta.gov/directives/attach/UIPL/UIPL12-09_ch1_a2acc.pdf.*

Dated: This tenth day of August, 2009.

Jane Oates,

Assistant Secretary of Labor, Employment and Training Administration.

[FR Doc. E9–19519 Filed 8–13–09; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notification of the Recovery and Reemployment Research Conference

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of the Recovery and Reemployment Research Conference.

SUMMARY: The Employment and Training Administration will host a Recovery and Reemployment Research Conference on September 15 and 16, 2009 at the L'Enfant Plaza Hotel in Washington, DC.

Purpose and Agenda: The conference is designed to give the workforce community an opportunity to engage with experts and colleagues to broaden their understanding of critical labor issues and challenges in the present economy. This conference translates specific research, pilot, demonstration, and evaluation efforts into actionable strategies that can be used in the workforce system. The conference, from a research perspective, builds on the success of the *ReEmployment Works!* Summit and subsequent Regional Recovery and Reemployment Forums.

Participants will have the opportunity to hear about workforce strategies for green jobs, entrepreneurship, training, unemployment and reemployment services, and research and policy tools to manage and improve the systems. A goal of the conference is for participants to gain insight into what works and what can be replicated in communities across the nation. The conference will feature a combination of plenary sessions and workshops, including presentations by ETA leaders.

DATES: The conference runs from 8:30 a.m. to 4:30 p.m. on Tuesday, September 15, 2009 and from 8:30 a.m. to 4 p.m. on Wednesday, September 16, 2009.

FOR FURTHER INFORMATION CONTACT: Registration and additional information for the Recovery and Reemployment Research Conference can be accessed at *http://www.RecoveryandReemployment.com*. For additional information related to registering for the research conference, contact Lauren Focarazzo of IMPAQ International, the logistical contractor for the conference, at *lfocarazzo@impaqint.com* or 1–866–677–4283 (this is a toll-free number). For other inquiries, contact Janet Javar, Office of Policy Development and Research, USDOL/ETA, at *javar.janet@dol.gov* or 200 Constitution Ave., NW., Room N–5641, Washington, DC 20210.

SUPPLEMENTARY INFORMATION: Space is limited. There is no cost to register. Interested individuals are encouraged to register as soon as possible.

Signed at Washington, DC, this 7th day of August, 2009.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–19516 Filed 8–13–09; 8:45 am]

BILLING CODE 4510–FM–P

DEPARTMENT OF LABOR

Employment and Training Administration

[SGA/DFA–PY–08–19]

Solicitation for Grant Applications (SGA) Amendment Two; Pathways Out of Poverty

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice: Amendment to SGA/DFA–PY–08–19.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** on June 24, 2009, announcing the availability of funds and solicitation for grant applications (SGA) for Pathways Out of Poverty to be awarded through a competitive process. This amendment to the SGA clarifies items related to: (1) Use of funds for supportive services (section IV.F); and (2) identifying PUMA(s) to be served (section VIII.A.1). The document is hereby amended.

1. ''Use of Funds for Supportive Services'' section IV.F (page 30145) is revised as follows to indicate a change in the amount of grant funds that may be used for supportive services:

a. Old Text—''Grantees may use no more than 5% of their grant funds on these services.''

b. New Text—''Grantees may use no more than 10% of their grant funds on these services.''

2. ''Identify PUMA(s) to be Served'' section VIII.A.1 (page 30151) is revised to include the following paragraph at the end of the section regarding additional resources on PUMAs that may be helpful:

a. New Text—''Applicants should note that the PUMA maps display the outlines of census tracts but do not show census tract numbers or street names. Applicants looking for additional information on the street-level boundaries of PUMAs should cross-reference the appropriate PUMA map, which can be found here (*http://www.census.gov/geo/www/maps/puma5pct.htm*) with the appropriate census tract maps, which can be found here (*http://ftp2.census.gov/plmap/pl_trt/*). Follow the census tract map link above, which will display a list of States. Click on the appropriate State, and then click the appropriate county for a directory of map files for that county. Each county directory contains map files that show numbered census tracts and street names for specific areas within the county. For some counties, the first file in the directory will be an overview map of the entire county, which serves as an index for the remaining map files. Applicants can then match the census tract outlines on the PUMA map with the numbered census tracts depicted on the census tract maps. Identifying the census tracts that serve as the outer edge of the PUMA and zooming in on the census tract maps to see the street names will help applicants to identify the street-level boundaries of the PUMA.''

FOR FURTHER INFORMATION CONTACT: Melissa Abdullah, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3346.

Signed at Washington, DC, this 11th day of August 2009.

Donna Kelly,

Grant Officer, Employment & Training Administration.

[FR Doc. E9–19510 Filed 8–13–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Treatment of Pension Rollover Distributions

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration has provided guidance to State workforce agencies on an amendment to Federal unemployment compensation (UC) law that prohibits the reduction of UC due to nontaxable pension rollover distributions. This continuing guidance was issued on May 4, 2009 as UIPL No. 10–09 and is published below to inform the public. It rescinds UIPL No. 22–87, Change 2.

SUPPLEMENTARY INFORMATION:

UIPL 10–09: Treatment of Pension Rollover Distributions

1. *Purpose.* To advise States of an amendment to Federal unemployment compensation (UC) law that prohibits the reduction of UC due to nontaxable pension rollover distributions.

2. *References.* Sections 3304(a)(15) of the Federal Unemployment Tax Act (FUTA); Public Law 109–280, the Pension Protection Act of 2006; Public Law 110–458, the Worker, Retiree, and Employer Recovery Act of 2008; Unemployment Insurance Program Letter (UIPL) 22–87 and Changes 1 (60 FR 55,604 (1995)) and 2 (68 FR 15,241 (2003)); Internal Revenue Service (IRS) Publications 575 and 590; and IRS Tax Topic 413—Rollovers from Retirement Plans.

3. *Background.* As a result of an amendment made by the Worker, Retiree, and Employer Recovery Act of 2008, States are now prohibited from reducing UC due to nontaxable pension rollover distributions. Whether to reduce UC due to receipt of taxable distributions remains a matter for the State to determine. This UIPL is issued to explain the amendment and its effect.

Based on information available to the Department, only one State currently reduces UC due to any pension rollovers. However, all States should review their laws regarding treatment of

rollovers to assure State law is consistent with the amendment.

4. *Amendment to Federal Law.* Section 3304(a)(15), FUTA, requires, as a condition of employers in a State receiving credit against the Federal unemployment tax, that the State law provide that the amount of UC payable to an individual be reduced for any week which begins in a period with respect to which the individual is ''receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual . * * *'' This section goes on to provide certain exceptions to this requirement that are not relevant here.

The Pension Protection Act of 2006 added new language to the end of section 3304(a), FUTA, providing that UC ''shall not be reduced under paragraph (15)'' due to any retirement payment ''not includible in gross income of the individual for the taxable year in which paid because it was part of a rollover distribution.'' The Worker, Retiree, and Employer Recovery Act of 2008 deleted this language, redesignated existing provisions of section 3304(a)(15), FUTA, and added the following new language:

> (B) the amount of compensation shall not be reduced on account of any payments of governmental or other pensions, retirement or retired pay, annuity, or other similar payments which are not includible in the gross income of the individual for the taxable year in which it was paid because it was part of a rollover distribution * * *.

5. *Effect of Amendment.* Prior to the 2006 amendment, States were free to determine whether rollover distributions would cause a reduction in UC. (See UIPL 22–87, Change 2, which this UIPL rescinds.) The effect of the 2006 amendment was ambiguous as it was unclear whether it prohibited the reduction of UC due to rollover distributions or merely clarified that FUTA did not require this reduction. The 2008 amendment is clear that States may not reduce UC due to payments ''which are not includible in the gross income of the individual for the taxable year in which it was paid because it was part of a rollover distribution . * * *'' In summary, as a result of the 2008 amendment, States are prohibited from reducing UC due to these nontaxable distributions; whether to reduce taxable distributions remains a matter for the State to determine.

Whether a rollover distribution is ''not includible in the gross income of the individual'' for a taxable year is determined under IRS guidelines. In general, a distribution from an eligible retirement plan is not includible in gross income when the taxpayer ''rolls over'' the distribution to another eligible retirement plan within 60 days.

Rollovers may occur in two ways. If the distribution is rolled over directly from one eligible retirement plan to another, the amount will not be includible in gross income, and FUTA therefore prohibits reduction of UC due to this rollover. If the distribution is paid directly to the individual, any amount of the requested distribution the individual pays into a qualified retirement plan within 60 days is not includible in gross income, meaning that a State may not reduce UC by that amount. Conversely, any amount distributed to the individual that the individual does *not* timely pay into another eligible retirement plan is includible in gross income; States may therefore elect to either reduce the individual's UC by that amount or not.

For further information on rollovers and their tax status, see IRS Tax Topic 413—Rollovers from Retirement Plans and IRS Publications 575 and 590. These documents are available at *http://www.irs.gov*.

As noted above, States remain free to determine whether to reduce UC due to a taxable distribution. If a State chooses to reduce UC due to taxable distributions, it must determine that a distribution is in fact taxable. Making this determination can be highly technical and time consuming, especially because the distribution's tax status is controlled by the 60-day timeframe, with the result that the tax status of the distribution may not be known until well after the initial payment of UC has been made.

6. *Effective Date.* According to section 112 of the Worker, Retiree, and Employer Recovery Act of 2008, the amendment ''shall take effect as if included in the provisions of'' the Pension Protection Act of 2006 ''to which the amendments relate.'' Because the Department recognizes that States that are not able to make the change through administrative interpretation may need time to introduce and enact conforming legislation to meet the requirements of Public Law 110–458, the Department will take no enforcement action prior to October 31, 2009.

7. *Effect of Redesignation on Departmental Issuances.* As noted above, the Worker, Retiree, and Employer Recovery Act of 2008 redesignated existing provisions of section 3304(a)(15), FUTA. As a result, the Department's previous issuances on this section no longer necessarily cite the correct paragraphs, clauses, and subclauses. The redesignation of these provisions does not affect the Department's interpretation of the requirements of Federal law as contained in UIPL 22–87, its changes, or other departmental issuances, except that UIPL 22–87, Change 2, has been rescinded.

8. *Action.* State administrators should review existing State law provisions to assure consistency with Federal UC law requirements and take appropriate action to obtain any needed legislation.

9. *Inquiries.* Please direct any questions to your Regional Office.

Dated: This tenth day of August 2009.

Jane Oates,

Assistant Secretary of Labor, Employment and Training Administration.

[FR Doc. E9–19521 Filed 8–13–09; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that three meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

Literature (application review): September 9–11, 2009 in Room 716. A portion of this meeting, from 12:30 p.m. to 1 p.m. on September 11th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 6:30 p.m. on September 9th and 10th, and from 9 a.m. to 12:30 p.m. and 1 p.m. to 4 p.m. on September 11th, will be closed.

Learning in the Arts (application review): September 15–16, 2009 in Room 716. A portion of this meeting, from 4 p.m. to 4:30 p.m. on September 16th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on September 15th, and from 9 a.m. to 4 p.m. and 4:30 p.m. to 5:30 p.m. on September 16th, will be closed.

Learning in the Arts (application review): September 21–25, 2009 in Room 716. A portion of this meeting, from 2:30 p.m. to 3 p.m. on September 25th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on September 21st through 24th and from 9 a.m. to 2:30 p.m. and 3 p.m. to 3:30 p.m. on September 25th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 28, 2008, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: August 11, 2009.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E9–19472 Filed 8–13–09; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee For Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L., 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (BIO) #1110.

Date and Time: September 10, 2009—8:30 a.m.–5 p.m.,September 11, 2009—8:30 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 375.

Type of Meeting: Open.

Contact Person: Dr. Joann Roskoski, Executive Officer, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; *Tel No.:* (703) 292–8400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda:

- Assistant Director, BIO reports on the American Recovery and Reinvestment Act and FY'09 Budget.
- Undergraduate Education in Biology.
- Environmental Research and Education Report.
- National Ecological Observatory Network Report.

Dated: August 11, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–19475 Filed 8–13–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Environmental Research and Education (9487).

Dates: September 9, 2009, 9 a.m.–5 p.m. and September 10, 2009, 9 a.m.–1 p.m.

Place: Stafford I, Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Alan Tessier, National Science Foundation, Suite 635, 4201 Wilson Blvd, Arlington, Virginia 22230. Phone 703–292–7198.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda

September 9

Introduction of New Members.
Update on recent NSF environmental activities.
Public release of the Committee's report: *Transitions and Tipping Points in Complex Environmental Systems.*
Discussion with Dr. Arden L. Bement, NSF Director.

September 10

Discussion of Future AC/ERE activities.
Joint session with Advisory Committee for Biological Sciences.

Dated: August 11, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–19476 Filed 8–13–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2009–0155]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on April 30, 2009.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 150, ''Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters under section 274.''

3. *Current OMB approval number:* 3150–0032.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* How often the collection is required: 10 CFR 150.16(b), 150.17(c), and 150.19(c) require the submission of reports following specified events, such as the theft or unlawful diversion of licensed radioactive material. The source material inventory reports required under 10 CFR 150.17(b) must be submitted annually by certain licensees.

6. *Who will be required or asked to report:* Agreement State licensees authorized to possess source or special nuclear material at certain types of facilities, or at any one time and location in greater than specified amounts. In addition, persons engaging in activities in non-Agreement States, in areas of exclusive Federal jurisdiction within Agreement States, or in offshore waters.

7. *An estimate of the number of annual responses:* 8.

8. *The estimated number of annual respondents:* 15.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 190 hours.

10. *Abstract:* 10 CFR part 150 provides certain exemptions from NRC regulations for persons in Agreement States. Part 150 also defines activities in Agreement States and in offshore waters over which NRC regulatory authority continues, including certain information collection requirements. The information is needed to permit NRC to make reports to other governments and the International Atomic Energy Agency in accordance with international agreements. The information is also used to carry out NRC's safeguards and inspection programs.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 14, 2009. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

NRC Desk Officer, Office of Information and Regulatory Affairs (3150–0032), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

The Acting NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 5th day of August, 2009.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–19543 Filed 8–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0334]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 531, Request for Taxpayer Identification Number.

2. *Current OMB approval number:* OMB No. 3150–0188.

3. *How often the collection is required:* One time from each applicant or individual to enable the Department of the Treasury to process electronic payments or collect debts owed to the Government.

4. *Who is required or asked to report:* All individuals doing business with the U.S. Nuclear Regulatory Commission, including contractors and recipients of credit, licenses, permits, and benefits.

5. *The number of annual respondents:* 300.

6. *The number of hours needed annually to complete the requirement or request:* 25 hours (5 minutes per respondent).

7. *Abstract:* The Debt Collection Improvement Act of 1996 requires that agencies collect taxpayer identification numbers (TINs) from individuals who do business with the Government, including contractors and recipients of credit, licenses, permits, and benefits. The TIN will be used to process all electronic payments (refunds) made to licensees by electronic funds transfer by the Department of the Treasury. The Department of the Treasury will use the TIN to determine whether the refund can be used to administratively offset any delinquent debts reported to the Treasury by other government agencies. In addition, the TIN will be used to collect and report to the Department of the Treasury any delinquent indebtedness arising out of the licensee's or applicant's relationship with the NRC.

Submit, by October 13, 2009, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2009–0334. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2009–0334. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 4th day of August 2009.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–19544 Filed 8–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0145; Docket No. 40–9079]

Uranium One Americas; Antelope and JAB Uranium Project New Source Material License Application; Notice of Intent to Prepare a Supplemental Environmental Impact Statement

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Intent (NOI).

SUMMARY: Uranium One Americas (Uranium One) submitted an application for a new source material license for the Antelope and JAB Uranium Project to be located in Sweetwater County, Wyoming, approximately 38 miles northwest of Rawlins, Wyoming and approximately 90 miles southwest of Casper, Wyoming. The application proposes the construction, operation, and decommissioning of in-situ recovery (ISR), also known as in-situ leach, facilities and restoration of the aquifer from which the uranium is being extracted. Uranium One submitted the application for the new source material license to the U.S. Nuclear Regulatory Commission (NRC) by a letter dated July 3, 2008. A notice of receipt and availability of the license application, including the Environmental Report (ER), and opportunity to request a hearing was published in the **Federal Register** on May 19, 2009 (74 FR 23436). The purpose of this NOI is to inform the public that the NRC will be preparing a site-specific Supplemental Environmental Impact Statement (SEIS) to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (ISR GEIS) for a new source material license for the Antelope and JAB Uranium Project, as required by 10 CFR 51.26(d). In addition, as outlined in 36 CFR 800.8, ''Coordination with the National Environmental Policy Act (NEPA),'' the NRC plans to use the environmental review process as reflected in 10 CFR part 51 to coordinate compliance with section 106 of the National Historic Preservation Act.

FOR FURTHER INFORMATION CONTACT: For general information on the NRC NEPA process or the environmental review process related to the Antelope and JAB Uranium Project application, please contact the NRC Environmental Project Manager, Johari Moore, at (301) 415–7694 or *johari.moore@nrc.gov.*

Information and documents associated with the Antelope and Jab Uranium Project, including the license application, are available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm/adams.html* and on the NRC's Antelope and JAB Uranium Project Web page: *http://www.nrc.gov/info-finder/materials/uranium/apps-in-review/jab-antelope-new-app-review.html.* Documents may also be obtained from NRC's Public Document Room at the U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, Maryland.

SUPPLEMENTARY INFORMATION:

1.0 Background

Uranium One submitted the application for a new source material license to the NRC for ISR facilities by a letter dated July 3, 2008. A notice of receipt and availability of the license application, including the ER, and opportunity to request a hearing was published in the **Federal Register** on May 19, 2009 (74 FR 23436). No requests for hearing were received.

The NRC is preparing a SEIS that will tier off of the ISR GEIS (NUREG–1910). The NRC staff is planning to place ads in newspapers serving communities near the proposed site requesting information and comments from the public regarding the proposed action. Also, NRC staff plans to meet with and gather information from local agencies and public interest groups in conjunction with a visit to the proposed site. However, no public scoping meetings will be held as part of this review. NRC staff may also use relevant information gathered for the GEIS to define the scope of the SEIS. The NRC staff is consulting with Bureau of Land Management, U.S. Fish & Wildlife Service, U.S. Army Corps of Engineers, Wyoming Department of Environmental Quality, Wyoming State Historic Preservation Office, Shoshone and Arapaho Tribal Historic Preservation Offices, Wyoming Game and Fish Department, and Natural Resource Conservation District in preparing the SEIS.

The NRC has begun evaluating the potential environmental impacts associated with the proposed ISR facility in parallel with the review of the license application. This environmental evaluation will be documented in draft and final SEISs in accordance with NEPA and NRC's implementing regulations contained in 10 CFR part 51. The NRC is required by 10 CFR 51.20(b)(8) to prepare an Environmental Impact Statement (EIS) or supplement to an EIS for the issuance of a license to possess and use source material for uranium milling. The ISR GEIS and the site-specific SEIS fulfill this regulatory requirement. The purpose of the present notice is to inform the public that the NRC staff will prepare a site-specific supplement to the ISR GEIS as part of the review of the application.

2.0 Antelope and JAB ISR Facilities

The facilities, if licensed, would include a central processing plant, satellite facility, accompanying wellfields, and ion exchange columns. The process involves the dissolution of the water-soluble uranium from the mineralized host sandstone rock by pumping oxidants (oxygen or hydrogen peroxide) and chemical compounds (sodium bicarbonate) through a series of injection wells. The uranium-rich solution is transferred from production wells to either the central processing plant or satellite facility for uranium concentration using ion exchange columns. Final processing is conducted in the central processing plant to produce yellowcake, which would be sold to off-site facilities for further processing and eventual use as commercial fuel for use in nuclear power reactors.

3.0 Alternatives To Be Evaluated

No-Action—The no-action alternative would be to deny the license application. Under this alternative, the NRC would not issue the license. This serves as a baseline for comparison.

Proposed action—The proposed Federal action is to issue a license to use or process source material at the proposed ISR facilities. The license review process analyzes the construction, operation, and decommissioning of ISR facilities and restoration of the aquifer from which the uranium is being extracted. The ISR facilities would be located in Sweetwater County, Wyoming, approximately 38 miles northwest of Rawlins, Wyoming and approximately 90 miles southwest of Casper, Wyoming. The applicant would be issued an NRC license under the provisions of 10 CFR parts 40.

Other alternatives not listed here may be identified through the environmental review process.

4.0 Environmental Impact Areas To Be Analyzed

The following areas have been tentatively identified for analysis in the SEIS:

- *Land Use:* Plans, policies, and controls;
- *Transportation:* Transportation modes, routes, quantities, and risk estimates;
- *Geology and Soils:* Physical geography, topography, geology, and soil characteristics;
- *Water Resources:* Surface and groundwater hydrology, water use and quality, and the potential for degradation;
- *Ecology:* Wetlands, aquatic, terrestrial, economically and recreationally important species, and threatened and endangered species;
- *Air Quality:* Meteorological conditions, ambient background, pollutant sources, and the potential for degradation;

• *Noise:* Ambient, sources, and sensitive receptors;

• *Historical and Cultural Resources:* Historical, archaeological, and traditional cultural resources;

• *Visual and Scenic Resources:* Landscape characteristics, manmade features and viewshed;

• *Socioeconomics:* Demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, and education;

• *Environmental Justice:* Potential disproportionately high and adverse impacts to minority and low-income populations;

• *Public and Occupational Health:* Potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios (including natural events);

• *Waste Management:* Types of wastes expected to be generated, handled, and stored; and

• *Cumulative Effects:* Impacts from past, present, and reasonably foreseeable actions at and near the site(s).

This list is not intended to be all inclusive, nor is it a predetermination of potential environmental impacts.

5.0 The NEPA Process

The SEIS for the Antelope and JAB Uranium Project will be prepared pursuant to the NRC's NEPA Regulations at 10 CFR part 51. The NRC will continue its environmental review of the application and as soon as practicable, the NRC and its contractor will prepare and publish a draft SEIS. The NRC currently plans to have a 45-day public comment period for the draft SEIS. Availability of the draft SEIS and the dates of the public comment period will be announced in the **Federal Register** and the NRC Web site: *http://www.nrc.gov.* The final SEIS will include responses to public comments received on the draft SEIS.

Dated at Rockville, Maryland, this 6th day of August 2009.

For the Nuclear Regulatory Commission.

Christepher McKenney,

Acting Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E9–19542 Filed 8–13–09; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

Reporting Requirements Submitted for OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review; Correction.

SUMMARY: The Small Business Administration published a document in the **Federal Register** of August 7, 2009, concerning Reporting and Recordkeeping Requirements. The document contained an incorrect word in the title.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, 202–205–7030.

Correction:

In the **Federal Register** of August 7, 2009, FR document E9–18948, Volume 74, Number 151, page 39727, under **SUPPLEMENTARY INFORMATION** ''Title'' should read:

SUPPLEMENTARY INFORMATION:

Title: Disaster Home/Business Loan Inquiry Record.

Dated: August 7, 2009.

Curtis B. Rich,

Acting, Chief Administrative Information Branch.

[FR Doc. E9–19490 Filed 8–13–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting Requirements Submitted for OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review; Correction.

SUMMARY: The Small Business Administration published a document in the **Federal Register** of August 10, 2009, concerning Reporting and Recordkeeping Requirements. The document contained an incorrect title.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, 202–205–7030.

Correction

In the **Federal Register** of August 10, 2009, FR document E9–19013, Volume 74, Number 152, page 39991, under the **SUPPLEMENTARY INFORMATION** ''Title'' should read:

SUPPLEMENTARY INFORMATION:

Title: Information for Small Business Size Determination.

Dated: August 10, 2009.

Curtis B. Rich,

Acting, Chief Administrative Information Branch.

[FR Doc. E9–19491 Filed 8–13–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

U.S. Canadian Minerals, Inc.; Order of Suspension of Trading

August 12, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of U.S. Canadian Minerals, Inc. (OTC Bulletin Board symbol: USCN), a Nevada corporation. Questions have been raised about the accuracy and adequacy of publicly disseminated information concerning, among other things, U.S. Canadian Minerals' liabilities, stock issuances, recent merger transaction, business prospects, and recently acquired purported assets.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of U.S. Canadian Minerals, Inc.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, August 12, 2009, through 11:59 p.m. EDT, on August 25, 2009.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–19627 Filed 8–12–09; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60473; August 10, 2009]

Order Providing NRSROs a Temporary Exemption From the Requirement in Rule 17g–2(d) (Incorporating the Provisions of Rule 17g–2(a)(8)) of the Securities Exchange Act of 1934 That CUSIP Numbers Be Displayed

I. Background

The Credit Rating Agency Reform Act of 2006 (''Rating Agency Act'') [1] defined the term ''nationally recognized statistical rating organization''

[1] Public Law 109–291 (2006).

(''NRSRO'') and provided authority for the Securities and Exchange Commission (''Commission'') to implement registration, recordkeeping, financial reporting, and oversight rules with respect to registered credit rating agencies. The regulations implemented by the Commission pursuant to this mandate include Securities Exchange Act of 1934 (''Exchange Act'') Rule 17g–2,[2] which requires an NRSRO to make and retain certain records relating to its business and to retain certain other business records made in the normal course of business operations.

On February 2, 2009, the Commission adopted amendments to its NRSRO rules imposing additional requirements on NRSROs in order to address concerns about the integrity of their credit rating procedures and methodologies.[3] Among other things, the rule amendments added new paragraphs (a)(8) and (d) to Rule 17g–2. New paragraph (a)(8) of Rule 17g–2 requires an NRSRO to make and retain a record for each outstanding credit rating it maintains showing all rating actions (initial rating, upgrades, downgrades, placements on watch for upgrade or downgrade, and withdrawals) ''identified by the name of the rated security or obligor and, if applicable, the CUSIP of the rated security or the Central Index Key (CIK) number of the rated obligor.'' [4] New paragraph (d) of Rule 17g–2 requires an NRSRO to make publicly available, on a six-month delayed basis, the ratings histories for a random sample of 10% of the credit ratings paid for by the obligor being rated or by the issuer, underwriter, or sponsor of the security being rated (''issuer-paid credit ratings'') pursuant to paragraph (a)(8) of Rule 17g–2 for each class of credit rating for which the NRSRO is registered and has issued 500 or more issuer-paid credit ratings.[5]

Paragraph (d) of Rule 17g–2 further requires that this information be made public on the NRSRO's corporate Internet Web site in eXtensible Business Reporting Language (''XBRL'') format.[6] The rule provides that in preparing the XBRL disclosure, an NRSRO must use the List of XBRL Tags for NRSROs as specified on the Commission's Web site.[7] The Commission established a compliance date of August 10, 2009 for this provision.

The XBRL tags are not yet available. Therefore, the Commission issued a Notice on August 5, 2009 that an NRSRO subject to the disclosure provisions of Rule 17g–2(d) can satisfy the requirement to make publicly available ratings history information in an XBRL format by using an XBRL format or any other machine readable format until such time as the Commission provides further notice.[8]

As noted above, the required rating actions information includes, if applicable, the CUSIP of each rated security and the CIK number of each rated obligor. Although CIK numbers are available free of charge on the Commission's Web site, CUSIPs are owned and distributed by private parties.

Subsequent to the issuance of the August 5, 2009 Notice, several NRSROs have notified Commission staff that, despite their efforts, they have not been able to resolve certain issues with the managers of the CUSIP program. The Commission believes, however, that users of credit ratings would benefit from having ratings action information available by the August 10, 2009 implementation date for Rule 17g–2(d), even if CUSIP numbers are not included for a limited time. We note that identifying information, such as the name of the security, will be included.

For these reasons, the Commission finds that providing NRSROs a partial temporary exemption from Rule 17g–2(d) (incorporating the provisions of Rule 17g–2(a)(8)) is necessary and appropriate in the public interest and is consistent with the protection of investors.[9] Therefore, the Commission is providing NRSROs with a 30-day exemption from the requirement in Rule 17g–2(d) (incorporating the provisions of Rule 17g–2(a)(8)) that the CUSIP for each rated security be included with the ratings action information.

II. Conclusion

Accordingly, pursuant to Section 36 of the Exchange Act,

It is hereby ordered that NRSROs are temporarily exempt from the requirement in Rule 17g–2(d) (incorporating the provisions of Rule 17g–2(a)(8)) that the CUSIP for each rated security be included with the ratings action information for thirty days, until September 9, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–19478 Filed 8–13–09; 8:45 am]

BILLING CODE 8010–01–P

[2] 17 CFR 240.17g–2.

[3] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 59342 (February 2, 2009), 74 FR 6456 (''February 2009 Adopting Release'').

[4] 17 CFR 240.17g–2(a)(8).

[5] 17 CFR 240.17g–2(d).

[6] *Id.*

[7] *Id.* The February 2009 Adopting Release specified a compliance date of 180 days after publication in the **Federal Register**.

[8] *Notice Regarding the Requirement to Use eXtensible Business Reporting Language Format to Make Publicly Available the Information Required Pursuant to Rule 17g–2(d) of the Exchange Act,* Exchange Act Release No. 60451, August 5, 2009 (''August 5, 2009 Notice'').

[9] Section 36 of the Exchange Act authorizes the Commission, by rule, regulation, or order, to conditionally or unconditionally exempt any person from any rule under the Exchange Act, to the extent that the exemption is necessary or appropriate in the public interest and is consistent with the protection of investors. 15 U.S.C. 78mm.

DEPARTMENT OF STATE

[Public Notice 6724]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

DATES: *Effective Date:* As shown on each of the 15 letters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Kovac, Managing Director, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2861.

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

May 21, 2009.

Hon. Nancy Pelosi,
Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense services and defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Mexico for the manufacture of components for use in Auxiliary Power Units and Propulsion Engines for end use on various U.S. and non-U.A. approved military platforms.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 011–09.

May 21, 2009.

Hon. Nancy Pelosi,
Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services, and defense articles to Mexico for the manufacture of Military Vehicle Wiring Harnesses for end-use by the U.S. Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 015–09.

May 21, 2009.

Hon. Nancy Pelosi,
Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the United Arab Emirates for the manufacture of the 2.75'' Laser Guided Rocket All-Up-Round for the United Arab Emirates Armed Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 019–09.

May 21, 2009.

Hon. Nancy Pelosi,
Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the permanent export of a commercial communications satellite to the United Kingdom. This notification is for the export of the satellite and associated launch support equipment only.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 022–09.

May 21, 2009.

Hon. Nancy Pelosi,
Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement to include the export of technical data, defense services, and defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services, and hardware to support the Proton launch of the SIRIUS–5 Commercial Communication Satellite from the Baikonur Cosmodrome in Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 023–09.

May 21, 2009.

Hon. Nancy Pelosi,
Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the manufacture of the Personnel Locator System (PLS) in Mexico for end-use by the U.S. Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 029–09.

May 21, 2009.

Hon. Nancy Pelosi,
Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license for the export of technical data, defense services, and defense articles in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles and defense services for the manufacture and support of S–70B (SH–60J/K) Helicopters, parts and support equipment for end-use by the Japan Maritime Defense Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 031–09.

May 21, 2009.

Hon. Nancy Pelosi,
Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of technical data, defense services, and defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles and defense services for the upgrade of the Iraqi Ministry of Defense communication systems for end-use by the Iraqi Ministry of Defense.

The United States Government is prepared to license the export of these items having

taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 032–09.

May 21, 2009.

Hon. Nancy Pelosi,
Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the export of technical data, defense services, and defense articles in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles and defense services for the manufacture and support of the S–70A (UH–60J) Helicopters, parts and support equipment for end-use by Japan's Maritime Defense Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 033–09.

May 21, 2009.

Hon. Nancy Pelosi,
Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the manufacture of the AN/APN–217 (V) 2–3–6 Doppler Navigation System in Japan for end-use by the Ministry of Defense of Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 035–09.

May 21, 2009.

Hon. Nancy Pelosi,
Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the manufacture of the advanced Digital Dispensing System I and VII for the Ministry of Defense of Israel for use on the F–15 Aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 039–09.

June 2, 2009.

Hon. Nancy Pelosi,
Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of major defense equipment (MDE) and associated technical data, defense services, and defense articles in the amount of $25,000,000 or more.

The transaction contained in the attached certification involves the export to the Commonwealth of Australia of defense services and defense articles, including technical data, to support the export, combat system integration, upgrade, qualification support, operational training, and organizational and intermediate level maintenance training for the Phalanx Close-In Weapon System Block 1A through Block 1B Baseline Weapon Systems.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 041–09.

May 22, 2009.

Hon. Nancy Pelosi,
Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the export of technical data, defense services, and defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles and defense services for the manufacture and support of AN/SSQ–62, AN/SSQ–53, and AN/SSQ–36 Sonobuoys and Sonobuoy Assemblies in Canada.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 042–09.

May 22, 2009.

Hon. Nancy Pelosi,
Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the export of technical data, defense services, and defense articles in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles and defense services for the manufacture of the AN/APG–63(V) 1 Radar System Retrofit Kits for end-use by the Ministry of Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 043–09.

May 21, 2009.

Hon. Nancy Pelosi,
Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement to include the export of technical data, defense services, and defense articles regarding major defense equipment in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the sale of four C–130J aircraft, associated support equipment, initial logistics support and initial maintenance and operational training to the Government of Qatar.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Richard R. Verma,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 004–09.

Dated: July 1, 2009.

Robert S. Kovac,

Managing Director, Directorate of Defense Trade Controls, Department of State.

[FR Doc. E9–19541 Filed 8–13–09; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 5, 2009, 74 FR 27058–27059. Wildlife strike data are collected to develop standards and monitor hazards to aviation. Data identify wildlife strike control requirements and provide in-service data on aircraft component failure.

DATES: Please submit comments by September 14, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauneyfaa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Bird/Other Wildlife Strike Report.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0045.

Forms(s): Form 5200–7.

Affected Public: An estimated 7,666 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 5 minutes per response.

Estimated Annual Burden Hours: An estimated 613 hours annually.

Abstract: Wildlife strike data are collected to develop standards and monitor hazards to aviation. Data identify wildlife strike control requirements and provide in-service data on aircraft component failure. The FAA form 5200–7, Bird/Other Wildlife Strike Report, is most often completed by the pilot in charge of an aircraft involved in a wildlife collision or by Air Traffic Control Tower personnel, or other airline or airport personnel who have knowledge of the incident.

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 estimates 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.

Issued in Washington, DC, on August 7, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–19424 Filed 8–13–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Indexing the Annual Operating Revenues of Railroads

The Surface Transportation Board (STB) is publishing the annual inflation-adjusted index factors for 2008. These factors are used by the railroads to adjust their gross annual operating revenues for classification purposes. This indexing methodology insures that railroads are classified based on real business expansion and not from the affects of inflation. Classification is important because it determines the extent to which individual railroads must comply with STB reporting requirements.

The STB's annual inflation-adjusted factors are based on the annual average Railroad's Freight Price Index which is developed by the Bureau of Labor Statistics (BLS). The STB's deflator factor is used to deflate revenues for comparison with established revenue thresholds.

The base year for railroads is 1991. The inflation index factors are presented as follows:

STB RAILROAD INFLATION-ADJUSTED INDEX AND DEFLATOR FACTOR TABLE

Year	Index	Deflator
1991	409.50	[1] 100.00
1992	411.80	99.45
1993	415.50	98.55
1994	418.80	97.70
1995	418.17	97.85
1996	417.46	98.02
1997	419.67	97.50
1998	424.54	96.38
1999	423.01	96.72
2000	428.64	95.45
2001	436.48	93.73
2002	445.03	91.92
2003	454.33	90.03
2004	473.41	86.40
2005	522.41	78.29
2006	567.34	72.09
2007	588.27	69.52
2008	656.78	62.28

[1] Ex Parte No. 492, *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR 1201,* 8 I.C.C. 2d 625 (1992), raised the revenue classification level for Class I railroads from $50 million (1978 dollars) to $250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also raised from $10 million (1978 dollars) to $20 million (1991 dollars).

DATES: *Effective Date:* January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Scott Decker 202–245–0330. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

By the Board, Leland L. Gardner, Director, Office of Economics, Environmental Analysis, and Administration.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–19452 Filed 8–13–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35284]

S&S Shortline Leasing, LLC—Operation Exemption—City of Ely, NV and White Pine Historical Railroad Foundation

S&S Shortline Leasing, LLC (S&S), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 127.9 miles of rail line owned by the City of Ely (City) and the White Pine Historical Railroad Foundation, (Foundation), between milepost 0.0 at or near Cobre, and milepost 127.9 at or near McGill Junction, in White Pine and Elko Counties, NV.[1] S&S states that the line connects at two points with Union Pacific Railroad Company (UP) (milepost 0.0 at Cobre (former Southern Pacific) and milepost 18.79 at Shafter (former Western Pacific).[2]

The transaction is expected to be consummated on or after August 30, 2009.

S&S certifies that its projected annual revenues as a result of the transaction will not result in S&S becoming a Class II or Class I rail carrier and further certifies that its projected annual revenue will not exceed $5 million.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 21, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35284, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle St., Suite 1890, Chicago, IL 60604.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov*.''

Decided: August 10, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–19433 Filed 8–13–09; 8:45 am]

BILLING CODE 4915–01–P

[1] This segment of railroad is the remaining part of a main line consisting of approximately 156.7 miles, also owned by the City and the Foundation. Great Basin and Northern Railroad was authorized to operate over approximately 28.8 miles of the main line in *Great Basin and Northern Railroad—Change in Operators Exemption—The City of Ely and the White Pine Historical Railroad Foundation,* STB Finance Docket No. 34506 (STB served June 7, 2004). S&S seeks to operate over the remainder.

[2] S&S states that interchange with UP will initially take place at Shafter because the trackage used for interchange at that location is in better condition than the trackage at Cobre.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 56]

Railroad Safety Advisory Committee (RSAC); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Working Group Activities.

SUMMARY: The FRA is updating its announcement of RSAC's Working Group activities to reflect its current status.

FOR FURTHER INFORMATION CONTACT: Larry Woolverton, RSAC Designated Federal Officer/Administrative Officer, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Grady Cothen, Deputy Associate Administrator for Safety, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports of June 19, 2009 (74 FR 29268, 11401). The 39th full RSAC Committee meeting was held June 25, 2009, and the 40th meeting is scheduled for September 10, 2009, at the Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC.

Since its first meeting in April of 1996, the RSAC has accepted 32 tasks. The status for each of the open tasks (neither completed nor terminated) is provided below:

Open Tasks

Task 96–4—Tourist and Historic Railroads. Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulation task. Planned future activities involve the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads. *Contact:* Grady Cothen, (202) 493–6302.

Task 03–0l—Passenger Safety. This task includes updating and enhancing the regulations pertaining to passenger safety, based on research and experience. This task was accepted on May 20, 2003, and a Working Group was established. Prior to embarking on substantive discussions of a specific task, the Working Group set forth in writing a specific description of the task. The Working Group reports planned activities to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. At the first meeting, held September 9–10, 2003, a consolidated list of issues was completed. At the second meeting, held November 6–7, 2003, four task groups were established: Emergency Preparedness; Mechanical; Crashworthiness; and Track I Vehicle Interaction. The task forces met and reported on activities for Working Group consideration at the third meeting held May 11–12, 2004, and a fourth meeting was held October 26–27, 2004. The Working Group met on March 21–22, 2006, and again on September 12–13, 2006, at which time the group agreed to establish a task force on General Passenger Safety. The full Passenger Safety Working Group met on April 17–18, 2007; December 11–12, 2007; November 13, 2008; and June 8, 2009. On August 5, 2009, the Working Group was requested to establish an Engineering Task Force, which would be expected to meet initially on September 23–24, 2009, to consider technical criteria and procedures for

qualifying alternative passenger equipment designs as equivalent in safety to equipment meeting the design standards in the Passenger Equipment Safety Standards. The next meeting of the Working Group is scheduled for December 8, 2009. *Contact:* Charles Bielitz, (202) 493–6314.

(*Emergency Preparedness Task Force*) At the Working Group meeting of March 9–10, 2005, the Working Group received and approved the consensus report of the Emergency Preparedness Task Force related to emergency communication, emergency egress, and rescue access. These recommendations were presented to and approved by the full RSAC Committee on May 18, 2005. The Working Group met on September 7–8, 2005, and additional, supplementary recommendations were presented to and accepted by the full RSAC on October 11, 2005. The Notice of Proposed Rulemaking (NPRM) was published on August 24, 2006 (71 FR 50275), and was open for comment until October 23, 2006. The Working Group agreed upon recommendations for the final rule, including resolution of final comments received, during the April 17–18, 2007, meeting. The recommendations were presented to and approved by the full RSAC on June 26, 2007. The Passenger Train Emergency Systems final rule, focusing on emergency communication, emergency egress, and rescue access, was published on February 1, 2008 (73 FR 6370). The Task Force met on October 17–18, 2007, and reached consensus on draft rule text for a follow-up NPRM on Passenger Train Emergency Systems, focusing on low location emergency exit path marking, emergency lighting, and emergence signage. The Task Force presented the draft rule text to the Passenger Safety Working Group on December 11–12, 2007, and the consensus draft rule text was presented to and approved by full RSAC vote during the February 20, 2008, meeting. During the May 13–14, 2008, meeting, the Task Force recommended clarifying the applicability of backup emergency communication system requirements in the February 1, 2008, final rule, and FRA announced its intention to exercise limited enforcement discretion for a new provision amending instruction requirements for emergency window exit removal. The Working Group ratified these recommendations on June 19, 2008. The Task Force met again on March 31, 2009, to clarify issues related to the follow-up NPRM raised by members. The modified rule text was presented to and approved by the Passenger Safety Working Group on June 8, 2009. The Working Group requested that FRA draft the rule text requiring daily inspection of removable panels or windows in vestibule doors, and entrust the Emergency Preparedness Task Force with reviewing the text. FRA sent the draft text and is sending this back to the Task Force for review and comment on August 4, 2009. No additional Task Force meetings are currently scheduled. *Contact:* Brenda Moscoso, (202) 493–6282.

(Mechanical Task Force) (Completed) Initial recommendations on mechanical issues (revisions to Title 49 Code of Federal Regulations (CPR) Part 238) were approved by the full Committee on January 26, 2005. At the Working Group meeting of September 7–8, 2005, the Task Force presented additional perfecting amendments and the full RSAC approved them on October 11, 2005. An NPRM was published in the **Federal Register** on December 8, 2005 (70 PR 73070). Public comments were due by February 17, 2006. The final rule was published in the **Federal Register** on October 19, 2006 (71 FR 61835), effective December 18, 2006.

(Crash worthiness Task Force) Among its efforts, the Crashworthiness Task Force provided consensus recommendations on static end strength that were adopted by the Working Group on September 7–8, 2005. The full Committee accepted the recommendations on October 11, 2005. The Front-End Strength of Cab Cars and Multiple-Unit Locomotives NPRM was published in the **Federal Register** on August 1, 2007 (72 FR 42016), with comments due by October 1, 2007. A number of comments were entered into the docket, and a Crashworthiness Task Force meeting was held September 9, 2008, to resolve comments on the NPRM. Based on the consensus language agreed to at the meeting, PRA has prepared the text of the final rule incorporating the resolutions made at the Task Force meeting and the final rule language was adopted at the Passenger Safety Working Group meeting held on November 13, 2008. The language was presented and approved at the December 10, 2008, full RSAC meeting. The rule is currently in final coordination and will go forward with a target publication date of August 2009. *Contact:* Gary Fairbanks, (202) 493–6322.

(Vehiclenrack Interaction Task Force) The Task Force is developing proposed revisions to 49 CFR Parts 213 and 238, principally regarding high-speed passenger service. The Task Force met on October 9–11, 2007, and again on November 19–20, 2007, in Washington, DC, and presented the final Task Force Report and final recommendations and proposed rule text for approval by the Passenger Safety Working Group at the December 11–12, 2007, meeting. The final report and the proposed rule text were approved by the Working Group and was presented to and approved by full RSAC vote during the February 20, 2008, meeting. The group last met on February 27–28, 2008, and FRA is currently crafting an NPRM with a target publication date of September 2009. No additional Task Force meetings are currently scheduled. *Contact:* John Mardente, (202) 493–1335.

(General Passenger Safety Task Force) At the Working Group meeting on April 17–18, 2007, the Task Force presented a progress report to the Working Group. The Task Force met on July 18–19, 2007, and afterwards, it reported proposed reporting cause codes for injuries involving the platform gap, which were approved by the Working Group by mail ballot in September 2007. The full RSAC approved the recommendations for changes to 49 CFR part 225 accident/incident cause codes on October 25, 2007. The General Passenger Safety Task Force presented draft guidance material for management of the gap that was considered and approved by the Working Group during the December 11–12, 2007, meeting, and was presented to and approved by full RSAC vote during the February 20, 2008, meeting. The group met April 23–24, 2008; December 3–4, 2008; and April 21–23, 2009. The Task Force continues work on passenger train door securement, ''second train in station,'' trespasser incidents, and System Safety-based solutions by developing a regulatory approach to System Safety. The Task Force has created two Task Groups to focus on these issues. The Door Safety Task Group has reached consensus on 47 out of 48 safety issues addressed in the area of passenger train door mechanical and operational requirements, and will present draft regulatory language to the General Passenger Safety Task Force at the next meeting. The System Safety Task Group has produced draft regulatory language for a System Safety Rule and will present its recommendation to the General Passenger Safety Task Force at the next meeting. The next General Passenger Safety Task Force meeting is scheduled for October 6–7, 2009. *Contact:* Dan Knote, (631) 567–1596.

Task 05–01—Review of Roadway Worker Protection Issues. This task was accepted on January 26, 2005, to review 49 CFR Part 214, Subpart C, Roadway Worker Protection (RWP), and related sections of Subpart A. The RSAC agreed to recommend consideration of specific

actions to advance the on-track safety of railroad employees and contractors engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing requirements. A Working Group was established, and reported to the RSAC any specific actions identified as appropriate. The first meeting of the Working Group was held on April 12–14, 2005. The group drafted and accepted regulatory language for various revisions, clarifications, and additions to 32 separate items in 19 sections of the rule. However, two parties raised technical concerns regarding the draft language concerning the electronic display of track authorities. The Working Group reported recommendations to the full Committee at the June 26, 2007, meeting. Through the NPRM process, FRA will address this issue, along with eight additional items on which the Working Group was unable to reach a consensus. Comments were received and were considered during the drafting of the NPRM. In early 2008, the external working group members were solicited to review the consensus text for errata review.

In order to address the heightened concerns raised with the current regulations for adjacent-track on-track safety, an NPRM was published on July 17, 2008, that focused on this element of the RWP rule alone. As this was an NPRM, FRA sought comment on the entire proposal, including those portions that FRA sought to clarify. However, on August 13, 2008, the NPRM was withdrawn to permit further consideration of the RSAC-reported consensus language.

FRA has decided to separately issue a second proposed rule on adjacent track protection, which will be handled on an accelerated basis. The second NPRM concerning adjacent controlled-track safety is under final review and is expected to be published within the next 2 months. The remaining larger NPRM for the various revisions, clarifications, and additions to 31 separate items in 19 sections of the rule, and FRA's recommendations for the eight nonconsensus items, is planned for late 2009. FRA intends to address all the items discussed through two rulemakings: (1) A relatively compact rulemaking that will address adjacent track protection and (2) a longer, catchall rulemaking that will address all consensus items and be broad enough in scope to raise the nonconsensus items for further discussion and comment. The decision to issue a separate adjacent track rule was due to an increase in roadway worker fatalities that occurred on adjacent track. Consequently, a draft NPRM to address adjacent track protection was published in the **Federal Register** on July 17, 2008, but due to concern that parts of the NPRM failed to accurately capture the consensus recommendations of the RSAC, the NPRM was withdrawn by FRA on August 13, 2008. FRA will address discrepancies between the consensus language and the adjacent track protection NPRM to clarify the essential issues, and intends to publish a second NPRM by August 31, 2009. FRA is also working on the longer, catchall rulemaking, and plans to publish an NPRM in late 2009. *Contact:* Christopher Schulte, (610) 521–8201.

Task 05–02—Reduce Human Factor-Caused Train Accidents/Incidents. This task was accepted on May 18, 2005, to reduce the number of human factor-caused train accidents/incidents and related employee injuries. The Railroad Operating Rules Working Group was formed and the Group extensively reviewed the issues presented. The final Working Group meeting devoted to developing a proposed rule was held February 8–9, 2006. The Working Group was not able to deliver a consensus regulatory proposal, but did recommend that it be used to review comments on FRA's NPRM, which was published in the **Federal Register** on October 12, 2006 (FR 71 60372), with public comments due by December 11, 2006. Two reviews were held, one on February 8–9, 2007, the other on April 4–5, 2007. Consensus was reached on four items and those items were presented and accepted by the full RSAC Committee at the June 26, 2007, meeting. A fmal rule was published in the **Federal Register** on February 13, 2008 (73 FR 8442), with an effective date of April 14, 2008. FRA received four petitions for reconsideration of that final rule. The final rule that responded to the petitions for consideration was published in the **Federal Register** on June 16, 2008, and concluded the rulemaking. Working group meetings were held September 27–28, 2007; January 17–18, 2008; May 21–22, 2008; and September 25–26, 2008. The Working Group has considered issues related to the issuance of Emergency Order No. 26 (prohibition on use of certain electronic devices while on duty) and ''after arrival mandatory directives,'' among other issues. The working group continues to work on after arrival orders, and at the September 25, 2008, meeting voted to create a Highway-Rail Grade Crossing Task Force to review highway-rail grade crossing accident reports regarding incidents of crossing warning systems providing ''short or no warning,'' resulting from or contributed to ''by train operational issues'' with the intent to recommend new accident/incident reporting codes that would better explain such events, and which may provide information for remedial action going forward. A follow-on task is to review and provide recommendations regarding supplementary reporting of train operations-related, nowarning, or short-warning incidents that are not technically warning system activation failures but which result in an accident/incident or a near miss. The Task Force has been formed and will meet in late 2009 after other Railroad Safety Improvement Act of 2008 (RSIA) priorities are met. *Contact:* Douglas Taylor, (202) 493–6255.

Task 06–01—Locomotive Safety Standards. This task was accepted on February 22, 2006, to review 49 CFR Part 229, Railroad Locomotive Safety Standards, and revise as appropriate. A Working Group was established with the mandate to report any planned activity to the full Committee at each scheduled full RSAC meeting, to include milestones for completion of projects, and to progress toward completion. The first Working Group meeting was held May 8–10, 2006. Working Group meetings were held on August 8–9, 2006; September 25–26, 2006; October 30–31, 2006; and the Working Group presented recommendations regarding revisions to requirements for locomotive standards to the full RSAC on September 21, 2006. The NPRM regarding standards was published in the **Federal Register** on March 6, 2007 (72 FR 9904). Comments received were discussed by the Working Group for clarification, and FRA published a final rule on October 19, 2007 (72 FR 59216). The Working Group is continuing the review of Part 229, with work in the areas of locomotive cab temperature standards, alerters, remote control locomotives, and critical locomotive electronics, with a view to proposing further revisions to update the standards. The Working Group met on January 9–10, 2007; November 27–28, 2007; February 5–6, 2008; May 20–21, 2008; August 5–6, 2008; October 22–23, 2008; January 6–7, 2009; and April 15–16, 2009. The group has now completed the review of Part 229 and was unable to reach consensus regarding locomotive cab temperatures standards, locomotive alerters, and remote control locomotives. The group reached consensus regarding critical locomotive electronic standards, an update of annual biennial air brake

standards, clarification of the ''air brakes operate as intended'' requirement, locomotive pilot clearance within hump classification yards, clarification of the ''high Voltage'' warning requirement, an updated ''headlight lamp'' requirements, and language to allow locomotive records to be stored electronically. The Working Group will present a draft Part 229 rule text revision covering these items to the Committee for approval at the September 10, 2009, meeting and if approved, FRA will brief the full RSAC and proceed to NPRM. The Working Group may be called back into service to address comments received on the NPRM after publication. *Contact:* George Scerbo, (202) 493–6249.

Task 06–02—Track Safety Standards and Continuous Welded Rail (CWR). Section 9005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. No. 109–59), the 2005 Surface Transportation Authorization Act, requires FRA to issue requirements for inspection of joint bars in CWR to detect cracks that could affect the integrity of the track structure (49 U.S.C. 20142(e). FRA published an interim final rule (IFR) establishing new requirements for inspections on November 2, 2005 (70 FR 66288). On October 11, 2005, FRA offered the RSAC a task to review comments on this IFR, but conditions could not be established under which the Committee could have undertaken this with a view toward consensus. Comments on the IFR were received through December 19, 2005. FRA reviewed the comments. On February 22, 2006, the RSAC accepted this task to review and revise the CWR, related to provisions of the Track Safety Standards, with particular emphasis on reduction of derailments and consequent injuries and damage caused by defective conditions, including joint failures, in track using CWR. A Working Group was established. The first Working Group meeting was held April 3–4, 2006, at which time the Working Group reviewed comments on the IFR. The second Working Group meeting was held April 26–28, 2006. The Working Group also met May 24–25, 2006, and July 19–20, 2006. The Working Group reported consensus recommendations for the final rule that were accepted by the full RSAC Committee by mail ballot on August 11, 2006. The final rule was published in the **Federal Register** on October 11, 2006 (71 FR 59677). The Working Group continued review of 49 CFR Section 213.119, with a view to proposing further revisions to update the standards. The Working Group met January 30–31, 2007; April 10–11, 2007; June 27–28, 2007; August 15–16, 2007; October 23–24, 2007; and January 8–9, 2008. The Working Group reported consensus recommendations for revisions to 49 CPR Section 213.119 regulations to the full RSAC Committee on February 20, 2008, and the Working Group's recommendations were accepted. FRA published an NPRM on December 1, 2008, and is preparing a final rule with a target publication date of August 2009. See Tasks 07–01 and 08–03, below. *Contact:* Ken Rusk, (202) 493–6236.

Task 06–03—Medical Standards for Safety-Critical Personnel. This task was accepted on September 21, 2006, to enhance the safety of persons in the railroad operating environment and the public by establishing standards and procedures for determining the medical fitness for duty of personnel engaged in safety-critical functions. A Working Group has been established and will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The first Working Group meeting was held December 12–13, 2006. The Working Group has held follow-on meetings on the following dates: February 20–21, 2007; July 24–25, 2007; August 29–30, 2007; October 31–November 1, 2007; December 4–5, 2007; February 13–14, 2008; March 26–27, 2008; and April 22–23, 2008. At the latter meeting, FRA announced that the agency would prepare an NPRM draft based on the discussions to date and schedule a further meeting for review of the document. The draft NPRM is currently in FRA coordination and the language is being revised based on comments. The draft NPRM will be presented to the RSAC Medical Standards Working Group, when completed. A Physicians Task Force, established by the Working Group in May 2007, is proceeding to develop accompanying medical guidelines, which will be used to provide consistent criteria for determining the medical fitness for duty of the safety-critical positions. These guidelines will be presented for the Medical Standards Working Group consideration, when complete. When accepted by the Medical Standards Working Group, the two parts of the rulemaking will be presented to the full RSAC for approval. The target date for publishing the NPRM is December 2009. The Physicians Task Force has had meetings or conference calls on July 24, 2007; August 20, 2007; October 15, 2007; October 31, 2007; June 23–24, 2008; September 8–10, 2008; October 8, 2008; November 12–13, 2008; December 8–10, 2008; January 27–28, 2009; February 24–25, 2009; March 11–12, 2009; March 31–April 1, 2009; April 15, 2009; April 22, 2009; May 13, 2009; May 20, 2009; and June 17, 2009. *Contact:* Dr. Bernard Arseneau, (202) 493–6002.

Task 07–01—Track Safety Standards. This task was accepted on February 22, 2007, to consider specific improvements to the Track Safety Standards or other responsive actions, supplementing work already underway on CWR, specifically to: (1) Review controls applied to reuse of rail in CWR ''plug rail''; (2) review the issue of cracks emanating from bond wire attachments; (3) consider improvements in the Track Safety Standards related to fastening of rail to concrete ties; and (4) ensure a common understanding within the regulated community concerning requirements for internal rail flaw inspections. The tasks were assigned to the Track Safety Standards Working Group. The Working Group will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The first Working Group meeting was held on June 27–28, 2007, and the group met again on August 15–16, 2007, and October 23–24, 2007. Two Task Forces were created under the Working Group: Concrete Ties and Rail Integrity. The Concrete Ties Task Force met on November 26–27, 2007, February 13–14, 2008, April 16–17, 2008, July 9–10, 2008, and September 17–18, 2008. The Concrete Ties Task Force finalized consensus language regarding concrete crossties (49 CFR Part 213) and presented a recommendation to the Track Standards Working Group at the November 20, 2008, Working Group meeting. The language was approved by both the Working Group and the December 10, 2008, RSAC meeting and the Task Force was dissolved. FRA is preparing an NPRM, with a target publication date of September 2009. *Contact:* Ken Rusk, (202) 493–6236.

Task OS–03—Track Safety Standards Rail Integrity. This task was accepted on September 10, 2008, to consider specific improvements to the Track Safety Standards or other responsive actions designed to enhance rail integrity. The Rail Integrity Task Force was created in October 2007 under Task 07–01 and first met on November 28–29, 2007. The Task Force met on February 12–13, 2008; April 15–16, 2008; July 8–9, 2008; September 16–17, 2008; February 3–4, 2009; and June 16–17, 2009. Consensus has been achieved on bond wires and a common understanding on internal rail

flaw inspections has been reached. ''Valid test'' and ''qualified operator'' have been defined and will be issued as a technical bulletin. The Task Force has reached consensus to recommend to the Working Group that the item regarding ''the effect of rail head wear, surface conditions, and other relevant factors on the acquisition and interpretation of internal rail flaw test results'' be closed. The Task Force does not recommend regulatory action concerning head wear. Surface conditions and their affect on test integrity has been discussed and understood during dialogue concerning common understanding on internal rail flaw inspections. The Task Force believes that new technology has been developed that improves test performance, and will impact the affect of head wear and surface conditions on interpretation of internal rail flaw test results. The next Rail Integrity Task Force meeting is scheduled for October 29–30, 2009. *Contact:* Carlo Patrick, (202) 493–6399.

Task No. 08–04—Positive Train Control. This task was accepted on December 10, 2008, to provide advice regarding development of implementing regulations for Positive Train Control (PTC) systems and their deployment under RSIA. The task included a requirement to convene an initial meeting not later than January 2009 and to report recommendations back to the RSAC no later than April 24, 2009. The PTC Working Group was created in December 2008 by working group member nominations from Committee member organizations under Task 08–04 and the kickoff meeting was held on January 26–27, 2009. The group met again on February 11–13, 2009; February 25–27, 2009; March 17–18, 2009; and March 31–April 1, 2009. On April 2, 2009, the RSAC approved the request by the Working Group for agreement to vote on the draft rule text recommendations from the Working Group by mail ballot. On May 11, 2009, by majority vote via mail ballot, the RSAC Committee accepted the recommendations of the Positive Train Control Working Group and forwarded those recommendations to the Administrator, with the understanding that there are other issues for which FRA will be making proposals with respect to their resolution. The NPRM was published on July 21, 2009 (74 FR 36152), and a public hearing has been announced for August 13, 2009 (74 FR 36152). Comments are due by August 20, 2009. The PTC Working Group will reconvene on August 31–September 2, 2009, to discuss comments received on the NPRM. The target date for the PTC final rule is October 2009, with an effective date of January 2010. An additional Task Force was formed to assist FRA in developing a model template for a successful PTC Implementation Plan (PTCIP). PTCIPs are required to be submitted by April 16, 2010, under mandate of the RSIA. FRA will post a final version of a PTCIP template and an example of a risk-based model for prioritization of line segment implementation to the public FRA Web site, when complete. *Contact:* Grady Cothen, (202) 493–6302.

Task No. 08–05—Railroad Bridge Safety Assurance. This task was accepted on December 10, 2008, to develop a draft rule encompassing the requirements of Section 417 of the RSIA, Railroad Bridge Safety Assurance. This Section directs the Secretary of Transportation to promulgate regulations, not later than 12 months after the October 16, 2008, date of enactment, requiring owners of track carried on one or more railroad bridges to adopt a bridge safety management program to reduce the risk of human casualties, environmental damage, and disruption to the Nation's railroad transportation system that would result from a catastrophic bridge failure. The Railroad Bridge Working Group, created under Task 08–01, was directed to reconvene, and the kickoff meeting was held January 28–29, 2009. The Working Group also met on February 23–24, 2009, where they reached agreement on consensus language covering all but two issues. The Working Group presented the draft language to the full Committee at the April 2, 2009, meeting and the Committee approved the consensus recommendations by vote as the recommendations of the Committee to the FRA Administrator. The resulting NPRM is currently in coordination, with a target publication date of August 2009. The Working Group may be reconvened to address comments received on the NPRM if time permits. *Contact:* Gordon Davids, (202) 493–6320.

Task No. 08–07—Conductor Certification. This task was accepted on December 10, 2008, to develop regulations for certification of railroad conductors, as required by the RSIA, and to consider any appropriate related amendments to existing regulations and report recommendations for a proposed final rule or IFR (as determined by FRA in consultation with the Office of the Secretary of Transportation and the Office of Management and Budget) by October 16, 2009. The Conductor Certification Working Group was officially formed by nominations from member organizations in April 2009 and the first meeting was held on July 21–23, 2009. Additional meetings are scheduled for August 25–27, 2009; September 1–17, 2009; and October 20–22, 2009. *Contact:* Mark McKeon, (202) 493–6350.

Task No. 09–01—Passenger Hours of Service. This task was accepted on April 2, 2009, to provide advice regarding development of implementing regulations for the hours of service of operating employees of commuter and intercity passenger railroads under the RSIA. The group has been tasked to review available data concerning the effects of fatigue on the performance of subject employees and to consider the role of fatigue prevention in determining maximum hours of service. The group has also been tasked to consider the potential for alternative approaches to hours of service using available tools for evaluating the impact of various crew schedules, and to determine the effect of alternative approaches on the availability of employees to support passenger service. The group is charged to report whether existing hours of service restrictions are effective in preventing fatigue among subject employees, whether an alternative approach to hours of service for the subject employees would enhance safety, and whether alternative restrictions on hours of service could be coupled with other fatigue countermeasures to promote the fitness of employees for safety-critical duties. The Passenger Hours of Service Working Group was officially formed through the formal Committee member nomination process in May 2009 and the first meeting was held on June 24, 2009. Additional meetings will be scheduled as often as necessary as soon as work/rest data is available. *Contact:* Grady Cothen, (202) 493–6302.

Completed Tasks

Task 96–1—(Completed) Revising the Freight Power Brake Regulations.

Task 96–2—(Completed) Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213).

Task 96–3—(Completed) Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220).

Task 96–5—(Completed) Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR Part 230).

Task 96–6—(Completed) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240).

Task 96–7—(Completed) Developing Roadway Maintenance Machines (On-Track Equipment) Safety Standards.

Task 96–8—(Completed) This planning task evaluated the need for action responsive to recommendations contained in a report to Congress titled, Locomotive Crash worthiness & Working Conditions.

Task 97–1—(Completed) Developing crashworthiness specifications (49 CFR Part 229) to promote the integrity of the locomotive cab in accidents resulting from collisions.

Task 97–2—(Completed) Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate.

Task 97–3—(Completed) Developing event recorder data survivability standards.

Task 97–4 and Task 97–5—(Completed) Defining PTC functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment.

Task 97–6—(Completed) Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems.

Task 97–7—(Completed) Determining damages qualifying an event as a reportable train accident.

Task OO–1—(Task withdrawn) Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing, or inspecting rear end marking devices (Blue Signal Protection).

Task O1–1—(Completed) Developing conformity of FRA's regulations for accident/incident reporting (49 CFR Part 225) to revised regulations of the Occupational Safety and Health Administration, U.S. Department of Labor, and to make appropriate revisions to the *FRA Guide for Preparing Accident/Incident Reports.*

Task OB–O1—(Completed) Report on the Nation's Railroad Bridges. Report to the FRA Administrator on the current state of railroad bridge safety management; update the findings and conclusions of the 1993 Summary Report of the FRA Railroad Bridge Safety Survey.

Task No. OB–06—(Completed) Hours of Service Recordkeeping and Reporting. Develop revised recordkeeping and reporting requirements for hours of service of railroad employees. Final rule published May 27, 2009, with an effective date of July 16, 2009 (74 FR 25330).

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740), for more information about the RSAC.

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

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–19560 Filed 8–13–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Investment Securities (12 CFR part 1).'' The OCC also gives notice that it has sent the information collection to the Office of Management and Budget (OMB) for review.

DATES: You should submit written comments by September 14, 2009.

ADDRESSES: You should direct your comments to:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, Attention: 1557–0205, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0205, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval, without change, of the following information collection:

Title: Investment Securities (12 CFR part 1).

OMB Number: 1557–0205.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements in 12 CFR part 1 are as follows: Under 12 CFR 1.4(h)(2), a national bank may request an OCC determination that it may invest in an entity that is exempt from registration under section 3(c)(1) of the Investment Company Act of 1940 if the portfolio of the entity consists exclusively of assets that a national bank may purchase and sell for its own account. The OCC uses the information contained in the request as a basis for determining that the bank's investment is consistent with its investment authority under applicable law and does not pose unacceptable risk.

Under 12 CFR 1.7(b), a national bank may request OCC approval to extend the five-year holding period of securities held in satisfaction of debts previously contracted (DPC) for up to an additional five years. The bank must provide a clearly convincing demonstration of why any additional holding period is needed. The OCC uses the information in the request to ensure, on a case-by-case basis, that the bank's purpose in retaining the securities is not speculative and that the bank's reasons for requesting the extension are adequate, and to evaluate the risks to the bank of extending the holding period, including potential effects on bank safety and soundness.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 25.

Estimated Total Annual Responses: 25.

Estimated Total Annual Burden: 460 hours.

Frequency of Response: On occasion.

The OCC issued a 60-day notice for comment on May 8, 2009. 74 FR 21738. No comments were received. Comments continued to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has 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 on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 10, 2009.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E9–19469 Filed 8–13–09; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Leasing.''

DATES: Comments must be received by October 13, 2009.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, Attention: 1557–0206, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0206, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The OCC is proposing to extend OMB approval of the following information collection:

Title: Leasing (12 CFR part 23).

OMB Number: 1557–0206.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend the expiration date.

Information Collection Requirements Found in 12 CFR Part 23

12 CFR 23.4(c)

Under 12 CFR 23.4(c), national banks must liquidate or re-lease personal property that is no longer subject to lease (off-lease property) within five years from the date of the lease expiration. If a bank wishes to extend the five-year holding period for up to an additional five years, it must obtain OCC approval. Permitting a bank to extend the holding period may result in cost savings to national banks. It also provides flexibility for a bank that experiences unusual or unforeseen conditions which would make it imprudent to dispose of the off-lease property. Section 23.4(c) requires a bank seeking an extension to provide a clearly convincing demonstration as to why an additional holding period is necessary. In addition, a bank must value off-lease property at the lower of current fair market value or book value promptly after the property comes off-lease. These requirements enable the OCC to ensure that a bank is not holding the property for speculative reasons and that the value of the property is recorded in accordance with generally accepted accounting principles (GAAP).

Section 23.5

Under 12 CFR 23.5, leases are subject to the lending limits prescribed by 12 U.S.C. 84 or, if the lessee is an affiliate of the bank, to the restrictions on transactions with affiliates prescribed by 12 U.S.C. 371c and 371c-1. See 12 CFR 23.6. Twelve U.S.C. 24 contains two separate provisions authorizing a national bank to acquire personal property for purposes of lease financing. Twelve U.S.C. 24 (Seventh) authorizes leases of personal property (section 24 (Seventh) Leases) if the lease serves as the functional equivalent of a loan. See 12 CFR 23.20. A national bank may also acquire personal property for purposes of lease financing under the authority of 12 U.S.C. 24 (Tenth) (CEBA Leases). Section 23.5 requires that if a bank enters into both types of leases, its records must distinguish between the two types of leases. This information is required to prove that the national bank is complying with the limitations and requirements applicable to the two types of leases.

National banks use the information to ensure their compliance with applicable Federal banking law and regulations and accounting principles. The OCC uses the information in the conduct of bank examinations and as an audit tool to verify bank compliance with law and regulations. In addition, the OCC uses national bank requests for permission to extend the holding period for off-lease property to ensure national bank compliance with relevant law and regulations and to ensure bank safety and soundness.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 370.

Estimated Total Annual Responses: 370.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 685.

Comments submitted in response to this notice will be summarized, included in the request for OMB approval, and 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 has 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 on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 10, 2009.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E9–19473 Filed 8–13–09; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).'' The OCC also gives notice that it has sent the information collection to the Office of Management and Budget (OMB) for review.

DATES: You should submit comments by September 14, 2009.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0237, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0237, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

OMB Number: 1557–0237.

Description: 12 CFR 41.90, 41.91, 41.82 and Appendix J to part 41 implement sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Public Law 108–159 (2003).

Section 114 amended section 615 of the Fair Credit Reporting Act (FCRA) to require the OCC, FRB, FDIC, OTS, NCUA, and FTC (Agencies) to issue jointly: (1) Guidelines for financial institutions and creditors regarding identity theft with respect to their account holders and customers; (2) regulations requiring each financial institution and creditor to establish reasonable policies and procedures for implementing the guidelines to identify possible risks to account holders or customers or to the safety and soundness of the institution or creditor; and (3) regulations generally requiring credit and debit card issuers to assess the validity of change of address requests under certain circumstances. Section 315 amended section 605 of the FCRA to require the Agencies to issue regulations providing guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency (CRA).

The information collections in § 41.90 require each financial institution and creditor that offers or maintains one or more covered accounts to develop and implement a written Identity Theft Prevention Program (Program). In developing the Program, financial institutions and creditors are required to consider the guidelines in Appendix J to part 41 and include those that are appropriate. The initial Program must be approved by the board of directors or an appropriate committee thereof and the board, an appropriate committee thereof or a designated employee at the level of senior management must be involved in the oversight of the Program. In addition, staff must be trained to carry out the Program. Pursuant to § 41.91, each credit and debit card issuer is required to establish and implement policies and procedures to assess the validity of a change of address request under certain circumstances. Before issuing an additional or replacement card, the card issuer must notify the cardholder or use another means to assess the validity of the change of address.

The information collections in § 41.82 require each user of consumer reports to develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it requested the report when the user receives a notice of address discrepancy from a CRA. A user of consumer reports must also develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed to be accurate to the CRA from which it receives a notice of address discrepancy when (1) the user can form a reasonable belief that the consumer report relates to the consumer about whom the user has requested the report; (2) the user establishes a continuing relationship with the consumer; and (3) the user regularly and in the ordinary course of business furnishes information to the CRA from which it received the notice of address discrepancy.

Type of Review: Regular.

Affected Public: Individuals; businesses or other for-profit.

Estimated Number of Respondents: 1,635.

Estimated Total Annual Responses: 6,550.

Estimated Frequency of Response: On occasion.

Estimated Total Annual Burden: 183,985 hours.

The OCC issued a 60-day notice for comment on May 8, 2009. 74 FR 21740. Two comments were received. The burden estimates have been adjusted to take into consideration the comments. A summary of the comments can be found in the supporting statement contained in the collection, which is available from the contact person listed above under **FOR FURTHER INFORMATION CONTACT**.

Comments continued to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has 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 on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 10, 2009.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E9–19474 Filed 8–13–09; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Securities Exchange Act Disclosure Rules (12 CFR Part 11).''

DATES: Comments must be received by October 13, 2009.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, *Attention:* 1557–0106, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy the comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0106, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The OCC is proposing to extend OMB approval of the following information collection:

Title: Securities Exchange Act Disclosure Rules (12 CFR Part 11).

OMB Control No.: 1557–0106.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB approve its revised estimates.

The Securities and Exchange Commission (SEC) is required by statute to collect, through regulation, from any firm that is required to register its stock with the SEC, certain information and documents. 15 U.S.C. 78m(a)(1). Federal law also requires the OCC to apply similar regulations to any national bank similarly required to be registered (those with a class of equity securities held by 500 or more shareholders). 15 U.S.C. 78l(i).

12 CFR Part 11 ensures that ''a national bank whose securities are subject to registration'' provides adequate information about its operations to current and potential shareholders, depositors, and to the public. The OCC reviews the information to ensure that it complies with Federal law and makes public all information required to be filed under these rules. Investors, depositors, and the public use the information to make informed investment decisions.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 29.

Estimated Total Annual Responses: 185.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 1,130.5

Comments submitted in response to this notice will be summarized, included in the request for OMB approval, and 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 has 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 on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 10, 2009.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E9–19479 Filed 8–13–09; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal

agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Bank Activities and Operations.'' The OCC also gives notice that it has sent the information collection to the Office of Management and Budget (OMB).

DATES: You should submit written comments by September 14, 2009.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0204, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0204, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval, without change, of the following information collection:

Title: Bank Activities and Operations—12 CFR 7.

OMB Control No.: 1557–0204.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements ensure that national banks conduct their operations in a safe and sound manner and in accordance with applicable Federal banking statutes and regulations. The information is necessary for regulatory and examination purposes.

The information collection requirements in part 7 are as follows:

- *12 CFR 7.1000(d)(1) (National bank ownership of property—Lease financing of public facilities):* National bank lease agreements must provide that the lessee will become the owner of the building or facility upon the expiration of the lease.
- *12 CFR 7.1014 (Sale of money orders at non-banking outlets):* A national bank may designate bonded agents to sell the bank's money orders at non-banking outlets. The responsibility of both the bank and its agent should be defined in a written agreement setting forth the duties of both parties and providing for remuneration of the agent.
- *12 CFR 7.2000(b) (Corporate governance procedures—Other sources of guidance):* A national bank shall designate in its bylaws the body of law selected for its corporate governance procedures.
- *12 CFR 7.2004 (Honorary directors or advisory boards):* Any listing of a national bank's honorary or advisory directors must distinguish between them and the bank's board of directors or indicate their advisory status.
- *12 CFR 7.2014(b) (Indemnification of institution-affiliated parties—Administrative proceeding or civil actions not initiated by a Federal banking agency):* A national bank shall designate in its bylaws the body of law selected for making indemnification payments.
- *12 CFR 7.2024(a) (Staggered terms for national bank directors):* Any national bank may adopt bylaws that provide for staggering the terms of its directors. National banks shall provide the OCC with copies of any bylaws so amended.
- *12 CFR 7.2024(c) (Size of bank board):* A national bank seeking to increase the number of its directors must notify the OCC any time the proposed size would exceed 25 directors.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,300.

Estimated Total Annual Responses: 1,300.

Estimated Total Annual Burden: 418 hours.

Frequency of Response: On occasion.

The OCC issued a 60-day notice for comment on May 8, 2009. 74 FR 21739. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has 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 on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 10, 2009.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E9–19477 Filed 8–13–09; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment of Systems of Records Notice ''Customer User Provisioning System (CUPS)–VA'' (87VA005OP).

SUMMARY: As required by the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), notice is hereby given that the Department of Veterans Affairs (VA), is amending the system of records entitled ''Customer User Provisioning System (CUPS)–VA'' (87VA005OP) as set forth in 69 FR 18436. VA is amending the system of records by revising the system name, category of records, and the routine uses in the system. VA is re-publishing the system notice in its entirety.

DATES: Comments on this amended system of records must be received no later than September 14, 2009. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the amended system will become effective September 14, 2009.

ADDRESSES: Written comments may be submitted through *http://*

www.Regulations.gov; by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS).

FOR FURTHER INFORMATION CONTACT: Alvin J. Donnell, Chief, Systems Security Division, Corporate Data Center Operations (CDCO), Department of Veterans Affairs, 1615 Woodward Street, Austin, Texas 78772, telephone (512) 326–6006.

SUPPLEMENTARY INFORMATION:

Background: CDCO is the largest data center in the Department of Veterans Affairs. In order to record and track system access to the computers operated and maintained by this organization, CDCO must maintain a current list of all VA employees, employees of other government agencies, and authorized contractor personnel who require access to this computer resources, in accordance with Federal computer security requirements.

In this system of record, the name is amended to reflect the name of the new system. The new system name is Customer User Provisioning System (CUPS). CUPS replaces the Automated Customer Registration System (ACRS) effective January 5, 2009.

The Category of Records in the System is amended to reflect the records in this system, in both paper and electronic form, will not include the social security numbers of personnel who have requested and gained access to the automated resources at CDCO. In addition to deleting the Social Security number, the individual's log-on ID for their local area network will be included in the record, which is used as the unique identifier in lieu of the Social Security number. The records will include the name, business address and telephone number, job title and information relating to data file and computer system access permissions granted to that individual.

Routine Uses numbers 8–14 have been added per the requirement of the Department and for further clarification of disclosures that VA may make to individuals, agencies and third party entities.

The Report of Intent to Amend a System of Records notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Dated: July 28, 2009.

Approved:

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

SYSTEM NUMBER:

87VA005OP

SYSTEM NAME:

Customer User Provisioning System—VA.

SYSTEM LOCATION:

The automated records are maintained by the Corporate Data Center Operations, 1615 Woodward Street, Austin, TX 78772. The paper records will be maintained at each VA field station that has a responsibility for CUPS input.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Department of Veterans Affairs employees, employees of other government agencies, and authorized contractor personnel who have requested and have been granted access to the automated resources of the VA Corporate Data Center Operations (CDCO).

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in this system, in both paper and electronic form, will include the names and network user-ID of all personnel who have requested and been granted access to the automated resources at the CDCO. The records will also include business address and telephone number, job title, and information relating to data file and computer system access permissions granted to that individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Section 501.

PURPOSE(S):

The purpose of this system of records is to allow the CDCO in Austin, Texas, to maintain a current list of all VA employees, employees of other government agencies, and authorized contractor personnel who require access to the computer resources of the CDCO, in accordance with Federal computer security requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. At the initiative of VA, pertinent information may be disclosed to appropriate Federal, State or local agencies responsible for investigating, prosecuting, enforcing or implementing statutes, rules, regulations or orders, where VA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

2. Disclosure of specific information may be made to a Federal agency, in response to its request, to the extent that the information requested is relevant and necessary to the requesting agency's decision in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation on an individual, classifying jobs, awarding a contract or issuing a license, grant or other benefit.

3. Disclosure of information may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel or the Equal Employment Opportunity Commission, when requested in performance of their authorized duties, and the request is not in connection with a law enforcement investigation.

4. The record of an individual who is covered by this system or records may be disclosed to a member of Congress, or staff person acting for the member when the member or staff person requests the record on behalf of and at the written request of that individual.

5. Disclosure may be made to the National Archives and Records Administration and General Services Administration for record management inspections conducted under Authority of Title 44 U.S.C.

6. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records

in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

7. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

8. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, that is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation or order. VA may also disclose on its own initiative the names and addresses of veterans with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations if law, or charged with enforcing or implementing the statute regulation, or order issued pursuant thereto.

9. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

10. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) VA has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to the economic or property interests, identity theft or fraud, or harm to security, confidentially, or integrity of this system or other systems or programs (whether maintained by VA or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the VA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by VA to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Each field station responsible for inputting records into the system will retain the original signed paper copies of requests for system access in locked containers. Data files supporting the automated system are stored in a secure area located at the CDCO. Data files are stored on magnetic disk and, for archival purposes, on magnetic tape.

RETRIEVABILITY:

Paper records are maintained in alphabetical order by last name of the requester. Automated records are retrieved by individual name or by a specific automated resource.

SAFEGUARDS:

Paper records in progress are maintained in a manned room during working hours. Paper records maintained for archival purposes are stored in locked containers until needed. During non-working hours, the paper records are kept in a locked container in a secured area. Access to the records is on a need-to-know basis only. Access to the automated system is via computer terminal; standard security procedures, including a unique customer identification code and password combination, are used to limit access to authorized personnel only. Specifically, in order to obtain access to the automated records contained in this system of records, an individual must: 1. Have access to the automated resources of the CDCO. An individual may not self-register for this access. Formal documentation of the request for access, signed by the employee's supervisor, is required before an individual may obtain such access. Authorized customers are issued a customer identification code and one-time password.

2. Be an authorized official of the CUPS system. Only two individuals per field station may be designated CUPS officials with access to add, modify or delete records from the system. These individuals require a specific functional task code in their customer profile; this functional task can only be assigned by the CDCO. A limited number of supervisory or managerial employees throughout VA will have read-only access for the purpose of monitoring CUPS activities.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with the records disposal authority approved by the Archivist of the United States, the National Archives and Records Administration, and published in Agency Records Control Schedules. Paper records will be destroyed by shredding or other appropriate means for destroying sensitive information. Automated storage records are retained and destroyed in accordance with a disposition authorization approved by the Archivist of the United States.

SYSTEMS AND MANAGER(S) AND ADDRESS:

Officials responsible for policies and procedures; Executive Director, Corporate Data Center Operations, 1615 Woodward Street, Austin, Texas 78772. The telephone number is (512) 326–6000.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the Executive Director, Corporate Data Center Operations, 1615 Woodward Street, Austin, Texas 78772.

RECORD ACCESS PROCEDURE:

An individual who seeks access or wishes to contest records maintained under his or her name or other personal identifier may write, call or visit the system manager.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Individuals who have applied for and been granted access permission to the resources of the CDCO.

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Federal Register

Friday,
August 14, 2009

Part II

Federal Reserve System

12 CFR Part 226
Truth in Lending; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1353]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff commentary.

SUMMARY: The Board is publishing final rules amending Regulation Z, which implements the Truth in Lending Act (TILA) following the passage of the Higher Education Opportunity Act (HEOA). Title X of the HEOA amends TILA by adding disclosure and timing requirements that apply to creditors making private education loans, which are defined as loans made for postsecondary educational expenses. The HEOA also amends TILA by adding limitations on certain practices by creditors, including limitations on ''co-branding'' their products with educational institutions in the marketing of private education loans. The HEOA requires that creditors obtain a self-certification form signed by the consumer before consummating the loan. It also requires creditors with preferred lender arrangements with educational institutions to provide certain information to those institutions.

DATES: *Effective Date:* September 14, 2009.

Compliance Date: Compliance is optional until February 14, 2010.

FOR FURTHER INFORMATION CONTACT: Brent Lattin, Senior Attorney, or Mandie Aubrey, Attorney; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Regulation Z Student Loan Disclosure Requirements

Congress enacted the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, to regulate certain credit practices and promote the informed use of consumer credit by requiring uniform disclosures about its costs and terms. Under TILA section 128, creditors must provide TILA disclosures to consumers in writing before consummation of certain closed-end credit transactions. Extensions of consumer credit over $25,000 are exempt from TILA with the exceptions of credit secured by real property, and, following enactment of the HEOA, private education loans. Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) are also exempt from TILA.

TILA mandates that the Board prescribe regulations to carry out the purposes of the statute. 15 U.S.C. 1604(a). Accordingly, the Board has promulgated Regulation Z, 12 CFR part 226. An Official Staff Commentary, 12 CFR part 226 (Supp. I) interprets the requirements of the regulation and provides guidance to creditors in applying the rules to specific transactions.

To implement TILA section 128, 15 U.S.C. 1638, Regulation Z requires disclosures for certain closed-end loans, including for education loans that are not exempt Federal education loans. Sections 226.17 and 226.18 require a creditor to provide the consumer with clear and conspicuous disclosures before consummation of the transaction. Current § 226.17(i) contains special rules for student credit plans which are education loans where the repayment amount and schedule of payments are not known at the time that the credit is advanced. In such cases, creditors may make all the TILA cost disclosures at the time credit is extended based on the best information available at that time, and state clearly that the disclosures are estimates. Alternatively, creditors may provide partial disclosures at the time the credit is extended and later provide a complete set of disclosures when the repayment schedule for the loan is established.

B. The Higher Education Opportunity Act of 2008

On August 14, 2008, the Higher Education Opportunity Act of 2008 (HEOA) was enacted. Title X of the HEOA, entitled the ''Private Student Loan Transparency and Improvement Act of 2008,'' adds new subsection 128(e) and section 140 to TILA. These TILA amendments add disclosure requirements and prohibit certain practices for creditors making ''private education loans,'' defined as loans made expressly for postsecondary educational expenses, but excluding open-end credit, real estate-secured loans, and Federal loans under title IV of the Higher Education Act of 1965. The HEOA also amends TILA section 104(3) to expressly cover private education loans even if the amount financed exceeds $25,000.

1. Overview of the HEOA's Amendments to TILA

Substantive Restrictions. The HEOA prohibits a creditor from using in its marketing materials a covered educational institution's name, logo, mascot, or other words or symbols readily identified with the educational institution, to imply that the educational institution endorses the loans offered by the creditor.[1] With respect to private education loans, the HEOA also amends TILA in the following ways:

- Creditors must give the consumer 30 days after a private education loan application is approved to decide whether to accept the loan offered. During that time, the creditor may not change the rates or terms of the loan offered, except for rate changes based on changes in the index used for rate adjustments on the loan.
- The consumer has a right to cancel the loan for up to three business days after consummation. Creditors are prohibited from disbursing funds until the three-day cancellation period has run.

Disclosure Requirements. The HEOA adds a number of new disclosures for private education loans, which must be given at different times in the loan origination process. Specifically, the HEOA's amendments to TILA require the following disclosures for private education loans:

- *Disclosures with applications (or solicitations that require no application).* Creditors must provide general information about loan rates, fees, and terms, including an example of the total cost of a loan based on the maximum interest rate the creditor can charge. These disclosures must inform a prospective borrower of, among other things, the potential availability of Federal student loans and the interest rates for those loans, and that additional information about Federal loans may be obtained from the school or the Department of Education Web site.

[1] The HEOA adds a new section 140 to TILA that includes other restrictions regarding private education loans. The Board is only required to issue regulations to implement subsection (c) of TILA section 140, the prohibition on co-branding. The other subsections of section 140 became effective when the HEOA was enacted and the Board is not issuing regulations to implement them at this time. The other subsections of TILA Section 140 prohibit creditors from giving gifts to educational institutions or their employees, and prohibit revenue sharing between creditors and educational institutions. In addition, they restrict creditor payments to financial aid officials who serve on creditors' advisory boards, and require disclosure of any payments made to financial aid officials for advisory board service expenses. Prepayment penalties or fees for early repayment are prohibited for private education loans.

• *Disclosures when the loan is approved.* When the creditor approves the consumer's application for a private education loan, the creditor must give the consumer a set of transaction-specific disclosures, including information about the rate, fees and other terms of the loan. The creditor must disclose, for example, estimates of the total repayment amount based on both the current interest rate and the maximum interest rate that may be charged. The creditor must also disclose the monthly payment at the maximum rate of interest.

• *Disclosures at consummation.* At consummation, the creditor must provide updated cost disclosures substantially similar to those provided at approval. The consumer's three-day right to cancel the transaction must also be disclosed.

Finally, once a consumer applies for a private education loan, the consumer must complete a ''self-certification form'' with information about the cost of attendance at the school that the student will attend or is attending. The form includes information about the availability of Federal student loans, the student's cost of attendance at that school, the amount of any financial aid, and the amount the consumer can borrow to cover any gap. The creditor must obtain the signed and completed form before consummating the private education loan. The Department of Education has primary responsibility for developing the self-certification form in consultation with the Board.

2. Civil Liability

The HEOA amends TILA to provide a private right of action for several, but not all, of the disclosure requirements added by the HEOA. HEOA, Title X, Subtitle A, Section 1012 (amending TILA Section 130). The HEOA also amends TILA's statute of limitations for civil liability regarding private education loans. Currently, TILA section 130(e) requires that an action be brought within one year of the date of the occurrence of the violation. Under the HEOA amendment, an action for a violation involving a private education loan must be brought within one year from the date on which the first regular payment of principal is due for the private education loan.

The HEOA provides a safe harbor for any creditor that elects to use a model form promulgated by the Board that accurately reflects the terms of the creditor's loans. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(5)(C)). Model forms are included in the final rule as amendments to Regulation Z's Appendix H. In addition, a creditor has no liability under TILA for failure to comply with the requirement that it receive the consumer's self-certification form before consummating a private education loan. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 130(j)).

C. Consumer Testing

In October 2008, the Board retained a research and consulting firm (Rockbridge Associates) and a design firm (EightShapes) to help the Board design the model forms required under the HEOA and to conduct consumer testing to determine the most effective presentation of the information required to be disclosed. Specifically, the Board used consumer testing to develop model forms for the following:

• Information required to be disclosed on or with applications or solicitations for private education loans (Application and Solicitation Disclosure);

• Information required to be disclosed when a private education loan is approved (Approval Disclosure); and

• Information required to be disclosed after the consumer accepts a private education loan and at least three business days before loan funds are disbursed (Final Disclosure).

Initial forms design. In November 2008, the Board worked with Rockbridge Associates and EightShapes to develop sample disclosures to be used in the testing, taking into account the specific requirements of the HEOA, information learned through the Board's outreach efforts, and Rockbridge Associate's experience in financial disclosure testing.

Cognitive interviews on model disclosures. In December 2008, Rockbridge Associates worked closely with the Board to conduct two rounds of consumer testing. Each round of testing comprised in-person cognitive interviews with 10 consumers. Both rounds of testing were conducted within the Washington, DC/Baltimore metropolitan area. The consumer participants included both college students and parents of college students, representing a range of ethnicities, ages, educational levels, and education loan experience.

The cognitive interviews consisted of one-on-one discussions with consumers, during which consumers were asked to view the sample Application and Solicitation Disclosure, the Approval Disclosure, and the Final Disclosure developed by the Board. The goals of these interviews were as follows: (1) To learn more about what information consumers are concerned about and actually read when they receive private education loan disclosures; (2) to determine how easily consumers can find various critical pieces of information in the disclosures; (3) to assess consumers' understanding of the information that the HEOA and § 226.18 require to be disclosed for private education loans, and of certain terminology related to private education loans; and (4) to determine the most clear and understandable way to disclose the required information to consumers.

After the first round of cognitive testing, the Board worked with Rockbridge Associates and EightShapes to revise the initial drafts of the sample disclosures in response to findings from the first round of testing. Later in December 2008, the Board and Rockbridge Associates conducted a second round of testing in which 10 consumers were asked to review the revised sample Application and Solicitation Disclosure, Approval Disclosure, and Final Disclosure.

Additional cognitive interviews on model disclosures. In April and May 2009, Rockbridge Associates worked closely with the Board to conduct two additional rounds of consumer testing. Each round of testing consisted of in-person cognitive interviews with 10 consumers. One round of testing was conducted within the Washington, DC metropolitan area and the second round of testing was conducted within the Philadelphia, PA metropolitan area. The consumer participants included college students, proprietary school students and parents of students, representing a range of ethnicities, ages, educational levels, and education loan experience. The format of the cognitive interviews was similar to the initial rounds and the Board worked with Rockbridge Associates and EightShapes to revise the model disclosures in response to findings from the each round of testing.

Following the conclusion of the comment period on the proposed rule, Rockbridge Associates and EightShapes worked with the Board to further revise the disclosures in response to public comment. In June 2009, Rockbridge Associates worked with the Board to conduct a final round of consumer testing comprised of in-person cognitive interviews with 10 consumers conducted in the Washington, DC metropolitan area. The format of the cognitive interviews was similar to the earlier rounds and the Board worked with Rockbridge Associates and EightShapes to revise the model disclosures in response to findings from the final round of testing.

Results of testing. A report summarizing the results of the testing is

available on the Board's Web site: *http://www.federalreserve.gov*.

Application and Solicitation Disclosure. Regarding the Application and Solicitation Disclosure, consumers were confused in the initial rounds by seeing the required disclosure of a range of initial rates for which they could be approved. Consumers commonly mistook the highest rate in the range with the maximum possible rate for the life of the loan. Consequently, the model form was revised by providing information under two separate headings for the consumer's ''Starting interest rate upon approval'' and the consumer's ''Interest rate during the life of the loan.'' This revision improved consumers' ability to understand the range of initial interest rates and how the rate would vary over time.

Once consumers understood that the rates disclosed were not necessarily the rates that actually would apply to them, they consistently wanted to know how their own rate would be determined. Thus, the model form places general information about how the consumer's rate will be determined under the heading about the consumer's starting interest rate upon approval. Consumers also wanted to understand how their rate would vary over the life of the loan, but many were confused by detailed information about how the interest rate varies based on the application of a margin to an index. A large number of consumers in the initial rounds were confused by the reference in the model forms to the London Interbank Offered Rate (LIBOR) as the index. However, in the final round of testing, the model form referenced the LIBOR being published in a major newspaper which worked to assure consumers that the LIBOR is a standard index used for determining variable interest rates on loans.

Consumer testing also indicated that consumers want to see specific figures and dollar amounts for fees that may apply to their loan. Thus the model form requires dollar amounts to be disclosed for each fee included on the form wherever possible.

In addition, testing showed that consumers found the sample total cost information to be useful in assessing the potential impact of a private education loan on their financial future. Consumers indicated that the sample total cost was most understandable when the loan amount, interest rate and loan term were included. In addition, consumers found showing the sample total cost of a loan based on each payment deferral option to be useful information.

Finally, consumers found the presentation of Federal loan alternatives, ''Next Steps,'' and reference notes to be clear and understandable, and the information in these sections to be useful.

Approval Disclosure. Regarding the Approval Disclosure, testing indicated that consumers are most concerned about the rate and loan costs, and that the traditional TILA box style of presenting the key elements of a loan is effective even with novice consumers. In initial testing of the proposed model forms, consumers did not understand explanations of the difference between the interest rate and the APR. For this reason, the model forms published with the proposal were revised to disclose the interest rate more prominently than the APR so that consumers would focus on the rate they understood. In subsequent rounds of testing, the prominence of the interest rate disclosure and the additional context provided to explain the APR improved some consumers' understanding of the concepts, although a few consumers continued to have difficulty understanding the difference between the APR and the interest rate. However, in choosing between two loans, consumers in the tests were more likely to compare the payment schedules, total of payments, and finance charge rather than relying on the interest rate alone.

Testing also showed that consumers generally do not understand detailed explanations of how their variable rate changes based on a publicly available index. For consumers, the most important information regarding how the rate changes was simply that the creditor may not change the rate at will, and instead generally can do so only based on market factors out of the creditor's control.

Testing also indicated that consumers strongly prefer to have all fees disclosed with specific dollar amounts. In addition, the placement of the total loan amount in the box at the top of the form, along with the itemization of the amount financed, improved consumers' understanding of the concept presented by the amount financed—that the amount of credit actually available to the consumer would be less than the total loan amount if fees applied.

Consumers considered the monthly payment schedule and amounts to be critical information in understanding the financial implications of obtaining a private education loan. Most consumers felt the disclosure of the maximum monthly payment amounts and total amount for repayment at the maximum rate was useful information. When shown disclosures where a sample maximum rate was used because no maximum rate applies, consumers indicated that they understood the disclosure was only an example.

As with the Application and Solicitation Disclosure, consumers found the presentation of Federal loan alternatives and ''Next Steps'' to be clear and understandable, and the information in these sections to be useful.

Final Disclosure. Regarding the Final Disclosure, the information required to be disclosed under the HEOA is identical to that required on the Approval Disclosure, except for the right to cancel notice. Recognizing the importance of the right to cancel notice for consumers, the model Final Disclosure provides the right to cancel information as clearly and prominently as possible. Consumers tested immediately saw and read the information in the proposed right to cancel notice.

Results from the initial rounds of testing indicated that consumers did not find the information about Federal loan alternatives to be useful at this stage in the private education loan origination process. Consumers stated that this information is redundant; they have already been told about these options two times (on the Application and Solicitation Disclosure and the Approval Disclosure) and have already decided at this point to obtain a private education loan. Consumers in the later rounds of testing were asked whether they felt the Federal loan alternatives should be included in the Final Disclosure and the majority did not feel such information would be useful at that stage. For these reasons, as discussed in the section-by-section analysis under § 226.47(b)(3), the Board is exercising its exception authority under TILA sections 105(a) and 105(f) to omit information about Federal loan alternatives from the Final Disclosure form.

II. The Board's Rulemaking Authority

The Board has authority under the HEOA to issue regulations to implement paragraphs (1), (2), (3), (4), (6), (7), and (8) of new TILA section 128(e), and to implement section 140(c) of new TILA section 140. HEOA, Title X, Section 1002. In addition to implementing the specific disclosure requirements in TILA section 128(e), the Board has authority under TILA sections 128(e)(1)(R), 128(e)(2)(P), and 128(e)(4)(B) to require disclosure of such other information as is necessary or appropriate for consumers to make informed borrowing decisions. 15 U.S.C.

1638(e)(1)(R), 15 U.S.C. 1638(e)(2)(P), 15 U.S.C. 1638(e)(4)(B).

TILA section 128(e)(9) provides that, in issuing regulations to implement the disclosure requirements under TILA section 128(e), the Board is to prevent duplicative disclosure requirements for creditors that are otherwise required to make disclosures under TILA. However, if the disclosure requirements of section 128(e) differ or conflict with the disclosure requirements elsewhere under TILA, the requirements of section 128(e) are controlling. 15 U.S.C. 1638(e)(9).

TILA also mandates that the Board prescribe regulations to carry out the purposes of the act. TILA specifically authorizes the Board, among other things, to issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion. 15 U.S.C. 1604(a).

TILA also specifically authorizes the Board to exempt from all or part of TILA any class of transactions if the Board determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board must consider factors identified in the act and publish its rationale at the time it proposes an exemption for comment. In proposing exemptions, the Board considered (1) The amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection. 15 U.S.C. 1604(f). The rationales for these exemptions were explained in the proposal and are explained below.

III. Overview of Comments Received

On March 24, 2009, the Board published a proposed rule that would amend Regulation Z's rules by adding disclosure and timing requirements that apply to creditors making private education loans. 74 FR 12464. The Board received seventy-one public comment letters. Several financial institutions and financial services trade associations stated that they supported the Board's efforts to improve the disclosure of credit terms to consumers of private education loans and recognized that the Board's proposal was intended to conform Regulation Z to TILA, as amended by the HEOA. These commenters requested that the Board provide flexibility in the timing of the proposed approval disclosure to allow creditors to approve loans conditioned on verification of information provided by the consumer and the educational institution. These commenters also stated that the Board should not cover loans made ''in whole or in part'' to finance postsecondary educational expenses, as proposed. They expressed concern that such coverage would increase the burden in complying with the rule and could cause some lenders to decline to provide consumers with credit if any part of the loan would be used for postsecondary educational expenses. Some of these commenters also did not support the proposal to make the disclosure of the annual percentage rate (APR) less prominent than the disclosure of the interest rate. A few financial institutions stated that the costs of the new disclosure and timing requirements under the HEOA outweigh the benefits and that consumers would object to delays in consummating a private education loan transaction.

By contrast, consumer advocacy organizations generally supported the HEOA's goal of providing additional disclosure of private education loan terms to consumers and in providing for a 30-day period for the consumer to accept the loan and a three-day right to cancel the loan. Consumer advocates encouraged the Board to maintain coverage of loans used ''in whole or in part'' for postsecondary educational expenses. Most of these commenters did not support the proposal to make the disclosure of the APR less prominent than the disclosure of the interest rate.

The Board also received comments from educational institutions and financial aid administrators and trade associations. These commenters also generally supported the HEOA's requirements to provide additional disclosure of private education loan credit terms to consumers. However, a majority of these commenters stated that educational institutions, or specific types of credit provided by education institutions, should be exempt from the proposed rules. Specifically, these creditors sought exemptions for credit in the form of tuition billing plans that permit the student to pay in installments and for short term ''emergency'' loans provided to students while they await disbursement of other funding sources. A number of financial aid officers commented that the proposed self-certification form would be burdensome and requested an exemption to the requirement to obtain a self-certification form in cases where the creditor certifies the student's financial need directly with the educational institution.

Comments are discussed in detail below in part IV of the **SUPPLEMENTARY INFORMATION**.

IV. Section-by-Section Analysis

Overview

The final rule adds the following new disclosure requirements to Regulation Z for private education loans:

(i) Disclosures with applications (or solicitations that require no application) in § 226.47(a);

(ii) Disclosures when notice of loan approval is provided in § 226.47(b); and

(iii) Disclosures before loan disbursement in § 226.47(c). General rules applicable to the new disclosure requirements were detailed in § 226.46 and associated commentary. Model forms for these disclosures are added to Regulation Z's Appendix H.

To implement TILA's new prohibition on co-branding, § 226.48 prohibits a creditor from using in its marketing a covered educational institution's name, logo, mascot, or other words or symbols readily identified with the institution, to imply that the institution endorses the loans offered by the creditor. The final rule adopts an exception to this prohibition under the Board's TILA section 105(a) authority, for creditors who enter into an agreement where the covered educational institution endorses the creditor's private education loans. Section 226.48 also: Provides the consumer with 30 days following receipt of the approval disclosures to accept the loan and prohibits certain changes to a loan's rate or terms during that time; provides the consumer a right to cancel the loan for three business days after receipt of the final disclosures and prohibits disbursement during that time; requires creditors to obtain a completed self-certification form signed by the consumer before consummating the transaction; and requires creditors with preferred lender arrangements to provide certain information to educational institutions.

The final rule largely adopts the provisions in the Board's March 24, 2009 proposed rule. 74 FR 12464. The Board has made certain modifications to the proposal in response to public comment as described throughout this Section-by-Section analysis. In addition, the provisions in new Subpart F have been redesignated from proposed §§ 226.37, 38, and 39 to §§ 226.46, 47, and 48. Sections 226.37 through 226.45 have been reserved in order to accommodate future rulemakings by the Board.

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement, and Liability

Section 226.1(b) describes the purposes of Regulation Z. The Board proposed to amend § 226.1(b) to refer to the new provisions for private education loans. Section 226.1(d) provides an outline of Regulation Z. Proposed paragraph (d)(6) referenced the addition of a new Subpart F containing rules relating to private education loans.

No comments were received on these provisions and the Board is adopting them as proposed with redesignated cross-references. In addition, transition rules are added as comment 1(d)(6)–1.

Section 226.2—Definitions and Rules of Construction

Currently, § 226.2(a)(6) contains two definitions of ''business day.'' Under the general definition, a ''business day'' is a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for some purposes a more precise definition applies; ''business day'' means all calendar days except Sundays and specified Federal legal public holidays, for purposes of §§ 226.15(e), 226.19(a)(1)(ii), 226.19(a)(2), 226.23(a), and 226.31(c)(1) and (2). The Board proposed using the more precise definition of business day for all purposes in proposed §§ 226.37, 38, and 39, including for measuring the period during which consumers may cancel a private education loan. Industry commenters requested that the Board adopt the general definition of ''business day,'' or exclude Saturdays from the more precise definition of ''business day.'' These commenters noted that they did not operate their systems for disbursing funds or providing disclosures on a Saturday and expressed concern that including Saturday as a business day could make it difficult to provide required disclosures to consumers in a timely fashion.

Consistent with the Board's approach for certain transactions secured by the consumer's dwelling in § 226.19(a)(1)(i), the Board is adopting the more precise definition of business day in providing presumptions of when consumers receive mailed disclosures. The Board is adopting the general definition of ''business day'' for all other purposes in §§ 226.46, 47, and 48, including for measuring the period of time in which the consumer may cancel the loan. The Board believes that allowing creditors to exclude Saturdays or other days on which the creditor's offices are not open to the public for carrying on substantially all of its business functions will result in consumers being provided more time in which to cancel a private education loan. As discussed in the section-by-section analysis to § 226.48(d), the final rule permits creditors to provide consumers with more time to cancel the loan than the minimum three business days. Thus, whichever definition of ''business day'' the Board were to select, creditors would be free to exclude Saturdays or other days by providing the consumer with more time in which to cancel. The final rule also requires the creditor to disclose prominently the precise date upon which the consumer's right to cancel expires and, based on the consumer testing, the Board believes that consumers will be able to understand precisely their deadline to cancel.

Section 226.3—Exempt Transactions

TILA section 104(3) (15 U.S.C. 1603(3)) exempts from coverage credit transactions in which the total amount financed exceeds $25,000, unless the loan is secured by real property or a consumer's principal dwelling. The HEOA amends TILA section 104(3) to provide that private education loans over $25,000 are not exempt from TILA. The Board proposed to revise § 226.3(b) to reflect this change. The Board did not propose changes to § 226.3(f) because the HEOA did not affect TILA's exclusion of loans made, insured, or guaranteed under title IV of the Higher Education Act of 1965. 15 U.S.C. 1603(7). However, the Board proposed to revise comment 3(f)–1 to remove the list of Federal education loans covered by the exemption because it is outdated, and to clarify that private education loans are not exempt.

The Board is adopting the revisions to § 226.3 as proposed with redesignated cross-references. Under the final rules, as proposed, private education loans are covered by TILA and Regulation Z regardless of the loan's total amount financed.

Section 226.17—General Disclosure Requirements

Proposed §§ 226.38(b) and (c) required creditors to provide the current § 226.18 disclosures for private education loans in addition to the new disclosures. Consequently, the Board proposed to revise § 226.17 to clarify that the format and timing rules for private education loans differ slightly from the rules for other types of closed-end credit. In addition, the Board proposed to remove the special rules for student credit plans.

The Board is adopting the proposed changes to § 226.17 for the format and timing rules for private education loans, with redesignated cross-references. The Board is also eliminating the special rules for student credit plans under § 226.17(i) for credit extensions made on or after the mandatory compliance date of Subpart F. However, as discussed more fully below, the Board is revising rather than removing § 226.17(i) to clarify that student credit extensions made under § 226.17(i) prior to the mandatory compliance date of Subpart F must still follow the requirements in § 226.17(i).

Current § 226.17(a)(1) requires that the closed-end credit disclosures under § 226.18 be grouped together, segregated from everything else, and not contain any information not directly related to the disclosures required under § 226.18. It also requires that the itemization of the amount financed under § 226.18(c)(1) must be separate from the other disclosures required under that section. The Board proposed to revise § 226.17(a)(1) and comment 17(a)(1)–4 to clarify that the information required under § 226.38 must be provided together with the information required under § 226.18. In addition, as discussed in the section-by-section analysis under § 226.47, the Board proposed to allow creditors to provide the itemization of the amount financed together with the disclosures required under § 226.18 for private education loan disclosures.

Annual percentage rate disclosure. Current § 226.17(a)(2), implementing TILA section 122(a), requires the terms ''finance charge'' and ''annual percentage rate,'' together with a corresponding amount or percentage rate, to be more conspicuous than any other disclosure, except the creditor's identity under § 226.18(a). For private education loans, TILA sections 128(e)(2)(A) and 128(e)(4)(A) require a disclosure of the interest rate in addition to the APR. The Board proposed to exercise its authority under TILA section 105(a) to except private

education loans from the requirement that the APR be more prominent than other disclosures and proposed to give prominence to the interest rate disclosure that is required by the HEOA. The Board also proposed to exercise its authority under TILA section 122(a) to require that the interest rate be disclosed as prominently as the finance charge. *See* proposed § 226.37(c)(2)(iii).

Some industry, consumer group, and other commenters objected to the proposal to give the interest rate more prominence than the APR. Some of the commenters believed the APR was a better tool for consumers to use to compare the cost of a loan than the interest rate. They believed that emphasizing the interest rate could mislead consumers who do not consider other costs of loans. Other commenters believed that for uniformity, the APR should not deviate from the prominent position in the model forms for other types of closed-end loans. Further, consumer group commenters argued that the data produced from consumer testing was not definitive enough to justify making the exception, noting that most consumers tested did not notice the difference between the APR and interest rate and that the testing involved only 20 consumers. The consumer groups also cited several studies to support retaining the prominence of the APR, including a study that found that more than 70% of the population reported using the APR to shop for closed-end credit.[2]

TILA section 128(e)(1)(A) requires a disclosure of the range of potential interest rates in the application and solicitation disclosure. In consumer testing, some consumers expressed confusion as to why the APR on the approval and final forms was inconsistent with the interest rates disclosed on the application form. Consumers tested indicated that the interest rate was most relevant to them for private education loan purposes. In addition, TILA section 128(e)(9), as added by the HEOA, directs the Board to implement the HEOA's requirements even if those requirements differ from or conflict with requirements under other parts of TILA. The HEOA also requires the Board to develop model forms that may be used for the private education loan disclosures based on consumer testing. HEOA, Title X, Subtitle B, Sec. 1021 (adding TILA section 128(e)(5)(A)).

Consumer testing of private education loan disclosures that continued during and after the comment period confirmed that most consumers understand the interest rate and that it is one of the most important terms to them. At the same time, most consumers do not understand the APR and incorrectly believe that the APR is the interest rate.[3] In the initial rounds of testing the APR was presented more prominently than the interest rate. Most consumers had difficulty reconciling the two terms and some consumers believed that either the APR or the interest rate was a mistake and expressed a concern about the accuracy of the disclosures. Consumer confusion was compounded with the private education loan disclosures. Under the HEOA, the application disclosure that the consumer receives first in the series of forms contains a range of interest rates and not APRs. Consumers expected to see similar disclosures on subsequent forms.[4]

By contrast, in consumer testing of the model forms with a less prominent APR, consumers were less likely to equate the APR with the interest rate. Rather, the APR's less prominent location on the model form encouraged consumers to view it in the context of the explanatory text provided. This, in turn, helped consumers to better understand that the APR was a distinct disclosure that reflected both the interest rate and the fees.[5]

In addition, based on consumer testing, the Board does not believe that making the APR less prominent is likely to cause consumers to focus solely on the interest rate to the exclusion of other costs. When consumers were asked in testing to determine which of two sample loans was less expensive, they relied on information other than the interest rate and APR to make their determination, such as the finance charge or the total of payments. By using the other cost information all consumers tested were able to select the loan that had a lower APR, even when it had a higher interest rate.[6]

The findings from the Board's consumer testing that consumers do not understand the APR are supported in other research. For example, the study that cited high awareness of the APR by mortgage borrowers also found that at least 40% of those borrowers did not understand the relationship between the interest rate and the APR which, the study concluded, ''indicates a significant gap between awareness and understanding.'' [7] Lack of understanding of the APR on the part of the consumer could result in an inaccurate comparison of loan terms. For example, a consumer comparing two loans based on both the APR and the fees might erroneously consider fees that were already included in the APR.

Thus, the Board believes that an exception from the requirement that the APR be disclosed more prominently than other terms is necessary and proper to assure a meaningful disclosure of credit terms for consumers, and it is retained in the final rule.

Timing of disclosures. Current § 226.17(b) requires creditors to make closed-end credit disclosures before consummation of the transaction. As discussed more fully below in the section-by-section analysis under §§ 226.46 and 226.47, the Board is adopting as proposed revisions to § 226.17(b) to require creditors to make the current closed-end disclosures two times for private education loans: Once with any notice of approval of a private education loan, and again before disbursement. Under current comment 17(b)–1, the disclosures must be made before consummation, but need not be given by a particular time, except in certain dwelling-secured transactions. The Board is adopting as proposed revisions to comment 17(b)–1 to clarify that more specific timing rules would apply for private education loans.

The proposed rule did not propose any changes to current § 226.17(f), but the final rule revises that section. Current § 226.17(f) requires redisclosure if disclosures are given before consummation of a transaction under certain conditions. The Board is excluding private education loans from the requirements of § 226.17(f) because the Board believes that the disclosure and other requirements for private education loans make redisclosures under § 226.17(f) unnecessary. Creditors must provide approval disclosures for private education loans and then, after the consumer accepts the loan and before funds are disbursed, provide final disclosures. Thus, consumers will always receive at least two disclosures in private education loan transactions. In addition, with few exceptions, creditors cannot change the loan's rate or terms after providing the disclosures,

[2] Jinkook Lee and Jeanne M. Hogarth, ''The Price of Money: Consumers' Understanding of APRs and Contract Interest Rates,'' 18 J. Pub. Pol'y and Marketing 66, 74 (1999).

[3] Rockbridge Associates, ''Consumer Research and Testing for Private Education Loans: Final Report of Findings'' at 8.

[4] Rockbridge Associates, ''Consumer Research and Testing for Private Education Loans: Final Report of Findings'' at 39.

[5] Rockbridge Associates, ''Consumer Research and Testing for Private Education Loans: Final Report of Findings'' at 8, 43.

[6] Rockbridge Associates, ''Consumer Research and Testing for Private Education Loans: Final Report of Findings'' at 55.

[7] Jinkook Lee and Jeanne M. Hogarth, ''The Price of Money: Consumers' Understanding of APRs and Contract Interest Rates,'' 18 J. Pub. Pol'y and Marketing 66, 74 (1999).

and § 226.48(c) requires redisclosure if certain permitted changes are made after the approval disclosure is provided. Creditors are permitted, however, to make changes to the interest rate based on adjustments to the index. As a result of interest rate fluctuations, the loan's APR may vary outside of the tolerance in § 226.17(f)(2). The Board believes that requiring creditors to redisclose the approval or final disclosures merely because of fluctuations in the interest rate would be burdensome to creditors and could be confusing to consumers who might not understand that the redisclosures reflected only changes in the variable rate, rather than substantive changes in the loan terms. Accordingly, § 226.17(f) in the final rule does not apply to private education loans.

In addition, the final rule revises § 226.17(g) which implements TILA section 128(c). Current § 226.17(g) allows for delayed delivery of disclosures if a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation. The creditor may delay disclosures until the due date of the first payment if certain information is made available to the consumer or the public before the actual purchase order request. The final rule excludes private education loans from § 226.17(g) because the Board believes that the specific disclosure and timing requirements that the HEOA added to TILA for private education loans supersede TILA's general delayed disclosure provisions implemented in § 226.17(g).

Special rules for student credit extensions. Under current § 226.17(i) and accompanying commentary, Regulation Z applies special disclosure rules to closed-end student loans that are ''student credit plans.'' The commentary to Regulation Z describes a ''student credit plan'' as an extension of credit for educational purposes, where the repayment amount and schedule are not known at the time credit is advanced. The plans include loans made under any student credit plan not otherwise exempt from TILA, whether government or private. Comment 17(i)–1. The credit extended before the repayment period begins under these plans is referred to as the interim student credit extension. The Board understands that most or all private education loans made today are ''student credit plans.''

The Board proposed to eliminate the special rules for student credit plans under § 226.17(i) and accompanying commentary because the new TILA section 128(e) disclosure rules effectively eliminate the disclosure exemptions and special rules in § 226.17(i). Implementing new TILA section 128(e)(2)(H), proposed § 226.38(b)(3)(vii) required the creditor to give the consumer an estimate of the total amount for repayment at the time that the loan is approved. As discussed further below, the Board views the total amount for repayment disclosure as duplicative of TILA's existing total of payments disclosure. Proposed § 226.38(b)(3)(vii) required creditors to disclose the total of payments before a definitive repayment schedule is set. Thus, the HEOA revisions to TILA eliminate the § 226.17(i) exemption for disclosure of the total of payments. This also has the effect of eliminating the other exemptions as well, because an estimate of the total of payments requires the creditor to estimate the finance charge and payment schedule. In addition, the Board proposed to apply the new private education loan disclosure regime to consolidation loans, rendering the commentary on consolidation loan disclosures under comment 17(i)–3 unnecessary.

The Board believes that retaining two different disclosure regimes from which creditors may choose is unnecessarily complex and may not be useful to consumers and creditors. Thus, the final rule eliminates the special rules for student credit plans under § 226.17(i) for loans for which an application is received on or after the mandatory compliance date of §§ 226.46, 47, and 48.

However, in response to public comment the Board is not eliminating § 226.17(i) in its entirety, as proposed. Under current comment 17(i)–1, creditors who choose not to make complete disclosures at the time the credit is extended must make a new set of complete disclosures at the time the creditor and consumer agree upon a repayment schedule for the total obligation. The Board is retaining and revising § 226.17(i) to clarify that the requirement to provide a complete disclosures at the time the creditor and consumer agree upon a repayment schedule for the total obligation remains in effect for student credit extensions made before the mandatory compliance date of §§ 226.46, 47, and 48, and for which the creditor chose not to make complete disclosures before consummation.

For loans subject to §§ 226.46, 47, and 48 the Board did not propose to require creditors to give a new set of disclosures once the creditor and consumer agree upon a repayment schedule. Consumer group commenters suggested that the Board require a new set of disclosures upon repayment. However, TILA as amended by the HEOA, does not require such disclosure for private education loans. The final rules require a complete disclosure at the time the credit is extended. In addition, new disclosures are required under § 226.20(a) in the case of a refinancing of a loan.

Section 226.18—Content of Disclosures

As discussed more fully below, the Board is adopting as proposed, with redesignated cross-references, revisions to the commentary to § 226.18. The final rule requires that creditors provide the disclosures required in § 226.18 along with the disclosures required with notice of approval in § 226.47(b) and with the final disclosures required in § 226.47(c). As proposed, the model forms in Appendix H–19 and H–20 show the disclosures required under § 226.18 as well as the disclosures required under §§ 226.47(b) and (c). However, as explained below, the HEOA's disclosure about limitations on interest rate adjustments differs slightly from that of § 226.18(f)(1)(ii), as interpreted in comment 18(f)(1)(ii)–1. Thus the Board is revising comment 18(f)(1)(ii)–1 to clarify that parts of the comment do not apply to private education loans.

Current § 226.18(f)(1)(ii) requires that if the annual percentage rate in a closed-end credit transaction not secured by the consumer's principal dwelling may increase after consummation, the creditor must disclose, among other things, any limitations on the increase. Current comment 18(f)(1)(ii)–1 states that when there are no limitations, the creditor may, but need not, disclose that fact. By contrast, the HEOA and §§ 226.47(b) and 47(c) require creditors to disclose any limitations on interest rate adjustments, or the lack thereof. Thus, for private education loans, disclosure of the absence of any limitations on interest rate adjustments is required, not optional. In addition, under §§ 226.47(b)(1)(iii), and (c)(1), limitations on rate increases include, rather than exclude, legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations. Comment 47(b)(1)–2, proposed as comment 38(b)(1)–2, discussed below, provides guidance on how creditors are to disclose limitations on interest rate adjustments.

The Board is also revising, as proposed, comment 18(f)(1)(iv)–2, which currently clarifies that for interim student credit extensions creditors need not provide a hypothetical example of the payment terms that would result from an increase in the variable rate. The comment is revised, with a

redesignated cross-reference, to replace the reference to interim student credit extensions with a reference to private education loans. Sections 226.47(b)(3)(viii) and 226.47(c)(3) require a disclosure of the maximum monthly payment on a private education loan based on the maximum possible rate of interest. As discussed more fully in the section-by-section analysis in § 226.47, the Board believes that the required disclosure of the maximum monthly payment amount at the maximum rate satisfies the requirement under § 226.18(f)(1)(iv) to disclose a hypothetical example of the payment terms resulting from an increase in the rate. Comment 47(b)(1)–1, proposed as comment 38(b)(1)–1, clarifies that while creditors must disclose the maximum payment at the maximum possible rate, they need not also disclose a separate example of the payment terms resulting from a rate increase under § 226.18(f)(1)(iv).

The Board also proposed to revise comment 18(k)(1)–1 which currently clarifies that interim interest on a student loan is not considered a penalty for purposes of the requirement in § 226.18(k)(1) to disclose whether or not a penalty may be imposed if a loan is prepaid in full. The proposal removed the reference to interim interest on a student loan as an example of what is not a penalty. The Board did not intend to indicate that interim interest on a student loan is considered a penalty. Rather, with the proposed removal of § 226.17(i) and associated commentary, the reference to interim interest on a student loan would no longer be clear. Although the Board is retaining and revising § 226.17(i), to avoid confusion between the terms ''student loan'' and ''private education loan,'' the Board is adopting the proposed revision to comment 18(k)(1)–1. The Board believes that the description of what constitutes a penalty in the remainder of revised comment 18(k)(1)–1 provides sufficient clarity that interim interest on a student loan would not be considered a penalty.

Subpart F

The final rule, as proposed, adds a new Subpart F to contain the rules relating to private education loans. In the final rule, proposed §§ 226.37, 38, and 39 have been redesignated to §§ 226.46, 47, and 48. On July 23, 2009, the Board proposed new disclosure requirements for closed-end loans secured by real property or a dwelling. In order to make these proposed provisions contiguous with the current Special Rules for Certain Mortgage Transactions in Subpart E, the Board proposed to add the new disclosure requirements to §§ 226.37 and 226.38. In order to accommodate the potential for future rulemakings the Board is reserving §§ 226.39 through 226.45.

Section 226.46 Special Disclosure Requirements for Private Education Loans

Section 226.46, proposed as § 226.37, contains general rules about the disclosure and other requirements contained in Subpart F. Proposed § 226.37(a) specified that Subpart F would apply only to private education loans. Section 226.46(a) of the final rule applies Subpart F to all extensions of credit that meet the definition of a private education loan in § 226.46(b)(5). The final rule also permits, but does not require, creditors to comply with Subpart F for certain extensions of credit subject to §§ 226.17 and 18 that are related to financing an education. Specifically, some commenters requested clarification as to whether certain loans that do not meet the definition of private education loan, but are extended to students who have completed graduate school for expenses related to relocation, medical internship or residency, or bar study would be covered. Under § 226.46(a) of the final rule, compliance with Subpart F is optional for extensions of credit that are extended to a consumer for expenses incurred after graduation from a law, medical, dental, veterinary or other graduate school and related to relocation, study for a bar or other examination, participation in an internship or residency program, or similar purposes. New comment 46(a)–1 clarifies that if the creditor opts to comply with Subpart F, it must comply with all the applicable requirements of Subpart F. It also clarifies that if the creditor opts not to comply with Subpart F it must comply with the requirements in §§ 226.17 and 18.

Loans made for bar study, residency, or internship expenses may not meet the definition of ''private education loan'' in § 226.46(b)(5) if the extension of credit will not be used, in whole or in part, for ''postsecondary educational expenses'' as specified in § 226.46(b)(3). Consequently, under the HEOA, compliance with Subpart F would not be mandatory for such loans. However, the Board believes that permitting creditors to comply with Subpart F benefits both creditors and consumers. Creditor commenters requested the ability to comply with Subpart F for these loans because the loans are often made along with private education loans and share operational systems with those loans. Optional compliance would allow creditors to avoid the expense of maintaining separate compliance systems. The Board also believes that permitting creditors to comply with Subpart F will benefit consumers who will receive information about credit terms earlier in the lending process and gain the benefits of a 30-day acceptance period and three-day right to cancel.

Comment 46(a)–1, proposed as comment 37(a)–1 clarifies that if any part of a loan used for post-graduate expenses is also used for postsecondary educational expenses, then compliance with Subpart F is mandatory not optional. It also clarifies that, except where specifically provided otherwise, the requirements and limitations of Subpart F are in addition to the requirements of the other subparts of Regulation Z.

46(b) Definitions

The HEOA amends TILA by adding a number of defined terms in new TILA sections 140 and 128(e). Section 226.46(b), proposed as § 226.37(b), adds these definitions to Regulation Z.

The Board did not propose to add a definition to Regulation Z for one new term defined in the HEOA, ''private educational lender.'' Instead, the Board proposed to use Regulation Z's existing definition of ''creditor'' (12 CFR 226.2(a)(17)). The HEOA defines the term ''private educational lender'' as a financial institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), or a Federal credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) that solicits, makes, or extends private education loans.[8] The term also includes any other person engaged in the business of soliciting, making, or extending private education loans. In the proposal, the Board stated its belief that the ''creditor'' definition would encompass persons ''engaged in the business of'' extending private education loans.[9] The term ''creditor'' applies to a person who regularly extends consumer credit, which is defined as credit extended more than 25 times (or more than 5 times for transactions secured by a dwelling) in

[8] The term ''financial institution'' is not defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), but the Board interprets this term to refer to the defined term ''depository institution,'' which is the most comprehensive definition in section 3 of the Federal Deposit Insurance Act.

[9] The HEOA also covers persons engaged in the business of soliciting private education loans. Under § 226.46(d)(1), proposed as § 226.37(d)(1), the term solicitation is defined as an offer to extend credit that does not require the consumer to complete an application. The term ''solicit'' does not include general advertising or invitations to apply for credit.

the preceding calendar year. 12 CFR 226.2(a)(17).

Under the HEOA, a depository institution or Federal credit union would be covered for any private education loan it makes, regardless of whether or not the institution regularly extended consumer credit. By applying the private education loan rules only to ''creditors,'' the Board proposed to create an exception for depository institutions and Federal credit unions that do not regularly extend consumer credit. The Board requested comment on whether there were instances where an institution that does not regularly extend consumer credit nevertheless makes an occasional private education loan and should be covered by the rule. The few commenters who addressed this issue did not provide specific examples of depository institutions or Federal credit unions that make private education loans but do not meet the definition of creditor.

Under TILA section 105(a), the Board may provide exceptions to TILA for any class of transactions to facilitate compliance with TILA. The Board believes that in most cases depository institutions and credit unions that extend private education loans would also be creditors under Regulation Z. The definition of creditor applies to institutions that extended consumer credit of any type more than 25 times in the preceding calendar year (or more than 5 times for transactions secured by a dwelling). That is, an institution need not make more than 25 private education loans to be covered. If an institution makes 3 private education loans and 23 automobile loans, that institution is a creditor. For institutions that do not meet the definition of creditor, the compliance burden of the private education loans rules appears significant for the small number of loans that they may extend. Applying the private education loan rules to such institutions would likely dissuade them from providing private education loans, diminishing competition and consumer choice for those consumers who may have access to such loans. Thus, the Board believes that this exception is necessary and proper to facilitate compliance with TILA, and it is adopted as proposed in the final rule.

The Board also proposed to exercise its authority under TILA section 105(f) in applying the private education loan rules only to ''creditors,'' as defined in Regulation Z, thereby exempting from the requirements of HEOA depository institutions and Federal credit unions that do not regularly extend consumer credit. The Board understands that the private education loan population contains students who may lack financial sophistication, and that the amount of the loan may be large and the loan itself may be important to the borrower. The Board believes, however, that because the number of instances where a consumer would receive a private education loan from an institution that does not regularly extend consumer credit is very limited, the burden and expenses of compliance that would be assumed by the institution are not outweighed by the benefit to the consumer. Furthermore, the Board believes that the goal of consumer protection would not be undermined by this exemption and that, after considering the 105(f) factors, coverage would not provide a meaningful benefit to consumers in the form of useful protection.

The Board also requested comment on whether other persons not covered by the definition of ''creditor'' should be covered by the rule. A few commenters expressed concern that because the current definition of ''creditor'' includes only persons who met the thresholds for regularly extending consumer credit in the preceding calendar year, it would not include new entrants into the private education loan market in their first year. These commenters suggested that the definition be extended to include those persons who intend to regularly extend private education loans for the coming calendar year.

As proposed, the final rule applies to persons meeting the definition of ''creditor'' under § 226.2(a)(17). The current definition provides persons with certainty as to whether or not they are covered by Regulation Z. An alternative definition based on intent to regularly extend credit would be subjective and persons could not determine whether or not they must comply with Regulation Z until after the fact.

46(b)(1) Covered Educational Institution

The HEOA defines the term ''covered educational institution'' to mean any educational institution that offers a postsecondary educational degree, certificate, or program of study (including any institution of higher education) and includes an agent, officer, or employee of the educational institution. Included in the definition of covered educational institution are ''institutions of higher education,'' as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002). The Higher Education Act of 1965 contains two definitions of the term ''institution of higher education;'' a narrower definition in section 101, and a broader definition in section 102. *See* 20 U.S.C. 1001, 1002. The HEOA explicitly uses the broader definition in section 102 of the Higher Education Act of 1965. HEOA Title X, Section 1001 (adding TILA Section 140(a)(3)). The more expansive definition of institution of higher education, as interpreted by the Department of Education's regulations (34 CFR 600), appears broad enough to encompass most educational institutions that offer postsecondary educational degrees, certificates, or programs of study. The definition of institution of higher education under section 102 of the Higher Education Act of 1965, however, would not include certain unaccredited educational institutions that offer postsecondary educational degrees, certificates, or programs of study. The HEOA's definition of ''covered educational institution'' appears to be broader than the definition of ''institution of higher education'' because the former includes, but is not limited to, the latter. For this reason, § 226.46(b)(1), proposed as § 226.37(b)(1), defines ''covered educational institution'' as an educational institution (as well as an agent, officer or employee of the institution) that would meet the definition of an institution of higher education as defined in § 226.46(b)(2), without regard to the institution's accreditation status.

Comment 46(b)(1)–1, proposed as comment 37(b)(1)–1, clarifies that if an educational institution would not be considered an ''institution of higher education'' solely on account of the institution's lack of accreditation, the institution nonetheless would be a ''covered educational institution.'' It also clarifies that a covered educational institution may include, for example, a private university or a public community college. It may also include an institution, whether accredited or unaccredited, that offers instruction to prepare students for gainful employment in a recognized profession such as flying, culinary arts, or dental assistance. Under the definition, a covered educational institution does not include elementary or secondary schools.

Although the definition of ''covered educational institution'' under the Title X of the HEOA includes an agent, officer or employee of a covered educational institution, the term ''agent'' is not explicitly defined in that section of the HEOA. However, section 151 of the HEOA defines an ''agent'' as an officer or employee of a covered institution or an institution-affiliated organization and excluding any creditor regarding any private education loan made by the creditor. Proposed comment 37(b)(1)–2 clarified that an ''agent'' for the

purposes of defining a covered educational institution is an officer or employee of an institution affiliated organization. Comment 46(b)(1)–2 in the final rule further clarifies that an ''agent'' of a covered educational institution includes the institution-affiliated organization itself, as well as an officer or employee of an institution-affiliated organization.

46(b)(2) Institution of Higher Education

The HEOA added the term ''institution of higher education'' to TILA Section 140(a)(3) and defined it to have the same meaning as in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002). The definition encompasses, among other institutions, colleges and universities, proprietary educational institutions and vocational educational institutions. Proposed § 226.37(b)(2) defined ''institution of higher education'' with reference to section 102 of the Higher Education Act of 1965 and to the implementing regulations promulgated by the Department of Education. However, on May 22, 2009, after passage of the HEOA and publication of the Board's proposed rule, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (''Credit CARD Act'') amended TILA and added a definition of the term ''institution of higher education'' to TILA section 127 that differs slightly from the definition of ''institution of higher education'' in TILA section 140. The Credit CARD Act amendment to TILA defines ''institution of higher education'' to include both sections 101 and 102 of the Higher Education Act of 1965. Credit CARD Act, Title III, Section 305 (adding TILA section 127(r)(1)(D)).

The definition of institution of higher education in TILA section 127 does not apply to private education loans. However, the Credit CARD Act added substantive provisions that apply to ''institutions of higher education'' to TILA section 127 and section 140, indicating that the difference between the two definitions was inadvertent. Thus, the Board believes that the two definitions of ''institution of higher education'' should be reconciled. In order to ensure that the definition of ''institution of higher education'' is consistent throughout Regulation Z, the final rule adopts a definition of ''institution of higher education'' that includes both sections 101 and 102 of the Higher Education Act of 1965. The Board understands, after consulting with the Department of Education, that intuitions covered under section 101 of the Higher Education Act of 1965 would also be covered under section 102 of the Higher Education Act. As a result, the Board is not expanding the coverage of the final rule, but rather is adopting a definition that is consistent with the most recent statutory amendment to TILA. The Board is adopting comment 46(b)(2)–1, proposed as comment 37(b)(2)–1, providing examples of institutions of higher education.

46(b)(3) Postsecondary Educational Expenses

The HEOA defines ''postsecondary educational expenses'' as any of the expenses that are listed as part of the cost of attendance of a student under section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll). Section 226.46(b)(3) adopts this definition as proposed in § 226.37(b)(3), and provides illustrative examples of postsecondary educational expenses. Examples included tuition and fees, books, supplies, miscellaneous personal expenses, room and board, and an allowance for any loan fee, origination fee, or insurance premium charged to a student or parent for a loan incurred to cover the cost of the student's attendance. Comment 46(b)(3)–1, adopted as proposed in comment 37(b)(3)–1, clarifies that the examples in the rule are not exhaustive.

46(b)(4) Preferred Lender Arrangement

The HEOA defines ''preferred lender arrangement'' as having the same meaning as in section 151 of the Higher Education Act of 1965 (20 U.S.C 1019). Section 226.46(b)(4), proposed as § 226.37(b)(4), adopts this definition. Comment 46(b)(4)–1, proposed as comment 37(b)(4)–1, clarifies that the term refers to an arrangement or agreement between a creditor and a covered educational institution under which a creditor provides education loans to consumers for students attending the school and the school recommends, promotes, or endorses the creditor's private education loans. It does not include arrangements or agreements with respect to Federal Direct Stafford/Ford loans, or Federal PLUS loans made under the Federal PLUS auction pilot program.

46(b)(5) Private Education Loan

Proposed § 226.37(b)(5) implemented the HEOA's definition of a ''private education loan.'' Under the proposal, a private education loan was defined as a loan that is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) and is extended expressly, in whole or in part, for postsecondary educational expenses to a consumer, regardless of whether the loan is provided through the educational institution that the student attends. A private education loan excluded any credit otherwise made under an open-end credit plan. It also excluded any closed-end loan secured by real property or a dwelling.

Proposed comment 37(b)(5)–1 clarified that a loan made ''expressly for'' postsecondary educational expenses included loans issued explicitly for expenses incurred while a student is enrolled in a covered educational institution. It also covered loans issued to consolidate a consumer's pre-existing private education loans.

Under § 226.46(b)(5) and related commentary, the Board is adopting the definition of ''private education loan'' substantially as proposed, but with exceptions for certain credit extensions provided by covered educational institutions. Extensions of credit with a term of 90 days or less, and tuition billing plans where an interest rate will not be applied to a balance and the term of the transaction is not greater than one year, even if the credit is payable in more than four installments, are exempt.

Loans used for multiple purposes. Proposed comment 37(b)(5)–2 addressed loans, other than open-end credit or any loan secured by real property or a dwelling, that a consumer may use for multiple purposes, including postsecondary education expenses. Under the proposal, creditors extending such loans, could, at their option, provide the disclosures under § 226.38(a) on or with an application or solicitation. However, under § 226.37(d)(1)(iii), the Board proposed to exercise its authority under TILA section 105(a) and except multi-purpose loans from the application disclosure requirements of proposed § 226.38(a). As explained below, the Board stated its belief that this exception is necessary and proper to effectuate the purposes of, and facilitate compliance with, TILA.

The Board also proposed to exercise its authority under TILA section 105(f) to exempt such loans from the proposed § 226.38(a) disclosure requirements implementing TILA section 128(e)(1). The Board stated its view that these application and solicitation disclosure requirements do not provide a meaningful benefit to consumers in the form of useful information or protection for loans that may be used for multiple purposes. The Board considered that the private education loan population includes many students who may lack financial sophistication and the size of the loan could be relatively significant and important to the borrower. However, with respect to loans that may be used for multiple purposes, the creditor may not know at application if

the consumer intends to use such loans for educational purposes. A requirement to provide a consumer with the proposed § 226.38(a) disclosures would likely have been complicated and burdensome to creditors and potentially infeasible to implement. Furthermore, the Board believed that the borrower would receive meaningful information about the loan through the subsequent approval and final disclosures required under proposed §§ 226.38(b) and 38(c), respectively. The HEOA also provides borrowers with significant rights, such as the right to cancel the loan. The Board recognized that such multi-purpose loans would not be secured by the principal residence of the consumer, which is a factor for consideration under section 105(f). The Board stated its belief that consumer protection would not be undermined by this exemption.

Proposed comment 37(b)(5)–2 clarified that if the consumer expressly indicates on an application that the proceeds of the loan will be used to pay for postsecondary educational expenses, the creditor must comply with the disclosure requirements of proposed §§ 226.38(b) (approval disclosures) and 38(c) (final disclosures) and proposed § 226.39 (including the 30 day acceptance period and three-business-day right to cancel). To determine the purpose of the loan, proposed comment 37(b)(5)–2 stated that the creditor may rely on a check-box or purpose line on a loan application.

Proposed comment 37(b)(5)–2 also clarified that the creditor must base the disclosures on the entire amount of the loan, even if only a part of the proceeds is intended for postsecondary educational expenses. The Board's view was that this approach would be the least administratively burdensome for creditors and would also be clearer to consumers. Providing disclosures based on a partial loan amount might cause a consumer to misinterpret the correct amount of his or her loan obligation. Therefore, the Board proposed to exercise its authority under TILA section 105(a) to require that the approval and final disclosure requirements of HEOA be applied to the portion of the loan that is not a private education loan. As explained above, the Board stated its belief that this provision is necessary and appropriate to assure a meaningful disclosure of credit terms for consumers.

The Board requested comment on whether the private education loan application disclosures should be required for loans that may be used for multiple purposes, or, alternatively, whether such loans should be exempt from any of the other disclosure requirements. The Board also requested comment on whether creditors who make loans that may be used for multiple purposes should be required to comply with the requirement to obtain a self-certification form under proposed § 226.39(e) and, if so, whether creditors should be required to obtain the self-certification form only from consumers who are students, or from all consumers, such as parents of a student.

The Board received numerous comments on the proposed application of the private education loan rules to loans that may be used for multiple purposes. Industry commenters, including both large and small institutions and their representatives, stated that applying the proposed rule to such loans would be burdensome. Small institutions stated that the additional disclosures and timing requirements would not be beneficial to their customers who expect to be able to apply for and receive installment loans quickly based on an existing relationship with the institution. Larger institutions noted that they often have dedicated student lending operations and that applying the rules to general installment loans would require them to update systems not only for their student lending divisions, but also for other lending divisions. Some commenters expressed concern that, rather than build systems to comply with the private education loan rules, some institutions would decline to make a loan if the consumer indicated that the funds would be used for postsecondary educational expenses. Commenters also expressed concern that basing the disclosures on the entire loan amount, rather than the amount used for educational expenses would cause confusion.

By contrast, consumer group commenters supported the proposed inclusion of loans that may be used for multiple purposes, noting the concern that exempting such loans could create an opportunity for evasion of the proposed rules. They also supported basing the disclosures on the entire loan amount, rather than the amount used for educational expenses. These commenters suggested that creditors be required to inquire whether a loan would be used for postsecondary educational expenses.

The final rule would cover multipurpose loans largely as proposed. The Board believes that coverage of loans that may be used for multiple purposes is warranted by the statutory inclusion of loans made ''expressly,'' that is, explicitly, for postsecondary educational expenses. The Board also believes that there is potential for evasion of the rules if creditors could avoid compliance by lending the consumer more than the amount needed for educational purposes. One of the goals of the HEOA is to prevent students from borrowing more than their financial need to finance their education. Comment 46(b)(5)–2 provides that the creditor may rely on a check-box or purpose line in an application to determine the loan's purpose. In addition, the creditor must base the disclosures on the entire amount of the loan, even if only part of the loan is to be used for postsecondary educational expenses. The Board believes that providing disclosures based on a partial loan amount might cause a consumer to misinterpret the correct amount of his or her loan obligation. The Board is also adopting the exception to the requirement that the application disclosures under § 226.47(a) be provided for multiple-purpose loans. The creditor may not know at application if the consumer intends to use such loans for educational purposes. A requirement to provide a consumer with the § 226.47(a) disclosures would likely be complicated and burdensome to creditors and potentially infeasible to implement.

Credit provided by educational institutions. In addition to comments about loans that may be used for multiple purposes, the Board received a number of comments from educational institutions requesting clarification as to whether tuition billing plans were covered by the proposed rules. These commenters noted that such billing plans do not involve a disbursement of funds to the consumer and do not involve the application of an interest rate to a balance. Consequently, a major part of the new disclosures required by the HEOA, such as disclosures about interest rates and payment amounts at the maximum interest rate, would not apply to such billing option plans. In addition, these commenters suggested that neither the 30 day acceptance period nor the three-day right to cancel would be meaningful to consumers in a context where no funds are disbursed to the consumer. Most commenters who addressed this issue noted that these billing plans usually have terms of one year or less.

Under § 226.46(b)(5)(iv)(B), the Board is revising the definition of ''private education loan'' to exclude certain billing plans provided by educational institutions. If payable in more than four installments, these plans may be considered credit under Regulation Z and would be subject to the requirements of §§ 226.17 and 18.

However, the Board agrees with commenters that the additional disclosure and timing rules for private education loans would not provide meaningful disclosures to consumers and could potentially make it more difficult for consumers to benefit from flexible payment options. The Board believes that the disclosure requirements under §§ 226.17 and 18 provide consumers with adequate information for these types of plans. In response to public comment, the Board is exercising its authority under TILA section 105(a) to adopt a narrow exception for billing plans that do not apply an interest rate to the credit balance and have a term of one year or less, even if payable in more than four installments. Based on public comment, the Board believes that the limited exception for billing plans of one year or less that do not charge interest will provide sufficient flexibility to schools to accommodate students' payment needs while ensuring that extensions of credit that are more likely to be a substitute for a private education loan are covered. Comment 46(b)(5)–3 clarifies that such plans may nevertheless be extensions of credit subject to §§ 226.17 and 18. As explained above, the Board believes that this exception is necessary and proper to effectuate the purposes of, and facilitate compliance with, TILA.

Educational institution commenters also requested an exemption for ''emergency'' loans provided to a student for a short term while the student waits for other funds to be disbursed. Most commenters that requested an exemption for these ''emergency'' loans stated that they have a term of 90 days or less. Because these loans may charge interest, they would not fall under the exemption for billing payment plans. However, as with billing payment plans, the Board believes that the additional disclosures required by the HEOA, such as the maximum rate disclosures, would not provide a meaningful benefit to consumers taking out short-term loans. Creditors would still be obligated to provide the general disclosures required under Regulation Z. Moreover, these commenters focused particularly on the burden that could be imposed on students by the prohibition on disbursing funds during the three-day cancellation period. For example, if delayed disbursement caused the student to fail to meet a tuition payment deadline the student may not be allowed to enroll in school, increasing the time needed to graduate. The Board believes that short-term loans provided by the school benefit consumers and that the HEOA's requirements, especially the three-day cancellation period, could impair their effectiveness by delaying disbursement of loan proceeds without providing a meaningful benefit to students. Accordingly, the final rule exempts loans provided by the school with a term of 90 days or less.

Comment 46(b)(5)–3 clarifies that such loans are not considered private education loans, even if interest is charged on the credit balance. Because these loans charge interest, they are not covered by the exception under § 226.46(b)(5)(iv)(B). However, these loans are extensions of credit subject to the requirements of §§ 226.17 and 18. The comment clarifies that if legal agreement provides that repayment is required when the consumer or the educational institution receives certain funds (such as by deposit into the consumer's or educational institution's account), the disclosures should be based on the creditor's estimate of the time the funds will be delivered.

The exceptions that apply when the covered educational institution is the creditor apply only when the school itself is the creditors and not when an institution-affiliated organization is the creditor. The definition of covered educational institution in § 226.46(b)(1) includes an agent of the institution, meaning and institution-affiliated organization. Comment 46(b)(1)–2 clarifies that institution-affiliated organization does not include the creditor with respect to any private education loan made by that creditor. Thus, if an institution-affiliated organization is the creditor, it is not a ''covered educational institution'' and the institution-affiliated organization's loans are not exempt.

Educational institution commenters also requested clarification as to whether state ''service requirement'' programs would be considered private education loans. Under these programs, money is disbursed to students who agree as part of the legal obligation to complete a service obligation, such as teaching or practicing medicine in an underserved area. If the consumer completes the obligation, no repayment of principal or interest is required. However, if the consumer does not complete the service obligation, under the terms of the legal obligation, the consumer is required to repay the funds with interest.

The Board notes that the definition of ''credit'' under § 226.2(a)(14) means the right to defer payment of debt or to incur debt and defer its payment. Certain ''service requirement'' programs may not be credit under Regulation Z if the terms of the legal obligation contemplate that the consumer will not be required to repay principal or interest on disbursed funds. If the consumer is required to repay disbursed funds only in connection with an unanticipated breach of the consumer's legal obligation to perform a service, the consumer may not have a credit extension under Regulation Z.

46(c) Form of Disclosures

Similar to the requirements imposed by § 226.17 for the disclosures required by § 226.18, the Board is adopting § 226.46(c)(1), proposed as § 226.37(c)(1), to require the disclosures for private education loans be made clearly and conspicuously. The Board is also adopting § 226.46(c)(2), proposed as § 226.37(c)(2), to require that the approval and final disclosures under §§ 226.47(b) and 47(c) to be in writing in a form that the consumer may keep. The disclosures must be grouped together, be segregated from everything else, and not contain any information not directly related to the disclosures required under §§ 226.47(b) and 47(c), which include the disclosures required under § 226.18. However, the disclosures may include an acknowledgement of receipt, the date of the transaction, and the consumer's name, address, and account number. In addition, as proposed, the following disclosures may be made together with or separately from other required disclosures as permitted under current § 226.17: the creditor's identity under § 226.18(a), insurance or debt cancellation under § 226.18(n), and certain security interest charges under § 226.18(o).

As proposed, the term ''finance charge'' and corresponding amount, when required to be disclosed under § 226.18(d), and the interest rate required to be disclosed under §§ 226.47(b)(1)(i) and 47(c)(1), must be more conspicuous than any other disclosure, except the creditor's identity under § 228.18(a). As discussed in the section-by-section analysis under § 226.17, the annual percentage rate is not required to be more prominent than other terms.

Comment 46(c)–1, proposed as comment 37(c)–1, clarifies that creditors may follow the rules in § 226.17 in complying with the requirement to provide the information required under § 226.18, as well as the requirement that the disclosures be grouped together and segregated from everything else. However, in contrast to § 226.17, the itemization of the amount financed under § 226.18(c)(1) need not be separate from the other disclosures.

TILA Section 128(b)(1) requires any computations or itemization to be segregated from the disclosures required in TILA Section 128(a). However, the HEOA requires creditors to disclose a number of terms that are part of the itemization of the amount financed under § 226.18(b), such as the principal amount of the loan and an itemization of fees. *See* §§ 226.47(b)(2), 47(b)(3)(i), 47(c)(2) and 47(c)(3)(i). Based on consumer testing, the Board believes that consumers may be confused about the difference between the required disclosure of the amount financed (§ 226.18(b)) and the loan's total principal amount in cases where those two disclosures are different. Providing an itemization can help clarify distinction between the ''amount financed'' and the ''total loan amount'' by showing the consumer how the amount financed is derived. It can also provide a clear and understandable disclosure of certain fees. For these reasons, the Board is exercising its authority under TILA section 105(a) to except private education loans from the requirement that the itemization of the amount financed be segregated from the other disclosures. The Board believes that this exception is necessary and proper to effectuate the purposes of, and facilitate compliance with, TILA.

The Board proposed to allow creditors to provide the disclosure of the loan's total principal amount as part of the itemization of the amount financed, if the creditor opts to provide an itemization. However, because the final model disclosures provide the loan's total principal amount, not the amount financed, prominently, the final rule allows the creditor to disclose the amount financed as part of the itemization if the creditor opts to provide an itemization.

Section 226.46(c)(2), proposed as § 226.37(c)(2), permits creditors to make disclosures to consumers in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by § 226.47(a) may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act on or with an application or solicitation provided in electronic form. The self-certification form required under § 226.48(e) may be obtained in electronic form subject to the requirements in that section. In addition, as discussed below in the section-by-section analysis under §§ 226.48(c) and (d), if creditors have provided the approval or final disclosures electronically in accordance with the E-Sign Act, creditors may accept electronic communication of loan acceptance or cancellation, respectively.

Comment 46(c)(2)–1, proposed as comment 37(c)(2)–1, contains guidance on the manner in which disclosures may be provided in electronic form. Electronic disclosures are deemed to be on or with an application or solicitation if they—(1) Automatically appear on the screen when the application or solicitation reply form appears; (2) are located on the same Web ''page'' as the application or solicitation reply form and the application or reply form contains a clear and conspicuous reference to the location and content of the disclosures; or (3) are posted on a Web site and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by-passing the disclosures before submitting the application or reply form. This approach is consistent with the rules for electronic disclosures for credit and charge card applications under comment 5a(a)(2)–1.ii.

46(d) Timing of Disclosures

Section 226.46(d), proposed as § 226.37(d), contains the rules governing the timing of the proposed disclosures. Proposed comment 37(d)–1 contained guidance specifying that if the creditor places the disclosures in the mail, the consumer is considered to have received them three business days after they are mailed. For purposes of proposed §§ 226.37, 226.38, and 226.39, the term ''business day'' was given the more precise definition used for rescission and other purposes, meaning all calendar days except Sundays and the Federal holidays referred to in § 226.2(a)(6).

As discussed in the section-by-section analysis under § 226.2(a)(6), in the final rule the more precise definition of ''business day'' applies only to measuring the time period in which consumers are deemed to have received mailed disclosures. The final rule includes a new § 226.46(d)(4) providing that the consumer is deemed to have received mailed disclosures within three business days after they are mailed. Comment 46(d)–1 clarifies that the definition of ''business day'' used in § 226.46(d)(4) means all calendar days except Sundays and the Federal holidays referred to in § 226.2(a)(6). For example, if the creditor places the disclosure in the mail on Thursday, June 4, the disclosures are considered received on Monday, June 8.

Proposed comment 37(d)–1 stated that the disclosures are considered provided when received by the consumer. However, in order to clarify the timing of different aspects of the final rule, this is not adopted in comment 46(d)–1. Instead, as discussed in this section-by-section analysis under § 226.46, the final rule specifies when disclosures must be provided and, as discussed in the section-by-section analysis under § 226.48, the final rule provides guidance on when disclosures are deemed to be received by the consumer for purposes of measuring the 30-day acceptance period and three-day cancellation period.

Application disclosures. The HEOA requires creditors to provide disclosures in an application or in a solicitation that does not require the consumer to complete an application. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA section 128(e)(1)). Under § 226.46(d)(1)(i), proposed as § 226.37(d)(1), creditors are allowed to provide the disclosures on or with the application or solicitation because the disclosures are likely to be longer than a single page. The final regulation, as proposed, defines the term ''solicitation'' to mean an offer of credit that does not require the consumer to complete an application. A ''solicitation'' would also include a ''firm offer of credit'' as defined in the Fair Credit Reporting Act (FCRA). 15 U.S.C. 1681 *et seq.* Because consumers who receive ''firm offers of credit'' have been preapproved to receive credit and may be turned down only under limited circumstances, the Board believes that these preapproved offers are of the type intended to be captured as a ''solicitation,'' even though consumers are typically asked to provide some additional information in connection with accepting the offer. The definition of ''solicitation'' is similar to that contained in § 226.5a(a)(1) for credit and charge card application disclosures. Comment 46(d)(1)–1, proposed as comment 37(d)(1)–1, provides additional guidance that invitations to apply for a private education loan would not be considered solicitations.

Proposed § 226.37(d)(1)(ii) dealt with provision of disclosures in a telephone application or solicitation initiated by the creditor. The creditor was allowed, but not required, to orally disclose the information in proposed § 226.38(a). Alternatively, if the creditor did not disclose orally the information in § 226.38(a), the creditor was required to provide or place in the mail the disclosures no later than three business days after the consumer applied for the credit. The Board stated its belief that

orally disclosing to consumers all of the information in proposed § 226.38(a), including rate and loan cost information, information about Federal loan alternatives, and loan eligibility requirements, may make it difficult for consumers to comprehend and retain the information.

The Board requested comment on alternatives to providing application disclosures in telephone applications or solicitations initiated by the creditor. In response to comment, the final rule revises the proposal in two ways. First, under § 226.47(d)(1)(ii), the oral disclosure provisions for telephone applications or solicitations apply regardless of whether the creditor or the consumer initiates the communication. Both industry and consumer group commenters stated that consumers of private education loans often initiate telephone applications and suggested that both consumers and creditors would benefit if the same rules applied regardless of which party initiates the communication.

Second, the Board recognized in the proposal that creditors may sometimes be able to communicate approval of the consumer's application at the same time that the creditor would provide the application disclosures. Consumers may be confused by receiving both the application disclosures and the approval disclosures at the same time. Therefore, the Board proposed to exercise its authority under TILA section 105(a) to create an exception from the requirement to provide the application disclosures under proposed § 226.38(a) if the creditor did not provide oral application disclosures but did provide or place in the mail the approval disclosures in proposed § 226.38(b) no later than three business days after the consumer requested the credit. As explained above, the Board stated its belief that this exception is necessary and proper to assure a meaningful disclosure of credit terms for consumers.

The Board also proposed to exercise its authority under TILA section 105(f) in proposing the exemption, described above, from the requirement to provide the application disclosures under proposed § 226.38(a), as required by TILA section 128(e)(1). The Board believed that, as described above, the application disclosure requirements would not provide a meaningful benefit to consumers in the form of useful information or protection because they would also contemporaneously receive the approval disclosures which would provide the consumer with adequate information. Moreover, the Board stated its view that receiving both the application and approval disclosures at the same time may complicate and hinder the credit process by causing consumer confusion. The Board recognized that the private education loan population contains students who may lack financial sophistication, and that the amount of the loan may be large and the loan itself may be important to the consumer. The Board also noted that private education loans are not secured by the consumer's residence and that HEOA provides the consumer with the right to cancel the loan. Finally, in considering the last factor under section 105(f), the Board did not believe that the goal of consumer protection would be undermined by such an exemption.

Commenters supported this aspect of the proposal, but industry commenters also suggested that if creditor denies the consumer's application within three business days of the telephone communication, the creditor should not be required to provide the application disclosures. The Board agrees that it would be confusing for the consumer to receive an adverse action notice simultaneously with or shortly after receiving the application disclosures. Under § 226.47(d)(1)(ii) of the final rule, if the creditor does not provide the application disclosures orally and the creditor denies the consumer's application within three business days, the creditor need not send the application disclosures.

As discussed above in the section-by-section analysis under § 226.46(b)(5), § 226.46(d)(1)(iii) would create an exception to the application disclosure requirement for a loan, other than open-end credit or any loan secured by real property or a dwelling, that the consumer may use for multiple purposes including, but not limited to, postsecondary educational expenses.

Approval disclosures. Section 226.46(d)(2), proposed as § 226.37(d)(2), requires that the disclosures specified in § 226.47(b) be provided before consummation on or with any notice to the consumer that the creditor has approved the consumer's application for a loan. If the creditor provides approval to the consumer by mail, the disclosures have to be mailed at the same time as the approval. If the creditor provides approval by telephone, the creditor must place the disclosures in the mail within three business days of the approval. The creditor may provide the disclosures solely in electronic form if the creditor has complied with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. § 7001 *et seq.*); otherwise, the creditor must place the disclosures in the mail within three business days.

The HEOA requires that the disclosures be provided contemporaneously with loan approval. However, loan approval is an internal process of the creditor's and it often may not be feasible to provide the disclosures at the precise moment that the creditor approves the loan. The Board believes that by requiring the disclosures be provided at the time the creditor communicates approval to the consumer, the consumer will receive the information at the earliest opportunity contemporaneous with loan approval. In addition, the rule provides creditors with certainty as to when the disclosure must be provided. The Board believes that creditors are likely to notify the consumer that the loan has been approved shortly after approval is granted because the creditor cannot consummate and disburse the loan until the consumer has received the required approval disclosures and accepted the loan.

The Board requested comment on alternative approaches to the timing of the approval disclosure. As discussed more fully in the section-by-section analysis under § 226.48(c), industry commenters requested clarification as to when ''approval'' occurs. They noted that they currently provide conditional notices of approval to consumers but that final approval does not occur until information provided by the consumer and the educational institution are verified. These commenters noted that under the prohibition on changing terms during the consumer's 30-day acceptance period in proposed § 226.39(b), they could no longer provide conditional approvals and expressed concern that final approvals would come too late in the process for the 30-day acceptance period to be meaningful to consumers.

The final rule requires creditors to provide the approval disclosures on or with any notice of approval, as proposed. However, to ensure that the approval disclosure comes as early as reasonably possible consistent with the HEOA's prohibition on the creditor changing the terms of the loan, § 226.48(c) allows creditors to make certain, limited changes to loan terms after loan approval without providing another 30-day acceptance period. In addition, comment 46(d)(2)–1 explicitly permits the creditor to communicate that additional information is required from the consumer before approval may be granted, without triggering the disclosure requirements of § 226.47(b).

Final disclosures. Proposed § 226.37(d)(3) required final disclosures

to be provided to the consumer after the consumer accepts the loan and at least three business days prior to disbursing the private education loan funds.

In the final rule § 226.46(d)(3), requires the final disclosures to be provided to the consumer after the consumer accepts the loan, but does not base the timing on when the private education loan funds are disbursed. Section 226.48(d) prohibits the creditor from disbursing funds until at least three business days after the consumer receives the final disclosures. The reference in proposed § 226.37(d)(3) to the disbursement of funds was potentially confusing and did not add a meaningful restriction on the timing of providing the disclosures.

In both the proposed and final rule, the timing of the final disclosure differs slightly from the language used in the HEOA. For the reasons discussed below, the Board believes that creditors may not always be able to comply with the literal text of the HEOA, and that the Board's timing rule implements the purpose of the HEOA's final disclosure.

The HEOA requires a final disclosure contemporaneously with the consummation of a private education loan. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(4)). Regulation Z defines ''consummation'' as the time that a consumer becomes contractually obligated on a credit transaction. 12 CFR 226.2(a)(13). The corresponding staff commentary provides that applicable state law governs in determining when a consumer becomes contractually obligated.[10] The Board recognizes that states define when a consumer becomes contractually obligated in a variety of ways. The multiple state definitions could result in considerable confusion among creditors as to the required timing of the final disclosures. Under many current private education loan agreements, the consumer is not contractually obligated until funds are disbursed to the consumer. This would create a compliance problem for creditors making loans in these cases because, in addition to requiring delivery of the final disclosures contemporaneously with consummation, the HEOA forbids creditors from disbursing funds until three business days after the consumer receives the final disclosures. Thus, where the consumer is not contractually obligated until the funds are disbursed, creditors cannot comply with the literal language of the HEOA; a creditor cannot simultaneously provide a disclosure at the time of disbursement and not disburse funds until three business days after the disclosure is provided. The HEOA adds further complexity to determining when the consumer becomes contractually obligated because it requires creditors to provide an approval disclosure to the consumer and hold the terms open for 30 days for the consumer to accept. It is not clear how this process would affect various states' interpretations of when the consumer becomes contractually obligated. Thus, creditors may face considerable uncertainty as to when the required disclosures must be provided.

The Board interprets the phrase ''contemporaneously with consummation'' to mean a time after the consumer accepts the loan that is at least three days before disbursement. Accordingly, the Board is adopting § 226.46(d)(3) to require that the final disclosures be provided after the consumer accepts the loan and, as discussed in the section-by-section analysis below, § 226.48(d) to prohibit disbursement until three days after the consumer receives the final disclosures. The Board solicited comment on alternative approaches to the timing of the final disclosure that achieve the statutory purpose while ensuring that compliance is possible in all cases and commenters generally supported the Board's approach. The Board believes that the purpose of the final disclosure, and the consumer's three-business day right to cancel following receipt of that disclosure, is to ensure that consumers are given a final opportunity to evaluate their need for a private education loan after acceptance and before the funds are actually disbursed. The Board believes that rule will accomplish the statute's objectives while ensuring that creditors have reasonable certainty in complying with the rule's timing requirement.

46(e) Basis of Disclosures and Use of Estimates

Section 226.46(e), adopted as proposed in § 226.37(e), requires that the disclosures be based on the terms of the legal obligation between the parties and is similar to current § 226.17(e). If any information necessary for an accurate disclosure is unknown to the creditor, the creditor must make the disclosure based on the best information reasonably available at the time the disclosure is provided and state clearly that the disclosure is an estimate. For example, the creditor may not know the exact date that repayment will begin at the time that credit is advanced to the consumer. The creditor is permitted to estimate a repayment start date based on, for instance, an estimate of the consumer's graduation date.

46(f) Multiple Creditors; Multiple Consumers

Proposed § 226.37(f), provided rules for disclosures where there are multiple creditors or consumers. If there are multiple creditors only one set of disclosures could be given and the creditors were required to agree which creditor must comply. If there are multiple consumers, the creditor was permitted to provide the disclosure to any consumer who is primarily liable on the obligation.

Consumer group commenters urged the Board to require that the disclosures be provided to all consumers primarily liable on the obligation. However, proposed § 226.37(f) was consistent with the treatment of other disclosures under Regulation Z and the Board is adopting it as proposed in § 226.46(f).

46(g) Effect of Subsequent Events

Under proposed § 226.37(g) and comment 37(g)–1, if an event that occurred after consummation rendered the final disclosures under proposed § 226.38(c) inaccurate, the inaccuracy would not be a violation of Regulation Z. For example, if the consumer initially chose to defer payment of principal and interest while enrolled in an educational institution, but later chose to make payments while enrolled, such a change would not make the original disclosures inaccurate.

Proposed § 226.37(g) was modeled after current § 226.17(e). However, because only one set of disclosures are required under § 226.17, while two sets are required for private education loans, commenters requested clarification of the effect of subsequent events on the approval disclosures required under proposed § 226.38(b). Specifically, commenters noted that because the proposed rule had excepted private education loans from § 226.17(e), but provided an analogous rule in proposed § 226.37(g) only for final disclosures, the proposal did not address the effect of subsequent events on approval disclosures.

In the final rule, § 226.46(g) is broken out into separate rules for the approval disclosures under § 226.47(b) and the final disclosures under § 226.47(c). For approval disclosures, the rule clarifies that if a disclosure under § 226.47(b) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 CFR part 226), although new disclosures may

[10] The comment states that when a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; Regulation Z does not make this determination. Comment 2(a)(13)–1.

be required under § 226.48(c). Comment 46(g)–1 clarifies that although inaccuracies in the disclosures required under § 226.47(b) are not violations if attributable to events occurring after disclosures are made, creditors are restricted under § 226.48(c)(2) from making certain changes to the loan's rate or terms after the creditor provides an approval disclosure to a consumer. Creditors are also required to make subsequent disclosures in the form of the final disclosures required under § 226.47(c) and therefore, except as specified under § 226.48(c)(4), need not make new approval disclosures in response to an event that occurs after the creditor delivers the required approval disclosures. For example, at the time the approval disclosures are provided, the creditor may not know the precise disbursement date of the loan funds and must provide estimated disclosures based on the best information reasonably available. If, after the approval disclosures are provided, the creditor learns from the educational institution the precise disbursement date, new approval disclosures would not be required, unless specifically required under § 226.48(c)(4) if other changes are made at the same time. Similarly, the creditor may not know the precise amounts of each loan to be consolidated in a consolidation loan transaction and information about the precise amounts would not require new approval disclosures, unless specifically required under § 226.48(c)(4) if other changes are made.

For final disclosures required under § 226.47(c), § 226.46(g)(2) rule clarifies that if a disclosure under § 226.47(c) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 CFR part 226. For example, if the consumer initially chooses to defer payment of principal and interest while enrolled in a covered educational institution, but later chooses to make payments while enrolled, such a change does not make the original disclosures inaccurate.

Section 226.47 Content of Disclosures

Section 226.47, proposed as § 226.38, establishes the content that a creditor is required to include in its disclosures to a consumer at three different stages in the private education loan origination process: (1) On or with an application or a solicitation that does not require the consumer to complete an application, (2) with any notice of approval of the private education loan, and (3) after the consumer accepts the loan.

Preventing Duplication of Existing TILA Disclosure Requirements

While adding a number of disclosure requirements for private education loans, the HEOA did not eliminate a creditor's obligation to provide consumers with the information required to be disclosed before consummation of any closed-end loan, in accordance with TILA sections 128(a) through (d). The HEOA requires the Board to prevent, to the extent possible, duplicative disclosure requirements for creditors making private education loans under TILA. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(9)). Where the disclosure requirements of section 128(e) differ or conflict with other disclosure requirements under TILA that apply to creditors, the requirements of section 128(e) are controlling. *Id.*

The new application and solicitation disclosures proposed under § 226.38(a) did not duplicate disclosures previously required under TILA because TILA does not require disclosures at the time of application or solicitation for closed-end credit. Under TILA sections 128(a) through (d), as implemented by §§ 226.17 and 226.18, the closed-end loan disclosures applicable to private education loans are required to be provided only once, before consummation. However, the Board proposed to require the § 226.18 closed-end loan disclosures be provided twice for private education loans—once when the loan is approved, and again with the final disclosures, in a manner shown in the proposed model forms in Appendix H. Specifically, the Board proposed to require creditors to provide consumers the existing § 226.18 disclosures along with the proposed § 226.38(b) approval disclosures. The Board also proposed to require that the § 226.18 disclosures be provided along with the final disclosures required under new TILA section 128(e)(4) (implemented by proposed § 226.38(c), discussed below).

Under TILA sections 128(e)(2)(P) and 128(e)(4)(B), the Board has authority to add such other information as necessary or appropriate for consumers to make informed borrowing decisions. With respect to the approval disclosures, the Board stated in its proposal its belief that combining the existing closed-end credit TILA disclosures with the new private education loan disclosures provided to consumers the most relevant transaction-specific information at a point where the consumer was most likely to make the decision as to whether a particular private education loan met the consumer's needs. Once the creditor communicates approval to the consumer, the consumer has the right to accept the loan terms at any time within 30 calendar days of the date the consumer receives the approval disclosures. During this time, with a few exceptions, the creditor may not change the rate and terms of the loan. As a result, if the consumer accepts the loan within that 30-day period, the rate and terms of the approved loan will generally be the rate and terms of the loan ultimately made to the consumer. To make an informed decision during this deliberation period, the Board stated that consumer would be best served by having the information required under §§ 226.17 and 226.18, as well as under proposed § 226.38(b).

In addition, consistent with the requirement in § 226.17 that creditors must provide closed-end disclosures before consummation of the credit transaction, proposed § 226.37(d)(2) required that the approval disclosure be provided before consummation. Based on TILA's definition of ''consummation'' in § 226.2(a)(13), this meant that the closed-end credit disclosures must be provided before the consumer was contractually obligated on the loan. State laws may vary as to when consummation occurs (*see* comment 2(a)(13)–1), but the Board believes that the time of approval is likely to precede the time at which the consumer becomes contractually obligated on a loan.

The Board believed that providing the § 226.18 disclosures a second time along with the final disclosures under proposed § 226.38(c) would enhance consumer understanding by making it easier for consumers to compare the approval and final disclosures. By having two sets of disclosures that largely mirror each other, both in content and in form, consumers would be able to easily compare terms between the two sets of disclosures and likely would be better able to decide whether or not to exercise their right to cancel the loan. Moreover, relatively few disclosures could be removed from the final disclosure if the current TILA disclosures were not required, given the substantial overlap with the HEOA requirements. Thus, the Board stated that requiring uniformity would likely enhance consumer understanding without unduly burdening creditors.

Commenters generally supported the inclusion of the information required in § 226.18 along with the approval and final disclosures in proposed §§ 226.38(b) and 38(c) and the final rule adopts these requirements in §§ 226.47(b) and 47(c). In combining the § 226.18 disclosures with the

disclosures under §§ 226.47(b) and 47(c) in a model form, the Board, as proposed, retains many of the basic elements of the closed-end loan model form in existing Regulation Z Appendix H (*see* Appendix H–2). The model forms are discussed further in the section-by-section analysis under Appendix H.

Graduated payment disclosure. TILA section 128(e)(2)(K) requires the creditor to disclose whether monthly payments are graduated. As proposed, the Board is implementing this requirement as part of the requirement that creditors provide the information under § 226.18. Specifically, the payment schedule disclosure under § 226.18(g) requires creditors to show whether the payments are graduated.

Other instances in which the Board is merging specific § 226.18 disclosures with the disclosures in §§ 226.47(b) and (c) to avoid duplicative disclosures are discussed throughout this section-by-section analysis below.

General Disclosure Requirements

Proposed comment 38–1 clarified that the disclosures required under proposed § 226.38 need be provided only as applicable, except where specifically provided otherwise. For example, under proposed §§ 226.38(b)(1) and (c)(1) creditors would specifically be required to disclose the lack of any limitations on adjustments to the loan's interest rate, rather than omit the disclosure as inapplicable. However, for some loans, especially loans made to consolidate a consumer's existing private education loans, a number of the required disclosures may not apply. For example, the required disclosures about the availability of Federal student loans would generally not apply to a consolidation loan because Federal loan programs do not allow a consumer to consolidate private education loans. For this reason, the Board proposed to allow disclosures for consolidation loans to omit the disclosures required in proposed §§ 226.38(a)(6), and (b)(4).

Industry commenters sought further clarification that disclosure of Federal loan alternatives would not apply to other types of loans for which Federal funding is not available. In response to these comments, comment 47–1 of the final rule also lists the transactions for which compliance under Subpart F is optional, such as medical residency or bar study loans, as loans for which §§ 226.47(a)(6) and (b)(4) are not applicable.

47(a) Application or Solicitation Disclosures

Section 226.47(a), proposed as § 226.38(a), specifies the information that a creditor must disclose to a consumer on or with any application for a private education loan or any solicitation for a private education loan that does not require an application. The disclosures may be included either on the same document as the application or solicitation or on a separate document, as long as the creditor provides the required disclosures to the consumer at the required time. Other guidance on delivery of the disclosures required under § 226.47(a) is provided in § 226.46, corresponding commentary, and in this section-by-section analysis under § 226.46. Revisions to the final rule regarding the provision of application and solicitation disclosures in telephone applications are discussed in the section-by-section analysis under § 226.46(d)(1).

47(a)(1) Interest Rates

Section 226.47(a)(1), proposed as § 226.38(a)(1), requires creditors to disclose information regarding the interest rates that apply to the private education loan being offered.

Proposed § 226.38(a)(1)(i) required creditors to disclose the initial interest rate or range of rates that are being offered for the loan. TILA section 128(e)(1)(A) requires disclosure of the potential range of rates of interest applicable to the loan, but does not clarify how this requirement should be applied to loans with variable interest rates that might change between the time of application and approval of the loan. The Board proposed to require that the creditor disclose the minimum and maximum starting rates of interest available at the time that the creditor provides the application or solicitation to the consumer.

The Board recognized that these rates might vary based on the creditor's underwriting criteria for a particular loan product, including a consumer's credit history. Based on consumer testing, the Board believes that providing a general explanation of how an interest rate would be determined provides the context necessary for a consumer to understand why more than one rate is being disclosed and how a creditor would determine a consumer's interest rate if the consumer were to apply for the loan. For this reason, the Board proposed to add a disclosure requirement under its TILA section 128(e)(1)(R) authority. If the rate will depend, in part, on a later determination of the consumer's creditworthiness or other factors, the creditor would be required to state that the rate for which the consumer may qualify will depend on the consumer's creditworthiness and other factors. Proposed comment 38(a)(1)(i)–2 clarified that the disclosure does not require the creditor to list the factors that the creditor will use to determine the interest rate.

Section 226.47(a)(1) adopts proposed § 226.38(a)(1)(i) largely as proposed. Comment 47(a)(1)(i)–2 clarifies that the creditor may, at its option, specify any factors other than the consumer's credit history that it will use to determine the interest rate. For example, if the creditor will determine the interest rate based on information in the consumer's or co-signer's credit report and the type of school the consumer attends, the creditor may state, ''Your interest rate will be based on your credit history and other factors (co-signer credit and school type).''

Proposed comment 38(a)(1)(i)–1 clarified that the rates disclosed must be rates that are actually offered by the creditor. For variable rate loans, the comment provided guidance on when a rate disclosure would be considered timely so that the disclosed rate would be deemed to be actually offered. For disclosures that are mailed, rates would be considered actually offered if the rates were in effect within 60 days before mailing. For disclosures in printed applications or solicitations made available to the general public, or for disclosures in electronic form, rates would be considered actually offered if the rates were in effect within 30 days before printing or within 30 days before the disclosures are sent to consumers electronically or, for disclosures made on an Internet Web site, within 30 days before being viewed by the public. For disclosures in telephone applications or solicitations, rates provided orally would be considered actually offered if the rates are currently applicable at the time the disclosures are provided. Proposed comment 38(a)(1)(i)–1 was consistent with the rules for variable-rate accuracy in credit and charge card application disclosures under §§ 226.5a(c), (d), and (e).

Industry commenters expressed concern that proposed comment 38(a)(1)(i)–1 required interest rate information on an Internet Web site to be in effect as of the time the consumer viewed the information. However, the Board's intent was to provide that such information is deemed actually offered if in effect within 30 days before being viewed by the public. Final comment 47(a)(1)(i)–1 has been revised to clarify this.

Industry, consumer group, and educational institution commenters all expressed concern that for variable-rate loans the interest rates disclosed under § 226.47(a)(1) not be allowed to reflect

an interest rate other than the rate based on the index and margin used to make rate adjustments. For example, commenters pointed to certain ''borrower benefits,'' such as a reduction in the interest rate for a series of on-time payments that creditors may offer. According to commenters, few consumers achieve these benefits and often the benefits are not contained in the legal obligation between the parties.

Under § 226.46(e)(1), the disclosures must reflect the terms of the legal obligation between the parties. Section 226.47(a)(1) requires a disclosure of the rate or rates applicable to the loan. Comment 47(a)(1)(i)–3 clarifies that the disclosure of the interest rate or range of rates must reflect the rate or rates calculated based on the index and margin that will be used to make interest rate adjustments under the loan. The comment also permits the creditor to disclose a brief description of the index and margin, or range of margins, used to make rate adjustments. Consumer testing conducted for the Board indicated that consumers' understanding of how a variable-rate loan works is enhanced by such information.

Fixed or variable rate loans, rate limitations. The Board is adopting proposed §§ 226.38(a)(1)(ii) and 38(a)(1)(iii) as §§ 226.47(a)(1)(ii) and 47(a)(1)(iii). Section 226.47(a)(1)(ii) requires the creditor to disclose whether the interest rate applicable to the loan is fixed or may increase after consummation of the transaction. TILA section 128(e)(1)(A) requires disclosure of whether the interest rate applicable to the loan is fixed or variable. Comment 47(a)(1)(iii)–1, proposed as comment 38(a)(1)(iii)–1 clarifies that the variable rate disclosures do not apply to interest rate increases based on delinquency (including late payment), default, assumption, or acceleration. If the loan's interest rate would fluctuate solely because of one or more of these actions, but in no other circumstances, the interest rate is considered fixed.

As proposed, if the interest rate may increase after consummation, § 226.47(a)(1)(iii) requires the creditor to disclose any limitations on interest rate adjustments, or, if there are no limitations on interest rate adjustments, that fact. Under comment 47(a)(1)(iii)–2, when disclosing any limitations on interest rate adjustments, the creditor must disclose both: (1) The maximum allowable increase during a single time period, or the lack of such a limit, and (2) the maximum allowable interest rate over the life of the loan, or the lack of a maximum rate. For example, a creditor could disclose that the maximum interest rate adjustment is two percent in a single month and that the maximum interest rate on the loan can never exceed twenty-five percent over the life of the loan. Consistent with the disclosures based on the maximum rate in §§ 226.47(b) and 47(c) discussed below, limitations include legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations. However, if the applicable rate limitation is in form of a legal limit, such as a state's usury cap (rather than a maximum rate specified in the legal obligation between the parties), the creditor must disclose that the maximum rate is determined by applicable law. The creditor is also required to disclose that the consumer's actual interest rate may be higher or lower than the range of rates disclosed under § 226.47(a)(1)(i), if applicable.

Co-signer or Guarantor Disclosure. Proposed § 226.38(a)(1)(iv) implemented TILA section 128(e)(1)(D), which requires disclosure of requirements for a ''co-borrower,'' including any changes in the applicable interest rates that may apply to the loan if the loan does not have a ''co-borrower.'' HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(1)(D)). The Board interprets the phrase ''co-borrower,'' to mean a co-signer.

Proposed § 226.38(a)(1)(iv) required the creditor to state whether a co-signer is required and whether the applicable interest rates typically will be higher if the loan is not co-signed or guaranteed by a third party. If the presence of a co-signer or guarantor would not affect the loan's interest rate, the creditor was required to disclose that fact. The rule required only a statement and the creditor was not required to estimate any potential changes in the applicable interest rates numerically.

One industry commenter noted that the Board's Regulation B, which implements the Equal Credit Opportunity Act, prohibits creditors from requiring co-signers unless certain conditions are met. 12 CFR 202.7. This commenter expressed concern that the requirement to disclose whether a co-signer is required could cause confusion with the requirements of Regulation B. The HEOA does not alter the prohibitions in Regulation B. Accordingly, § 226.47(a)(1)(iv) of the final rule does not adopt the requirement to state whether a co-signer is required. Rather, the final rule, as proposed, requires disclosure of whether interest rates typically will be higher without a co-signer. In addition, § 226.47(a)(5) requires disclosure of certain eligibility criteria for co-signers. These provisions implement the HEOA's requirement to disclose the requirements for a co-borrower.

47(a)(2) Fees and Default or Late Payment Costs

Proposed § 226.38(a)(2) required disclosure of the fees or range of fees applicable to the private education loan and other default or late payment costs, implementing the fee and penalty disclosures required in TILA sections 128(e)(1)(E) and (F). Under the proposal, the creditor was required to itemize all fees required to obtain the private education loan (proposed § 226.38(a)(2)(i)) and any applicable charges or fees, changes to the interest rate, and adjustments to principal based on the consumer's default or late payment (proposed § 226.38(a)(2)(ii)).

Proposed comment 38(a)(2)–1 explained that the creditor must disclose the dollar amount of each fee required to obtain the loan, unless the fee is based on a percentage, in which case a percentage may be disclosed. If the exact amount of a fee is not known at the time of disclosure, the creditor could disclose the dollar amount or percentage for each fee as an estimated range and must clearly label the fee amount as an estimated range.

Neither the HEOA nor its legislative history clarifies whether Congress intended the fees or range of fees disclosure to require an itemization of all fees, or rather to allow for disclosure of a single dollar or percentage amount for all fees combined. The Board proposed to require an itemization of fees, but to permit the creditor to provide an estimated range of the dollar or percentage amount of each fee if a single dollar or percentage amount is not known. Hearings preceding enactment of the HEOA expressly alerted Congress to concerns about excessively high origination fees and the charging of separate additional fees.[11] In addition, the legislative history indicates that the HEOA is intended to require creditors of private education loans to provide full information to borrowers regarding their loans and to protect the interests of private education loan consumers by requiring creditors prominently to disclose all loan terms, conditions and incentives.[12]

[11] *See* National Consumer Law Center, ''Testimony before the U.S. Senate Committee on Health, Education, Labor, and Pensions regarding 'Ensuring Access to College in a Turbulent Economy' '' (Mar. 17, 2008), p. 8.

[12] *See* U.S. House of Representatives, Committee on Education and Labor, ''Higher Education Opportunity Act of 2008: Protecting Borrowers of Federal and Private Student Loans,'' <*http://edlabor.house.gov/micro/coaa_protect.shtml*> (visited Oct. 31, 2008).

Proposed comment 38(a)(2)–2 clarified that the fees to be disclosed include finance charges under § 226.4, such as loan origination fees and credit report fees, as well as fees not considered finance charges but required to obtain credit, such as an application fee charged whether or not credit is extended.

Implementing TILA section 128(e)(1)(E), the proposal also required the creditor to disclose fees and costs based on defaults or late payments of the consumer, including adjustments to the interest rate, charges, late fees, and adjustments to principal. The HEOA requires a similar disclosure at approval and again in the final disclosure required after the consumer accepts the loan. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Sections 128(e)(2)(E) and (e)(4)(B)).

One difference between the proposal and TILA section 128(e)(1)(E) is that the latter requires disclosure of ''finance charges'' based on defaults or late payments, whereas the Board's proposed regulation eliminated the word ''finance'' and required disclosures of ''charges'' based on defaults or late payments. TILA section 106(a) defines the ''finance charge'' as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. 15 U.S.C. 1605. The Board has interpreted the definition of ''finance charge'' in Regulation Z to expressly exclude charges for late payment, delinquency, default, or a similar occurrence. 12 CFR 226.4(c)(2). By contrast, the HEOA does not define the term ''finance charges,'' but simply states that ''finance charges'' based on the consumer's default or late payment must be disclosed. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(1)(E)). However, under current Regulation Z, there are no ''finance charges'' based on the consumer's default or late payment. To give effect to the requirements of HEOA, the Board proposed to use its authority under HEOA and impose additional disclosure requirements including charges based on defaults or late payments that are not covered by the definition of finance charge under Regulation Z. Therefore the word ''charges,'' without the word ''finance,'' was used in proposed § 226.38(a)(2)(ii) and in the corresponding provisions for other private education loan disclosures (proposed §§ 226.38(b)(2)(ii) and 38(c)(2)).

The Board did not propose to require creditors to disclose fees that would apply if the consumer exercised an option after consummation under the agreement or promissory note for the private education loan, such as fees for exercising deferment, forbearance, or loan modification options. Creditors were not required to disclose third-party fees and costs for collection- or default-related expenses that might be passed on to the consumer, as these are not easily predicted and may never apply.

The Board requested comment on whether creditors should be required to disclose these or other fees. Some consumer group commenters suggested that fees for exercising deferment, forbearance or loan modification options may be important to some consumers. However, the final rule does not require the disclosure of such fees. Based on consumer testing, the Board believes that consumers are unlikely to shop and compare loans based on such fees. Given the amount of information required to be disclosed, the Board believes that disclosure of these fees could produce information overload and distract consumers from more relevant information.

A few commenters also requested clarification as to whether fees charged when the consumer enters repayment of a loan for which payments were deferred during an interim period were fees to ''obtain'' the loan.

The Board is adopting proposed § 226.38(a)(2) as § 226.47(a)(2). In addition, the Board is clarifying in comment 47(a)(2)–2 that because repayment fees are considered finance charges, they must be disclosed as fees required to obtain the loan under § 226.47(a)(2).

47(a)(3) Repayment Terms

Section 226.47(a)(3), proposed as § 226.38(a)(3), requires disclosure of information related to repayment.

Loan term. Proposed § 226.38(a)(3)(i) implemented TILA section 128(e)(1)(G), which requires disclosure of the term of the private education loan. Proposed comment 38(a)(3)(i)–1 clarified that the term of the loan is the period of time during which regular principal and interest payments must be made on the loan. For example, where repayment begins upon consummation of the private education loan, the disclosed loan term would be the same as the full term of the loan. By contrast, where repayment does not begin until, for instance, after the student is no longer enrolled, the disclosed loan term would be shorter than the full term of the loan. If more than one repayment term is possible, the creditor must disclose the loan term as the longest possible repayment term. Proposed § 226.38(a)(3)(i) is adopted as § 226.47(a)(3)(i).

Payment deferral options. Proposed § 226.38(a)(3)(ii) required disclosure of information relating to the options offered by the creditor to the consumer to defer payments during the life of the loan, implementing TILA section 128(e)(1)(I). Under the Board's TILA section 128(e)(1)(R) authority, the proposal also required that if the creditor does not offer any options to defer payments, the creditor must state that fact. Proposed comment 38(a)(3)–2 clarified that payment deferral options include both options to defer payment while the student is enrolled and options for payment deferral, forbearance or payment modification during the loan's repayment term. The disclosure would have been required to include a description of the length of the deferment period, the types of payments that may be deferred, and a description of any payments that are required during the deferment period. The creditor would also have been permitted to disclose any conditions applicable to the deferment option, such as that deferment is permitted only while the student is continuously enrolled.

Under proposed § 226.38(a)(3)(iii) and proposed comment 38(a)(3)–3, if the creditor offered payment deferral options that applied while the student is enrolled in a covered educational institution, the creditor would be required to disclose the following additional information for each deferral option: (1) Whether interest will accrue while the student is enrolled in a covered educational institution; and (2) if interest accrues while the student is enrolled at a covered educational institution, whether payment of interest may be deferred and added to the principal balance.

Proposed comment 38(a)(3)–4 explained that disclosure of payment deferral options may be combined with the disclosure of cost estimates required in § 226.38(a)(4). For example, the creditor could describe each payment deferral option in the same chart or table that provides the cost estimates for each payment deferral option. This approach was used in the Board's proposed sample form contained in Appendix H–21.

A number of industry commenters requested clarification on the requirements of proposed § 226.38(a)(3)(ii). That section required creditors to disclose options the consumer may have to defer payment after the loan's repayment period begins, such as options for forbearance or deferral upon re-enrolling in an

educational program. Comment 38(a)(3)(ii)–2 required a description of the length of the deferment period, the types of payments that may be deferred, and a description of any payments that are required during the deferment period for all payment deferral options, both in-school and after repayment begins. However, the Board's proposed model and samples form did not indicate where such information was to be provided. Commenters stated that descriptions of deferral options during the repayment period would be lengthy and could detract from the other information provided on the model forms.

The final rule adopts §§ 226.38(a)(3)(ii) and 38(a)(3)(iii) as §§ 226.47(a)(3)(ii) and 47(a)(3)(iii), largely as proposed. However, to conform to the final model and sample forms, the Board is clarifying in comment 47(a)(3)–2 that the creditor may disclose the length of the maximum initial in-school deferment period. In addition, comment 47(a)(3)–2 clarifies that if the creditor offers payment deferral options that may apply during the repayment period, the creditor need only disclose a statement referring the consumer to the legal obligation for more information. Comment 47(a)(3)–4 also clarifies that the creditor may combine all of the disclosures required under § 226.47(a)(3), including the loan term, with the cost estimate disclosure required in § 226.47(a)(4).

In addition, the final rule includes new § 226.47(a)(3)(iv) requiring a disclosure of private education loan discharge limitations in bankruptcy. The disclosure of limitations of discharge of private education loans in bankruptcy is mandated by TILA section 128(e)(2)(E) for the approval disclosures and TILA section 128(e)(4)(B) for the final disclosures. It is not statutorily required in the application and solicitation disclosures prescribed by TILA section 128(e)(1)(E). The Board requested comment on whether disclosure of education loan discharge limitations in bankruptcy should be included in the application and solicitation disclosures as implemented by proposed § 226.38(a). Consumer group commenters supported including the bankruptcy disclosures and other commenters who addressed the issue did not oppose it. The Board believes that the bankruptcy disclosures will be useful to consumers earlier in the lending process, when consumers are most likely to be considering a wide range of education financing options. The Board also believes adding bankruptcy disclosures to the application and solicitation disclosures provides for uniformity across the disclosure forms. Thus, the Board is exercising its authority under TILA section 128(e)(1)(R) by adding a disclosure similar to the disclosures required under §§ 226.47(b)(3)(vi) and 47(c)(3).

47(a)(4) Cost Estimates

Implementing TILA section 128(e)(1)(K), § 226.47(a)(4), proposed as § 226.38(a)(4), requires creditors to provide an example of the total cost to a consumer of a sample loan at the highest initial rate of interest actually offered by the creditor, from the time of consummation until the loan is repaid. The HEOA does not define the term ''total cost,'' and, as proposed, the Board interprets ''total cost'' to mean the total of payments disclosed in accordance with the rules in § 226.18(h). *See* comment 47(a)(4)–1.

Basis for estimates. Under proposed § 226.38(a)(4) and comment 38(a)(4)–2, creditors were required to disclose an example of the total cost of the loan calculated using the highest initial rate of interest applicable to the loan and the fees applicable to loans at the highest initial rate of interest. For example, if the creditor offers a range of rates and fees that depend on the consumer's creditworthiness and particular fees will apply to loans with the highest interest rate, then the creditor must include those fees in the total cost estimate.

In order to provide consumers with information about the effect that financing fees has on the total cost of the loan, proposed § 226.38(a)(4) and comment 38(a)(4)–2 required that the creditor base the total cost estimate on a loan amount of $10,000 plus the finance charges applicable to loans at the highest initial rate of interest. For example, if the creditor charges a 3% origination fee on loans with the highest initial interest rate, and finances the 3% fee, under the proposal the creditor would calculate the total cost of the loan based on a $10,300 total loan amount. However, while the creditor would have been required to base the calculation on the total loan amount, the creditor would have to disclose that the example provides the total cost of a $10,000 amount financed, rather than disclosing the total loan amount used in calculating the loan cost estimate.

The HEOA calls for an example based on the principal amount actually offered by the creditor. However, at the application stage, the creditor does not know the specific loan amount the consumer will request. Rather than permit each creditor to choose a loan amount upon which to base the disclosure, the Board believed that specifying uniform assumptions about the loan amount would allow consumers more easily to compare different loan products. The proposal allowed consumers to compare the cost of receiving a uniform $10,000 disbursement under different loans.

The Board also proposed to provide creditors with flexibility if they do not make loans of the size that the Board specified. If the creditor only offers a particular type of loan for less than $10,000, the creditor would be required to use a $5,000 principal amount.

The Board requested comment on alternative ways of ensuring that the total cost example reflects the cost of loan fees. Specifically, the Board requested comment on whether an assumed loan amount of $10,000 should be used without adding fees to the loan amount, but instead separately adding the fees to the total of payments. The Board requested comment on whether private education loan consumers have historically been more likely to add fees to the loan amount they request, or to deduct the fees from the loan amount requested (or pay them separately by cash or check). The Board also requested comment on the practical limitations, if any, for creditors to determine the fees that would be applicable to loans where the highest initial rate of interest applies. In addition, the Board requested comment on whether the total cost example should be based on an assumed amount financed of $10,000, as proposed, or on a higher or lower amount. The Board also requested comment on whether the assumption of a $5,000 amount financed when creditors do not offer loans of $10,000 or more was an appropriate alternative.

Commenters generally supported the Board's proposed approach to ensuring that the total loan cost example provided a consistent basis for calculating the total cost so that consumers could accurately compare loans. Specifically, most commenters supported a calculation method that assumed that prepaid finance charges are included in the total loan amount so that the total cost will reflect the effect of the consumer paying interest on the finance charges. Commenters supported requiring creditors to use a $10,000 amount financed or, if the creditor does not offer loans of $10,000 or more, a $5,000 amount financed. Commenters did not state that there were practical limitations on determining the amount of fees that would apply to loans at the highest rate.

Two industry group commenters noted that creditors are not uniform in the way they calculate prepaid finance

charges that are based on a percentage of the loan amount. According to these commenters, the majority deduct prepaid finance charges from the total loan amount, rather than adding them to the loan amount. These commenters requested that the Board allow creditors to choose the method the creditor normally uses for assessing prepaid finance charges. In the alternative, the commenters suggested that if the Board imposed a uniform calculation method that it be based on the more common practice of deducting prepaid finance charges from the total loan amount.

In the final rule, § 226.47(a)(4) is adopted largely as proposed in § 226.38(a)(4), but with a change in the total cost calculation method. Comment 47(a)(4)–2.i, as proposed in comment 38(a)(4)–2, requires creditors to calculate the total cost estimate by determining all finance charges that would be applicable to loans with the highest initial rate of interest. For example, if a creditor charges a range of origination fees from 0% to 3%, but the 3% origination fee would apply to loans with the highest initial interest rate, the lender must assume the 3% origination fee is charged. Comment 47(a)(4)–2.i also requires the creditor to base the total cost example on a principal amount that results in a $10,000 amount financed when all prepaid finance charges are financed. The creditor must disclose the example as reflecting the $10,000 disbursement, rather than the full loan amount. If the creditor only offers a particular private education loan for less than $10,000, the creditor may assume a total loan amount that results in a $5,000 amount financed for that loan.

The Board recognizes that prepaid finance charges can be assessed and paid in different ways depending on the creditor's practices and the consumer's needs. However, the Board believes that in order for consumers to be able to easily compare the costs of different loan products using the total cost example on the application and solicitation disclosures, creditors must use uniform assumptions about the way prepaid finance charges are assessed and paid.

Comment 47(a)(4)–2.i, as proposed, requires creditors to assume that all prepaid finance charges are financed by the consumer rather than paid separately by cash or check. However, fees based on a percentage of the loan amount can be assessed in two different ways, even when they are financed. Under the proposal, creditors were required to assume that the fee was assessed as a percentage of a hypothetical $10,000 amount financed. Thus, a 3% fee resulted in a $300 charge. This charge, in turn, was added to the $10,000 amount financed resulting in a total principal loan amount of $10,300. Accordingly, the consumer would borrow $10,300 in order to obtain a $10,000 disbursement.

The assumption that fees are assessed as a percentage of the $10,000 amount financed and then added to the total loan amount reflects the practices of some, but not all creditors. Another practice assesses fees as a percentage of the total loan amount and then deducts the fees from the loan amount. For example, in this case a total loan amount of $10,309.28, times a 3% origination fee results in a finance charge of $309.28. The creditor does not, however, add an extra $309.28 to the loan balance. Instead, the creditor deducts the $309.28 from the loan amount and disburses $10,000 to the consumer. The resulting amount financed (the $10,309.28 principal loan amount less the $309.28 prepaid finance charge) is $10,000.

Under comment 47(a)(4)–2.ii in the final rule, if a prepaid finance charge is based on a percentage of the amount financed, for purposes of the example, the creditor must assume that the fee is assessed on the total loan amount, even if this is not the creditor's usual practice. In order to ensure that consumers may accurately compare total cost examples from different creditors, the Board is not allowing creditors to choose whether to add or subtract prepaid finance charges. Rather, based on comments received, the final rule requires creditors to use the method that appears to be more common.

Highest initial rate. Proposed § 226.38(a)(4)(i) required creditors to calculate the total cost example at the maximum rate of interest, and proposed comment 38(a)(4)–3 clarified that the ''maximum'' rate of interest meant the highest initial rate of interest disclosed in the range of rates under proposed § 226.38(a)(1)(i). Some industry commenters requested clarification in the regulation that the phrase ''maximum rate of interest'' used in proposed § 226.38(a)(4)(i) was the highest initial interest rate rather than the maximum possible interest rate. Section 226.47(a)(4)(i) is revised to clarify that the total cost example should be based on the highest rate required to be disclosed under § 226.47(a)(1). As a result, proposed comment 38(a)(4)–3 is unnecessary and therefore is not adopted.

Payment deferral options. Under comment 47(a)(4)–3, proposed as comment 38(a)(4)–4, the loan cost example must include an estimate of the total cost of the loan for each in-school deferral option disclosed in § 226.47(a)(3)(iii). For example, if the creditor provides the consumer with the option to begin making principal and interest payments immediately, to defer principal payments but begin making interest-only payments immediately, or to defer all principal and interest payments while in school, the creditor is required to disclose three estimates of the total cost of the loan, one for each deferral option.

Comment 47(a)(4)–3 also clarifies that if the creditor adds accrued interest to the loan balance (i.e., interest is capitalized), the estimate of the total loan cost should be based on the capitalization method that the creditor actually uses for the loan. For instance, for each deferred payment option where the creditor would capitalize interest on a quarterly basis, the total loan cost must be calculated assuming interest capitalizes on a quarterly basis.

Proposed comment 38(a)(4)–5 provided guidance on the assumed deferral period on which to base the total cost example. For loan programs intended for educational expenses of undergraduate students, the creditor would have been required to assume that the consumer defers payments for four years plus the loan's maximum applicable grace period, if any. For all other loans the creditor would have been required to assume that the consumer defers for two years plus the maximum applicable grace period, if any, or the maximum time the consumer may defer payments under the loan program, whichever time is less. The Board believed that consumers would be better able to compare loan cost examples for loans that allow the consumer to defer payments if those examples are based on uniform assumptions about how long the consumer will remain in school. The Board proposed to require creditors assume a four-year deferral period for consumers applying for undergraduate loans since most undergraduate programs are four years long. The Board believed that using a four-year term would ensure that the disclosure is most meaningful to consumers who are at the beginning of their undergraduate education, and therefore likely are considering education loans for the first time. For all other types of loans, the proposal required creditors assume a two-year enrollment period (or to use the maximum deferral period for the loan, if less than two-years). The Board believed that a two-year enrollment period represented a term that would be applicable to most other postsecondary

education programs and would meaningfully inform consumers of the effect of deferring payment on the total costs of the loan for more than a minimal period of time.

The Board requested comment on the proposed deferral period assumptions for calculating the total cost examples under proposed § 226.38(a)(4). Specifically, the Board requested comment on whether creditors should be allowed to modify the total cost disclosure if the creditor knows a consumer's specific situation. For example, if the creditor knows that a consumer is a college senior, the Board asked whether the creditor should be allowed to provide a cost estimate based on a one-year deferral period, rather than a four-year deferral period. The Board also requested comment on whether two years is an appropriate term for non-undergraduate private education loans, or whether another term that would be a statistically more accurate representation of an average or median deferment period should be used. The Board also requested comment on whether lenders should be permitted to modify the disclosure for specific educational programs that are generally of a fixed length, such as three years for law school or four years for medical school.

Commenters generally supported the proposal to use uniform assumptions for determining the consumer's deferral period in cases where the consumer's actual situation was not known. However, most commenters supported allowing creditors to use more accurate assumptions where more information was known. Commenters supported allowing creditors to use the specific duration of an educational program of a known length, such as three years for law school. In addition, commenters noted that the term ''undergraduate'' may include students in two-year programs and that the four-year term assumption would not be appropriate for these students. Commenters also supported allowing creditors to tailor the deferral period assumption to the specific consumer's situation if known. Where the length of the educational program was not known, commenters did not oppose using a two-year term.

Comment 47(a)(4)–4, proposed as comment 38(a)(4)–5, has been revised to allow the creditor to use either of two methods for estimating the duration of deferral periods. Similar to the proposed rule, for loan programs intended for educational expenses of undergraduate students, the creditor may assume that the consumer defers payments for a four-year matriculation period, plus the loan's maximum applicable grace period, if any. For all other loans the creditor may assume that the consumer defers for a two-year matriculation period, plus the maximum applicable grace period, if any, or the maximum time the consumer may defer payments under the loan program, whichever is shorter.

Alternatively, if the creditor knows that the student will be enrolled in a program with a standard duration, the creditor may assume that the consumer defers payments for the full duration of the program (plus any grace period). For example, if a creditor makes loans intended for students enrolled in a four-year medical school degree program, the creditor may assume that the consumer defers payments for four years plus the loan's maximum applicable grace period, if any. However, the creditor may not modify the disclosure to correspond to a particular student's situation. For example, even if the creditor knows that a student will be a second-year medical school student, the creditor must assume a four-year deferral period.

The Board believes that the use of standardized assumptions will assist consumers when shopping for a private education loan. Providing consistent deferral periods is necessary in order for a consumer to compare the overall costs of different loans for particular educational programs. Consumers enrolled in an educational program may have difficulty comparing the total cost of two loans if one disclosure uses the consumer's actual deferral period and the other uses an assumed deferral period. The total cost may appear lower on the disclosure using the actual, shorter, deferral period, but the consumer may not be able to determine if the loan is actually less costly. Therefore, the Board is not permitting disclosures to be tailored to individual consumers.

47(a)(5) Eligibility

Proposed § 226.38(a)(5) implemented TILA section 128(e)(1)(J) which requires disclosure of the general eligibility criteria for a private education loan. The proposal specified the eligibility criteria that must be disclosed. The creditor would have to disclose any age or school enrollment eligibility requirements regarding the consumer or co-signer, if applicable. The Board requested comments on whether other types of eligibility requirements should be disclosed.

A few commenters suggested that the Board require more information about eligibility requirements. However, in the consumer testing conducted for the Board, few consumers suggested that more such information would be helpful. Because the disclosure of all eligibility criteria could be detailed and lengthy, the Board believes that requiring additional eligibility information would not be meaningful to consumers. Therefore, the final rule provides that the creditor provide any age or school enrollment eligibility requirements relating to the consumer or co-signer.

47(a)(6) Alternatives to Private Education Loans

The Board proposed § 226.38(a)(6), to implement TILA sections 128(e)(1)(L), (M), (N), and (Q) by requiring statements regarding the following alternatives to private education loans: (1) education loans offered or guaranteed by the Federal government and (2) school-specific education loan benefits and terms potentially offered by a covered educational institution.

Concerning Federal education loans, under the proposal, a creditor was required to disclose the following: (1) A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*), (2) the interest rates available under each program and whether the rates are fixed or variable, as prescribed in the Higher Education Act of 1965 (20 U.S.C. 1077a), and (3) a statement that the consumer may obtain additional information concerning Federal student financial assistance from the relevant institution of higher education, or at the Web site of the Department of Education, including an appropriate Web site address. After consulting with the Department of Education, the Board proposed comment 38(a)(6)(ii)–1, which explained that the disclosure must list the address of an appropriate U.S. Department of Education Web site such as ''*http://federalstudentaid.ed.gov.*''

To avoid overloading consumers with information and to ensure that consumers notice the most important information about Federal student loans, the Board proposed to exercise its authority under TILA section 105(a) to make exceptions to the statute by not requiring creditors to state that Federal loans may be obtained in lieu of or in addition to private education loans. Instead the Board's proposed model forms labelled the disclosure as ''Federal Loan Alternatives.'' *See* proposed App. H–18, H–19. The Board stated its belief that this exception was necessary and proper to effectuate meaningful disclosure of credit terms to consumers.

The Board also proposed to exercise its authority under TILA section 105(f) to exempt private education loans from the specific disclosure requirement about Federal loans, pursuant to the HOEA amendment to TILA sections 128(e)(1)(M) and 128(e)(2)(L). The Board believed that this specific requirement does not provide a meaningful benefit to consumers in the form of useful information or protection. In testing, consumers' understanding that Federal loans are available in lieu of or in addition to private education loans was enhanced by simply providing them a clear and prominent label indicating that the disclosures contained information about Federal loan alternatives. The Board considered that the private education loan population includes students who may lack financial sophistication and that the size of the loan could be relatively significant and important to the borrower. However, as explained above, the Board believed that the borrower would receive meaningful information about Federal loans through the other disclosures and the model form. The Board also recognized that private education loans would not be secured by the principal residence of the consumer, which is a factor for consideration under section 105(f). Furthermore, the HEOA provides significant rights, such as the right to cancel the loan. The Board believed that consumer protection would not be undermined by this exemption.

A few consumer group commenters urged the Board to retain the phrase that Federal loans are available ''in addition to or in lieu of'' private education loans. However, the Board's consumer testing during and after the comment period continued to indicate that consumers understood the disclosure about Federal student loans and that Federal loans are available in addition to or in lieu of private education loans. The Board believes that requiring additional verbiage to communicate something that consumers already understand could contribute to information overload, cause consumers to skip over the existing textual information about Federal student loans, and potentially cause consumers to miss more important information in the disclosures. Consumers tested found the information about Federal student loans to be clear and understandable. The Board is adopting proposed § 226.38(a)(6), as § 226.47(a)(6).

Under the proposal, for each title IV program enumerated in the disclosure (*e.g.,* Perkins, Stafford (both subsidized and unsubsidized), and PLUS loans), the creditor would be required to disclose the interest rate corresponding to each loan program, as well as whether those rates are fixed or variable. The Board proposed to require disclosure of whether the Federal loan rates are fixed or variable, under its TILA section 128(e)(1)(R) authority. The Board believed this additional disclosure to be necessary in order to provide consumers with a more complete description of the nature of the Federal loans' interest rates and to aid in comparison of Federal loan programs to private education loans. During the Board's consumer testing, consumers indicated that the disclosure that Federal student loans have fixed rates is important information to them. Federal student loan interest rates are set by statute. Currently, Federal student loan interest rates are fixed rates rather than variable rates, but this has not always been the case. For this reason, the proposal would require a disclosure of whether the rates are fixed or variable.

The statute that sets the Federal student loan interest rates currently contains a schedule with different fixed rates for loans originated at different times. *See* Higher Education Act of 1965 (20 U.S.C. 1077a). For example, the fixed rate on subsidized Stafford loans was 6.0% for loans originated or applied for (depending on the loan) before July 1, 2009. For loans after July 1, 2009, the current fixed interest rate is 5.6%. Where the interest rate for a loan varies depending on the date of disbursement or receipt of application, the creditor must disclose only the current interest rate as of the time the disclosure is provided.

To implement TILA section 128(e)(1)(L), the proposal also required the creditor to disclose that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form. School-specific education loan benefits and terms might include loans with special terms negotiated by the school with particular creditors, or loans extended by the covered educational institution itself to its students. The creditor was not required to state what school-specific education loan benefits and terms might be available because these may vary widely, but rather was required to alert the consumer to the possibility that school-specific education loan benefits and terms might be available to the consumer.

47(a)(7) Rights of the Consumer

Proposed § 226.38(a)(7) implemented TILA section 128(e)(1)(O), by identifying for the consumer certain rights relating to the private education loan.

Thirty day right of acceptance. Proposed § 226.38(a)(7)(i) required the creditor to disclose that, should the consumer apply for the loan and the loan application be approved, the consumer would have the right to accept the terms of the loan at any time within 30 calendar days following notice of loan approval. TILA section 128(e)(1)(O)(i) requires a disclosure that the consumer has 30 days to accept and consummate the loan.

Prohibition on loan term changes. Under proposed § 226.38(a)(7)(ii), the creditor was required to state that, except for changes based on adjustments to the index used to determine the rate for the loan, the creditor may not change the rates and terms of the loan during the 30-day acceptance period described in proposed § 226.38(a)(7)(i). Proposed comment 39(c)–1 allowed the creditor to give consumers a period of time longer than 30 days in which to accept the loan. In the preamble to the proposed rule, the Board stated that creditors choosing to give consumers a period of time in which to accept the loan that is longer than 30 calendar days were required to disclose this alternate time period.

The Board proposed in § 226.39(c) to allow creditors to make changes to the rate and terms of the loan not only in response to adjustments to a variable rate, but also in cases where the change was requested by, or unequivocally beneficial to, the consumer. The Board did not propose, however, to require the application disclosure to state each possible condition under which the rate or terms might change. The Board requested comment on the appropriate amount of detail in the application disclosure.

The Board received one comment about the appropriate amount of detail in the statement on the application disclosure regarding the permissible changes to the rate or terms of the loan after the loan is approved. The industry commenter suggested that the Board should not require creditors to list every possible reason that rates and terms may change because of the limited amount of space on the two-page disclosure. The commenter suggested that it would be appropriate to disclose the most common reason or reasons that the rates and terms may change after approval.

The Board agrees that it is not necessary or useful to list each reason that rates and terms of a loan may change after approval and that a more general statement is sufficient to alert the consumer to the restrictions on changing the loan terms. The Board also

believes a less detailed statement is appropriate in light of the changes made to § 226.48(c) (proposed as § 226.39(c)), which includes additional exceptions to the prohibition on changing the terms of the loan. Thus, in the final rule, § 226.47(a)(7) requires the creditor to state that if the loan for which the consumer is applying is approved, the terms of the loan will be available for 30 days. It also requires the creditor to state that the terms of the loan will not change during this period except as a result of adjustments to the interest rate and due to other changes permitted by law. The requirement in the final rules more closely resembles the language that was used on the application and solicitation disclosures in consumer testing which consumers found clear and understandable.

47(a)(8) Self-Certification Information

The Board proposed § 226.38(a)(8) to implement TILA section 128(e)(1)(P). It required a statement that before the loan may be consummated, the consumer must obtain the self-certification form required under proposed § 226.39(e), and sign and submit the completed form to the creditor.

The model forms used in consumer testing contained a basic statement that the consumer must complete the self-certification form as part of the application process and that the form may be obtained from the relevant institution of higher education. Consumers found the language in the model form to be clear and understandable and the Board believes that the self-certification form itself will provide consumers with sufficient instruction as to the steps the consumer must take to complete the form. Accordingly, § 226.47(a)(8) of the final rule conforms the required disclosure to the text used in the proposed model form.

As discussed in the section-by-section analysis under § 226.48(e), the disclosure regarding the self-certification form is required only for expenses to be used by a student enrolled in an institution of higher education. It would not apply to consolidation loans and would not apply to loans to students attending covered educational institutions that do not meet the definition of institution of higher education.

47(b) Approval Disclosures

Section 226.47(b), proposed as § 226.38(b), specifies the information that a creditor must disclose on or with any notice of approval provided to the consumer. Guidance on delivery of the disclosures required under § 226.47(b) is provided in § 226.46, corresponding commentary, and in the section-by-section analysis under § 226.46.

As discussed above in the section-by-section analysis under § 226.46(a), the creditor must make the closed-end credit disclosures required under §§ 226.17 and 226.18 as well as the private education loan disclosures required under § 226.47(b).

47(b)(1) Interest Rate

Implementing TILA section 128(e)(2)(A), § 226.47(b)(1)(i), proposed as § 226.38(b)(1)(i), requires a creditor to disclose the interest rate that applies to the private education loan for which the consumer has been approved.

Fixed or variable rate, rate limitations. Implementing TILA section 128(e)(2)(A) and (B), proposed §§ 226.38(b)(1)(ii) and (iii) required the creditor to disclose whether the interest rate is fixed or variable and any limitations, or the absence of limitations, on changes to the variable interest rate.

Proposed comment 38(b)(1)–1 clarified that a private education loan would only be considered to have a variable rate if the terms of the legal obligation allow the creditor to increase the rate originally disclosed to the consumer. However, a rate is not considered variable if increases result only from delinquency, default, assumption or acceleration. The comment also clarified that the creditor must make the other variable-rate disclosures required under §§ 226.18(f)(1)(i) and (iii)—the circumstances under which the rate may increase and the effect of an increase, respectively. The creditor would not be required to provide an example of the payment terms that would result from an increase under § 226.18(f)(1)(iv). Current comment 18(f)(1)(iv)–2 provides that creditors need not provide the hypothetical example for interim student credit extensions. However, the Board believes that the requirement to disclose the maximum monthly payment based on the maximum possible rate in § 226.38(b)(3)(viii) satisfies the requirement under § 226.18(f)(1)(iv) of an example of the payment terms that would result from an increase in the rate. In order to avoid duplicative examples of the effect of a rate increase, proposed comment 38(b)(1)–1 clarified that, although the creditor need not disclose a separate example under § 226.18(f)(1)(iv), the creditor is nevertheless required to disclose the maximum monthly payment in § 226.38(b)(2)(viii).

As explained in the section-by-section analysis under § 226.18 (discussing the proposed changes to comment 18(f)(1)(ii)–1), proposed comment 38(b)(1)–2 clarified that the rules regarding disclosure of limitations on interest rate increases for private education loans differ from the general rules in § 226.18(f)(1)(ii) and comment 18(f)(1)(ii)–1. Specifically, proposed § 226.38(b)(1)(iii) required that creditors explicitly disclose the lack of any limitations on interest rate adjustments. By contrast, existing comment 18(f)(1)(ii)–1 does not require creditors to disclose the absence of limits on interest rate adjustments. In addition, under proposed § 226.38(b)(1)(iii), limitations on rate increases include, rather than exclude, legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations. However, if the applicable rate limitation is in the form of a legal limit, such as a state's usury cap (rather than a maximum rate specified in the legal obligation between the parties), the creditor must disclose that the maximum rate is determined by law and may change.

As discussed in the section-by-section analysis under § 226.47(a)(1) above, commenters urged the Board allow disclosure of a variable interest rate only as calculated based on the index and margin used to make interest rate adjustments. The Board is adopting proposed § 226.38(b)(1) as § 226.47(b)(1) and adding new comment 47(b)(1)–3 to clarify that the disclosure of the interest rate must reflect the rate calculated based on the index and margin that will be used to make interest rate adjustments for the loan.

47(b)(2) Fees and Default or Late Payment Costs

Implementing TILA sections 128(e)(2)(E) and (F), proposed § 226.38(b)(2) and proposed comment 38(b)(2)–1 required the creditor to provide to the consumer the fee and penalty information required under proposed § 226.38(a)(2), as explained in the section-by-section analysis for § 226.47(a)(2). Under § 226.18(l) creditors are required to disclose any dollar or percentage charge that may be imposed before maturity due to late payment, other than a deferral or extension charge. Under the proposal, creditors were required to disclose any charges that must be disclosed under § 226.18(l) with the disclosures required under proposed § 226.38(b)(2). In addition, if the creditor includes the itemization of the amount financed under § 226.18(c), any fees disclosed as part of the itemization need not be separately disclosed elsewhere. The

Board is adopting proposed § 226.38(b)(2) as § 226.47(b)(2).

47(b)(3) Repayment Terms

Section 226.47(b)(3), proposed as § 226.38(b)(3), requires disclosure of information related to repayment.

Principal amount. Proposed § 226.38(b)(3)(i) implemented TILA section 128(e)(2)(D), which requires disclosure of the ''initial approved principal amount,'' by requiring disclosure of the loan's ''principal amount.''

Regulation Z currently uses the term ''principal loan amount'' as part of its requirement to disclose the ''amount financed.'' As explained below, however, the Board did not propose to equate the terms ''principal loan amount'' used in comment 18(b)(3)–1 with the ''principal amount'' disclosed under § 226.38(b)(3)(i).

Under current Regulation Z, the amount financed must be calculated in the following manner:

(1) Determining the principal loan amount * * * (subtracting any downpayment);

(2) Adding any other amounts that are financed by the creditor and are not part of the finance charge; and

(3) Subtracting any prepaid finance charge. 12 CFR 226.18(b).

Regarding the first part of this calculation, determining the ''principal loan amount,'' the commentary states that when loan fees are financed by the creditor, the creditor has the option (when the charges are not add-on or discount charges) of either including or excluding the amount of the finance charges in the principal loan amount. As the commentary points out, this means that the ''principal loan amount'' for this calculation may, but need not, equal the face amount of the note. Comment 18(b)(3)–1. If the creditor opts to include finance charges in the principal loan amount, the creditor should deduct these charges from the principal loan amount as prepaid finance charges when calculating the amount financed. *Id.*

Rather than equate Regulation Z's existing term ''principal loan amount'' with the ''principal amount'' required to be disclosed in proposed § 226.38(b)(3)(i), the Board's view was that the most straightforward and easy-to-understand approach was to define ''principal amount'' as the face amount of the note if the transaction occurred on the terms approved. The ''principal amount'' under proposed § 226.38(b)(3)(i) was to include all charges incorporated in the approved loan amount—in other words, the total amount borrowed. This amount should reflect what the face amount of the note would be if the loan were given based on the loan amount initially approved. For example, prepaid finance charges, as defined and discussed in comment 18(b)(3)–1, should be included if they would be included in the face amount of the note.

The Board believed that defining ''principal amount'' in this way would not cause consumer confusion with Regulation Z's use of the term ''principal loan amount'' in § 226.18(b), because ''principal loan amount'' is not currently a stand-alone disclosure in Regulation Z that consumers could confuse with the ''principal amount.'' Defining the ''principal amount'' in proposed § 226.38(b)(3)(i) as distinct from the term ''principal loan amount'' in § 226.18(b) may also reduce creditor confusion about whether the definition of ''principal amount'' changes how the ''amount financed'' is calculated under § 226.18(b). As noted above, ''principal loan amount'' is a term used only as part of the calculation of the ''amount financed'' disclosure. Current comment 18(b)(3)–1 permits creditors to decide whether to include or exclude prepaid finance charges in the ''principal loan amount,'' but solely for purposes of calculating the ''amount financed.''

In addition, in order to minimize potentially duplicative disclosures, proposed comment 38(b)(3)–1 explained that creditors may disclose the principal amount as part of the itemization of the amount financed. The creditor would be permitted to disclose the principal amount as part of the itemization of the amount financed only if the creditor states the principal amount as part of the itemization. The proposed sample form in Appendix H–22 provided an example of this disclosure. Also, as discussed above, the proposal revised § 226.17(a)(1) to allow the itemization of the amount financed to be included with the required disclosures, rather than disclosed separately.

Some commenters expressed confusion as to the distinction among the concepts of the ''principal amount'' required to be disclosed in proposed § 226.38(b)(3)(i), the ''principal loan amount'' used to calculate the amount financed, and the ''amount financed'' required to be disclosed in § 226.18(b), because the Board's sample forms did not include non-interest finance charges. Commenters were unclear as to where and how the principal amount was required to be disclosed on the model and sample forms.

Proposed § 226.38(b)(3)(i) is adopted as § 226.47(b)(3)(i). Comment 47(b)(3)–1 has been revised to clarify that the principal amount required to be disclosed under § 226.47(b)(3)(i) should be labelled the ''Total Loan Amount'' and that this amount may be different from the ''principal loan amount'' used to calculate the amount financed under comment 18(b)(3)–1. In addition, the Board's sample forms in Appendix H–22 and H–23 provide examples that include non-interest finance charges and better reflect the distinction between the principal amount and the amount financed.

The Board is also revising the model and sample disclosures in Appendix H to make the principal amount, labelled the ''Total Loan Amount,'' more prominent by placing it in a box labelled ''Total Loan Amount'' at the top left of the disclosure, where the disclosure of the amount financed was in the proposal. The Board's consumer testing indicated that consumers interpret the ''Amount Financed'' and the accompanying phrase ''the amount of credit provided to you or on your behalf'' to mean the loan's total principal amount. They do not readily understand that the amount financed may not include certain finance charges and thus may be less than the face amount of the note. Consumer testing indicated that consumers better understand the amount financed if it is disclosed as part of the itemization of the amount financed because consumers can see how the amount financed is arrived at based on the total principal amount.

The Board proposed to allow creditors to make the disclosure of the principal amount in § 226.47(b)(3)(i) as part of the itemization of the amount financed, if the creditor chose to include the itemization. However, because the final model forms disclose the principal amount more prominently, comment 47(b)(3)–1 has been revised to permit the creditor to make the disclosure of the amount financed under § 226.18(b)(3) as part of the itemization of the amount financed, if the creditor elects to include the itemization on the disclosures under § 228.18(c)(1).

Loan term. Proposed § 226.38(b)(3)(ii) and comment 38(b)(3)–2 implemented TILA section 128(e)(2)(G), which requires disclosure of the maximum term of the private education loan program. Under the proposal, the term of the loan was the period of time during which regular principal and interest payments must be made on the loan. For example, where repayment begins upon consummation of the private education loan, the disclosed loan term would be the same as the full term of the loan. By contrast, where repayment does not begin until, for instance, after the student is no longer enrolled, the disclosed loan term would

be shorter than the full term of the loan. If more than one repayment term is possible, the creditor must disclose the loan term as the longest possible repayment term. Proposed § 226.38(b)(3)(ii) is adopted as § 226.47(b)(3)(ii).

Payment deferral options. Proposed § 226.38(b)(3)(iii) and proposed comment 38(b)(3)–3 required the creditor to provide information about deferral options, implementing TILA section 128(e)(2)(J). This disclosure was similar to the requirement under proposed § 226.38(a)(3)(ii), as explained in the section-by-section analysis for section § 226.47(a)(3)(ii). However, by the time the consumer receives the approval disclosure, the consumer may have chosen a deferral option already. The difference between proposed §§ 226.38(a)(3)(ii) and 226.38(b)(3)(iii) is that the creditor was required to explain the deferral option chosen by the consumer, if the consumer has chosen a deferral option, as well as any other deferral options that the consumer is permitted to choose in the future. The Board is adopting § 226.38(b)(3)(ii) as § 226.47(b)(3)(ii). The section-by-section analysis of the deferral options disclosure of § 226.47(a)(3)(ii) describes the information that must also be included in the explanation of deferral options under § 226.47(b)(3)(iii).

Payments required during enrollment. Proposed § 226.38(b)(3)(iv) and comment 38(b)(3)–4 required the creditor to disclose whether any payments are required on the loan while the student is enrolled, implementing TILA section 128(e)(2)(I). The creditor also was required to describe the payments required during enrollment, such as principal and interest payments or interest-only payments. The payments required during enrollment may depend on the deferral option chosen by the consumer. The disclosure under proposed § 226.38(b)(3)(iv) was required to correspond to the deferral option chosen by the consumer. The Board is adopting § 226.38(b)(3)(iv) as § 226.47(b)(3)(iv).

Estimate of interest accruing during enrollment. Also implementing TILA section 128(e)(2)(I), proposed § 226.38(b)(3)(v) applied only if interest is charged on the private education loan while the student is enrolled, and the consumer will not be paying interest on the loan during this time. This disclosure would require the creditor to give the consumer an estimate of the interest that will accrue on the loan during enrollment. The Board is adopting proposed § 226.38(b)(3)(v) as § 226.47(b)(3)(v).

Bankruptcy limitations. Proposed § 226.38(b)(3)(vi) required disclosure of a statement of limitations on the discharge of a private education loan in bankruptcy. Proposed comment 38(b)(3)–5 stated that a creditor may comply with proposed § 226.38(b)(vi) by disclosing the following statement: ''If you file for bankruptcy you may still be required to pay back this loan.'' To avoid overloading the consumer with information, the Board proposed to require a general statement that student loans may not be dischargeable in bankruptcy rather than require a detailed disclosure of student loan bankruptcy rules and limitations. The Board is adopting proposed § 226.38(b)(3)(vi) as § 226.47(b)(3)(vi).

Total amount for repayment. TILA section 128(e)(2)(H) requires the creditor to disclose an estimate of the total amount for repayment calculated based on: (1) the interest rate in effect on the date of approval; and (2) the maximum possible rate of interest applicable to the loan or, if a maximum rate cannot be determined, a good faith estimate of the maximum rate.

Proposed § 226.38(b)(3)(vii) defined the total amount for repayment in the same manner as the current Regulation Z closed-end credit disclosure of the total of payments. 12 CFR 226.18(h). Neither the HEOA nor its legislative history provides guidance on the definition of ''total amount for repayment.'' Regulation Z defines ''total of payments'' as the amount the consumer will have paid when the consumer has made all scheduled payments. 12 CFR 226.18(h). In some cases, the total of payments will not exactly match the total amount that the borrower must repay. For example, if the borrower pays prepaid finance charges separately in cash, the amount of these charges will not be reflected in the total of payments. However, the Board believes that requiring separate disclosures for the ''total amount for repayment'' and the ''total of payments'' would likely cause consumer confusion and that both terms are meant to capture the amount that the borrower will have paid after making all scheduled payments to repay the loan. Accordingly, in order to avoid duplication, proposed comment 38(b)(3)–6.i clarified that compliance with the total of payments disclosure under § 226.18(h) constitutes compliance with the requirement to disclose the total amount for repayment at the interest rate in effect on the date of approval.

Maximum rate. For the requirement that the creditor disclose an estimate of the total amount for repayment at the maximum possible rate of interest, proposed § 226.38(b)(3)(vii) and comment 38(b)(3)–6.ii required that either the maximum possible rate be used or, if a maximum rate cannot be determined, an assumed rate of 21%. For example, if the creditor were in a state without a usury limit on interest rates, and the legal agreement between the parties did not specify a maximum rate, the creditor would have to base the disclosure on a rate of 21%.

Under proposed comment 38(b)(3)–6.ii, a maximum rate included a legal limit in the nature of a usury or rate ceiling under state or Federal statutes or regulations, and the creditor was required to calculate the total amount for repayment based on that rate, and to disclose that the maximum rate is determined by law and may change.

TILA section 128(e)(2)(H) requires that, if a maximum rate cannot be determined, the creditor must use a good faith estimate of the maximum rate. The Board proposed to use its authority under the HEOA to add a requirement that where a maximum rate cannot be determined, the creditor use a rate of 21%. The Board stated its belief that such a rule is necessary and appropriate for consumers to make informed borrowing decisions. A rule providing a uniform maximum rate assumption also gives creditors more certainty in complying with the regulation. The Board proposed a rate of 21% because the Board believed that 21% was the most common rate within the range of usury rate ceilings that consumers in the private education loan market are likely to face. Thus, the Board believed that basing the disclosure on an assumed maximum rate of 21% would assist consumers in comparing different loans by providing consumers with an estimated total amount for repayment that will be similar between states with and without usury rate limitations.

In addition, under the Board's TILA section 128(e)(2)(P) and 128(e)(4)(B) authority, the proposal added a requirement that, if the legal obligation between the parties does not specify a maximum rate, the creditor must accompany the estimated total amount for repayment with a statement that: (1) No maximum interest rate applies to the private education loan; (2) the maximum interest rate used to calculate the total amount for repayment is an estimate; and (3) the total amount for repayment disclosed is an estimate and will be higher if the applicable interest rate increases. The Board believed that these additional disclosures were necessary to inform consumers that the examples in the disclosure statement are

merely illustrative and that their loan in fact has no maximum rate.

The HEOA allows the creditor to disclose the total amount for repayment as an estimate. Proposed § 226.38(b)(3) also required only an estimated total amount for repayment. The Board recognized that permitting disclosure of an estimate of the total amount for repayment is necessary because the interest rates on most private education loans are variable and the repayment schedule is often not known at the time that the approval disclosures must be provided to the consumer.

The Board requested comment on whether a specific maximum rate assumption should be used for disclosures where a maximum rate cannot be determined, and, if so, whether 21% was the most appropriate rate or whether another rate should be used. The Board also requested comment on whether, if a maximum rate of interest was to be specified, the Board should publish the rate periodically, based on a median or a commonly used usury rate applicable to private education loans in various states. The Board also requested comment on alternative approaches by which creditors may make a good faith estimate of a maximum possible rate when a maximum rate cannot be determined.

The Board received a number of comments on the proposal to require disclosure of the total amount for repayment at an assumed rate of 21% if a maximum interest rate could not be determined. Commenters generally supported the approach used in the proposed rule although a few commenters suggested specific higher or lower rates to be used as a maximum rate assumption, or to require a creditor to use its actual interest rate history. For example, consumer group commenters suggested that a rate of 36% represented an average of state law usury ceilings, but cited in support a study of payday lending laws. By contrast, some industry commenters suggested that historically a rate of 21% was higher than had actually been charged to consumers for private education loans. One government agency supported using the greater of 21% or the highest rate actually charged by the creditor during a recent period of time. One industry commenter stated that it was subject to a state usury ceiling of 25% and expressed concern that allowing other lenders with no rate cap to base the disclosure example on a maximum rate of 21% was unfair to creditors in states with higher usury ceilings. The commenter expressed concern that some consumers would incorrectly conclude that it was preferable to take a loan from a creditor in a state with no usury ceiling than from a creditor in a state with a ceiling greater than 21%. Some commenters also suggested that the Board should publish from time to time an assumed rate to be used in calculating the total for repayment where a maximum rate cannot be determined.

The Board is adopting proposed § 226.38(b)(3)(vii) as § 226.47(b)(3)(vii) largely as proposed, but the final rule requires a disclosure based on an assumed rate of 25% where a maximum rate cannot be determined, rather than 21%. The Board proposed using a rate of 21% based on the most common rate in the range of usury rate ceilings that consumers in the private education loan market are likely to face. However, the Board believes that basing the example on the most common state usury rate could disadvantage creditors in states with higher usury ceilings. The highest state law usury rate actually applicable to student loans mentioned by commenters was 25%. In addition, consumers shown a disclosure where no maximum rate applied understood in testing that the example used only an assumed rate of 21%. However, a few consumers stated that they usually expect an assumption to be a ''round number'' such as 20% or 25%, not a number like 21%. Based on consumer testing results, the Board also believes that using an assumed rate of 25% will help indicate to consumers that the disclosure is based on an example. The Board is not publishing a rate because commenters did not suggest a methodology by which the Board could choose a more appropriate rate. In addition, the Board believes that requiring all creditors to use the same assumption, rather than historic rates, will better assist consumers in comparing loans because a creditor's past interest rates may not be predictive of future interest rates.

In response to one state education loan provider's comment, the Board is adding comment 47(b)(3)–6.iii to clarify that if terms of the legal obligation provide a limitation on the amount that the interest rate may increase at any one time, the creditor may reflect the effect of the interest rate limitation in calculating the total cost example. For example, if the legal obligation provides that the interest rate may not increase by more than three percentage points each year, the creditor may, at its option, assume that the rate increases by three percentage points each year until it reaches that maximum possible rate, or if a maximum rate cannot be determined, an interest rate of 25%.

Maximum monthly payment. Proposed § 226.38(b)(3)(viii) implemented TILA section 128(e)(2)(O) by requiring the creditor to disclose the maximum monthly payment based on the maximum rate of interest applicable to the loan or, if a maximum rate cannot be determined, for the reasons discussed above, an assumed rate of 21%. In addition, as discussed above, under the Board's TILA section 128(e)(2)(P) and 128(e)(4)(B) authority, the proposal added a requirement that the creditor state that: (1) No maximum interest rate applies to the loan; (2) the maximum interest rate used to calculate the maximum monthly payment amount is an estimate; and (3) the maximum monthly payment amount is an estimate and will be higher if the applicable interest rate increases.

As with proposed § 226.38(b)(3)(vii), the Board requested comment on other approaches by which creditors may calculate a maximum payment when a maximum rate cannot be determined. Commenters combined their comments on proposed § 226.38(b)(3)(viii) with their comments on proposed § 226.38(b)(3)(vii).

For the reasons discussed above, the Board is adopting proposed § 226.38(b)(3)(viii) as § 226. 47(b)(3)(viii) largely as proposed except that if a maximum rate cannot be determined, an assumed rate of 25% must be used.

47(b)(4) Alternatives to Private Education Loans

Implementing TILA section 128(e)(2)(M), the Board proposed §§ 226.38(b)(4) to require the creditor to provide the information about alternatives to private education loans for financing education that were also required under proposed §§ 226.38(a)(6)(i)–(iii) and explained in the section-by-section analysis for §§ 226.47(a)(6). The Board proposed to use its authority under TILA sections 105(a) and 105(f) to make exceptions to the statute by not requiring creditors to state that Federal loans may be obtained in lieu of or in addition to private education loans. As explained in the section-by-section analysis for §§ 226.47(a)(6), the Board believes that this exception is necessary and proper to effectuate meaningful disclosure of credit terms to consumers. The Board is adopting §§ 226.38(a)(6) as §§ 226.47(a)(6).

47(b)(5) Rights of the Consumer

In implementing TILA section 128(e)(2)(L), proposed § 226.38(b)(5) required a creditor to disclose that the consumer had the right to accept the loan on the terms approved for up to 30

calendar days. The proposed disclosure also informed the consumer that the rate and terms of the loan would not change during this period, except for changes to the rate based on adjustments to the index used for the loan.

Under the Board's TILA section 128(e)(2)(P) authority, the proposed disclosure required a creditor to include the specific date on which the 30-day period expired and to indicate that the consumer may accept the terms of the loan until that date. For example, under the proposal, if the consumer received the disclosures on June 1, the disclosure was required to state that the consumer could accept the loan until July 1. The Board believed that this disclosure was necessary to inform consumers of the precise date when the 30-day period expired because the date the consumer was deemed to receive the disclosure may have differed slightly from the date the consumer actually received the disclosure. The creditor was also required to disclose the method or methods by which the consumer could communicate acceptance. The Board believed that this disclosure was necessary to ensure consumers understood the specific steps required to accept the loan. Proposed comment 39(c)–3, discussed below, provided guidance to creditors on disclosing methods by which consumers may communicate acceptance.

Section 226.47(b)(5) of the final rule requires a statement that the consumer may accept the terms of the loan until the acceptance period under § 226.48(c)(1) has expired. As discussed in the section-by-section analysis in § 226.47(a)(7), the disclosure also requires a statement similar to the statement in the application disclosure that, except for changes as a result of adjustments to the interest rate and other changes permitted by law, the rates and terms of the loan may not be changed by the creditor during the acceptance period. As in the application disclosure, the requirements of this provision more closely resemble the language used on the approval disclosures in consumer testing, which consumers found to be clear and understandable.

Section 226.47(b)(5) also requires the creditor to include the specific date on which the acceptance period expires, based upon the date on which the consumer receives the disclosures. It further requires the disclosure to specify the method or methods by which the consumer may accept the loan, such as by telephone or by mailing a signed acceptance.

47(c) Final Disclosures

Section 226.47(c), proposed as § 226.38(c), requires the creditor to disclose to the consumer a third set of disclosures after the consumer accepts the loan in accordance with § 226.48(c)(1). Section 226.47(c) implements TILA section 128(e)(4), which requires the creditor to provide this final set of disclosures contemporaneously with consummation. Regulation Z defines ''consummation'' as the time that a consumer becomes contractually obligated on a credit transaction. *See* 12 CFR 226.2(a)(13). The corresponding commentary defers to state law to determine when consummation occurs. *See* comment 2(a)(13)–1. As discussed earlier in the section-by-section analysis under § 226.46, to avoid confusion about when the final private education loan disclosures should be given due to differing state law definitions of consummation, and to ensure that consumers have a meaningful opportunity to exercise their cancellation right under TILA section 128(c)(8), the Board interprets ''contemporaneously with consummation'' to require creditors to provide these final disclosures after acceptance and, under § 226.48(d), at least three days before disbursement.

47(c)(1) Interest Rate

Section 226.47(c)(1), proposed as § 226.38(c)(1), requires creditors to disclose the interest rate that applies to the private education loan accepted by the consumer.

Fixed or variable rate, rate limitations. As proposed in § 226.38(c)(1), § 226.47(c)(1) requires the creditor to provide to the consumer the rate information required under §§ 226.47(b)(1)(ii) and (iii), as explained in the section-by-section analysis for those sections.

47(c)(2) Fees and Default or Late Payment Costs

As proposed in § 226.38(c)(2), § 226.47(c)(2) requires the creditor to provide to the consumer the fee and default or late payment information required under § 226.47(b)(2), as explained in the section-by-section analysis for that section.

47(c)(3) Repayment Terms

As proposed in § 226.38(c)(3), § 226.47(c)(3) requires the creditor to provide to the consumer the repayment information required under § 226.47(b)(3), as explained in the section-by-section analysis for that section.

47(c)(4) Cancellation Right

Section 226.47(c)(4) is adopted as proposed in § 226.38(c)(4). Section 226.47(c)(4) and comment 47(c)–1 implement TILA section 128(e)(4)(C) by requiring the creditor to disclose to the consumer the following information:

(i) The consumer has the right to cancel the loan, without being penalized, at any time before the cancellation period under § 226.48(d) has expired; and

(ii) Loan proceeds will not be disbursed until after the cancellation period expires.

Under the Board's TILA section 128(e)(4)(B) authority, § 226.47(c)(4) adds a requirement that creditor disclose the specific date on which the cancellation period expires and include the methods or methods by which the consumer may cancel the loan.

Comment 47(c)–2, proposed as comment 38(c)–2, clarifies that the statement of the right to cancel must be more conspicuous than any other disclosure required under § 226.47(c), except for the finance charge, the interest rate, and the creditor's identity. *See* § 226.46(c)(2)(iii). Under comment 47(c)–2, the right to cancel statement is deemed more conspicuous than other disclosures if the creditor segregates the statement from other the disclosures, places the statement at or near the top of the disclosure document, and highlights the statement in relation to other required disclosures. Examples of appropriate highlighting given in comment 47(c)–2 are that the statement may be outlined with a prominent, noticeable box; printed in contrasting color; printed in larger type, bold print or different type face; underlined; or set off with asterisks. Comments 48(d)–1, and 2, discussed below in the section-by-section analysis under § 226.48(d), provide additional guidance about how the creditor must notify the consumer of the cancellation right and how the consumer may exercise this right.

Alternatives to Private Education Loans

Based on the results of the Board's consumer testing, the Board proposed to use its authority under TILA section 105(a) to create an exception from the requirement in TILA section 128(e)(4)(b) that the creditor provide the consumer with information about Federal alternatives to private education loans. Consumers overwhelmingly indicated that this information would not be meaningful or useful to them at the time when they would receive the final disclosures. Consumers indicated that by the time they had applied for and accepted a private education loan, they

already would have made a decision as to whether or not to seek other loan alternatives.

The Board also proposed to exercise its authority under TILA section 105(f) to exempt private education loans from the specific requirement to disclose information about Federal loan alternatives in the final disclosure form. The Board believed that this disclosure requirement does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board considered that the private education loan consumer population may contain students who lack financial sophistication and that the size of the loan could be relatively significant and important to the borrower. However, as explained above, consumers tested indicated that this disclosure was not useful at this final stage in the loan process. Borrowers would receive the information about Federal loans at application and approval. The Board also recognized that private education loans would not be secured by the principal residence of the consumer, which is a factor for consideration under section 105(f). Furthermore, the HEOA provides significant rights, such as the right to cancel the loan. The Board believed that consumer protection would not be undermined by this exemption.

The Board requested comment on whether it should adopt this proposed exception. Some consumer group commenters urged the Board to retain the disclosures about Federal loan alternatives stating a concern that consumers in a testing context received the various private education loan disclosure forms close together in time, but that consumers in the marketplace would receive them at different times and may not recall the information about Federal loan alternatives.

For the reasons stated in the proposal, the Board is not requiring disclosure of Federal loan alternatives on the final disclosure form. The Board's consumer testing conducted after the proposed rule was issued confirmed that consumers would not find this information beneficial at the stage in the lending process where they receive the final disclosure form.

Section 226.48 Limitations on Private Education Loans

Section 226.48, proposed as § 226.39, contains rules and limitations on private education loans. It includes a prohibition on co-branding in the marketing of private education loans, rules governing the 30-day acceptance period and three-day cancellation period for private education loans, the requirement that the creditor obtain a self-certification form from the consumer before consummating a private education loan, and the requirement that creditors in preferred lender arrangements provide certain information to covered educational institutions.

48(a) Co-Branding Prohibited

The HEOA prohibits creditors from using the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols readily identified with a covered educational institution in the marketing of private education loans in any way that implies that the covered educational institution endorses the creditor's loans.

Proposed § 226.39(a)(1) implemented this prohibition by prohibiting creditors from referencing a covered educational institution in a way that implies that the educational institution endorses the creditor's loans. At the same time, the Board recognized that a creditor may at times have legitimate reasons for using the name of a covered educational institution. For instance, some educational institutions' financial aid Web sites might provide links to specific creditors' Web sites. Creditors might provide a welcome page to the student that references the name of the school that provided the link. Some creditors may have school-specific terms or benefits and may need to use the name of the school to provide accurate information to consumers about the nature and availability of its loan products.

For these reasons, proposed § 226.39(a)(2) provided creditors with the following safe harbor for those cases where the creditor's marketing does make reference to an educational institution. Marketing that refers to an educational institution would not be deemed to imply endorsement if the marketing clearly and conspicuously discloses that the educational institution does not endorse the creditor's loans, and that the creditor is not affiliated with the educational institution. This safe harbor approach is consistent with the views expressed in the Conference Report to the HEOA, which states that the conferees intended that creditors could demonstrate that they are not implying endorsement by the covered educational institution by providing a clear and conspicuous disclaimer that the use of the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols readily identified with a covered educational institution, in no way implies endorsement by the covered educational institution of the creditor's private education loans and that the creditor is not affiliated with the covered educational institution. The Board stated its belief that this safe harbor approach will inform consumers that a reference to a covered educational institution does not mean that the institution endorses the loan being marketed while also providing clarity about how to market private education loans without violating TILA and Regulation Z.

Proposed comment 39(a)–1 clarified the term ''marketing'' as used in proposed § 226.39. The term included all ''advertisements'' as that term is defined in Regulation Z. 12 CFR 226.2(a)(2). The proposal explained that the term marketing is broader than advertisement, however, and includes documents that are part of the negotiation of the specific private education loan transaction. For example, applications or solicitations, promissory notes or contract documents would be considered marketing. The Board believed that a broader meaning of marketing is needed to cover documents, such as promissory notes, that are not considered advertisements, but that may use the name of the educational institution prominently in a potentially misleading way. For example, naming the loan the ''University of ABC Loan'' could mislead consumers into believing that the loan was offered by the educational institution.

Proposed comment 39(a)–2 clarified that referencing a covered educational institution in a way that implies that the educational institution, rather than the creditor, is offering or making the loan is a form of implying that the educational institution endorses the loan and was therefore not permitted under proposed § 226.39(a)(1). However, the use of a creditor's own name, even if that name includes the name of a covered educational institution, would not imply endorsement. For example, a credit union whose name includes the name of a covered educational institution would not be prohibited from using its own name. In addition, authorized use of a state seal by a state or an institution of higher education in the marketing of state education loan products would not imply endorsement.[13]

[13] *See* Joint Explanatory Statement of the Committee of Conference on H.R. 4137, Title X, Subtitle A, § 1011. The Conference Report states that the prohibition is not intended to prohibit a credit union whose name includes the name of a covered educational institution from using its own name in marketing its private education loans. In addition, it is not intended to prohibit states or

Proposed comment 39(a)–3.i provided a model clause that creditors may use in complying with the safe harbor proposed in § 226.39(a)(2). The creditor would be considered to have complied with proposed § 226.39(a)(2) if the creditor includes a clear and conspicuous statement, using the creditor's name and the covered educational institution's name, that ''[Name of creditor]'s loans are not endorsed by [name of school] and [name of creditor] is not affiliated with [name of school].''

The Board received comments from educational institutions arguing that the prohibition on co-branding should not apply if the educational institution is itself the creditor. The Board also received comments from creditors suggesting that use of the educational institution's name on the promissory note, if no more conspicuous than the text of the promissory note does not imply endorsement and should not be prohibited. By contrast, consumer groups suggested that the Board engage in consumer testing to ensure that the proposed disclosures were effective in indicating that a private education loan was not endorsed by the educational institution.

Proposed §§ 226.39(a)(1) and 39(a)(2) are adopted as §§ 226.48(a)(1) and 48(a)(2) largely as proposed. However, consistent with comment 47–2, which permits a creditor to use its own name, § 226.48(a)(1) has been clarified to not apply to a covered educational institution if the institution is the creditor. In addition, comments 47(d)–3.i and 47(d)–3.ii of the final rule require the safe harbor model clauses be provided with equal prominence and in close proximity to the reference to the school. Consistent with the Board's interpretation of the equal prominence and close proximity standards in the advertising rules in §§ 226.16 and 24, the statement would be deemed equally prominent and closely proximate if it is the same type size and is located immediately next to or directly above or below the reference to the school, without any intervening text or graphical displays. The Board believes that requiring equal prominence and close proximity for the use of the safe harbor statements will ensure that marketing material clearly communicates to consumers the identity of the creditor making the loan and, if applicable, that the school does not endorse the creditor's loans.

The final rule does not exclude use of the school's name in the promissory note from the general rule, even if the school's name is no more prominent than other text. The Board does not believe that the relative prominence of the school's name within the promissory note, by itself, determines whether or not the use of the school's name is misleading.

48(b) Preferred Lender Arrangements

In the proposal, the Board recognized that in certain instances the prohibition on creditors' implying endorsement from covered educational institutions would not be appropriate because it would not be factually correct. The HEOA specifically allows covered educational institutions to endorse the private education loans of creditors with which they have a ''preferred lender arrangement.'' The HEOA defines a ''preferred lender arrangement'' as an arrangement or agreement between a creditor and a school under which the creditor provides loans to the school's students or their families, and the school recommends, promotes, or endorses the creditor's loans. HEOA, Title I, § 120 (adding Section 152 to the Higher Education Act). Thus, where a creditor and a covered educational institution have a preferred lender arrangement, a creditor's statement that a school did not endorse its loans would be misleading.

The Board proposed to exercise its authority under TILA section 105(a) to provide an exception to the co-branding prohibition for creditors that have preferred lender arrangements. As explained above, the Board believes that this provision is necessary and proper to assure an accurate and meaningful disclosure to consumers of the relationship between the creditor and the educational institution. Proposed § 226.39(b) allowed the creditor to refer to the covered educational institution, but required that the creditor clearly and conspicuously disclose that the loan is not being offered or made by the educational institution, but rather by the creditor. The Board believes that a disclosure that the loan is provided by a creditor and not by the school would address consumer confusion about whether the loan was actually made by the school, or merely endorsed by the school.

The proposed requirement that creditors with preferred lender arrangements make a disclosure when referring to a school follows a prohibition on co-branding for preferred lenders contained in section 152 of the Higher Education Act, as added by the HEOA, which is similar to the newly added co-branding prohibition in TILA. Section 152 of the Higher Education Act prohibits a creditor in a preferred lender arrangement from making a reference to a covered educational institution in any way that implies that the loan is offered or made by such institution or organization instead of the creditor. HEOA, Title I, Section 120 (adding Section 152(a)(2) to the Higher Education Act). Thus, proposed § 226.39(b) reconciled the two co-branding prohibitions contained in the HEOA.

Proposed comment 39(a)–3.ii provided a model clause that creditors could use in complying with proposed § 226.39(b). The creditor would be considered to have complied with proposed § 226.39(b) if the creditor included a clear and conspicuous statement, using the name of the creditor's loan or loan program, the creditor's name and the covered educational institution's name, that ''[Name of loan or loan program] is not being offered or made by [name of school], but by [name of creditor].''

The Board requested comment on whether creditors should be offered a safe harbor from the prohibition on co-branding, and, if so, whether other types of safe harbors should be considered. The Board also requested comment on how the co-branding prohibition should apply to creditors with preferred lender arrangements with covered educational institutions. The Board also requested comment on whether there are other examples of marketing that should be included in the co-branding prohibition.

The Board received comments from educational institutions and some lenders indicating that the proposed exception to the co-branding prohibition might conflict the Department of Education's, or other state law code-of-conduct provisions. Some educational institutions expressed concern that the proposed rule would permit the creditor to claim endorsement without the educational institution's consent if the educational institution merely placed a creditor on a suggested list of lenders provided to students.

The Board is adopting § 226.48(b) largely as proposed in § 226.39(b). However, the final rule clarifies that it does not authorize creditors to claim endorsement by an educational institution without the institution's having actually endorsed the creditor's loan program. After consulting with the Department of Education, the Board still believes that such endorsements may be permissible. The final rule has also been clarified to apply only when an endorsement of the creditor's loans by the educational institution is not

institutions of higher education from using state seals, with appropriate authorization, in the marketing of state education loan products.

prohibited by other applicable law or regulation. In addition, the statement that must accompany the reference to the educational institution must be equally prominent and closely proximate as discussed in the section-by-section analysis under § 226.48(a) above.

48(c) Consumer's Right To Accept

The HEOA provides consumers with a 30-day period following receipt of the approval disclosures in which to accept a private education loan. It also prohibits creditors from changing the rate or terms of the loan, except for changes based on adjustments to the index used for the loan, until the 30-day period has expired. Section 226.48(c), proposed as § 226.39(c), implements the 30-day acceptance period for private education loans.

Under the proposal, the 30-day period began following the consumer's receipt of the approval disclosures required in proposed § 226.38(b). Proposed comment 39(c)–1 required creditors to provide at least 30 days from the date the consumer received the disclosures required under proposed § 226.38(b) for the consumer to accept a private education loan. It also allowed creditors to provide a longer period of time at the creditor's option. It clarified that if the creditor placed the disclosures in the mail, the consumer was considered to have received them three business days after they were mailed. The proposed comment also clarified that the consumer could accept the loan at any time before the end of the 30 day period.

Commenters agreed with the proposal requiring a minimum 30-day acceptance period and the provision that a consumer could accept the loan at any time within the 30-day period. Therefore, proposed § 226.39(c) and comment 39(c)–1 are adopted as § 226.48(c) and comment 48(c)–1, respectively.

The HEOA does not specify the method by which the consumer may accept the terms of the loan. Proposed comment 39(c)–2 allowed the creditor to specify a method or methods by which acceptance could occur. Under the proposal, the creditor could specify that acceptance be made orally or in writing or could permit either form of acceptance. The creditor could also allow the consumer to accept electronically, but could not make electronic acceptance the sole form of acceptance.

Commenters generally agreed with the proposed comment on permissible methods of acceptance. However, some commenters suggested that creditors should be permitted to require electronic communication to be the only means of acceptance if the creditor provided the approval disclosure to the consumer electronically. The Board believes that requiring a form of acceptance in addition to electronic communication is generally appropriate because not all consumers have access to electronic forms of communication. However, the Board agrees with commenters that electronic communication could be permissible as the only means of acceptance when the consumer has already indicated a willingness to communicate electronically by consenting to and receiving a disclosure electronically, pursuant to the E-Sign Act. Comment 48(c)–2, proposed as comment 39(c)–2, is adopted and revised to permit electronic communication as the only means of acceptance if the creditor has provided the approval disclosure electronically in compliance with the consumer consent and other applicable provisions of the E-Sign Act.

Proposed § 226.39(c)(2) prohibited creditors from changing the terms of the loan, with a few specified exceptions, before the loan disbursement, or the expiration of the 30-day acceptance period if the consumer did not accept the loan during that time. To ensure that consumers receive the benefit of the entire 30-day period in which to accept the loan, the Board proposed to prohibit creditors from changing the rate and terms of the loan until the date of disbursement, if the consumer accepted within the 30-day period.

Proposed § 226.39(c)(2) prohibited only those changes that would affect the rate or terms required to be disclosed under proposed §§ 226.38(b) and (c), the approval and final disclosures, respectively. The Board interpreted the prohibition on changes to the rate or terms of the loan to cover only the disclosed terms.

In the proposal, the Board provided three exceptions to the provision that the rate and terms of private education loans required to be disclosed could not be changed. Proposed § 226.39(c)(2) did not prohibit changes based on adjustments to the index used for a loan, implementing TILA section 128(e)(6)(B). In addition, in the proposal, the Board exercised its authority under TILA section 105(a) to make exceptions to effectuate the purposes of the statute to allow the creditor to make changes that would unequivocally benefit the consumer, similar to the rule for home-equity plans in § 226.5b(f)(3)(iv). The Board also proposed to exercise its authority under TILA section 105(f) in permitting unequivocally beneficial changes by exempting creditors from HEOA's prohibition on making changes to the loan prior to the date of acceptance of the terms of the loan and consummation of the transaction. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(6)(B)).

The proposal also did not prohibit changes made in connection with accommodating a request by the consumer. Proposed § 226.39(c)(3) and proposed comment 39(c)–3 allowed creditors to change a loan's rate or terms in response to a request from a consumer. The proposed rule did not limit the changes that could be made. For example, the creditor was permitted to provide for a shorter repayment term as a condition of granting the consumer's request to borrow a lesser loan amount. However, under the proposal if the creditor chose to modify the terms of the loan in response to a consumer's request, the creditor needed to provide a new set of approval disclosures and provide the consumer with a new 30-day acceptance period.

The HEOA provides that a consumer has 30 days in which to accept the terms of a private education loan and consummate the transaction, and that the creditor may not change the rate and terms of the loan during this time. The statute does not explicitly state under what conditions, if any, a creditor could withdraw the loan offer or change the loan's terms in response to a change in a material condition of the loan. The Board requested comment on whether there were instances where a material condition of the loan offer was not met such that the creditor should be permitted to withdraw the offer or change the terms of the loan.

Commenters generally agreed with the permissible exceptions to the restrictions on changes to the loan's rate and terms. Industry commenters, however, suggested that creditors should be permitted to give approval disclosures at a conditional approval stage, and be allowed to change the terms of the loan based upon information received later, such as verification of income, verification of citizenship, validation of co-borrower information, and validation that the loan transaction is in compliance with applicable laws. Industry commenters also argued for an exception to enable creditors to change the terms of a loan based on revised information regarding a consumer's educational expenses and financial need provided in a school certification or other communication from a school. They argued that if creditors were not permitted to give approval disclosures at a conditional approval stage, loan approvals and

approval disclosures would be delayed while verifications, compliance checks, and school certifications were completed.

The Board agrees that it is important to inform consumers of a loan approval and the applicable rates and terms early in the loan process, so that consumers have as much time as possible to shop for a private education loan with the most favorable terms. However, the HEOA provides that the rates and terms of the private education loan may not be changed by a creditor during the 30-day period in which the consumer has the right to accept the loan terms and consummate the transaction, except for changes based on adjustments to the index used for a loan.[14] Thus, permitting conditions contemplated by the commenters would require the Board to make multiple exceptions, which could undermine the statutory provision. This would also prevent the consumer from being able to adequately shop for the best loan terms because the consumer would not know the final terms of the offer until the final disclosure was provided. Moreover, the Board believes that while private education loan approvals may be delayed in order for creditors to verify certain information, creditors will still have an incentive to approve the loans expeditiously in order to respond to the needs of their customers.

However, the Board does believe that two of the exceptions suggested by the industry commenters are appropriate, in addition to those exceptions provided in the proposed rules and, for the reasons stated below, is adopting them pursuant to its TILA Section 105(a) authority in order to effectuate the purposes of and facilitate compliance with TILA. In response to concerns that the provision would require creditors to consummate a loan that is legally impermissible, in § 226.48(c)(3) and comment 48(c)–4 in the final rules, the Board makes clear that a creditor may withdraw an offer prior to consummation if the extension of credit would be prohibited by law. The creditor also may withdraw an offer prior to consummation if the creditor has reason to believe that the consumer has committed fraud in connection with the application.

The Board also understands that it is common for students' financial assistance packages to change in a short time period for a variety of reasons, such as changes to the student's and family's financial situation or the availability of grants. The Board shares commenters' concerns that those whose financial assistance amount increases after their private education loan has been approved could end up over-borrowing, which, among other things, could adversely affect a student's eligibility for Federal student loans. Thus, section 226.48(c)(3) and comment 48(c)–4 permit the creditor to reduce the loan amount based upon a certification or other information received from a covered educational institution or from the consumer that indicates the student's cost of attendance has decreased or that other financial aid has increased. A creditor may make corresponding changes to the rate and other terms, but only to the extent that the consumer would have received the changed terms if the consumer had applied for the reduced loan amount. For example, assume a consumer applies for, and is approved for, a $10,000 loan at a 7% interest rate. However, the consumer's school certifies that the consumer's financial need is only $8,000. The creditor may reduce the loan amount for which the consumer is approved to $8,000. The creditor may also, for example, increase the interest rate on the loan to 7.125%, but only if the consumer would have received a rate of 7.125% if the consumer had originally applied for a $8,000 loan.

The Board is also adopting the exceptions to the restrictions on changing the rates and terms of the loan that were set forth in the proposed rules. The Board continues to believe a permissible change that would unequivocally benefit the consumer is appropriate. Disallowing such a change could complicate the credit process and unnecessarily increase costs for consumers and creditors who, for example, would otherwise have to repeat the application process in order to change the terms. In addition, consumers retain their right under HEOA to cancel the loan. Therefore, the Board is adopting the exception proposed in § 226.39(c)(2) and comment 39(c)–3 that permits a creditor to make changes if they will unequivocally benefit the consumer in the final rules as § 226.48(c)(3) and comment 48(c)–4. The final rules clarify that the permissible changes may be made to both the interest rate and the terms of the loan. For example, a creditor is permitted to reduce the interest rate or lower the amount of a fee.

The Board is also adopting proposed § 226.39(c)(2) as § 226.48(c)(3) in the final rules, permitting changes based on adjustments to the index used for a loan, as mandated in the HEOA. The final rules clarify that while changes to the interest rate are permissible under this exception, changes to other loan terms based on adjustments to the index used for a loan are not permissible.

The Board has clarified in § 226.48(c)(3)(ii) and comment 48(c)–4 that if the creditor changes the rate or terms of the loan under § 226.48(c)(3), the creditor need not provide the approval disclosures required under § 226.47(b) for the changed loan terms, nor must the creditor provide an additional 30 days to accept the new terms of the loan. However, the creditor must provide the final disclosures required under § 226.47(c).

In addition to the changes to the rates and terms of the loan permitted in § 226.48(c)(3), the Board also continues to believe that it is in the consumer's interest to be able to request changes to specific terms of the loan, even if this results in changes to the rate or other terms. The Board understands that it is common for a consumer's private education loan needs to change even until immediately prior to consummation of the loan. For example, a consumer may seek to defer repayment during enrollment in school after the consumer has already applied for the loan. The Board seeks to ensure that consumers retain the benefit of the 30-day acceptance period while also providing consumers with flexibility to move forward with a transaction with a creditor without having to cancel a loan, or loan offer, and expend time and money re-applying. Thus, the Board is also adopting proposed § 226.39(c)(3) and comment 39(c)–4 as § 226.48(c)(4) and comment 48(c)–5 to permit a creditor, at its option, to change the rate or terms of a loan in order to accommodate a request from a consumer. The final rule also clarifies that, except for the permissible changes to the rates and terms in § 226.48(c)(3) discussed above, a creditor may not withdraw or change the rate or terms of the original loan for which the consumer was approved unless the consumer accepts the terms of the loan offered in response to the consumer's request. For example, assume a consumer applies for a $10,000 loan and is approved for the $10,000 amount at an interest rate of 6%. After the creditor has provided the approval disclosures, the consumer's financial need increases, and the consumer requests to a loan amount of $15,000. In this situation, the creditor is permitted to offer a $15,000 loan, and to make any other changes such as raising the interest rate to 7%, in response to the consumer's request. However, because the consumer may choose not to accept the offer for the $15,000 loan at the higher interest rate, the creditor may not withdraw or

[14] Title X, Subtitle A, § 1021(a) (amending TILA Section 128(e)).

change the rate or terms of the offer for the $10,000 loan, except as permitted under § 226.48(c)(3), unless the consumer accepts the $15,000 loan.

The Board believes that consumers could be discouraged from requesting changes to loan terms unless the original offer for which the consumer was approved is held open until the consumer accepts the counter-offer. For similar reasons, the Board has clarified in § 226.48(c)(4)(ii) that if the creditor offers to make changes based on a request from the consumer, the creditor must provide the disclosures required under § 226.47(b) for the new loan terms. The creditor must also provide the consumer with an additional 30 days to accept the new terms of the loan and must not change the new loan's rate and terms except as specified in §§ 226.48(c)(3) and 226.48(c)(4).

48(d) Consumer's Right To Cancel

Section 226.48(d), adopted substantially as proposed in § 226.39(d), provides the consumer with the right to cancel a private education loan without penalty until midnight of the third business day following receipt of the final disclosures required in § 226.47(c). It also prohibits the creditor from disbursing any funds until the expiration of the three-business day period. As proposed, the consumer's right to cancel applies regardless of whether or not the consumer is legally obligated on the loan at the time that the final disclosures were provided.

Comment 48(d)–1, proposed as comment 39(d)–1, provides guidance on calculating the three-business day time period and when a consumer's request to cancel would be considered timely. It also clarifies that the creditor may provide a period of time longer than three business days in which the consumer may cancel, and that the creditor may disburse funds after the minimum three-business day period so long as the creditor honors the consumer's later timely cancellation request. Comment 48(d)–2, proposed as comment 39(d)–2, provides guidance to creditors on specifying a method or methods by which the consumer may cancel the loan. The creditor is permitted to require cancellation be communicated orally or in writing. Under the proposal, the creditor was also permitted to allow cancellation to be communicated electronically, but was not permitted to require only electronic communication because the Board believed that not all consumers have access to electronic communication. In the final rule, comment 48(d)–2 clarifies that if the creditor has provided the final disclosure electronically in accordance with the E-Sign Act, the creditor may allow electronic communication as the only means of acceptance.

Comment 48(d)–3, proposed as comment 39(d)–3 clarifies the requirement that the creditor allow cancellation without penalty. The prohibition extended only to fees charged specifically for canceling the loan. The creditor is not required to refund fees, such as an application fee, when charged to all consumers whether loans are cancelled or not.

The Board requested comment on whether creditors should be required to accept cancellation requests until midnight, or whether they should be allowed to set a reasonable deadline for communicating cancellation on the third business day. The Board also requested comment on whether creditors should be allowed to provide for a longer period during which consumers may cancel the loan, and, if so, whether creditors should be allowed to disburse funds after the minimum three-business-day period.

Commenters generally supported permitting creditors to provide a period longer than three days in which to cancel the loan and allowing loan funds to be disbursed after the third day if the creditor provides additional time in which to cancel. A few industry commenters suggested that creditors be allowed to set a reasonable cut-off time for cancellation requests on the third business day, such as 5 p.m. However, because the final rule allows creditors to provide the consumer with more than three days in which to cancel, the final rule adopts the midnight cutoff time on the third day.

48(e) Self-Certification Form

The HEOA requires that, before a creditor may consummate a private education loan, it obtain from the consumer a self-certification form. Proposed § 226.39(e) implemented this requirement. The HEOA requires that a creditor obtain the self-certification form only from consumers of private education loans intended for students attending an institution of higher education. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(3)). Thus, the proposal did not require a self-certification form with respect to every covered educational institution, but only those that met the definition of an institution of higher education in proposed § 226.37(b)(2). Moreover, proposed comment 39(e)–1 clarified that the requirement applied even if the student was not currently attending an institution of higher education, but would use the loan proceeds for postsecondary educational expenses while attending such institution. For example, a creditor would have been required to obtain the form before consummating a private education loan provided to a high school senior for expenses to be incurred during the consumer's first year of college. At the same time, proposed comment 39(e)–1 clarified that the self-certification requirement would not apply to loans where the self-certification information would not be applicable, such as loans intended to consolidate existing education loans. The self-certification form provides the consumer with information about the student's education costs to be incurred in the future (such as the cost of attendance and the amount of financial aid available). Even if the student were still enrolled, the information on the self-certification form would not apply to a consolidation loan, because the consolidation loan would cover expenses the student incurred in the past.

Section 155(a)(2) of the Higher Education Act of 1965, as added by the HEOA, provides that the form shall be made available to the consumer by the relevant institution of higher education. HEOA, Title X, Subtitle B, Sec. 1021(b). Although the HEOA requires that the creditor obtain the completed and signed self-certification form before consummating the loan, it does not specify that the creditor must obtain the form directly from the consumer. Proposed comment 39(e)–1 allowed the creditor to obtain the self-certification form either directly from the consumer or through the institution of higher education. Compliance with the self-certification requirement may be simplified for all parties if the educational institution is permitted to obtain the completed form from the consumer and forward it to the creditor. The consumer may find it easier to return the form to the educational institution as part of the institution's overall financial aid process. The creditor and educational institution may also find it easier to include the self-certification form as part of a larger package of information communicated by the institution to the creditor about the student's eligibility and cost of attendance.

Both Section 128(e)(3) of TILA and Section 155 of the Higher Education Act of 1965 provide that the self-certification form may be provided to the consumer in electronic form. Under Section 155 of the Higher Education Act of 1965, the Department of Education must develop the form and ensure that institutions of higher education make it

available to consumers in written or electronic form. Because the form will be provided by educational institutions to consumers, the Board did not propose to impose consumer consent or other requirements on creditors in order to accept the form in electronic form. The self-certification form may also be signed by the consumer in electronic form. Under Section 155(a)(5) of the Higher Education Act of 1965, the Department of Education must provide a place on the form for the applicant's written or electronic signature. Proposed comment 39(e)–2 provided that a consumer's electronic signature is considered valid if it meets the requirements promulgated by the Department of Education under Section 155(a)(5) of the Higher Education Act of 1965.

The Board received numerous comments from industry, educational institutions, and individual financial aid officers and their representatives about the self-certification requirement. These comments requested that the Board exempt from the self-certification requirement any private education loan for which the creditor certifies the borrower's cost of attendance, other financial aid, and financial need information with the school. Commenters expressed concern that the self-certification requirement would be duplicative of the current school certification process when that process is used. In particular, individual financial aid officers expressed concern that the self-certification process would greatly increase the burden on financial aid offices with few staff. Educational institutions also suggested that the self-certification process was likely to be less meaningful when the educational institution is the creditor because the educational institution provides the form as well as the information the consumer must use to complete the form, but must also receive the form back from the consumer.

Section 226.48(e) of the final rule does not provide an exception from the self-certification requirement for school-certified loans. The HEOA requires creditors to obtain the self-certification form in all cases. The Board believes that self-certification form is intended not only to ensure that the educational institution and creditor are aware of the cost of attendance at the educational institution and about the consumer's other financial aid and need, but also to provide the consumer with this information. Thus, even where the school and the creditor share this information directly, the self-certification form seeks to ensure consumers are aware of their own educational expenses, the financial aid for which they qualify, and their remaining financial need.

The final rule does, however, permit creditors to provide the self-certification form directly to the consumer with the information the consumer requires in order to complete the form. Nothing in the HEOA prohibits creditors or anyone else from providing the form to the consumer and the Board notes that the form necessarily will be provided by the creditor when the creditor is the educational institution. The HEOA requires a statement on the self-certification form that the consumer is encouraged to communicate with the financial aid office about the availability of other financial aid. The Board believes that allowing the creditor to provide the form will ensure that creditors have the ability to consummate private education loans and disburse loan funds in a timely manner and that this will benefit consumers, especially if financial aid offices are unable to process self-certification requests.

48(f) Provision of Information by Preferred Lenders

The HEOA requires a creditor that has a preferred lender arrangement with a covered educational institution to provide the educational institution annually, by a date determined by the Board in consultation with the Secretary of Education, with the information required to be disclosed on ''the model form'' developed by the Board for each type of private education loan the creditor plans to offer for the next award year (meaning the period from July 1 of the current calendar year to June 30 of the next year). HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(11)). TILA Section 128(e)(11) refers to the information on ''the model form'' but the HEOA requires the Board to develop three model forms and Section 128(e)(11) does not specify which of the model forms the creditor should use. However, the approval and consummation forms contain transaction-specific data that cannot be known for the next year. Thus, the final rule requires, as proposed, that the creditor provide the general loan information required on the application form in § 226.47(a), rather than the transaction-specific information required in the approval and final disclosure forms.

After consultation with the Department of Education, the Board proposed to require that creditors provide information by January 1 of each year. Proposed § 226.39(f) required that the creditor provide only the information about rates, terms and eligibility that are applicable to the creditor's specific loan products. The Board did not believe that educational institutions needed the other information required to be disclosed in § 226.38(a), such as information about the availability of Federal student loans. In addition, the Board believed that educational institutions could perform their own calculations of the total cost of the creditors' loans and did not need the cost estimate disclosure required under § 226.38(a)(4). Comment 39(f)–1 provided creditors with the flexibility to comply with this requirement by providing educational institutions with copies of their application disclosure forms if they chose, or to provide only the required information.

The Board requested comment on the appropriate date by which creditors must provide the required information and on what information should be required. Industry and educational institution commenters suggested that April 1 of each year would be a more appropriate date. Commenters stated that creditors often do not settle on credit terms for the upcoming school year and schools do not compile preferred lender lists until closer to April 1. In addition, commenters noted that under the Department of Education's negotiated rulemaking, the definition of preferred lender arrangement was likely to be very broad and that creditors may not know by April 1, or at all, that they are on a school's preferred lender list and thus party to a preferred lender arrangement. These commenters requested that they be required to provide the information by April 1 or within 30 days of learning that they were party to a preferred lender arrangement. Educational institution commenters also requested that the Board require disclosure of the total cost examples contained in the application forms, stating they may not always have the information or resources necessary to reproduce the calculations.

Under § 226.48(e), the final rule requires creditors to provide the required information by April 1 of each calendar year or within 30 days of entering into, or learning that the creditor is a party to, a preferred lender arrangement. The information must cover private education loans that the creditor plans to offer students for the period from July 1 of the current calendar year to June 30 of the next calendar year (that is, the next award year). In addition, the creditor is required to provide the information required in §§ 226.47(a)(1)–(5), which includes the total cost examples.

Comment 48(e)–1 clarifies that a creditor is not required to comply if the creditor is not aware that it is a party to a preferred lender arrangement. For example, if a creditor is placed on a covered educational institution's preferred lender list without the creditor's knowledge, the creditor is not required to comply with § 226.48(f).

Appendix H—Closed-End Model Forms and Clauses

Appendix H to part 226 contains model forms, model clauses and sample forms applicable to closed-end loans. Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. The Board proposed to add several model and sample forms to Appendix H to part 226. The Board also proposed to add commentary to the model and sample forms in Appendix H to part 226, as discussed below.

Current model form H–2 contains boxes at the top of the form with disclosures in the following order: the annual percentage rate, the finance charge, the amount financed, and the total of payments. Proposed model forms H–19, and H–20 contain a similar box-style arrangement, but reordered the disclosures as follows: The amount financed, the interest rate, the finance charge and the total of payments.[15] The proposed order reflected a mathematical progression of the disclosures that consumer testing indicates may enhance understanding of these terms: the consumer borrows the amount financed, is charged interest which, along with fees, yields a finance charge and a total of payments. While the Board believed that proposed order may enhance consumer understanding in the context of private education loans, the Board also recognized that consumers may be accustomed to the current order from other loan contexts. The Board requested comment on whether it should maintain a uniform order for the disclosures, or whether it should adopt the proposed order for private education loans.

A few industry and consumer group commenters suggested that the Board maintain the boxes in the order provided in model form H–1. However, the final model forms H–19 and H–20 contain further changes to the boxes displayed at the top of the forms. In the final model forms, the amount financed is disclosed as part of the itemization of the amount financed and the total loan amount is in the top left box where the amount financed was in the proposed forms. Consumer testing indicated that disclosing the total loan amount, interest rate, finance charge and total of payments in this manner enhanced consumer understanding. Consumers were able to follow the mathematical progression of the terms and understand the finance charge and total of payments based on the total loan amount, interest rate and itemization of the amount financed. For these reasons the Board is maintaining the order of the boxes as proposed.[16]

Permissible changes to the model and sample forms. The commentary to Appendices G and H to part 226 currently states that creditors may make certain changes in the format and content of the model forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability. *See* comment app. G and H–1. However, the Board proposed to adopt format requirements with respect to the model forms for disclosures applicable to private education loans, such as requiring certain disclosures be grouped together under specific headings. Proposed comment app. H–25.i provided a list of acceptable changes to the model forms. Proposed comment app. H–25.ii provided guidance on the design of the model forms that would not be required but would be encouraged.

The Board also proposed sample forms H–21, H–22, and H–23 to illustrate various ways of adapting the model forms to the individual transactions described in the commentary to appendix H. The deletions and rearrangements shown relate only to the specific transactions described in proposed comments app. H–26, H–27, and H–28. As a result, the samples do not provide the general protection from civil liability provided by the model forms.

The Board conducted consumer testing on the proposed forms and on later revisions of the proposed forms. The Board also received comments on the proposed forms requesting clarification as to whether certain changes could be made. For example, commenters requested the ability to move the notice of the right to cancel to accommodate a form that could be used with windowed envelopes.

The Board is adopting final model forms H–18, H–19, and H–20, and final sample forms H–21, H–22, and H–23, that have been revised to reflect the consumer testing conducted for the Board and public comment. The Board is also adopting comment H–25 to provide a list of acceptable changes to the model forms and guidance on the design of the forms. For example, in response to public comment, the Board tested a version of the sample final form with the notice of the right to cancel in the top right instead of the top left and consumers did not find the notice less conspicuous. The final rule allows creditors to place the notice of the right to cancel in the top right of the form to accommodate windowed envelopes.

V. Effective Date

The HEOA's amendments to TILA have various effective dates. The TILA amendments for which the Board is not required to issue regulations became effective on the date of the HEOA's enactment, August 14, 2008. HEOA Section 1003.

The Board is required to issue regulations for paragraphs (1), (2), (3), (4), (6), (7), and (8) of section 128(e) and section 140(c) of TILA. The Board's regulations are to have an effective date not later than six months after their issuance. HEOA Section 1002. However, the HEOA's amendments to TILA for which the Board must issue regulations take effect on the earlier of the date on which the Board's regulations become effective or 18 months after the date of the HEOA's enactment. HEOA Section 1003. Consequently, the latest date at which the provisions of the HEOA described above could become effective is February 14, 2010.

The Board requested comment on whether six months would be an appropriate implementation period for the proposed rules or whether the Board should specify a shorter implementation period. Commenters stated that compliance with the proposed rule would require significant updates to disclosure systems, processes, and training, and requested that the Board provide no less than a six-month implementation period. The final rule provides creditors until February 14, 2010 to comply.

Compliance with the final rules is mandatory for private education loans for which the creditor receives an application on or after February 14, 2010. Transition rules are provided for private education loans for which applications were received before the mandatory compliance date in comment 1(d)(6)–2.

[15] The disclosure of the interest rate and annual percentage rate is discussed in the section-by-section analysis in § 226.17.

[16] In addition, the Board notes that current comment app. H–1 specifically permits creditors to rearrange the order of the finance charge and amount financed boxes in model forms H–1 and H–2.

In addition, TILA section 128(e)(5) requires the Board to develop model forms for the disclosures required under TILA section 128(e) within two years of the HEOA's date of enactment. The Board is adopting model forms along with this final rule. The Board is also adopting a rule to implement TILA section 128(e)(11) which requires lenders to provide certain information to covered educational institutions with which they have preferred lender arrangements.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). In addition, the Board, under OMB delegated authority, will extend for three years the current recordkeeping and disclosure requirements in connection with Regulation Z. The collection of information that is required by this final rule is found in 12 CFR part 226. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.

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

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notice of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months (§ 226.25), but Regulation Z does not specify the types of records that must be retained.

Under the PRA, the Board accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Board that engage in lending covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Board-regulated institutions as: state member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other Federal agencies account for the paperwork burden imposed on the entities for which they have administrative enforcement authority. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Board provides model forms, which are appended to the regulation.

As discussed above, on March 24, 2009, the Board published in the **Federal Register** a notice of proposed rulemaking to implement the HEOA (74 FR 12,464). The comment period for this notice expired May 26, 2009. No comments that specifically addressed current or proposed paperwork burden estimates were received. The final rule will impose a one-time increase in the total annual burden under Regulation Z by 45,440 hours from 734,127 to 779,567 hours. In addition, the Board estimates that, on a continuing basis, the requirements will increase the annual burden by 231,744 hours[17] from 734,127 to 965,871 hours. The total annual burden will increase by 277,184 hours, from 734,127 to 1,011,311 hours.[18] This burden increase will affect all Board-regulated institutions that are deemed to be respondents for the purposes of the PRA.

The Board has a continuing interest in the public's opinions of its collections of information. At any time, comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

[17] The increase of 270 hours corrects a transposition of 231,474 hours published in the proposed rules.

[18] The burden estimate for this rulemaking includes the burden addressing changes to implement provisions of the Mortgage Disclosure Improvement Act of 2008, as announced in a separate final rulemaking. *See* 74 FR 23,289 (May 19, 2009).

VII. Regulatory Flexibility Analysis

In accordance with Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), the Board is publishing a final regulatory flexibility analysis for the proposed amendments to Regulation Z. The RFA requires an agency either to provide a final regulatory flexibility analysis with a final rule or certify that the final rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[19] The size standard to be considered a small business is: $175 million or less in assets for banks and other depository institutions; $25.5 million or less in annual revenues for flight training schools; and $7.0 million or less in annual revenues for all other non-bank entities that are likely to be subject to the final regulations.

The Board believes that this final rule will not have a significant economic impact on a substantial number of small entities. The final amendments to Regulation Z are narrowly designed to implement the revisions to TILA made by the HEOA. Creditors must comply with the HEOA's requirements by February 14, 2010, whether or not the Board amends Regulation Z to conform the regulation to the statute. The Board's final rule is intended to facilitate compliance by eliminating duplication between Regulation Z's existing requirements and the statutory requirements imposed by the HEOA and to provide guidance on compliance with the HEOA's requirements.

A. Statement of the Need for, and Objectives of, the Final Rule

Section 1002 of the HEOA requires the Board to prescribe regulations prohibiting creditors from co-branding and requiring creditors to make certain disclosures and perform related requirements when making private education loans. More specifically, the regulations must address, but are not limited to, the following aspects of sections 128 and 140 of the TILA: (i) Prohibiting a creditor from marketing

[19] *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

private education loans in any way that implies that the covered educational institution endorses the private education loans it offers; (ii) requiring a creditor to make certain disclosures to the consumer in an application (or solicitation without requiring an application), with the approval, and with the consummation of the private education loan; (iii) requiring the creditor to obtain from the consumer a self-certification form prior to consummation; (iv) allowing at least 30 days following receipt of the approval disclosures for the consumer to accept and consummate the loan, and prohibiting certain changes in rates and terms until either consummation or expiration of such period of time; and (v) requiring a three-day right to cancel following consummation and prohibiting disbursement of funds until the three-day period expires.

Moreover, section 1021(a)(5) of the HEOA requires the Board, in consultation with the Secretary of Education, to develop and issue model disclosure forms that may be used to comply with the amended section 128 of the TILA.

In addition, the regulations interpret certain definitions included in title X of the HEOA to clarify the meaning of terms used in section 1011(a) of the HEOA, including the definitions of private education loan, and covered educational institution. The HEOA does not require the Board to issue regulations to implement these definitions, but the definitions are intended to clarify the required regulations pursuant to the Board's authority under section 105(a) of the TILA.

The Board is issuing the final regulations and model forms both to fulfill its statutory duty to implement the provisions of sections 1002 and 1021(a)(5) of the HEOA and, in the case of the definition interpretations, to better clarify the requirements under the aforementioned sections. Parts I and IV of the **SUPPLEMENTARY INFORMATION** describe in detail the reasons, objectives, and legal basis for each component of the final rule.

B. Summary of Issues Raised by Comments in Response to the Initial Regulatory Flexibility Analysis

In connection with the proposed rule to implement the HEOA, the Board sought information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the rule to small institutions. The Board received several comments from small banks, credit unions, and educational institutions and trade associations that represent them. The commenters asserted that compliance with a final rule to implement the HEOA would increase costs and delay consummation of private education loans. However, these comments did not contain specific information about costs that will be incurred or changes in operating procedures that will be required to comply with the final rule. In general, the comments discussed the impact of statutory requirements rather than any impact that the Board's proposed rule itself would generate.

C. Description and Estimate of Small Entities to Which the Regulation Applies

The final regulations apply to any ''creditor'' as defined in Regulation Z (12 CFR 226.2(a)(17)) that extends a private education loan.

The total number of small entities likely to be affected by the final rule is unknown because the Board does not have data on the number of small creditors that make private education loans. The rule has broad applicability, applying to any creditor that makes loans expressly for postsecondary educational expenses, but excluding open-end credit, real estate-secured loans, and loans made, insured, or guaranteed by the Federal government under title IV of the Higher Education Act of 1965. It could apply not only to depository institutions and finance companies, but also schools that meet the creditor definition and extend private education loans to their students. The Board requested but did not receive specific comment regarding the number and type of small entities that would be affected by the proposed rule.

Based on the best information available, the Board makes the following estimate of small entities that would be affected by this final rule: Based on an average of data reported in Call Reports [20] at quarter end between April 1, 2008 and March 31, 2009, approximately 4,362 banks, 393 thrifts, and 7,038 credit unions, totaling 11,793 institutions, would be considered small entities that are subject to the final rules. The Board cannot identify the percentage of these small institutions that extend private education loans and thus are subject to the rulemaking. However, because the final rules cover all private education loans regardless of their size or whether they are for multiple purposes, the Board believes a majority of the 11,793 institutions would be covered by the final rules.

The Board is not aware of data that provides information regarding finance companies' size in terms of annual revenues, and therefore cannot identify with certainty the number of small finance companies that extend private education loans that would be subject to the final rule. However, the size standard for these companies is $7.0 million or less in annual revenues (rather than assets), and the Board believes the size standard for depository institutions—$175 million or less in asset size—is likely to provide a comparable estimate. A 2005 compilation of surveys conducted by the Board indicates that 211 finance companies have an asset size of $100 million or less, and an additional 36 finance companies have an asset size between $100 million and $1 billion. Thus, the Board estimates that there are no more than a total of 247 small finance companies. The Board is unable, however, to locate data demonstrating the number of these small finance companies that extend private education loans.

The final rule would also apply to covered educational institutions that extend private education loans to their students, including flight training schools. Accordingly to information on the Federal Aviation Administration Web site, there are approximately 588 flight training schools nationwide. The Board is unaware of data that shows how many of those flight training schools would be deemed small institutions and, of those small flight schools, how many extend private education loans.

The final rule would also apply to other types of postsecondary schools, including both accredited and unaccredited postsecondary schools. In order to calculate an estimate of small accredited postsecondary schools, the Board relied on data collected by the Department of Education through its Integrated Postsecondary Education Data System (IPEDS). The Board used IPEDS data showing the revenue of all schools that participate in the Department's financial aid programs for postsecondary students, all of which are accredited. According to this IPEDS data, the estimated number of small accredited postsecondary schools is 3,159.[21]

The Board is not aware of sources of data on either the number of non-

[20] Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041), Thrift Financial Report (1313), and NCUA Call Reports (NCUA 5300).

[21] Of these small accredited postsecondary schools, 396 are public institutions, 678 are private not-for-profit institutions, and 2,085 are private for-profit institutions.

accredited postsecondary schools nationwide or their revenues. However, based on estimates provided by several trade organizations representing for-profit postsecondary schools, the Board believes that the number of non-accredited for-profit schools is approximately three times the number of accredited for-profit schools. Based on the assumption that all non-accredited schools are for-profit institutions, and using the IPEDS data showing that there were approximately 2,600 accredited for-profit postsecondary schools in 2005, the Board estimates there are 7,800 non-accredited postsecondary schools nationwide.

In order to approximate how many of those 7,800 non-accredited postsecondary schools are small entities, the Board believes that available data on for-profit schools with programs less than two years is likely to provide the closest comparable data to that of non-accredited postsecondary schools. According to this data, approximately 95 percent of for-profit schools with programs less than two years—and therefore approximately 95 percent of non-accredited postsecondary schools—have $7 million or less in revenue.[22] Thus, the Board estimates that 7,410 non-accredited postsecondary schools qualify as small entities.[23]

With respect to both accredited and unaccredited postsecondary schools, the Board is not aware of a source of data regarding the number of these small institutions that extend private education loans. Anecdotal information and informal survey results from representatives of several state associations of for-profit schools produced conflicting results regarding how many small schools extend private education loans.

D. Reporting, Recordkeeping and Other Compliance Requirements

The compliance requirements of the final regulations are described in detail in parts I and IV of the **SUPPLEMENTARY INFORMATION** above.

The final regulations generally prohibit a creditor from marketing private education loans in a way that implies that the covered educational institution endorses the private education loans it offers. A creditor will need to analyze the regulations, determine whether it is engaging in marketing private education loans, and establish procedures to ensure the marketing does not imply such endorsement.

The final regulations also require creditors to make certain disclosures to the consumer on or with an application (or solicitation without requiring an application), with the approval, and with the consummation of the private education loan. The creditor is also required to obtain a self-certification form prior to consummation. The creditor must allow at least 30 days following the consumer's receipt of the approval disclosure documents for the consumer to accept the loan and must not change certain rates and terms until either consummation or expiration of such period of time. A creditor also must provide a three-day right to cancel following consummation and is generally prohibited from disbursing funds until the three-day period expires. A creditor will need to analyze the regulations, determine when and to whom such notices must be given, and design, generate, and provide those notices in the appropriate circumstances. The creditor must also ensure the receipt of the self-certification form prior to consummation and that the applicable rates and terms do not change in the period of time following the consumer's receipt of the approval disclosure documents.

The Board requested but did not receive specific information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small institutions. The precise costs to small entities of updating their systems and disclosures are difficult to predict. These costs will depend on a number of unknown factors, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures.

E. Steps Taken To Minimize the Economic Impact on Small Entities

The steps the Board has taken to minimize the economic impact and compliance burden on small entities, including the factual, policy, and legal reasons for selecting any alternatives adopted and why certain alternatives were not accepted, are described in the in parts I and IV of the **SUPPLEMENTARY INFORMATION** above. The Board believes that these changes minimize the significant economic impact on small entities while still meeting the requirements of the HEOA.

[22] This approximation is supported by similar estimates provided by representatives of several state associations of for-profit schools, who estimated that 90 to 95 percent of their institutions would qualify as small businesses.

[23] While the numbers of accredited and unaccredited postsecondary schools include flight training schools, the Board could not locate sources of data that would prevent this overlap.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

Subpart A—General

■ 2. Section 226.1 is amended by revising paragraph (b), redesignating paragraph (d)(6) as paragraph (d)(7), and adding new paragraph (d)(6) to read as follows:

§ 226.1 Authority, purpose, coverage, organization, enforcement and liability.

* * * * *

(b) *Purpose.* The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not govern charges for consumer credit. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home-equity plans that are subject to the requirements of § 226.5b and mortgages that are subject to the requirements of § 226.32. The regulation prohibits certain acts or practices in connection with credit secured by a consumer's principal dwelling. The regulation also regulates certain practices of creditors who extend private education loans as defined in § 226.46(b)(5).

* * * * *

(d) * * *

(6) Subpart F relates to private education loans. It contains rules on disclosures, limitations on changes in terms after approval, the right to cancel the loan, and limitations on co-branding in the marketing of private education loans.

* * * * *

■ 2. Section 226.2 is amended by revising paragraph (a)(6) to read as follows:

§ 226.2 Definitions and rules of construction.

(a) * * *

(6) *Business Day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 226.15 and 226.23, and for purposes of § 226.19(a)(1)(ii), § 226.19(a)(2), § 226.31, and § 226.46(d)(4), the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

* * * * *

■ 3. Section 226.3 is amended by revising paragraph (b) to read as follows:

§ 226.3 Exempt transactions.

* * * * *

(b) *Credit over $25,000.* An extension of credit in which the amount financed exceeds $25,000 or in which there is an express written commitment to extend credit in excess of $25,000, unless the extension of credit is:

(1) Secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer; or

(2) A private education loan as defined in § 226.46(b)(5).

* * * * *

Subpart C—Closed-End Credit

■ 4. Section 226.17 is amended by revising paragraphs (a), (b), (e), (f), (g) and (i) to read as follows:

§ 226.17 General disclosure requirements.

(a) *Form of disclosures.* (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by §§ 226.17(g), 226.19(b), and 226.24 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related [37] to the disclosures required under § 226.18 or § 226.47.[38] The itemization of the amount financed under § 226.18(c)(1) must be separate from the other disclosures under § 226.18, except for private education loan disclosures made in compliance with § 226.47.

(2) Except for private education loan disclosures made in compliance with § 226.47, the terms ''finance charge'' and ''annual percentage rate,'' when required to be disclosed under § 226.18 (d) and (e) together with a corresponding amount or percentage rate, shall be more conspicuous than any other disclosure, except the creditor's identity under § 226.18(a). For private education loan disclosures made in compliance with § 226.47, the term ''annual percentage rate,'' and the corresponding percentage rate must be less conspicuous than the term ''finance charge'' and corresponding amount under § 226.18(d), the interest rate under §§ 226.47(b)(1)(i) and (c)(1), and the notice of the right to cancel under § 226.47(c)(4).

(b) *Time of disclosures.* The creditor shall make disclosures before consummation of the transaction. In certain residential mortgage transactions, special timing requirements are set forth in § 226.19(a). In certain variable-rate transactions, special timing requirements for variable-rate disclosures are set forth in § 226.19(b) and § 226.20(c). For private education loan disclosures made in compliance with § 226.47, special timing requirements are set forth in § 226.46(d). In certain transactions involving mail or telephone orders or a series of sales, the timing of disclosures may be delayed in accordance with paragraphs (g) and (h) of this section.

* * * * *

(e) *Effect of subsequent events.* If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of this regulation, although new disclosures may be required under paragraph (f) of this section, § 226.19, § 226.20, or § 226.48(c)(4).

(f) *Early disclosures.* Except for private education loan disclosures made in compliance with § 226.47, if disclosures required by this subpart are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor shall disclose before consummation (subject to the provisions of § 226.19(a)(2) and § 226.19(a)(5)(iii)): [39]

(1) * * *

(2) * * *

(g) *Mail or telephone orders—delay in disclosures.* Except for private education loan disclosures made in compliance with § 226.47, if a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form or in electronic form to the consumer or to the public before the actual purchase order or request:

(1) * * *

(2) * * *

* * * * *

(i) *Interim student credit extensions.* For transactions involving an interim credit extension under a student credit program for which an application is received prior to the mandatory compliance date of §§ 226.46, 47, and 48, the creditor need not make the following disclosures: the finance charge under § 226.18(d), the payment schedule under § 226.18(g), the total of payments under § 226.18(h), or the total sale price under § 226.18(j) at the time the credit is actually extended. The creditor must make complete disclosures at the time the creditor and consumer agree upon the repayment schedule for the total obligation. At that time, a new set of disclosures must be made of all applicable items under § 226.18.

* * * * *

§§ 226.37–226.45 [Reserved.]

■ 5. Sections 226.37 through 226.45 are reserved.

■ 6. A new Subpart F consisting of §§ 226.46, 226.47, and 226.48 are added to read as follows:

Subpart F—Special Rules for Private Education Loans

Sec.

[37] The disclosures may include an acknowledgment of receipt, the date of the transaction, and the consumer's name, address, and account number.

[38] The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under § 226.18(a), the variable rate example under § 226.18(f)(1)(iv), insurance or debt cancellation under § 226.18(n), and certain security interest charges under § 226.18(o).

[39] [Reserved.]

Subpart F—Special Rules for Private Education Loans

§ 226.46 Special disclosure requirements for private education loans.

(a) *Coverage.* The requirements of this subpart apply to private education loans as defined in § 226.46(b)(5). A creditor may, at its option, comply with the requirements of this subpart for an extension of credit subject to §§ 226.17 and 226.18 that is extended to a consumer for expenses incurred after graduation from a law, medical, dental, veterinary, or other graduate school and related to relocation, study for a bar or other examination, participation in an internship or residency program, or similar purposes.

(1) *Relation to other subparts in this part.* Except as otherwise specifically provided, the requirements and limitations of this subpart are in addition to and not in lieu of those contained in other subparts of this Part.

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) *Covered educational institution* means:

(i) An educational institution that meets the definition of an institution of higher education, as defined in paragraph (b)(2) of this section, without regard to the institution's accreditation status; and

(ii) Includes an agent, officer, or employee of the institution of higher education. An agent means an institution-affiliated organization as defined by section 151 of the Higher Education Act of 1965 (20 U.S.C. 1019) or an officer or employee of an institution-affiliated organization.

(2) *Institution of higher education* has the same meaning as in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001–1002) and the implementing regulations published by the U.S. Department of Education.

(3) *Postsecondary educational expenses* means any of the expenses that are listed as part of the cost of attendance, as defined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll), of a student at a covered educational institution. These expenses include tuition and fees, books, supplies, miscellaneous personal expenses, room and board, and an allowance for any loan fee, origination fee, or insurance premium charged to a student or parent for a loan incurred to cover the cost of the student's attendance.

(4) *Preferred lender arrangement* has the same meaning as in section 151 of the Higher Education Act of 1965 (20 U.S.C. 1019).

(5) *Private education loan* means an extension of credit that:

(i) Is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*);

(ii) Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends;

(iii) Does not include open-end credit any loan that is secured by real property or a dwelling; and

(iv) Does not include an extension of credit in which the covered educational institution is the creditor if:

(A) The term of the extension of credit is 90 days or less; or

(B) an interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

(c) *Form of disclosures*—(1) *Clear and conspicuous.* The disclosures required by this subpart shall be made clearly and conspicuously.

(2) *Transaction disclosures.* (i) The disclosures required under §§ 226.47(b) and (c) shall be made in writing, in a form that the consumer may keep. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures required under §§ 226.47(b) and (c), which include the disclosures required under § 226.18.

(ii) The disclosures may include an acknowledgement of receipt, the date of the transaction, and the consumer's name, address, and account number. The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under § 226.18(a), insurance or debt cancellation under § 226.18(n), and certain security interest charges under § 226.18(o).

(iii) The term ''finance charge'' and corresponding amount, when required to be disclosed under § 226.18(d), and the interest rate required to be disclosed under §§ 226.47(b)(1)(i) and (c)(1), shall be more conspicuous than any other disclosure, except the creditor's identity under § 228.18(a).

(3) *Electronic disclosures.* The disclosures required under §§ 226.47(b) and (c) may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by § 226.47(a) may be provided to the consumer in electronic form on or with an application or solicitation that is accessed by the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act. The form required to be received under § 226.48(e) may be accepted by the creditor in electronic form as provided for in that section.

(d) *Timing of disclosures*—(1) *Application or solicitation disclosures.*

(i) The disclosures required by § 226.47(a) shall be provided on or with any application or solicitation. For purposes of this subpart, the term solicitation means an offer of credit that does not require the consumer to complete an application. A ''firm offer of credit'' as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) is a solicitation for purposes of this section.

(ii) The creditor may, at its option, disclose orally the information in § 226.47(a) in a telephone application or solicitation. Alternatively, if the creditor does not disclose orally the information in § 226.47(a), the creditor must provide the disclosures or place them in the mail no later than three business days after the consumer has applied for the credit, except that, if the creditor either denies the consumer's application or provides or places in the mail the disclosures in § 226.47(b) no later than three business days after the consumer requests the credit, the creditor need not also provide the § 226.47(a) disclosures.

(iii) Notwithstanding paragraph (d)(1)(i), for a loan that the consumer may use for multiple purposes including, but not limited to, postsecondary educational expenses, the creditor need not provide the disclosures required by § 226.47(a).

(2) *Approval disclosures.* The creditor shall provide the disclosures required by § 226.47(b) before consummation on or with any notice of approval provided to the consumer. If the creditor mails notice of approval, the disclosures must be mailed with the notice. If the creditor communicates notice of approval by telephone, the creditor must mail the disclosures within three business days of providing the notice of approval. If the creditor communicates notice of approval electronically, the creditor may provide the disclosures in electronic form in accordance with § 226.46(d)(3); otherwise the creditor must mail the disclosures within three business days of communicating the notice of approval. If the creditor communicates approval in person, the creditor must provide the disclosures to the consumer at that time.

(3) *Final disclosures.* The disclosures required by § 226.47(c) shall be

provided after the consumer accepts the loan in accordance with § 226.48(c)(1).

(4) *Receipt of mailed disclosures.* If the disclosures under paragraphs (d)(1), (d)(2) or (d)(3), are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

(e) *Basis of disclosures and use of estimates*—(1) *Legal obligation.* Disclosures shall reflect the terms of the legal obligation between the parties.

(2) *Estimates.* If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided, and shall state clearly that the disclosure is an estimate.

(f) *Multiple creditors; multiple consumers.* If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor will comply with the requirements that this part imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation.

(g) *Effect of subsequent events*—(1) *Approval disclosures.* If a disclosure under § 226.47(b) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 CFR part 226), although new disclosures may be required under § 226.48(c).

(2) *Final disclosures.* If a disclosure under § 226.47(c) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 CFR part 226).

§ 226.47 Content of disclosures.

(a) *Application or solicitation disclosures.* A creditor shall provide the disclosures required under paragraph (a) of this section on or with a solicitation or an application for a private education loan.

(1) *Interest Rates.*

(i) The interest rate or range of interest rates applicable to the loan and actually offered by the creditor at the time of application or solicitation. If the rate will depend, in part, on a later determination of the consumer's creditworthiness or other factors, a statement that the rate for which the consumer may qualify will depend on the consumer's creditworthiness and other factors, if applicable.

(ii) Whether the interest rates applicable to the loan are fixed or variable.

(iii) If the interest rate may increase after consummation of the transaction, any limitations on the interest rate adjustments, or lack thereof; a statement that the consumer's actual rate could be higher or lower than the rates disclosed under paragraph (a)(1)(i) of this section, if applicable; and, if the limitation is determined by applicable law, that fact.

(iv) Whether the applicable interest rates typically will be higher if the loan is not co-signed or guaranteed.

(2) *Fees and default or late payment costs.*

(i) An itemization of the fees or range of fees required to obtain the private education loan.

(ii) Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

(3) *Repayment terms.*

(i) The term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.

(ii) A description of any payment deferral options, or, if the consumer does not have the option to defer payments, that fact.

(iii) For each payment deferral option applicable while the student is enrolled at a covered educational institution:

(A) Whether interest will accrue during the deferral period; and

(B) If interest accrues, whether payment of interest may be deferred and added to the principal balance.

(iv) A statement that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan.

(4) *Cost estimates.* An example of the total cost of the loan calculated as the total of payments over the term of the loan:

(i) Using the highest rate of interest disclosed under paragraph (a)(1) of this section and including all finance charges applicable to loans at that rate;

(ii) Using an amount financed of $10,000, or $5000 if the creditor only offers loans of this type for less than $10,000; and

(iii) Calculated for each payment option.

(5) *Eligibility.* Any age or school enrollment eligibility requirements relating to the consumer or co-signer.

(6) *Alternatives to private education loans.*

(i) A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*).

(ii) The interest rates available under each program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) and whether the rates are fixed or variable.

(iii) A statement that the consumer may obtain additional information concerning Federal student financial assistance from the institution of higher education that the student attends, or at the Web site of the U.S. Department of Education, including an appropriate Web site address.

(iv) A statement that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form.

(7) *Rights of the consumer.* A statement that if the loan is approved, the terms of the loan will be available and will not change for 30 days except as a result of adjustments to the interest rate and other changes permitted by law.

(8) *Self-certification information.* A statement that, before the loan may be consummated, the consumer must complete the self-certification form and that the form may be obtained from the institution of higher education that the student attends.

(b) *Approval disclosures.* On or with any notice of approval provided to the consumer, the creditor shall disclose the information required under § 226.18 and the following information:

(1) *Interest rate.*

(i) The interest rate applicable to the loan.

(ii) Whether the interest rate is fixed or variable.

(iii) If the interest rate may increase after consummation of the transaction, any limitations on the rate adjustments, or lack thereof.

(2) *Fees and default or late payment costs.*

(i) An itemization of the fees or range of fees required to obtain the private education loan.

(ii) Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

(3) *Repayment terms.*

(i) The principal amount of the loan for which the consumer has been approved.

(ii) The term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.

(iii) A description of the payment deferral option chosen by the consumer, if applicable, and any other payment deferral options that the consumer may elect at a later time.

(iv) Any payments required while the student is enrolled at a covered educational institution, based on the deferral option chosen by the consumer.

(v) The amount of any unpaid interest that will accrue while the student is enrolled at a covered educational institution, based on the deferral option chosen by the consumer.

(vi) A statement that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan.

(vii) An estimate of the total amount of payments calculated based on:

(A) The interest rate applicable to the loan. Compliance with § 226.18(h) constitutes compliance with this requirement.

(B) The maximum possible rate of interest for the loan or, if a maximum rate cannot be determined, a rate of 25%.

(C) If a maximum rate cannot be determined, the estimate of the total amount for repayment must include a statement that there is no maximum rate and that the total amount for repayment disclosed under paragraph (b)(3)(vii)(B) of this section is an estimate and will be higher if the applicable interest rate increases.

(viii) The maximum monthly payment based on the maximum rate of interest for the loan or, if a maximum rate cannot be determined, a rate of 25%. If a maximum cannot be determined, a statement that there is no maximum rate and that the monthly payment amount disclosed is an estimate and will be higher if the applicable interest rate increases.

(4) *Alternatives to private education loans.*

(i) A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*).

(ii) The interest rates available under each program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*), and whether the rates are fixed or variable.

(iii) A statement that the consumer may obtain additional information concerning Federal student financial assistance from the institution of higher education that the student attends, or at the Web site of the U.S. Department of Education, including an appropriate Web site address.

(5) *Rights of the consumer.*

(i) A statement that the consumer may accept the terms of the loan until the acceptance period under § 226.48(c)(1) has expired. The statement must include the specific date on which the acceptance period expires, based on the date upon which the consumer receives the disclosures required under this subsection for the loan. The disclosure must also specify the method or methods by which the consumer may communicate acceptance.

(ii) A statement that, except for changes to the interest rate and other changes permitted by law, the rates and terms of the loan may not be changed by the creditor during the period described in paragraph (b)(5)(i) of this section.

(c) *Final disclosures.* After the consumer has accepted the loan in accordance with § 226.48(c)(1), the creditor shall disclose to the consumer the information required by § 226.18 and the following information:

(1) *Interest rate.* Information required to be disclosed under §§ 226.47(b)(1).

(2) *Fees and default or late payment costs.* Information required to be disclosed under § 226.47(b)(2).

(3) *Repayment terms.* Information required to be disclosed under § 226.47(b)(3).

(4) *Cancellation right.* A statement that:

(i) the consumer has the right to cancel the loan, without penalty, at any time before the cancellation period under § 226.48(d) expires, and

(ii) loan proceeds will not be disbursed until after the cancellation period under § 226.48(d) expires. The statement must include the specific date on which the cancellation period expires and state that the consumer may cancel by that date. The statement must also specify the method or methods by which the consumer may cancel. If the creditor permits cancellation by mail, the statement must specify that the consumer's mailed request will be deemed timely if placed in the mail not later than the cancellation date specified on the disclosure. The disclosures required by this paragraph (c)(4) must be made more conspicuous than any other disclosure required under this section, except for the finance charge, the interest rate, and the creditor's identity, which must be disclosed in accordance with the requirements of § 226.46(c)(2)(iii).

§ 226.48 Limitations on private education loans.

(a) *Co-branding prohibited.* (1) Except as provided in paragraph (b) of this section, a creditor, other than the covered educational institution itself, shall not use the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols identified with a covered educational institution, in the marketing of private education loans in a way that implies that the covered education institution endorses the creditor's loans.

(2) A creditor's marketing of private education loans does not imply that the covered education institution endorses the creditor's loans if the marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the covered educational institution that the covered educational institution does not endorse the creditor's loans and that the creditor is not affiliated with the covered educational institution.

(b) *Endorsed lender arrangements.* If a creditor and a covered educational institution have entered into an arrangement where the covered educational institution agrees to endorse the creditor's private education loans, and such arrangement is not prohibited by other applicable law or regulation, paragraph (a)(1) of this section does not apply if the private education loan marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the covered educational institution that the creditor's loans are not offered or made by the covered educational institution, but are made by the creditor.

(c) *Consumer's right to accept.* (1) The consumer has the right to accept the terms of a private education loan at any time within 30 calendar days following the date on which the consumer receives the disclosures required under § 226.47(b).

(2) Except for changes permitted under paragraphs (c)(3) and (c)(4), the rate and terms of the private education loan that are required to be disclosed under §§ 226.47(b) and (c) may not be changed by the creditor prior to the earlier of:

(i) The date of disbursement of the loan; or

(ii) The expiration of the 30 calendar day period described in paragraph (c)(1) of this section if the consumer has not accepted the loan within that time.

(3) *Exceptions not requiring re-disclosure.* (i) Notwithstanding paragraph (c)(2) of this section, nothing in this section prevents the creditor from:

(A) Withdrawing an offer before consummation of the transaction if the extension of credit would be prohibited by law or if the creditor has reason to believe that the consumer has committed fraud in connection with the loan application;

(B) Changing the interest rate based on adjustments to the index used for a loan;

(C) Changing the interest rate and terms if the change will unequivocally benefit the consumer; or

(D) Reducing the loan amount based upon a certification or other information received from the covered educational

institution, or from the consumer, indicating that the student's cost of attendance has decreased or the consumer's other financial aid has increased. A creditor may make corresponding changes to the rate and other terms only to the extent that the consumer would have received the terms if the consumer had applied for the reduced loan amount.

(ii) If the creditor changes the rate or terms of the loan under this paragraph (c)(3), the creditor need not provide the disclosures required under § 228.47(b) for the new loan terms, nor need the creditor provide an additional 30-day period to the consumer to accept the new terms of the loan under paragraph (c)(1) of this section.

(4) *Exceptions requiring re-disclosure.* (i) Notwithstanding paragraphs (c)(2) or (c)(3) of this section, nothing in this section prevents the creditor, at its option, from changing the rate or terms of the loan to accommodate a specific request by the consumer. For example, if the consumer requests a different repayment option, the creditor may, but need not, offer to provide the requested repayment option and make any other changes to the rate and terms.

(ii) If the creditor changes the rate or terms of the loan under this paragraph (c)(4), the creditor shall provide the disclosures required under § 228.47(b) and shall provide the consumer the 30-day period to accept the loan under paragraph (c)(1) of this section. The creditor shall not make further changes to the rates and terms of the loan, except as specified in paragraphs (c)(3) and (4) of this section. Except as permitted under § 226.48(c)(3), unless the consumer accepts the loan offered by the creditor in response to the consumer's request, the creditor may not withdraw or change the rates or terms of the loan for which the consumer was approved prior to the consumer's request for a change in loan terms.

(d) *Consumer's right to cancel.* The consumer may cancel a private education loan, without penalty, until midnight of the third business day following the date on which the consumer receives the disclosures required by § 226.47(c). No funds may be disbursed for a private education loan until the three-business day period has expired.

(e) *Self-certification form.* For a private education loan intended to be used for the postsecondary educational expenses of a student while the student is attending an institution of higher education, the creditor shall obtain from the consumer or the institution of higher education the form developed by the Secretary of Education under section 155 of the Higher Education Act of 1965, signed by the consumer, in written or electronic form, before consummating the private education loan.

(f) *Provision of information by preferred lenders.* A creditor that has a preferred lender arrangement with a covered educational institution shall provide to the covered educational institution the information required under §§ 226.47(a)(1) through (5), for each type of private education loan that the lender plans to offer to consumers for students attending the covered educational institution for the period beginning July 1 of the current year and ending June 30 of the following year. The creditor shall provide the information annually by the later of the 1st day of April, or within 30 days after entering into, or learning the creditor is a party to, a preferred lender arrangement.

■ 7. In Part 226, Appendix H is amended by adding new entries H–18 through H–23 to the table of contents at the beginning of the appendix, and adding new Forms H–18, H–19, H–20, H–21, H–22, and H–23.

Appendix H to Part 226—Closed-End Model Forms and Clauses

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H-18 Private Education Loan Application and Solicitation Model Form

[Creditor Name]
[Creditor Address]
[Creditor Phone Number]

Loan Interest Rate & Fees

Your **starting interest rate** will be between

% and %

After the starting rate is set, your rate will then vary with the market

Your Starting Interest Rate (upon approval)

The starting interest rate you pay will be determined after you apply. [Description of how starting rate is determined]. If approved, we will notify you of the rate you qualify for within the stated range.

Your Interest Rate during the life of the loan

Your rate is variable. This means that your rate could move lower or higher than the rates on this form. The variable rate is based upon the [Index] Rate (as published in the [source of index]). For more information on this rate, see the reference notes.

[Indication of **maximum rate** or **lack thereof**]

Loan Fees

[Itemization of fees]

Loan Cost Examples

The total amount you will pay for this loan will vary depending upon when you start to repay it. This example provides estimates based upon [number of repayment options] repayment options available to you while enrolled in school.

Repayment Option (while enrolled in school)	**Amount Provided** (amount provided directly to you or your school)	**Interest Rate** (highest possible starting rate)	**Loan Term** (how long you have to pay off the loan)	**Total Paid over [term of loan]** (includes associated fees)
1. **[REPAYMENT OPTION]** [Description]	$10,000	[Rate]	[Loan Term] [description of when repayment begins]	**[Total Cost]**
2. **[REPAYMENT OPTION]** [Description]	$10,000	[Rate]	[Loan Term] [description of when repayment begins]	**[Total Cost]**
3. **[REPAYMENT OPTION]** [Description]	$10,000	[Rate]	[Loan Term] [description of when repayment begins]	**[Total Cost]**

About this example

[Description of example assumptions]
[Description of other loan terms, if applicable]

Federal Loan Alternatives

Loan program	Current Interest Rates by Program Type	
PERKINS for Students	[Rate] fixed	
STAFFORD for Students	[Rate] fixed	Undergraduate subsidized
	[Rate] fixed	Undergraduate unsubsidized & Graduate
PLUS for Parents and Graduate / Professional Students	[Rate] fixed	Federal Family Education Loan
	[Rate] fixed	Federal Direct Loan

You may qualify for Federal education loans.

For additional information, **contact your school's financial aid office or the Department of Education at:**

www.federalstudentaid.ed.gov

Next Steps

1. **Find Out About Other Loan Options.**
   Some schools have school-specific student loan benefits and terms not detailed on this form. Contact your school's financial aid office or visit the Department of Education's web site at: www.federalstudentaid.ed.gov for more information about other loans.

2. **To Apply for this Loan, Complete the Application and the Self-Certification Form.**
   You may get the certification form from your school's financial aid office. If you are approved for this loan, the loan terms will be available for 30 days (terms will not change during this period, except as permitted by law and the variable interest rate may change based on the market).

REFERENCE NOTES

Variable Interest Rate
- [Variable interest rate information, if applicable]

Eligibility Criteria
- [Description of eligibility criteria]

Bankruptcy Limitations
- If you file for bankruptcy you may still be required to pay back this loan.

More information about loan eligibility and repayment deferral or forbearance options is available in your loan application and loan agreement.

H-19 Private Education Loan Approval Model Form

BORROWER:
[Borrower Name]
[Borrower Address]

CREDITOR:
[Creditor Name]
[Creditor Address]

Loan Rates & Estimated Total Costs

Total Loan Amount	Interest Rate	Finance Charge	Total of Payments
The total amount you are borrowing.	Your current interest rate.	The estimated dollar amount the credit will cost you.	The estimated amount you will have paid when you have made all payments.

ITEMIZATION OF AMOUNT FINANCED

Amount paid to you	[Amount]
Amount paid to others on your Behalf: • [Institution Name]	+ [Amount]
Amount Financed [Description]	= [Amount]
Initial finance charges (total) • [Charge Type], [Amount] • [Charge Type], [Amount]	+ [Amount]
Total Loan Amount	= **[Amount]**

ABOUT YOUR INTEREST RATE

- **Your rate is variable.** This means that your actual rate varies with the market and could be lower or higher than the rate on this form. The variable rate is based upon the [Index] Rate (as published in the [source of index]). For more information on this rate, see reference notes.
- Although your rate will vary, **it will never exceed [maximum interest rate]** (the maximum allowable [by law] for this loan).
- Your **Annual Percentage Rate (APR) is [Rate].** The APR is typically different than the Interest Rate since it considers fees and reflects the cost of your loan as a yearly rate. For more information about the APR, see reference notes.

FEES

- [Itemization of Fees, if applicable]

Estimated Repayment Schedule & Terms

[LOAN TERM]	[PAYMENT PERIOD, e.g. MONTHLY PAYMENTS]	
	at [Interest Rate]% the current interest rate of your loan	**at [Maximum Rate]%** the maximum interest rate possible for your loan
[Dates of Deferment Period, if applicable] deferment period	**No payment required** ([Amount of accrued interest] interest will accrue during this time)	**No payment required** (Interest will accrue during this time)
[Payment Due Dates] [number of monthly payments] monthly payments	[Payment Amount]	[Payment Amount]
[Payment Due Dates] [number of monthly payments] monthly payments	[Payment Amount]	[Payment Amount]

◀ The estimated **Total of Payments** at the Maximum Rate of Interest would be **[Total Payment Amount].**

Federal Loan Alternatives

Loan program	Current Interest Rates by Program Type	
PERKINS for Students	[Rate] fixed	
STAFFORD for Students	[Rate] fixed	Undergraduate subsidized
	[Rate] fixed	Undergraduate unsubsidized & Graduate
PLUS for Parents and Graduate / Professional Students	[Rate] fixed	Federal Family Education Loan
	[Rate] fixed	Federal Direct Loan

You may qualify for Federal education loans.

For additional information, **contact your school's financial aid office or the Department of Education at:**

www.federalstudentaid.ed.gov

Next Steps & Terms of Acceptance

This offer is good until:

[Date of Acceptance Deadline]

1. **Find Out About Other Loan Options.**
   Contact your school's financial aid office for more information.

2. **You Have Until [Date of Acceptance Deadline] to Accept this Offer**
   The terms of this offer will not change except as permitted by law and the variable interest rate may change based on the market.

To Accept the Terms of this loan,
[Description of method of acceptance]

REFERENCE NOTES

Variable Interest Rate:

- Your loan has a variable Interest Rate that is based on a publicly available index, the [Index Name], which is currently [Rate]. Your rate is calculated each month by adding a margin of [Margin Rate] to the [Index].
- The Interest Rate may be higher or lower than your Annual Percentage Rate (APR) because the APR considers certain fees you pay to obtain this loan, the Interest Rate, and whether you defer (postpone) payments while in school.
- [Description of effect of an increase]

Bankruptcy Limitations

- If you file for bankruptcy you may still be required to pay back this loan.

Repayment Options:

- [Description of deferment options, if applicable]

Prepayments:

- [Prepayment disclosure]

Security

- You are giving a security interest in [description, if applicable]

See your loan agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

H-20 Private Education Loan Final Model Form

BORROWER:
[Borrower Name]
[Borrower Address]

CREDITOR:
[Creditor Name]
[Creditor Address]

RIGHT TO CANCEL

You have a right to cancel this transaction, without penalty, by midnight on [deadline for cancellation]. No funds will be disbursed to you or to your school until after this time. You may cancel by calling us at [Creditor Phone Number].

Loan Rates & Estimated Total Costs

Total Loan Amount	Interest Rate	Finance Charge	Total of Payments
The total amount you are borrowing.	Your current interest rate.	The estimated dollar amount the credit will cost you.	The estimated amount you will have paid when you have made all payments.

ITEMIZATION OF AMOUNT FINANCED

Amount paid to you	[Amount]
Amount paid to others on your Behalf: • [Institution Name]	+ [Amount]
Amount Financed [Description]	= [Amount]
Initial finance charges (total) • [Charge Type], [Amount] • [Charge Type], [Amount]	+ [Amount]
Total Loan Amount	= [Amount]

ABOUT YOUR INTEREST RATE

- **Your rate is variable.** This means that your actual rate varies with the market and could be lower or higher than the rate on this form. The variable rate is based upon the [Index] Rate (as published in the [source of index]). For more information on this rate, see reference notes.
- There **is no limit on the amount the interest rate can increase.**
- Your **Annual Percentage Rate (APR) is [Rate].** The APR is typically different than the Interest Rate since it considers fees and reflects the cost of your loan as a yearly rate. For more information about the APR, see reference notes.

FEES

- [Itemization of Fees, if applicable]

Estimated Repayment Schedule & Terms

[LOAN TERM]	[PAYMENT PERIOD, e.g. MONTHLY PAYMENTS]	
	at [Interest Rate]% the current interest rate of your loan	**No Maximum Rate** example **at 25%**
[Dates of Deferment Period, if applicable] deferment period	**No payment required** ([Amount of accrued interest] interest will accrue during this time)	**No payment required** (Interest will accrue during this time)
[Payment Due Dates] [number of monthly payments] monthly payments	[Payment Amount]	[Payment Amount] (your payments will be higher if the rate increases above 25%)
[Payment Due Dates] [number of monthly payments] monthly payments	[Payment Amount]	[Payment Amount] (your payments will be higher if the rate increases above 25%)

◀ Though your loan does not have a maximum interest rate, **an example rate of 25%** has been used for comparative purposes.

The estimated **Total of Payments** if your rate rises to 25% would be **[Total Payment Amount].** Your Total of Payments will be higher if rate increases above 25%.

REFERENCE NOTES

Variable Interest Rate:

- Your loan has a variable Interest Rate that is based on a publicly available index, the [Index Name], which is currently [Rate]. Your rate is calculated each month by adding a margin of [Margin Rate] to the [Index].
- The Interest Rate may be higher or lower than your Annual Percentage Rate (APR) because the APR considers certain fees you pay to obtain this loan, the Interest Rate, and whether you defer (postpone) payments while in school.
- [Description of effect of an increase]

Bankruptcy Limitations

- If you file for bankruptcy you may still be required to pay back this loan.

Repayment Options:

- [Description of deferment options, if applicable]

Prepayments:

- [Prepayment disclosure]

Security

- You are giving a security interest in [description, if applicable]

See your loan agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

H-21 Private Education Loan Application and Solicitation Sample

First ABC Bank
12345 1st St.
Anytown, CA 93120
(800) 555 - 5555

Loan Interest Rate & Fees

Your **starting interest rate** will be between

7.375% and 17.375%

After the starting rate is set, your rate will then vary with the market

Your Starting Interest Rate (upon approval)

The starting interest rate you pay will be determined after you apply. It will be based upon your credit history and other factors (co-signer credit, school type, etc). If approved, we will notify you of the rate you qualify for within the stated range.

Your Interest Rate during the life of the loan

Your rate is variable. This means that your rate could move lower or higher than the rates on this form. The variable rate is based upon the LIBOR Rate (as published in the *Wall Street Journal*). For more information on this rate, see the reference notes.

Although the rate will vary after you are approved, it will **never exceed 25%** (the maximum allowable for this loan).

Loan Fees

Application Fee: $15. **Origination Fee:** The fees that we charge to make this loan range from 0% to 3% of total loan amount. **Loan Guarantee Fee:** 0% to 3% of total loan amount. **Repayment Fee:** The fees we charge when you begin repayment range from 0% to 3.5% of the total loan amount. **Late Charge:** 5% of the amount of the past due payment, or $25, whichever is greater. **Returned check charge:** up to $25.

Loan Cost Examples

The total amount you will pay for this loan will vary depending upon when you start to repay it. This example provides estimates based upon three (3) different repayment options available to you while enrolled in school.

Repayment Option (while enrolled in school)	Amount Provided (amount provided directly to you or your school)	Interest Rate (highest possible starting rate)	Loan Term (how long you have to pay off the loan)	Total Paid over 20 years (includes associated fees)
1. DEFER PAYMENTS Make no payments while enrolled in school. Interest will be charged and added to your loan	$10,000	17.375%	20 years starting after the deferment period	$81,084
2. PAY ONLY THE INTEREST Make interest payments but defer payments on the principal amount while enrolled in school.	$10,000	17.375%	20 years starting after the deferment period	$50,707
3. MAKE FULL PAYMENTS Pay both the principal and interest amounts while enrolled in school.	$10,000	17.375%	20 years starting after your first payment	$38,180

About this example

The repayment example assumes that you remain in school for 4 years and have a 6 month grace period before beginning repayment. It is based on the **highest starting rate currently charged** and associated fees. For loan amounts **up to $20,000**, repayment will last 20 years, starting once the initial principal payment is made. For loan amounts **more than $20,000** repayment will last 30 years, starting once the initial principal payment is made.

Federal Loan Alternatives

Loan program	Current Interest Rates by Program Type	
PERKINS for Students	5% fixed	
STAFFORD for Students	5.6% fixed	Undergraduate subsidized
	6.8% fixed	Undergraduate unsubsidized & Graduate
PLUS for Parents and Graduate / Professional Students	8.5% fixed	Federal Family Education Loan
	7.9% fixed	Federal Direct Loan

You may qualify for Federal education loans.

For additional information, **contact your school's financial aid office or the Department of Education at:**

www.federalstudentaid.ed.gov

Next Steps

1. **Find Out About Other Loan Options.**
   Some schools have school-specific student loan benefits and terms not detailed on this form. Contact your school's financial aid office or visit the Department of Education's web site at: www.federalstudentaid.ed.gov for more information about other loans.

2. **To Apply for this Loan, Complete the Application and the Self-Certification Form.**
   You may get the certification form from your school's financial aid office. If you are approved for this loan, the loan terms will be available for 30 days (terms will not change during this period, except as permitted by law and the variable interest rate may change based on the market).

REFERENCE NOTES

Variable Interest Rate

- This loan has a variable interest rate, that is based on a publicly available index, the London Interbank Offered Rate (LIBOR). Your rate will be calculated each month by adding a margin between 3% and 13% to the LIBOR.
- The rate will not increase more than once a month, but there is no limit on the amount that the rate could increase at one time.

Eligibility Criteria

Borrower

- Must be enrolled at an eligible school at least half-time.
- Must be 18 years or older at the time you apply.

Co-signers

- Rates are typically higher without a co-signer.
- Must be 18 years or older at the time of loan application.

Bankruptcy Limitations

- If you file for bankruptcy you may still be required to pay back this loan.

More information about loan eligibility and repayment deferral or forbearance options is available in your loan application and loan agreement.

H-22 Private Education Loan Approval Sample

BORROWER:
Christopher Smith Jr.
1492 Columbus Way
Plymouth, MA 02360

CREDITOR:
First ABC Bank
12345 1st St
Anytown, CA 93120

Loan Rates & Estimated Total Costs

Total Loan Amount	Interest Rate	Finance Charge	Total of Payments
$10,600.00	7.375%	$18,541.24	$ 28,541.24
The total amount you are borrowing.	Your current interest rate.	The estimated dollar amount the credit will cost you.	The estimated amount you will have paid when you have made all payments.

ITEMIZATION OF AMOUNT FINANCED

Amount paid to you	$0.00
Amount paid to others on your Behalf: • ABC State University	+ $10,000
Amount Financed (total amount provided)	= $10,000
Initial finance charges (total) • Origination Fee ($300) • Loan Guarantee Fee ($300)	+ $600
Total Loan Amount	**= $10,600**

ABOUT YOUR INTEREST RATE

- **Your rate is variable.** This means that your actual rate varies with the market and could be lower or higher than the rate on this form. The variable rate is based upon the LIBOR Rate (as published in the *Wall Street Journal*). For more information on this rate, see reference notes.
- Although your rate will vary, **it will never exceed 25%** (the maximum allowable for this loan).
- Your **Annual Percentage Rate (APR) is 8.23%.** The APR is typically different than the Interest Rate since it considers fees and reflects the cost of your loan as a yearly rate. For more information about the APR, see reference notes.

FEES

- **Late Charge:** 5% of the amount of the past due payment, or $25, whichever is greater.
- **Returned check charge:** up to $25.
- **Fee when you begin repaying the loan:** 3.5% of loan balance.

Estimated Repayment Schedule & Terms

20 YEAR LOAN TERM	MONTHLY PAYMENTS at 7.375% the current interest rate of your loan	MONTHLY PAYMENTS at 25% the maximum interest rate possible for your loan
Sept. 1, 2009 - Oct. 31, 2013 deferment period	**No payment required** ($3,799.67 in interest will accrue during this time)	**No payment required** (Interest will accrue during this time)
Nov. 1, 2013 - Sept. 30, 2033 239 monthly payments	$118.93	$645.41
Oct. 1, 2033 1 monthly payment	$116.97	$674.63

◀ The estimated **Total of Payments** at the Maximum Rate of Interest would be **$154,928.**

Federal Loan Alternatives

Loan program	Current Interest Rates by Program Type	
PERKINS for Students	5% fixed	
STAFFORD for Students	5.6% fixed	Undergraduate subsidized
	6.8% fixed	Undergraduate unsubsidized & Graduate
PLUS for Parents and Graduate / Professional Students	8.5% fixed	Federal Family Education Loan
	7.9% fixed	Federal Direct Loan

You may qualify for Federal education loans.

For additional information, **contact your school's financial aid office or the Department of Education at:**

www.federalstudentaid.ed.gov

Next Steps & Terms of Acceptance

This offer is good until:

August 1, 2009

1. **Find Out About Other Loan Options.**
   Contact your school's financial aid office for more information.
2. **You Have Until August 1, 2009 to Accept this Offer**
   The terms of this offer will not change except as permitted by law and the variable interest may change based on the market.

To Accept the Terms of this loan, contact us at

First ABC Bank
12345 1st St.
Anytown, CA 93120
(800) 555 - 5555

REFERENCE NOTES

Variable Interest Rate:

- Your loan has a variable interest Rate that is based on a publicly available index, the London Interbank Offered Rate (LIBOR), which is currently 4.375%. Your rate is calculated each month by adding a margin of 3% to the LIBOR.
- The Interest Rate may be higher or lower than your Annual Percentage Rate (APR) because the APR considers certain fees you pay to obtain this loan, the Interest Rate, and whether you defer (postpone) payments while in school.
- The rate will not increase more than once a month, but there is no limit on the amount that the rate could increase at one time. Your rate will never exceed 25%.
- If the Interest Rate increases your monthly payments will be higher.

Bankruptcy Limitations

- If you file for bankruptcy you may still be required to pay back this loan.

Repayment Options:

- Although you elected to postpone payments, you can still make payments while you are in school. You can also choose to change your deferment choice to: Pay Interest Only or Make Full Payments. More information about repayment deferral or forbearance options is available in your loan agreement.

Prepayments:

- If you pay the loan off early, you will not have to pay a penalty. You will not be entitled to a refund of part of the finance charge.

See your loan agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

H-23 Private Education Loan Final Sample

BORROWER:
Christopher Smith Jr.
1492 Columbus Way
Plymouth, MA 02360

CREDITOR:
First ABC Bank
12345 1st St
Anytown, CA 93120
(800) 555 - 5555

RIGHT TO CANCEL

You have a right to cancel this transaction, without penalty, by midnight on August 4, 2009. No funds will be disbursed to you or to your school until after this time. You may cancel by calling us at 800-555-5555.

Loan Rates & Estimated Total Costs

Total Loan Amount	Interest Rate	Finance Charge	Total of Payments
$10,600.00	7.375%	$18,541.24	$ 28,541.24
The total amount you are borrowing.	Your current interest rate.	The estimated dollar amount the credit will cost you.	The estimated amount you will have paid when you have made all payments.

ITEMIZATION OF AMOUNT FINANCED

Amount paid to you	$0.00
Amount paid to others on your Behalf: • ABC State University	+ $10,000
Amount Financed (total amount provided)	= $10,000
Initial finance charges (total) • Origination Fee ($300) • Loan Guarantee Fee ($300)	+ $600
Total Loan Amount	**= $10,600**

ABOUT YOUR INTEREST RATE

- **Your rate is variable.** This means that your actual rate varies with the market and could be lower or higher than the rate on this form. The variable rate is based upon the LIBOR Rate (as published in the *Wall Street Journal*). For more information on this rate, see reference notes.
- There **is no limit on the amount the interest rate can increase.**
- Your **Annual Percentage Rate (APR) is 8.23%.** The APR is typically different than the Interest Rate since it considers fees and reflects the cost of your loan as a yearly rate. For more information about the APR, see reference notes.

FEES

- **Late Charge:** 5% of the amount of the past due payment, or $25, whichever is greater.
- **Returned check charge:** up to $25.
- **Fee when you begin repaying the loan:** 3.5% of loan balance.

Estimated Repayment Schedule & Terms

20 YEAR LOAN TERM	MONTHLY PAYMENTS at 7.375% the current interest rate of your loan	MONTHLY PAYMENTS No Maximum Rate example at 25%
Sept. 1, 2009 - Oct. 31, 2013 deferment period	**No payment required** ($3,799.67 in interest will accrue during this time)	**No payment required** (Interest will accrue during this time)
Nov. 1, 2013 - Sept. 30, 2033 239 monthly payments	$118.93	$645.41 (your payments will be higher if the rate increases above 25%)
Oct. 1, 2033 1 monthly payment	$116.97	$674.63 (your payments will be higher if the rate increases above 25%)

◀ Though your loan does not have a maximum interest rate, **an example rate of 25%** has been used for comparative purposes.

The estimated **Total of Payments** if your rate rises to 25% would be **$154,928.** Your Total of Payments will be higher if rate increases above 25%.

REFERENCE NOTES

Variable Interest Rate:

- Your loan has a variable Interest Rate that is based on a publicly available index, the London Interbank Offered Rate (LIBOR), which is currently 4.375%. Your rate is calculated each month by adding a margin of 3% to the LIBOR.
- The Interest Rate may be higher or lower than your Annual Percentage Rate (APR) because the APR considers certain fees you pay to obtain this loan, the Interest Rate, and whether you defer (postpone) payments while in school.
- The rate will not increase more than once a month, but there is no limit on the amount that the rate could increase at one time. Your rate will never exceed 25%.
- If the Interest Rate increases your monthly payments will be higher.

Bankruptcy Limitations

- If you file for bankruptcy you may still be required to pay back this loan.

Repayment Options:

- Although you elected to postpone payments, you can still make payments while you are in school. You can also choose to change your deferment choice to: Pay Interest Only or Make Full Payments. More information about repayment deferral or forbearance options is available in your loan agreement.

Prepayments:

- If you pay the loan off early, you will not have to pay a penalty. You will not be entitled to a refund of part of the finance charge.

See your loan agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

■ 8. In Supplement I to Part 226:
■ a. Under *Section 226.1 paragraph 1(d)(6)* is revised and new *paragraph (1)(d)(7)* is added.
■ b. Under *Section 226.2,* paragraph *2(a) Definitions, 2(a)(6) Business day,* paragraph 2(a)(6)–2 is revised.
■ c. Under *Section 226.3,* the heading to *3(b) Credit Over $25,000 Not Secured by Real Property or a Dwelling,* and heading to *3(f) Student Loan Programs,* are revised.
■ d. Under *Section 226.17:*
■ (i) In paragraph *17(a) Form of Disclosures,* paragraphs 17(a)(1)–4, 17(a)(1)–6, 17(a)(2) are revised;
■ (ii) In paragraph *17(b) Time of Disclosures,* paragraph 17(b)–1 is revised;
■ (iii) In paragraph *17(i) Interim Student Credit Extensions,* paragraph 17(i)–1 is revised and new paragraph 17(i)–2 is added;
■ (iv) Paragraphs 17(i)–2, 17(i)–3, and 17(i)–4 are redesignated as paragraphs 17(i)–3, 17(i)–4, and 17(i)–5, respectively.
■ e. Under *Section 226.18, paragraph 18(f)(1)(ii), paragraph 18(f)(1)(iv)–2,* and *paragraph 18(k)(1)* are revised.
■ f. The following new paragraphs are added:
■ (i) *Subpart F—Special Rules for Private Education Loans* is added,
■ (ii) *Section 226.46—Requirements for Private Education Loans,* is added
■ (iii) *Section 226.47—Content of Disclosures,* is added; and
■ (iv) *Section 226.48—Limitations on Private Education Loans* is added.
■ g. Under the heading, *Appendixes G and H—Open-End and Closed-End Model Forms and Clauses,* paragraph 1 is revised.
■ h. Under *Appendix H—Closed-End Model Forms and Clauses,* paragraphs 21 through 24 are revised, and paragraphs 25 through 28 are added.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

* * * * *

Paragraph 1(d)(6)

1. *Mandatory compliance dates.* Compliance with the Board's revisions to Regulation Z published on August 14, 2009 is mandatory for private education loans for which the creditor receives an application on or after February 14, 2010. Compliance with the final rules on co-branding in §§ 226.48(a) and (b) is mandatory for marketing occurring on or after February 14, 2010. Compliance with the final rules is optional for private education loan transactions for which an application was received prior to February 14, 2010, even if consummated after the mandatory compliance date.

2. *Optional compliance.* A creditor may, at its option, provide the approval and final disclosures required under §§ 226.47(b) or (c) for private education loans where an application was received prior to the mandatory compliance date. If the creditor opts to provide the disclosures, the creditor must also comply with the applicable timing and other rules in §§ 226.46 and 226.48 (including providing the consumer with the 30-day acceptance period under § 226.48(c), and the right to cancel under § 226.48(d)). For example if the creditor receives an application on January 25, 2010 and approves the consumer's application on or after February 14, 2010, the creditor may, at its option, provide the approval disclosures under § 226.47(b), the final disclosures under § 226.47(c) and comply with the applicable requirements §§ 226.46 and 226.48. The creditor must also obtain the self-certification form as required in § 226.48(e), if applicable. Or, for example, if the creditor receives an application on January 25, 2010 and approves the consumer's application before February 14, 2010, the creditor may, at its option, provide the final disclosure under § 226.47(c) and comply with the applicable timing and other requirements of §§ 226.46 and 226.48, including providing the consumer with the right to cancel under § 226.48(d). The creditor must also obtain the self-certification form as required in § 226.48(e), if applicable.

Paragraph 1(d)(7)

1. [Reserved.]

Section 226.2—Definitions and Rules of Construction

2(a) Definitions.

* * * * *

2(a)(6) Business day.

* * * * *

2. *Rule for rescission, disclosures for certain mortgage transactions, and private education loans.* A more precise rule for what is a business day (all calendar days except Sundays and the Federal legal holidays specified in 5 U.S.C. 6103(a)) applies when the right of rescission, the receipt of disclosures for certain dwelling-secured mortgage transactions under §§ 226.19(a)(1)(ii), 226.19(a)(2), 226.31(c), or the receipt of disclosures for private education loans under § 226.46(d)(4) is involved. Four Federal legal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays (July 4, for example) falls on a Saturday, Federal offices and other entities might observe the holiday on the preceding Friday (July 3). In cases where the more precise rule applies, the observed holiday (in the example, July 3) is a business day.

* * * * *

Section 226.3—Exempt Transactions

* * * * *

3(b) Credit over $25,000.

* * * * *

3(f) Student Loan Programs

1. *Coverage.* This exemption applies to loans made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*). This exemption does not apply to private education loans as defined by § 226.46(b)(5).

* * * * *

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

* * * * *

17(a) Form of Disclosures

Paragraph 17(a)(1)

* * * * *

4. *Content of segregated disclosures.* Footnotes 37 and 38 contain exceptions to the requirement that the disclosures under § 226.18 be segregated from material that is not directly related to those disclosures. Footnote 37 lists the items that may be added to the segregated disclosures, even though not directly related to those disclosures. Footnote 38 lists the items required under § 226.18 that may be deleted from the segregated disclosures and appear elsewhere. Any one or more of these additions or deletions may be combined and appear either together with or separate from the segregated disclosures. The itemization of the amount financed under § 226.18(c), however, must be separate from the other segregated disclosures under § 226.18, except for private education loan disclosures made in compliance with § 226.47. If a creditor chooses to include the security interest charges required to be itemized under § 226.4(e) and § 226.18(o) in the amount financed itemization, it need not list these charges elsewhere.

* * * * *

6. *Multiple-purpose forms.* The creditor may design a disclosure statement that can be used for more than one type of transaction, so long as the required disclosures for individual transactions are clear and conspicuous. (See the Commentary to appendices G and H for a discussion of the treatment of disclosures that do not apply to specific transactions.) Any disclosure listed in § 226.18 (except the itemization of the amount financed under § 226.18(c) for transactions other than private education loans) may be included on a standard disclosure statement even though not all of the creditor's transactions include those features. For example, the statement may include:

- The variable rate disclosure under § 226.18(f).
- The demand feature disclosure under § 226.18(i).
- A reference to the possibility of a security interest arising from a spreader clause, under § 226.18(m).
- The assumption policy disclosure under § 226.18(q).
- The required deposit disclosure under § 226.18(r).

* * * * *

Paragraph 17(a)(2)

1. *When disclosures must be more conspicuous.* The following rules apply to the requirement that the terms ''annual percentage rate'' (except for private education loan disclosures made in compliance with § 226.47) and ''finance charge'' be shown more conspicuously:

- The terms must be more conspicuous only in relation to the other required disclosures under § 226.18. For example, when the disclosures are included on the contract document, those two terms need not be more conspicuous as compared to the heading on the contract document or information required by state law.
- The terms need not be more conspicuous except as part of the finance charge and annual percentage rate disclosures under § 226.18 (d) and (e), although they may, at the creditor's option, be highlighted wherever used in the required disclosures. For example, the terms may, but need not, be highlighted when used in disclosing a prepayment penalty under § 226.18(k) or a required deposit under § 226.18(r).
- The creditor's identity under § 226.18(a) may, but need not, be more prominently displayed than the finance charge and annual percentage rate.
- The terms need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs).

2. *Making disclosures more conspicuous.* The terms ''finance charge'' and (except for private education loan disclosures made in compliance with § 226.47) ''annual percentage rate'' may be made more conspicuous in any way that highlights them in relation to the other required disclosures. For example, they may be:

- Capitalized when other disclosures are printed in capital and lower case.
- Printed in larger type, bold print or different type face.
- Printed in a contrasting color.
- Underlined.
- Set off with asterisks.

17(b) Time of Disclosures

1. *Consummation.* As a general rule, disclosures must be made before ''consummation'' of the transaction. The disclosures need not be given by any particular time before consummation, except in certain mortgage transactions and variable-rate transactions secured by the consumer's principal dwelling with a term greater than one year under § 226.19, and in private education loan transactions disclosed in compliance with §§ 226.46 and 226.47. (See the commentary to § 226.2(a)(13) regarding the definition of consummation.)

* * * * *

17(i) Interim Student Credit Extensions

1. *Definition.* Student credit plans involve extensions of credit for education purposes where the repayment amount and schedule are not known at the time credit is advanced. These plans include loans made under any student credit plan, whether government or private, where the repayment period does not begin immediately. (Certain student credit plans that meet this definition are exempt from Regulation Z. See § 226.3(f).)

2. *Relation to other sections.* For disclosures made before the mandatory compliance date of the disclosures required under §§ 226.46, 47, and 48, paragraph 17(i) permitted creditors to omit from the disclosures the terms set forth in that paragraph at the time the credit was actually extended. However, creditors were required to make complete disclosures at the time the creditor and consumer agreed upon the repayment schedule for the total obligation. At that time, a new set of disclosures of all applicable items under § 226.18 was required. Most student credit plans are subject to the requirements in §§ 226.46, 47, and 48. Consequently, for applications for student credit plans received on or after the mandatory compliance date of §§ 226.46, 47, and 48, the creditor may not omit from the disclosures the terms set forth in paragraph 17(i). Instead, the creditor must comply with §§ 226.46, 47, and 48, if applicable, or with §§ 226.17 and 226.18.

3. *Basis of disclosures.* * * *

4. *Consolidation.* * * *

5. *Approved student credit forms.* See the commentary to appendix H regarding disclosure forms approved for use in certain student credit programs for which applications were received prior to the mandatory compliance date of §§ 226.46, 47, and 48.

* * * * *

Section 226.18—Content of Disclosures

* * * * *

Paragraph 18(f)(1)(ii)

1. *Limitations.* This includes any maximum imposed on the amount of an increase in the rate at any time, as well as any maximum on the total increase over the life of the transaction. Except for private education loans disclosures, when there are no limitations, the creditor may, but need not, disclose that fact, and limitations do not include legal limits in the nature of usury or rate ceilings under State or Federal statutes or regulations. (See § 226.30 for the rule requiring that a maximum interest rate be included in certain variable-rate transactions.) For disclosures with respect to private education loan disclosures, see comment 47(b)(1)–2.

* * * * *

Paragraph 18(f)(1)(iv)

* * * * *

2. *Hypothetical example not required.* The creditor need not provide a hypothetical example in the following transactions with a variable-rate feature:

- Demand obligations with no alternate maturity date.
- Private education loans as defined in § 226.46(b)(5).
- Multiple-advance construction loans disclosed pursuant to appendix D, Part I.

* * * * *

Paragraph 18(k)(1)

1. *Penalty.* This applies only to those transactions in which the interest calculation takes account of all scheduled reductions in principal, as well as transactions in which interest calculations are made daily. The

term penalty as used here encompasses only those charges that are assessed strictly because of the prepayment in full of a simple-interest obligation, as an addition to all other amounts. Items which are penalties include, for example:

- Interest charges for any period after prepayment in full is made. (See the commentary to § 226.17(a)(1) regarding disclosure of interest charges assessed for periods after prepayment in full as directly related information.)
- A minimum finance charge in a simple-interest transaction. (See the commentary to § 226.17(a)(1) regarding the disclosure of a minimum finance charge as directly related information.) Items which are not penalties include, for example, loan guarantee fees.

* * * * *

Subpart F—Special Rules for Private Education Loans

Section 226.46—Special Disclosure Requirements for Private Education Loans

46(a) Coverage

1. *Coverage.* This subpart applies to all private education loans as defined in § 226.46(b)(5). Coverage under this subpart is optional for certain extensions of credit that do not meet the definition of ''private education loan'' because the credit is not extended, in whole or in part, for ''postsecondary educational expenses'' defined in § 226.46(b)(3). If a transaction is not covered and a creditor opts to comply with any section of this subpart, the creditor must comply with all applicable sections of this subpart. If a transaction is not covered and a creditor opts not to comply with this subpart, the creditor must comply with all applicable requirements under §§ 226.17 and 226.18. Compliance with this subpart is optional for an extension of credit for expenses incurred after graduation from a law, medical, dental, veterinary, or other graduate school and related to relocation, study for a bar or other examination, participation in an internship or residency program, or similar purposes. However, if any part of such loan is used for postsecondary educational expenses as defined in § 226.46(b)(3), then compliance with Subpart F is mandatory not optional.

46(b) Definitions

46(b)(1) Covered Educational Institution

1. *General.* A covered educational institution includes any educational institution that meets the definition of an institution of higher education in § 226.46(b)(2). An institution is also a covered educational institution if it otherwise meets the definition of an institution of higher education, except for its lack of accreditation. Such an institution may include, for example, a university or community college. It may also include an institution, whether accredited or unaccredited, offering instruction to prepare students for gainful employment in a recognized profession, such as flying, culinary arts, or dental assistance. A covered educational institution does not include elementary or secondary schools.

2. *Agent.* For purposes of § 226.46(b)(1), the term agent means an institution-affiliated organization as defined by section 151 of the Higher Education Act of 1965 (20 U.S.C 1019) or an officer or employee of an institution-affiliated organization. Under section 151 of the Higher Education Act, an institution-affiliated organization means any organization that is directly or indirectly related to a covered institution and is engaged in the practice of recommending, promoting, or endorsing education loans for students attending the covered institution or the families of such students. An institution-affiliated organization may include an alumni organization, athletic organization, foundation, or social, academic, or professional organization, of a covered institution, but does not include any creditor with respect to any private education loan made by that creditor.

46(b)(2) Institution of higher education.

1. *General.* An institution of higher education includes any institution that meets the definitions contained in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001–1002) and implementing Department of Education regulations (34 CFR 600). Such an institution may include, for example, a university or community college. It may also include an institution offering instruction to prepare students for gainful employment in a recognized profession, such as flying, culinary arts, or dental assistance. An institution of higher education does not include elementary or secondary schools.

46(b)(3) Postsecondary educational expenses.

1. *General.* The examples listed in § 226.46(b)(3) are illustrative only. The full list of postsecondary educational expenses is contained in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll).

46(b)(4) Preferred lender arrangement.

1. *General.* The term ''preferred lender arrangement'' is defined in section 151 of the Higher Education Act of 1965 (20 U.S.C 1019). The term refers to an arrangement or agreement between a creditor and a covered educational institution (or an institution-affiliated organization as defined by section 151 of the Higher Education Act of 1965 (20 U.S.C 1019)) under which a creditor provides private education loans to consumers for students attending the covered educational institution and the covered educational institution recommends, promotes, or endorses the private education loan products of the creditor. It does not include arrangements or agreements with respect to Federal Direct Stafford/Ford loans, or Federal PLUS loans made under the Federal PLUS auction pilot program.

46(b)(5) Private education loan.

1. *Extended expressly for postsecondary educational expenses.* A private education loan is one that is extended expressly for postsecondary educational expenses. The term includes loans extended for postsecondary educational expenses incurred while a student is enrolled in a covered educational institution as well as loans extended to consolidate a consumer's pre-existing private education loans.

2. *Multiple-purpose loans.* i. *Definition.* A private education loan may include an extension of credit not excluded under § 226.46(b)(5) that the consumer may use for multiple purposes including, but not limited to, postsecondary educational expenses. If the consumer expressly indicates that the proceeds of the loan will be used to pay for postsecondary educational expenses by indicating the loan's purpose on an application, the loan is a private education loan.

ii. *Coverage.* A creditor generally will not know before an application is received whether the consumer intends to use the loan for postsecondary educational expenses. For this reason, the creditor need not provide the disclosures required by § 226.47(a) on or with the application or solicitation for a loan that may be used for multiple purposes. *See* § 226.47(d)(1)(i). However, if the consumer expressly indicates that the proceeds of the loan will be used to pay for postsecondary educational expenses, the creditor must comply with §§ 226.47(b) and (c) and § 226.48. For purposes of the required disclosures, the creditor must calculate the disclosures based on the entire amount of the loan, even if only a part of the proceeds is intended for postsecondary educational expenses. The creditor may rely solely on a check-box, or a purpose line, on a loan application to determine whether or not the applicant intends to use loan proceeds for postsecondary educational expenses.

iii. *Examples.* The creditor must comply only if the extension of credit also meets the other parts of the definition of private education loan. For example, if the creditor uses a single application form for both open-end and closed-end credit, and the consumer applies for open-end credit to be used for postsecondary educational expenses, the extension of credit is not covered. Similarly, if the consumer indicates the extension of credit will be used for educational expenses that are not postsecondary educational expenses, such as elementary or secondary educational expenses, the extension of credit is not covered. These examples are only illustrative, not exhaustive.

3. *Short-term loans.* Some covered educational institutions offer loans to students with terms of 90 days or less to assist the student in paying for educational expenses, usually while the student waits for other funds to be disbursed. Under § 226.46(b)(5)(iv)(A) such loans are not considered private education loans, even if interest is charged on the credit balance. (Because these loans charge interest, they are not covered by the exception under § 226.46(b)(5)(iv)(B).) However, these loans are extensions of credit subject to the requirements of §§ 226.17 and 18. The legal agreement may provide that repayment is required when the consumer or the educational institution receives certain funds. If, under the terms of the legal obligation, repayment of the loan is required when the certain funds are received by the consumer or the educational institution (such as by deposit into the consumer's or educational institution's account), the disclosures should be based on the creditor's estimate of the time the funds will be delivered.

4. *Billing plans*. Some covered educational institutions offer billing plans that permit a consumer to make payments in installments. Such plans are not considered private education loans, if an interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the plan is payable in more than four installments. However, such plans may be extensions of credit subject to the requirements of §§ 226.17 and 18.

46(c) Form of Disclosures

1. *Form of disclosures—relation to other sections*. Creditors must make the disclosures required under this subpart in accordance with § 226.46(c). Section 226.46(c)(2) requires that the disclosures be grouped together and segregated from everything else. In complying with this requirement, creditors may follow the rules in § 226.17, except where specifically provided otherwise. For example, although § 226.17(b) requires creditors to provide only one set of disclosures before consummation of the transaction, §§ 226.47(b) and (c) require that the creditor provide the disclosures under § 226.18 both upon approval and after the consumer accepts the loan.

Paragraph 46(c)(3)

1. *Application and solicitation disclosures—electronic disclosures*. If the disclosures required under § 226.47(a) are provided electronically, they must be provided on or with the application or solicitation reply form. Electronic disclosures are deemed to be on or with an application or solicitation if they meet one of the following conditions:

i. They automatically appear on the screen when the application or solicitation reply form appears;

ii. They are located on the same Web ''page'' as the application or solicitation reply form without necessarily appearing on the initial screen, if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable; or

iii. They are posted on a Web site and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by passing the disclosures before submitting the application or reply form.

46(d) Timing of Disclosures

1. *Receipt of disclosures*. Under § 226.46(d)(4), if the creditor places the disclosures in the mail, the consumer is considered to have received them three business days after they are mailed. For purposes of § 226.46(d)(4), ''business day'' means all calendar days except Sundays and the legal public holidays referred to in § 226.2(a)(6). *See* comment 2(a)(6)–2. For example, if the creditor places the disclosures in the mail on Thursday, June 4, the disclosures are considered received on Monday, June 8.

Paragraph 46(d)(1)

1. *Invitations to apply*. A creditor may contact a consumer who has not been pre-selected for a private education loan about taking out a loan (whether by direct mail, telephone, or other means) and invite the consumer to complete an application. Such a contact does not meet the definition of solicitation, nor is it covered by this subpart, unless the contact itself includes the following:

i. An application form in a direct mailing, electronic communication or a single application form as a ''take-one'' (in racks in public locations, for example);

ii. An oral application in a telephone contact; or

iii. An application in an in-person contact.

Paragraph 46(d)(2)

1. *Timing*. The creditor must provide the disclosures required by § 226.47(b) at the time the creditor provides to the consumer any notice that the loan has been approved. However, nothing in this section prevents the creditor from communicating to the consumer that additional information is required from the consumer before approval may be granted. In such a case, a creditor is not required to provide the disclosures at that time. If the creditor communicates notice of approval to the consumer by mail, the disclosures must be mailed at the same time as the notice of approval. If the creditor communicates notice of approval by telephone, the creditor must place the disclosures in the mail within three business days of the telephone call. If the creditor communicates notice of approval in electronic form, the creditor may provide the disclosures in electronic form. If the creditor has complied with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq*.) the creditor may provide the disclosures solely in electronic form; otherwise, the creditor must place the disclosures in the mail within three business days of the communication.

46(g) Effect of subsequent events

1. *Approval disclosures*. Inaccuracies in the disclosures required under § 226.47(b) are not violations if attributable to events occurring after disclosures are made, although creditors are restricted under § 226.48(c)(2) from making certain changes to the loan's rate or terms after the creditor provides an approval disclosure to a consumer. Since creditors are required provide the final disclosures under § 226.47(c), they need not make new approval disclosures in response to an event that occurs after the creditor delivers the required approval disclosures, except as specified under § 226.48(c)(4). For example, at the time the approval disclosures are provided, the creditor may not know the precise disbursement date of the loan funds and must provide estimated disclosures based on the best information reasonably available and labelled as an estimate. If, after the approval disclosures are provided, the creditor learns from the educational institution the precise disbursement date, new approval disclosures would not be required, unless specifically required under § 226.48(c)(4) if other changes are made. Similarly, the creditor may not know the precise amounts of each loan to be consolidated in a consolidation loan transaction and information about the precise amounts would not require new approval disclosures, unless specifically required under § 226.48(c)(4) if other changes are made.

2. *Final disclosures*. Inaccuracies in the disclosures required under § 226.47(c) are not violations if attributable to events occurring after disclosures are made. For example, if the consumer initially chooses to defer payment of principal and interest while enrolled in a covered educational institution, but later chooses to make payments while enrolled, such a change does not make the original disclosures inaccurate.

Section 226.47—Content of Disclosures

1. *As applicable*. The disclosures required by this subpart need be made only as applicable, unless specifically required otherwise. The creditor need not provide any disclosure that is not applicable to a particular transaction. For example, in a transaction consolidating private education loans, or in transactions under § 226.46(a) for which compliance with this subpart is optional, the creditor need not disclose the information under §§ 226.47(a)(6), and (b)(4), and any other information otherwise required to be disclosed under this subpart that is not applicable to the transaction. Similarly, creditors making loans to consumers where the student is not attending an institution of higher education, as defined in § 226.46(b)(2), need not provide the disclosures regarding the self-certification form in § 226.47(a)(8).

47(a) Application or Solicitation Disclosures

Paragraph 47(a)(1)(i)

1. *Rates actually offered*. The disclosure may state only those rates that the creditor is actually prepared to offer. For example, a creditor may not disclose a very low interest rate that will not in fact be offered at any time. For a loan with variable interest rates, the ranges of rates will be considered actually offered if:

i. For disclosures in applications or solicitations sent by direct mail, the rates were in effect within 60 days before mailing;

ii. For disclosures in applications or solicitations in electronic form, the rates were in effect within 30 days before the disclosures are sent to a consumer, or for disclosures made on an Internet Web site, within 30 days before being viewed by the public;

iii. For disclosures in printed applications or solicitations made available to the general public, the rates were in effect within 30 days before printing; or

iv. For disclosures provided orally in telephone applications or solicitations, the rates are currently available at the time the disclosures are provided.

2. *Creditworthiness and other factors*. If the rate will depend, at least in part, on a later determination of the consumer's creditworthiness or other factors, the disclosure must include a statement that the rate for which the consumer may qualify at approval will depend on the consumer's creditworthiness and other factors. The creditor may, but is not required to, specify

any additional factors that it will use to determine the interest rate. For example, if the creditor will determine the interest rate based on information in the consumer's or co-signer's credit report and the type of school the consumer attends, the creditor may state, ''Your interest rate will be based on your credit history and other factors (co-signer credit and school type).''

3. *Rates applicable to the loan.* For a variable-rate private education loan, the disclosure of the interest rate or range of rates must reflect the rate or rates calculated based on the index and margin that will be used to make interest rate adjustments for the loan. The creditor may provide a description of the index and margin or range of margins used to make interest rate adjustments, including a reference to a source, such as a newspaper, where the consumer may look up the index.

Paragraph 47(a)(1)(iii)

1. *Coverage.* The interest rate is considered variable if the terms of the legal obligation allow the creditor to increase the interest rate originally disclosed to the consumer and the requirements of section 226.47(a)(1)(iii) apply to all such transactions. The provisions do not apply to increases resulting from delinquency (including late payment), default, assumption, or acceleration.

2. *Limitations.* The creditor must disclose how often the rate may change and any limit on the amount that the rate may increase at any one time. The creditor must also disclose any maximum rate over the life of the transaction. If the legal obligation between the parties does specify a maximum rate, the creditor must disclose any legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations. However, if the applicable maximum rate is in the form of a legal limit, such as a state's usury cap (rather than a maximum rate specified in the legal obligation between the parties), the creditor must disclose that the maximum rate is determined by applicable law. The creditor must also disclose that the consumer's actual rate may be higher or lower than the initial rates disclosed under § 226.47(a)(1)(i), if applicable.

Paragraph 47(a)(1)(iv)

1. *Co-signer or guarantor—changes in applicable interest rate.* The creditor must state whether the interest rate typically will be higher if the loan is not co-signed or guaranteed by a third party. The creditor is required to provide a statement of the effect on the interest rate and is not required to provide a numerical estimate of the effect on the interest rate. For example, a creditor may state: ''Rates are typically higher without a co-signer.''

47(a)(2) Fees and Default or Late Payment Costs

1. *Fees or range of fees.* The creditor must itemize fees required to obtain the private education loan. The creditor must give a single dollar amount for each fee, unless the fee is based on a percentage, in which case a percentage must be stated. If the exact amount of the fee is not known at the time of disclosure, the creditor may disclose the dollar amount or percentage for each fee as an estimated range.

2. *Fees required to obtain the private education loan.* The creditor must itemize the fees that the consumer must pay to obtain the private education loan. Fees disclosed include all finance charges under § 226.4, such as loan origination fees, credit report fees, and fees charged upon entering repayment, as well as fees not considered finance charges but required to obtain credit, such as application fees that are charged whether or not credit is extended. Fees disclosed include those paid by the consumer directly to the creditor and fees paid to third parties by the creditor on the consumer's behalf. Creditors are not required to disclose fees that apply if the consumer exercises an option under the loan agreement after consummation, such as fees for deferment, forbearance, or loan modification.

47(a)(3) Repayment Terms

1. *Loan term.* The term of the loan is the maximum period of time during which regularly scheduled payments of principal and interest will be due on the loan.

2. *Payment deferral options—general.* The creditor must describe the options that the consumer has under the loan agreement to defer payment on the loan. When there is no deferment option provided for the loan, the creditor must disclose that fact. Payment deferral options required to be disclosed include options for immediate deferral of payments, such as when the student is currently enrolled at a covered educational institution. The description may include of the length of the maximum initial in-school deferment period, the types of payments that may be deferred, and a description of any payments that are required during the deferment period. The creditor may, but need not, disclose any conditions applicable to the deferment option, such as that deferment is permitted only while the student is continuously enrolled in school. If payment deferral is not an option while the student is enrolled in school, the creditor may disclose that the consumer must begin repayment upon disbursement of the loan and that the consumer may not defer repayment while enrolled in school. If the creditor offers payment deferral options that may apply during the repayment period, such as an option to defer payments if the student returns to school to pursue an additional degree, the creditor must include a statement referring the consumer to the contract document or promissory note for more information.

3. *Payment deferral options—in school deferment.* For each payment deferral option applicable while the student is enrolled at a covered educational institution the creditor must disclose whether interest will accrue while the student is enrolled at a covered educational institution and, if interest does accrue, whether payment of interest may be deferred and added to the principal balance.

4. *Combination with cost estimate disclosure.* The disclosures of the loan term under § 226.47(a)(3)(i) and of the payment deferral options applicable while the student is enrolled at a covered educational institution under §§ 226.47(a)(3)(ii) and (iii) may be combined with the disclosure of cost estimates required in § 226.47(a)(4). For example, the creditor may describe each payment deferral option in the same chart or table that provides the cost estimates for each payment deferral option. *See* Appendix H–21.

5. *Bankruptcy limitations.* The creditor may comply with § 226.47(a)(3)(iv) by disclosing the following statement: ''If you file for bankruptcy you may still be required to pay back this loan.''

47(a)(4) Cost Estimates

1. *Total cost of the loan.* For purposes of § 226.47(a)(4), the creditor must calculate the example of the total cost of the loan in accordance with the rules in § 226.18(h) for calculating the loan's total of payments.

2. *Basis for estimates.* i. The creditor must calculate the total cost estimate by determining all finance charges that would be applicable to loans with the highest rate of interest required to be disclosed under § 226.47(a)(1)(i). For example, if a creditor charges a range of origination fees from 0% to 3%, but the 3% origination fee would apply to loans with the highest initial rate, the lender must assume the 3% origination fee is charged. The creditor must base the total cost estimate on a total loan amount that includes all prepaid finance charges and results in a $10,000 amount financed. For example, if the prepaid finance charges are $600, the creditor must base the estimate on a $10,600 total loan amount and an amount financed of $10,000. The example must reflect an amount provided of $10,000. If the creditor only offers a particular private education loan for less than $10,000, the creditor may assume a loan amount that results in a $5,000 amount financed for that loan.

ii. If a prepaid finance charge is determined as a percentage of the amount financed, for purposes of the example, the creditor should assume that the fee is determined as a percentage of the total loan amount, even if this is not the creditor's usual practice. For example, suppose the consumer requires a disbursement of $10,000 and the creditor charges a 3% origination fee. In order to calculate the total cost example, the creditor must determine the loan amount that will result in a $10,000 amount financed after the 3% fee is assessed. In this example, the resulting loan amount would be $10,309.28. Assessing the 3% origination fee on the loan amount of $10,309.28 results in an origination fee of $309.28, which is withheld from the loan funds disbursed to the consumer. The principal loan amount of $10,309.28 minus the prepaid finance charge of $309.28 results in an amount financed of $10,000.

3. *Calculated for each option to defer interest payments.* The example must include an estimate of the total cost of the loan for each in-school deferral option disclosed in § 226.47(a)(3)(iii). For example, if the creditor provides the consumer with the option to begin making principal and interest payments immediately, to defer principal payments but begin making interest-only payments immediately, or to defer all principal and interest payments while in school, the creditor is required to disclose three estimates of the total cost of the loan,

one for each deferral option. If the creditor adds accrued interest to the loan balance (*i.e.,* interest is capitalized), the estimate of the total loan cost should be based on the capitalization method that the creditor actually uses for the loan. For instance, for each deferred payment option where the creditor would capitalize interest on a quarterly basis, the total loan cost must be calculated assuming interest capitalizes on a quarterly basis.

4. *Deferment period assumptions.* Creditors may use either of the following two methods for estimating the duration of in-school deferment periods:

i. For loan programs intended for educational expenses of undergraduate students, the creditor may assume that the consumer defers payments for a four-year matriculation period, plus the loan's maximum applicable grace period, if any. For all other loans, the creditor may assume that the consumer defers for a two-year matriculation period, plus the maximum applicable grace period, if any, or the maximum time the consumer may defer payments under the loan program, whichever is shorter.

ii. Alternatively, if the creditor knows that the student will be enrolled in a program with a standard duration, the creditor may assume that the consumer defers payments for the full duration of the program (plus any grace period). For example, if a creditor makes loans intended for students enrolled in a four-year medical school degree program, the creditor may assume that the consumer defers payments for four years plus the loan's maximum applicable grace period, if any. However, the creditor may not modify the disclosure to correspond to a particular student's situation. For example, even if the creditor knows that a student will be a second-year medical school student, the creditor must assume a four-year deferral period.

47(a)(6)(ii)

1. *Terms of Federal student loans.* The creditor must disclose the interest rates available under each program under title IV of the Higher Education Act of 1965 and whether the rates are fixed or variable, as prescribed in the Higher Education Act of 1965 (20 U.S.C. 1077a). Where the fixed interest rate for a loan varies by statute depending on the date of disbursement or receipt of application, the creditor must disclose only the interest rate as of the time the disclosure is provided.

47(a)(6)(iii)

1. *Web site address.* The creditor must include with this disclosure an appropriate U.S. Department of Education Web site address such as ''Federalstudentaid.ed.gov.''

47(b) Approval Disclosures

47(b)(1) Interest Rate

1. *Variable rate disclosures.* The interest rate is considered variable if the terms of the legal obligation allow the creditor to increase the interest rate originally disclosed to the consumer. The provisions do not apply to increases resulting from delinquency (including late payment), default, assumption, or acceleration. In addition to disclosing the information required under §§ 226.47(b)(ii) and (iii), the creditor must disclose the information required under §§ 226.18(f)(1)(i) and (iii)—the circumstances under which the rate may increase and the effect of an increase, respectively. The creditor is required to disclose the maximum monthly payment based on the maximum possible rate in § 226.47(b)(3)(viii), and the creditor need not disclose a separate example of the payment terms that would result from an increase under § 226.18(f)(1)(iv).

2. *Limitations on rate adjustments.* The creditor must disclose how often the rate may change and any limit on the amount that the rate may increase at any one time. The creditor must also disclose any maximum rate over the life of the transaction. If the legal obligation between the parties does provide a maximum rate, the creditor must disclose any legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations. However, if the applicable maximum rate is in the form of a legal limit, such as a State's usury cap (rather than a maximum rate specified in the legal obligation between the parties), the creditor must disclose that the maximum rate is determined by applicable law. Compliance with § 226.18(f)(1)(ii) (requiring disclosure of any limitations on the increase of the interest rate) does not necessarily constitute compliance with this section. Specifically, this section requires that if there are no limitations on interest rate increases, the creditor must disclose that fact. By contrast, comment 18(f)(1)(ii)–1 states that if there are no limitations the creditor need not disclose that fact. In addition, under this section, limitations on rate increases include, rather than exclude, legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations.

3. *Rates applicable to the loan.* For a variable-rate loan, the disclosure of the interest rate must reflect the index and margin that will be used to make interest rate adjustments for the loan. The creditor may provide a description of the index and margin or range of margins used to make interest rate adjustments, including a reference to a source, such as a newspaper, where the consumer may look up the index.

Paragraph 47(b)(2)

1. *Fees and default or late payment costs.* Creditors may follow the commentary for § 226.47(a)(2) in complying with § 226.47(b)(2). Creditors must disclose the late payment fees required to be disclosed under § 226.18(l) as part of the disclosure required under § 226.47(b)(2)(ii). If the creditor includes the itemization of the amount financed under § 226.18(c)(1), any fees disclosed as part of the itemization need not be separately disclosed elsewhere.

47(b)(3) Repayment Terms

1. *Principal amount.* The principal amount must equal what the face amount of the note would be as of the time of approval, and it must be labeled ''Total Loan Amount.'' *See* Appendix H–18. This amount may be different from the ''principal loan amount'' used to calculate the amount financed under comment 18(b)(3)–1, because the creditor has the option under that comment of using a ''principal loan amount'' that is different from the face amount of the note. If the creditor elects to provide an itemization of the amount financed under § 226.18(c)(1) the creditor need not disclose the amount financed elsewhere.

2. *Loan term.* The term of the loan is the maximum period of time during which regularly scheduled payments of principal and interest are due on the loan.

3. *Payment deferral options applicable to the consumer.* Creditors may follow the commentary for § 226.47(a)(3)(ii) in complying with § 226.47(b)(3)(iii).

4. *Payments required during enrollment.* Required payments that must be disclosed include payments of interest and principal, interest only, or other payments that the consumer must make during the time that the student is enrolled. Compliance with § 226.18(g) constitutes compliance with § 226.47(b)(3)(iv).

5. *Bankruptcy limitations.* The creditor may comply with § 226.47(b)(3)(vi) by disclosing the following statement: ''If you file for bankruptcy you may still be required to pay back this loan.''

6. *An estimate of the total amount for repayment.* The creditor must disclose an estimate of the total amount for repayment at two interest rates:

i. The interest rate in effect on the date of approval. Compliance with the total of payments disclosure requirement of § 226.18(h) constitutes compliance with this requirement.

ii. The maximum possible rate of interest applicable to the loan or, if the maximum rate cannot be determined, a rate of 25%. If the legal obligation between the parties specifies a maximum rate of interest, the creditor must calculate the total amount for repayment based on that rate. If the legal obligation does not specify a maximum rate but a usury or rate ceiling under State or Federal statutes or regulations applies, the creditor must use that rate. If a there is no maximum rate in the legal obligation or under a usury or rate ceiling, the creditor must base the disclosure on a rate of 25% and must disclose that there is no maximum rate and that the total amount for repayment disclosed under § 226.47(b)(3)(vii)(B) is an estimate and will be higher if the applicable interest rate increases.

iii. If terms of the legal obligation provide a limitation on the amount that the interest rate may increase at any one time, the creditor may reflect the effect of the interest rate limitation in calculating the total cost example. For example, if the legal obligation provides that the interest rate may not increase by more than three percentage points each year, the creditor may assume that the rate increases by three percentage points each year until it reaches that maximum possible rate, or if a maximum rate cannot be determined, an interest rate of 25%.

7. *The maximum monthly payment.* The creditor must disclose the maximum payment that the consumer could be required to make under the loan agreement, calculated using the maximum rate of interest

applicable to the loan, or if the maximum rate cannot be determined, a rate of 25%. The creditor must determine and disclose the maximum rate of interest in accordance with comments 47(b)(3)–6.ii and 47(b)(3)–6.iii. In addition, if a maximum rate cannot be determined, the creditor must state that there is no maximum rate and that the monthly payment amounts disclosed under § 226.47(b)(3)(viii) are estimates and will be higher if the applicable interest rate increases.

47(b)(4) Alternatives to Private Education Loans

1. *General.* Creditors may use the guidance provided in the commentary for § 226.47(a)(6) in complying with § 226.47(b)(4).

47(b)(5) Rights of the Consumer

1. *Notice of acceptance period.* The disclosure that the consumer may accept the terms of the loan until the acceptance period under § 226.48(c)(1) has expired must include the specific date on which the acceptance period expires and state that the consumer may accept the terms of the loan until that date. Under § 226.48(c)(1), the date on which the acceptance period expires is based on when the consumer receives the disclosures. If the creditor mails the disclosures, the consumer is considered to have received them three business days after the creditor places the disclosures in the mail *See* § 226.46(d)(4). If the creditor provides an acceptance period longer than the minimum 30 calendar days, the disclosure must reflect the later date. The disclosure must also specify the method or methods by which the consumer may communicate acceptance.

47(c) Final Disclosures

1. *Notice of right to cancel.* The disclosure of the right to cancel must include the specific date on which the three-day cancellation period expires and state that the consumer has a right to cancel by that date. *See* comments 48(d)–1 and 2. For example, if the disclosures were mailed to the consumer on Friday, June 1, and the consumer is deemed to receive them on Tuesday, June 5, the creditor could state: ''You have a right to cancel this transaction, without penalty, by midnight on June 8, 2009. No funds will be disbursed to you or to your school until after this time. You may cancel by calling us at 800–XXX–XXXX.'' If the creditor permits cancellation by mail, the statement must specify that the consumer's mailed request will be deemed timely if placed in the mail not later than the cancellation date specified on the disclosure. The disclosure must also specify the method or methods by which the consumer may cancel.

2. *More conspicuous.* The statement of the right to cancel must be more conspicuous than any other disclosure required under this section except for the finance charge, the interest rate, and the creditor's identity. *See* § 226.46(c)(2)(iii). The statement will be deemed to be made more conspicuous if it is segregated from other disclosures, placed near or at the top of the disclosure document, and highlighted in relation to other required disclosures. For example, the statement may be outlined with a prominent, noticeable box; printed in contrasting color; printed in larger type, bold print, or different type face; underlined; or set off with asterisks.

Section 226.48—Limitations on Private Education Loans

1. *Co-branding—definition of marketing.* The prohibition on co-branding in §§ 226.48(a) and (b) applies to the marketing of private education loans. The term marketing includes any advertisement under § 226.2(a)(2). In addition, the term marketing includes any document provided by the creditor to the consumer related to a specific transaction, such as an application or solicitation, a promissory note or a contract provided to the consumer. For example, prominently displaying the name of the educational institution at the top of the application form or promissory note without mentioning the name of the creditor, such as by naming the loan product the ''University of ABC Loan,'' would be prohibited.

2. *Implied endorsement.* A suggestion that a private education loan is offered or made by the covered educational institution instead of by the creditor is included in the prohibition on implying that the covered educational institution endorses the private education loan under § 226.48(a)(1). For example, naming the loan the ''University of ABC Loan,'' suggests that the loan is offered by the educational institution. However, the use of a creditor's full name, even if that name includes the name of a covered educational institution, does not imply endorsement. For example, a credit union whose name includes the name of a covered educational institution is not prohibited from using its own name. In addition, the authorized use of a state seal by a state or an institution of higher education in the marketing of state education loan products does not imply endorsement.

3. *Disclosure.* i. A creditor is considered to have complied with § 226.48(a)(2) if the creditor's marketing contains a clear and conspicuous statement, equally prominent and closely proximate to the reference to the covered educational institution, using the name of the creditor and the name of the covered educational institution that the covered educational institution does not endorse the creditor's loans and that the creditor is not affiliated with the covered educational institution. For example, ''[Name of creditor]'s loans are not endorsed by [name of school] and [name of creditor] is not affiliated with [name of school].'' The statement is considered to be equally prominent and closely proximate if it is the same type size and is located immediately next to or directly above or below the reference to the educational institution, without any intervening text or graphical displays.

ii. A creditor is considered to have complied with § 226.48(b) if the creditor's marketing contains a clear and conspicuous statement, equally prominent and closely proximate to the reference to the covered educational institution, using the name of the creditor's loan or loan program, the name of the covered educational institution, and the name of the creditor, that the creditor's loans are not offered or made by the covered educational institution, but are made by the creditor. For example, ''[Name of loan or loan program] is not being offered or made by [name of school], but by [name of creditor].'' The statement is considered to be equally prominent and closely proximate if it is the same type size and is located immediately next to or directly above or below the reference to the educational institution, without any intervening text or graphical displays.

Paragraph 48(c)

1. *30 day acceptance period.* The creditor must provide the consumer with at least 30 calendar days from the date the consumer receives the disclosures required under § 226.47(b) to accept the terms of the loan. The creditor may provide the consumer with a longer period of time. If the creditor places the disclosures in the mail, the consumer is considered to have received them three business days after they are mailed under § 226.46(d)(4). For purposes of determining when a consumer receives mailed disclosures, ''business day'' means all calendar days except Sundays and the legal public holidays referred to in § 226.2(a)(6). *See* comment 46(d)–1. The consumer may accept the loan at any time before the end of the 30 day period.

2. *Method of acceptance.* The creditor must specify a method or methods by which the consumer can accept the loan at any time within the 30-day acceptance period. The creditor may require the consumer to communicate acceptance orally or in writing. Acceptance may also be communicated electronically, but electronic communication must not be the only means provided for the consumer to communicate acceptance unless the creditor has provided the approval disclosure electronically in compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E–Sign Act) (15 U.S.C. § 7001 et seq.). If acceptance by mail is allowed, the consumer's communication of acceptance is considered timely if placed in the mail within the 30-day period.

3. *Prohibition on changes to rates and terms.* The prohibition on changes to the rates and terms of the loan applies to changes that affect those terms that are required to be disclosed under §§ 226.47(b) and (c). The creditor is permitted to make changes that do not affect any of the terms disclosed to the consumer under those sections.

4. *Permissible changes to rates and terms—re-disclosure not required.* Creditors are not required to consummate a loan where the extension of credit would be prohibited by law or where the creditor has reason to believe that the consumer has committed fraud. A creditor may make changes to the rate based on adjustments to the index used for the loan and changes that will unequivocally benefit the consumer. For example, a creditor is permitted to reduce the interest rate or lower the amount of a fee. A creditor may also reduce the loan amount based on a certification or other information received from a covered educational institution or from the consumer indicating

that the student's cost of attendance has decreased or the amount of other financial aid has increased. A creditor may also withdraw the loan approval based on a certification or other information received from a covered educational institution or from the consumer indicating that the student is not enrolled in the institution. For these changes permitted by § 226.48(c)(3), the creditor is not required to provide a new set of approval disclosures required under § 226.47(b) or provide the consumer with a new 30-day acceptance period under § 226.48(c)(1). The creditor must provide the final disclosures under § 226.47(c).

5. *Permissible changes to rates and terms—school certification.* If the creditor reduces the loan amount based on information that the student's cost of attendance has decreased or the amount of other financial aid has increased, the creditor may make certain corresponding changes to the rate and terms. The creditor may change the rate or terms to those that the consumer would have received if the consumer had applied for the reduced loan amount. For example, assume a consumer applies for, and is approved for, a $10,000 loan at a 7% interest rate. However, after the consumer receives the approval disclosures, the consumer's school certifies that the consumer's financial need is only $8,000. The creditor may reduce the loan amount for which the consumer is approved to $8,000. The creditor may also, for example, increase the interest rate on the loan to 7.125%, but only if the consumer would have received a rate of 7.125% if the consumer had originally applied for an $8,000 loan.

5. *Permissible changes to rates and terms—re-disclosure required.* A creditor may make changes to the interest rate or terms to accommodate a request from a consumer. For example, assume a consumer applies for a $10,000 loan and is approved for the $10,000 amount at an interest rate of 6%. After the creditor has provided the approval disclosures, the consumer's financial need increases, and the consumer requests to a loan amount of $15,000. In this situation, the creditor is permitted to offer a $15,000 loan, and to make any other changes such as raising the interest rate to 7%, in response to the consumer's request. The creditor must provide a new set of disclosures under § 226.47(b) and provide the consumer with 30 days to accept the offer under § 226.48(c) for the $15,000 loan offered in response to the consumer's request. However, because the consumer may choose not to accept the offer for the $15,000 loan at the higher interest rate, the creditor may not withdraw or change the rate or terms of the offer for the $10,000 loan, except as permitted under § 226.48(c)(3), unless the consumer accepts the $15,000 loan.

Paragraph 48(d)

1. *Right to cancel.* If the creditor mails the disclosures, the disclosures are considered received by the consumer three business days after the disclosures were mailed. For purposes of determining when the consumer receives the disclosures, the term ''business day'' is defined as all calendar days except Sunday and the legal public holidays referred to in § 226.2(a)(6). *See* § 226.46(d)(4). The consumer has three business days from the date on which the disclosures are deemed received to cancel the loan. For example, if the creditor places the disclosures in the mail on Thursday, June 4, the disclosures are considered received on Monday, June 8. The consumer may cancel any time before midnight Thursday, June 11. The creditor may provide the consumer with more time to cancel the loan than the minimum three business days required under this section. If the creditor provides the consumer with a longer period of time in which to cancel the loan, the creditor may disburse the funds three business days after the consumer has received the disclosures required under this section, but the creditor must honor the consumer's later timely cancellation request.

2. *Method of cancellation.* The creditor must specify a method or methods by which the consumer may cancel. For example, the creditor may require the consumer to communicate cancellation orally or in writing. Cancellation may also be communicated electronically, but electronic communication must not be the only means by which the consumer may cancel unless the creditor provided the final disclosure electronically in compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E–Sign Act) (15 U.S.C. 7001 *et seq.*). If the creditor allows cancellation by mail, the creditor must specify an address or the name and address of an agent of the creditor to receive notice of cancellation. The creditor must wait to disburse funds until it is reasonably satisfied that the consumer has not canceled. For example, the creditor may satisfy itself by waiting a reasonable time after expiration of the cancellation period to allow for delivery of a mailed notice. The creditor may also satisfy itself by obtaining a written statement from the consumer, which must be provided to and signed by the consumer only at the end of the three-day period, that the right has not been exercised.

3. *Cancellation without penalty.* The creditor may not charge the consumer a fee for exercising the right to cancel under § 226.48(d). The prohibition extends only to fees charged specifically for canceling the loan. The creditor is not required to refund fees, such as an application fee, that are charged to all consumers whether or not the consumer cancels the loan.

Paragraph 48(e)

1. *General.* Section 226.48(e) requires that the creditor obtain the self-certification form, signed by the consumer, before consummating the private education loan. The rule applies only to private education loans that will be used for the postsecondary educational expenses of a student while that student is attending an institution of higher education as defined in § 226.46(b)(2). It does not apply to all covered educational institutions. The requirement applies even if the student is not currently attending an institution of higher education, but will use the loan proceeds for postsecondary educational expenses while attending such institution. For example, a creditor is required to obtain the form before consummating a private education loan provided to a high school senior for expenses to be incurred during the consumer's first year of college. This provision does not require that the creditor obtain the self-certification form in instances where the loan is not intended for a student attending an institution of higher education, such as when the consumer is consolidating loans after graduation. Section 155(a)(2) of the Higher Education Act of 1965 provides that the form shall be made available to the consumer by the relevant institution of higher education. However, § 226.48(e) provides flexibility to institutions of higher education and creditors as to how the completed self-certification form is provided to the lender. The creditor may receive the form directly from the consumer, or the creditor may receive the form from the consumer through the institution of higher education. In addition, the creditor may provide the form, and the information the consumer will require to complete the form, directly to the consumer.

2. *Electronic signature.* Under Section 155(a)(2) of the Higher Education Act of 1965, the institution of higher education may provide the self-certification form to the consumer in written or electronic form. Under Section 155(a)(5) of the Higher Education Act of 1965, the form may be signed electronically by the consumer. A creditor may accept the self-certification form from the consumer in electronic form. A consumer's electronic signature is considered valid if it meets the requirements issued by the Department of Education under Section 155(a)(5) of the Higher Education Act of 1965.

Paragraph 48(f)

1. *General.* Section 226.48(f) does not specify the format in which creditors must provide the required information to the covered educational institution. Creditors may choose to provide only the required information or may provide copies of the form or forms the lender uses to comply with § 226.47(a). A creditor is only required to provide the required information if the creditor is aware that it is a party to a preferred lender arrangement. For example, if a creditor is placed on a covered educational institution's preferred lender list without the creditor's knowledge, the creditor is not required to comply with § 226.48(f).

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Appendixes G and H—Open-End and Closed-End Model Forms and Clauses

1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability, except formatting changes may not be made to model forms and samples in H–18, H–19, H–20, H–21, H–22, H–23, G–2(A), G–3(A), G–4(A), G–10(A)–(E), G–17(A)–(D), G–18(A) (except as permitted pursuant to § 226.7(b)(2)), G–18(B)–(C), G–19,

G–20, and G–21. The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using ''borrower'' and ''creditor'' instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain state ''plain English'' requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in ''N/A'' (not applicable) or ''0,'' crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms.)

vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.

Appendix H—Closed-End Model Forms and Clauses

21. *HRSA–500–1 9–82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–500–1 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved for use for loans made prior to the mandatory compliance date of the disclosures required under Subpart F. The form was approved for all Health Education Assistance Loans (HEAL) with a variable interest rate that were considered interim student credit extensions as defined in Regulation Z.

22. *HRSA–500–2 9–82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–500–2 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved for use for loans made prior to the mandatory compliance date of the disclosures required under Subpart F. The form was approved for all HEAL loans with a fixed interest rate that were considered interim student credit extensions as defined in Regulation Z.

23. *HRSA–502–1 9–82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–502–1 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved for use for loans made prior to the mandatory compliance date of the disclosures required under Subpart F. The form was approved for all HEAL loans with a variable interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

24. *HRSA–502–2 9–82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–502–2 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved for use for loans made prior to the mandatory compliance date of the disclosures required under Subpart F. The form was approved for all HEAL loans with a fixed interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

25. *Models H–18, H–19, H–20.*

i. These model forms illustrate disclosures required under § 226.47 on or with an application or solicitation, at approval, and after acceptance of a private education loan. Although use of the model forms is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to private education loan disclosures. Creditors may make certain types of changes to private education loan model forms H–18 (application and solicitation), H–19 (approval), and H–20 (final) and still be deemed to be in compliance with the regulation, provided that the required disclosures are made clearly and conspicuously. The model forms aggregate disclosures into groups under specific headings. Changes may not include rearranging the sequence of disclosures, for instance, by rearranging which disclosures are provided under each heading or by rearranging the sequence of the headings and grouping of disclosures. Changes to the model forms may not be so extensive as to affect the substance or clarity of the forms. Creditors making revisions with that effect will lose their protection from civil liability.

The creditor may delete inapplicable disclosures, such as:

- The Federal student financial assistance alternatives disclosures
- The self-certification disclosure

Other permissible changes include, for example:

- Adding the creditor's address, telephone number, or Web site
- Adding loan identification information, such as a loan identification number
- Adding the date on which the form was printed or produced
- Placing the notice of the right to cancel in the top left or top right of the disclosure to accommodate a window envelope
- Combining required terms where several numerical disclosures are the same. For instance, if the itemization of the amount financed is provided, the amount financed need not be separately disclosed
- Combining the disclosure of loan term and payment deferral options required in § 226.47(a)(3) with the disclosure of cost estimates required in § 226.47(a)(4) in the same chart or table (*See* comment 47(a)(3)–4.)
- Using the first person, instead of the second person, in referring to the borrower
- Using ''borrower'' and ''creditor'' instead of pronouns
- Incorporating certain state ''plain English'' requirements
- Deleting inapplicable disclosures by whiting out, blocking out, filling in ''N/A'' (not applicable) or ''0,'' crossing out, leaving blanks, checking a box for applicable items, or circling applicable items

ii. Although creditors are not required to use a certain paper size in disclosing the §§ 226.47(a), (b) and (c) disclosures, samples H–21, H–22, and H–23 are designed to be printed on two 8½ x 11 inch sheets of paper. A creditor may use a larger sheet of paper, such as 8½ x 14 inch sheets of paper, or may use multiple pages. If the disclosures are provided on two sides of a single sheet of paper, the creditor must include a reference or references, such as ''SEE BACK OF PAGE'' at the bottom of each page indicating that the disclosures continue onto the back of the page. If the disclosures are on two or more pages, a creditor may not include any intervening information between portions of the disclosure. In addition, the following formatting techniques were used in presenting the information in the sample tables to ensure that the information is readable:

A. A readable font style and font size (10-point Helvetica font style for body text).

B. Sufficient spacing between lines of the text.

C. Standard spacing between words and characters. In other words, the body text was not compressed to appear smaller than the 10-point type size.

D. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.

E. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

iii. While the Board is not requiring issuers to use the above formatting techniques in presenting information in the disclosure, the Board encourages issuers to consider these techniques when deciding how to disclose information in the disclosure to ensure that the information is presented in a readable format.

iv. Creditors are allowed to use color, shading and similar graphic techniques in the disclosures, so long as the disclosures remain substantially similar to the model and sample forms in appendix H.

26. *Sample H–21.* This sample illustrates a disclosure required under § 226.47(a). The sample assumes a range of interest rates between 7.375% and 17.375%. The sample assumes a variable interest rate that will never exceed 25% over the life of the loan. The term of the sample loan is 20 years for an amount up to $20,000 and 30 years for an amount more than $20,000. The repayment options and sample costs have been combined into a single table, as permitted in the commentary to § 226.47(a)(3). It demonstrates the loan amount, interest rate, and total paid when a consumer makes loan payments while in school, pays only interest while in school, and defers all payments while in school.

27. *Sample H–22.* This sample illustrates a disclosure required under § 226.47(b). The sample assumes the consumer financed $10,000 at an 8.23% annual percentage rate. The sample assumes a variable interest rate that will never exceed 25% over the life of the loan. The payment schedule and terms assumes a 20-year loan term and that the consumer elected to defer payments while enrolled in school. This includes a sample disclosure of a total loan amount of $10,600 and prepaid finance charges totaling $600, for a total amount financed of $10,000.

28. *Sample H–22.* This sample illustrates a disclosure required under § 226.47(c). The sample assumes the consumer financed $10,000 at an 8.23% annual percentage rate. The sample assumes a variable annual percentage rate in an instance where there is no maximum interest rate. The sample

demonstrates disclosure of an assumed maximum rate, and the statement that the consumer's actual maximum rate and payment amount could be higher. The payment schedule and terms assumes a 20-year loan term, the assumed maximum interest rate, and that the consumer elected to defer payments while enrolled in school. This includes a sample disclosure of a total loan amount of $10,600 and prepaid finance charges totaling $600, for a total amount financed of $10,000.

By order of the Board of Governors of the Federal Reserve System.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–18548 Filed 8–13–09; 8:45 am]

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Federal Register

Friday,
August 14, 2009

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Incidental Takes of Marine Mammals During Specified Activities; Marine Geophysical Survey in Southeast Asia, March–July 2009; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL89

Incidental Takes of Marine Mammals During Specified Activities; Marine Geophysical Survey in Southeast Asia, March–July 2009

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

ACTION: Notice; issuance and modification of an incidental take authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS issued and modified an Incidental Harassment Authorization (IHA) to Lamont-Doherty Earth Observatory (L–DEO), a part of Columbia University, for the take small numbers of marine mammals, by harassment, incidental to conducting a marine seismic survey in Southeast (SE) Asia during March–July 2009.

DATES: Effective March 31, 2009, through August 20, 2009.

ADDRESSES: A copy of the IHA and application are available by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3235 or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (*see* **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Ken Hollingshead, Office of Protected Resources, NMFS, 301–713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by United States (U.S.) citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].

16 U.S.C. 1362(18)

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On October 27, 2008, NMFS received an application from L–DEO for the taking, by Level B harassment only, of small numbers of marine mammals incidental to conducting, under cooperative agreement with the National Science Foundation (NSF), a marine seismic survey in SE Asia. The funding for the Taiwan Integrated Geodynamics Research (TAIGER) survey is provided by the NSF. The proposed survey will encompass the area 17°30′–26°30′ N, 113°30′–126° E within the Exclusive Economic Zones (EEZ) of Taiwan, Japan, and the Philippines, and on the high seas, and is scheduled to occur from March 31 to July 20, 2009. Some minor deviation from these dates is possible, depending on logistics and weather.

Taiwan is one of only a few sites of arc-continent collision worldwide; and one of the primary tectonic environments for large scale mountain building. The primary purpose of the TAIGER project is to investigate the processes of mountain building, a fundamental set of processes which plays a major role in shaping the face of the Earth. The vicinity of Taiwan is particularly well-suited for this type of study, because the collision can be observed at different stages of its evolution, from incipient, to mature, and finally to post-collision.

As a result of its location in an ongoing tectonic collision zone, Taiwan experiences a great number of earthquakes, most are small, but many are large and destructive. This project will provide a great deal of information about the nature of the earthquakes around Taiwan and will lead to a better assessment of the earthquake hazards in the area. The information obtained from this study will help the people and the earthquake hazards in the area. The information obtained from this study will help the people and government of Taiwan to better prepare for future seismic events and may thus mitigate some of the loss of life and economic disruptions that will inevitably occur.

The action is planned to take place in the territorial seas and EEZ's of foreign nations, and will be continuous with the activity that takes place on the high seas. NMFS does not authorize the incidental take of marine mammals in the territorial seas of foreign nations, as the MMPA does not apply in those waters. However, NMFS still needs to calculate the level of incidental take in territorial seas as part of the analysis supporting issuance of an IHA in order to determine the biological accuracy of the small numbers and negligible impact determination.

Description of the Specified Activity

The planned survey will involve one source vessel, the R/V *Marcus G. Langseth* (*Langseth*), which will occur in SE Asia. The *Langseth* will deploy an array of 36 airguns (6,600 in^3) as an energy source at a tow depth of 6–9 m (20–30 ft). The receiving system will consist of a hydrophone streamer and approximately 100 ocean bottom seismometers (OBSs). The *Langseth* will deploy an 8 km (5 mi) long streamer for most transects requiring a streamer; however, a shorter streamer (500 m to 2

km or 1,640 ft to 1.2 mi) will be used during surveys in Taiwan (Formosa) Strait. As the airgun array is towed along the survey lines, the hydrophone streamer will receive the returning acoustic signals and transfer the data to the on-board processing system. The OBSs record the returning acoustic signals internally for later analysis. The OBSs to be used for the TAIGER program will be deployed and retrieved numerous times by a combination of 4 or 5 Taiwanese support vessels, as well as the *Langseth*. The *Langseth* will also retrieve 20 OBSs that were deployed in the study area during previous years to record earthquake activity.

Approximately 100 OBSs will be deployed during the survey. OBSs will likely be deployed and retrieved by the *Langseth* as well as a combination of 4 to 5 Taiwanese vessels. The Taiwanese vessels to be used include two 30 m (98.4 ft) vessels (the R/V *Ocean Researcher 2* and the R/V *Ocean Researcher 3*) and two vessels greater than 60 m (196.8 ft) in length (R/V *Fisheries Research I* and the Navy ship *Taquan*). The R/V *Ocean Research I* may also be used if the *Langseth* is not used to deploy OBSs. The OBS deployment spacing will vary depending on the number of instruments available and shiptime. The nominal spacing is 15 km (9.3 mi), but this will vary from as little as 5 km (3.1 mi) to perhaps as much as 25 km (15.5 mi). The OBSs will be deployed and recovered several (2 to 4) times. 60 of the 100 OBSs may be deployed from the *Langseth*. All OBSs will be retrieved at the end of the study.

Up to 3 different types of OBSs may be used during the 2009 program. The Woods Hole Oceanographic Institution (WHOI) ''D2'' OBS has a height of approximately 1 m (3.3 ft) and a maximum diameter of 50 cm. The anchor is made of hot-rolled steel and weighs 23 kg (50.7 lbs). The anchor dimensions are 2.5 x 30.5 x 38.1 cm. The LC4x4 OBS from the Scripps Institution of Oceanography (SIO) has a volume of approximately 1 m^3 (3.3 ft^2), with an anchor that consists of a large piece of steel grating (approximately 1 m^2 or 3.3 ft^2). Taiwanese OBSs will also be used; their anchor is in the shape of an 'x' with dimensions of 51–76 cm^2 (1.7–2.5 ft^2). Once the OBS is ready to be retrieved an acoustic release transponder interrogates the OBS at a frequency of 9–11 kHz, and a response is received at a frequency of 9–13 kHz. The burn wire release assembly is then activated, and the instrument is released from the anchor to float to the surface.

The seismic survey as described in the **Federal Register** notice (73 FR 78294, December 22, 2008) for the proposed IHA was 15,902 km (9,881 mi) in length. After public comment, L–DEO revised the tracklines so that the seismic survey consists of approximately 14,515 km (9,019 mi) of transect lines within the South and East China Seas as well as the Philippine Sea, with the majority of the survey effort occurring in the South China Sea. The total length of the revised tracklines is approximately 9 percent less than the total length of the original tracklines. The survey will take place in water depths ranging from approximately 25 to 6,585 m (82–21,598 ft), but most of the survey effort (approximately 84.4 percent) will take place in water greater than 1,000 m (3,280 ft), 11.4 percent will take place in intermediate depth waters (100–1,000 m or 328–3,280 ft), and 4.2 percent will occur in shallow depth water (less than 100 m or 328 ft).

All planned geophysical data acquisition activities will be conducted by L–DEO with onboard assistance by the scientists who have proposed the study. The scientific team consists of Dr. Francis Wu (State University of New York at Binghamton) and Dr. Kirk McIntosh (University of Texas at Austin, Institute of Geophysics). The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

In addition to the operations of the airgun array, a 12 kHz Simrad EM 120 multibeam echosounder (MBES) and a 3.5 kHz sub-bottom profiler (SBP) will be operated from the *Langseth* continuously throughout the TAIGER cruise.

Dates, Duration, and Region of Activity

The survey will encompass the area from approximately 17°30′–26°30′ N, 113°30′–126° E within the EEZs of Taiwan, Japan, and the Philippines. The vessel will approach mainland Taiwan within 5.2 km (3.2 mi) and mainland China within 116 km (72 mi). The vessel will approach within 3.7 km (2.3 mi) and 105 km (65 mi) of islands off the coast of Taiwan and China, respectively. The closest approach to the Ryuku Islands and Okinawa Islands will be 51.5 km (32 mi) and approximately 400 km (249 mi), respectively. Although the survey will occur at least 32 km (29.9 mi) from Luzon, Philippines, survey lines will take place approximately 28.6 km (17.8 mi) and 8.8 km (5.5 mi) from the Babuyan and Batan islands, respectively. Water depths in the survey area range from approximately 25 to 6,280 m (164–20,603 ft). There are not seismic lines in less than 50 m (164 ft) water depth. The closest seismic line to land is approximately 3.7 km (2.3 mi) from an island off the east coast of Taiwan. The TAIGER program consists of 4 legs, each starting and ending in Kao-hsiung, Taiwan. The first leg is expected to occur from approximately March 31 to April 28, 2009 and will include the survey lines in the South China Sea. The second leg is scheduled for May 3 to June 3, 2009 and will include survey lines around Taiwan. The third leg (approximately June 7–14, 2009) will involve OBS recovery by the *Langseth* only; no seismic acquisition will occur during this leg. The fourth leg, consisting of the survey lines in the Luzon Strait and Philippine Sea, is scheduled to occur from June 18 to July 20, 2009. The program will consist of approximately 103 days of seismic acquisition. The exact dates of the activities depend on logistics and weather conditions.

Safety Radii

L–DEO estimated the safety radii around their operations using a model and by adjusting the model results based on empirical data gathered in the Gulf of Mexico in 2003. Additional information regarding safety radii in general, how the safety radii were calculated, and how the empirical measurements were used to correct the modeled numbers may be found in NMFS' proposed IHA notice (73 FR 78294, December 22, 2008) and L–DEO's application. Using the modeled distances and various correction factors, Table 1 outlines the distances at which three rms sound levels (190 dB, 180 dB, and 160 dB) are expected to be received from the various airgun configurations in shallow, intermediate, and deep water depths.

Source and volume	Tow depth (m)	Water depth	*Predicted RMS Distances (m)*		
			190 dB	180 dB	160 dB
Single Bolt airgun 40 in^3	*6–9	Deep	12	40	385
		Intermediate	18	60	578
		Shallow	150	296	1,050
4 strings 36 airguns 6600 in^3	6–7	Deep	220	710	4,670

Source and volume	Tow depth (m)	Water depth	*Predicted RMS Distances (m)*		
			190 dB	180 dB	160 dB
	.....	Intermediate	330	1,065	5,189
	.....	Shallow	1,600	2,761	6,227
	8–9	Deep	300	950	6,000
	.....	Intermediate	450	1,425	6,667
	.....	Shallow	2,182	3,694	8,000

Table 1. Predicted distances to which sound levels ≥190, 180, and 160 dB re 1 μPa might be received in shallow (<100 m; 328 ft), intermediate (100–1,000 m; 328–3,280 ft), and deep (>1,000 m; 3,280 ft) water from the 36 airgun array, as well as a single airgun, used during the Central American SubFac and STEEP Gulf of Alaska survey, and planned during the TAIGER SE Asia survey. *The tow depth has minimal effect on the maximum near-field output and the shape of the frequency spectrum for the single 40 in^3 airgun; thus, the predicted safety radii are essentially the same at each tow depth. The most precautionary distances (*i.e.,* for the deepest tow depth, 9m) are shown.

Because the predictions in Table 1 are based in part on empirical correction factors derived from acoustic calibration of airgun configurations different from those to be used on the *Langseth* (*cf.* Tolstoy *et al.,* 2004a,b), L–DEO conducted an acoustic calibration study of the *Langseth's* 36 airgun (approximately 6,600 in^3) array in late 2007/early 2008 in the Gulf of Mexico (LGL Ltd., 2006). Distances where sound levels (*e.g.,* 190, 180, and 160 dB re 1 μPa rms) were received in deep, intermediate, and shallow water will be determined for various airgun configurations. Acoustic data analysis is ongoing and a scientific paper on the *Langseth* calibration study is currently in review for future publication (Tolstoy, pers. comm.). After analysis, the empirical data from the 2007/2008 calibration study will be used to refine the exclusion zones (EZ) proposed above for use during the TAIGER cruise, if the data are appropriate and available for use at the time of the survey.

A more detailed description of the authorized action, including vessel and acoustic source specifications, was included in the proposed IHA notice (73 FR 78294, December 22, 2008).

Comments and Responses

A notice of receipt of the L–DEO application and proposed IHA was published in the **Federal Register** on December 22, 2008 (73 FR 78294). A notice extending the public comment period by 15 days, to February 5, 2009, due to several Federal holidays, was published in the **Federal Register** on January 16, 2009 (74 FR 2995). During the comment period, NMFS received comments from the Marine Mammal Commission (Commission). NMFS also received comments from the Center for Regulatory Effectiveness (CRE), Natural Resources Defense Council (NRDC) (on behalf of International Fund for Animal Welfare, Whale and Dolphin Conservation Society, Cetacean Society International [CSI], Animals Asia Foundation [AAF], New York Whale and Dolphin Action League, Ocean Futures Society, and Jean-Michel Cousteau), Wild at Heart Legal Defense Association (WaH) (on behalf of Changhua County Environmental Protection Union, Clymene Enterprises, Green Party Taiwan, Taiwan Friends of the Global Greens, Leviathan Sciences, Environment and Animal Society of Taiwan, Wild Bird Society of Yunlin, Matsu's Fish Conservation Union, Blue Dolphin Alliance, Hong Kong Dolphin Conservation Society [HKDCS], Dr. Ellen Hines, Taiwan Sustainable Union, Jo Marie V. Acebes, APEX Environmental, Coral Triangle Oceanic Cetacean Program and IUCN Species Survival Commission—Cetacean Specialist Group, Kimberly Reihl, Changhua Coast Conservation Action, Ocean Park Corporation, Dr. Bradley White, Ketos Ecology, CSI, Dr. Wang Ding, Study Centre for Marine Conservation, AAF, International Laboratory for Dolphin Behaviour Research, Mary Speer, and American Cetacean Society), CSI, Linking Individuals for Nature Conservation (LINC), Humane Society International (HSI), Dr. John Wang, Eastern Taiwan Strait Sousa Technical Advisory Working Group (ETSSTAWG), AAF, HKDCS, Dr. Robert Brownell, Dr. Lien-Siang Chou, Dr. Linda Weilgart, Dr. Kirk McIntosh and Dr. Francis Wu (Dr. McIntosh and Dr. Wu), Dr. Lemnuel Aragones, Dr. Joseph Minor and Dr. Christine Wilson and James Minor and Susan Wilson (Minor and Wilson), and a private citizen. The public comments can be found online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

The following are their comments, and NMFS' responses.

Extension Requests

Comment 1: Numerous parties expressed concern regarding L–DEO's IHA application under the MMPA to incidentally harass marine mammals during a proposed marine geophysical survey in SE Asia from March–July, 2009, as published in the **Federal Register** (73 FR 78294, December 22, 2008). Many interested persons and organizations requested an extension of the 30-day public comment period to allow for the adequate review of lengthy documents associated with the proposed IHA and prepare responses.

Response: NMFS considered these requests during the 30-day public comment period and published a notice in the **Federal Register** (74 FR 2995, January 16, 2009) extending the public comment period for the proposed IHA from January 21 to February 5, 2009. The 15-day extension is due to the unique circumstances of the timing of the publication of the **Federal Register** notice (74 FR 2995, January 16, 2009) relative to several Federal holidays. The **Federal Register** notice (74 FR 2995, January 16, 2009) published three days before the Christmas holiday, which fell on Thursday, December 25, 2008. The following day, Friday, December 26, 2008 was declared a Federal holiday for executive branch departments and agencies. New Year's Day, a Federal holiday, was the following Thursday, January 1, 2009. The 15-day extension was given in recognition of the fact that the timing of these three holidays led many workers to be away for much of the two-week period and some non-government organizations closed their offices during that period. NMFS is also aware that the proposed action was for a new geographical area rather than a renewal of a prior action, where the associated documents are lengthy and would likely not be familiar to many interested parties. NMFS believes that a 30-day comment period with a 15-day extension (for a total of 45 days) is more than an adequate time period for the public to address concerns and submit comments.

General Comments

Comment 2: The CRE objects to the statement in the proposed IHA (73 FR 78303, December 22, 2008) on page 78303, column one, paragraph three, that states: ''However, controlled exposure experiments in the Gulf of Mexico indicate that foraging behavior

was altered upon exposure to airgun sound (Jochens *et al.,* 2006).'' CRE states that this statement is misleading, and does not accurately reflect the underlying data, and it is not based on the most recent assessment of those data. NMFS' statement cites a 2006 Sperm Whale Seismic Study (SWSS) in the Gulf of Mexico Report which discusses data on foraging behavior and avoidance movements of seven tagged sperm whales in the Gulf of Mexico during exposure to airguns. The CRE requests that NMFS cite the final 2008 Synthesis Report on SWSS which cautions that the ''* * * sample size of seven animals that conducted foraging dives during exposure was too small to provide definitive results * * * the power of the test to detect small changes in foraging success was low, and no conclusions on the biological significance of these effects for an individual animal or for the populations can be made from the data sets available.''

Response: As CRE points out in their letter, L–DEO acknowledges in their application (see Section VI, page 37) that seismic energy alters sperm whale foraging behavior. NMFS acknowledges the commentor's interpretation of 2006 SSWS. However, after reviewing the 2008 Synthesis Report, NMFS believes that the following statement: ''* * * sample size of 7 animals conducted foraging dives during exposure was too small to provide definitive results * * * the power of the test to detect small changes in foraging success was low and no conclusions on the biological significance of these effects for an individual animal or for the population can be made from the data sets available,'' refers to having the statistical power to detect small changes in foraging success. Conversely, page 264 of the 2008 Synthesis Report states the following: ''* * * Our data seem to indicate that airgun exposure—even at low exposure levels observed in this experiment—can result in large reductions in foraging rate for some individual sperm whales.'' Therefore, the proposed IHA notice statement that data indicated alterations in foraging behavior, is supported by one of the conclusions discussed in the 2008 Synthesis Report. NSF and L–DEO presented this study as one of several pieces of information that relate to this topic. Though the commenter has presented an alternate interpretation of the data related to foraging behavior, NMFS finds that the EA provides sufficient analysis of the available data and the information is not such that NMFS' findings.

Comment 3: The Commission is concerned that most of the issues raised in its letter have been raised before and, to their knowledge, little is being done to resolve them. The Commission believes that the action agency and contractor should bear primary responsibility for carrying out the studies needed to reduce the existing uncertainty and that the authorizing and oversight agencies have a degree of responsibility as well.

Response: NMFS has responded to the best of its ability regarding all of the Commission's concerns on various issues during the public comment process.

Comment 4: The Commission is concerned that the opportunity for scientists, conservationists, and other interested parties from other countries to comment on research activities to be conducted by U.S. organizations in foreign waters. Scientists, conservationists, and others are generally unfamiliar with the procedures for permit review and authorization in the U.S. but may have a good understanding of the natural history and vulnerability of potentially affected species. The Commission believes that they should be provided with opportunities to contribute to the evaluation of the potential effects of seismic studies in the context of all other factors that may be affecting these species. If U.S. scientists and institutions are to engage in research activities in the waters of other countries, it stands to reason that our system of review should include sufficient opportunities for foreign parties to comment on potential effects. This might be accomplished in any number of ways, such as extending the comment period to give them additional time to comment and promoting interaction between the research organization and concerned parties from other countries. The Commission believes such participation is appropriate and, in the long run, will facilitate international cooperation on conservation issues, more informed comments, and more risk-averse research methods and mitigation procedures.

Response: NMFS agrees with the Commission's comments. NMFS extended the 30 day public comment for the proposed IHA by an additional 15 days to accommodate requests from the public. *See* Extension Request above.

Comment 5: Dr. McIntosh and Dr. Wu have provided some comments about the nature and significance of our project and also try to allay some of the expressed concerns. As an introductory statement, the research Dr. McIntosh and Dr. Wu plan targets fundamental Earth processes that remain inadequately understood; this includes topics such as the growth and composition of continents and the fundamental processes of building mountains. Dr. McIntosh and Dr. Wu choose to do this research in the Taiwan region because it is the best location, of only a few places globally, where we can study the collision of an oceanic island chain with a continent.

Response: NMFS acknowledges Dr. McIntosh and Dr. Wu's comments.

Comment 6: Dr. McIntosh and Dr. Wu state that as for marine mammal safety, the community of marine mammal biologists can be assured that their project is not a reckless intrusion into the marine habitat of endangered species. In fact, detailed studies have been conducted regarding the possible impacts of this project on marine mammal populations.

Response: NMFS acknowledges Dr. McIntosh and Dr. Wu's comments. NMFS expects the principal scientists to abide by the requirements described in the IHA issued to L–DEO. After issuance of the proposed IHA, L–DEO negotiated with the project's principal scientists to modify the cruise plan and adopt more precautionary mitigation measures for purposes of marine mammal safety in the study area.

Comment 7: Dr. McIntosh and Dr. Wu state that they expect to produce the most comprehensive subsurface images of the rapidly rising Taiwan mountains with their data. These images, along with seismicity recorded by L–DEO's arrays, will form a greatly enhanced basis for evaluating earthquake and tsunami potentials of Taiwan and can thus be used to improve the safety and security of the human population at risk to these phenomena.

Response: NMFS acknowledges Dr. McIntosh and Dr. Wu's comments.

Comment 8: CSI states that the IHA application and EA are similar in many respects to previous L–DEO EA's. The response, however, is not. The response to this authorization request will prove to be unique, a potential watershed in the manner all future seismic surveys should be critiqued by the scientific community. To be helpful, CSI has attached some relevant expert reviews to their comments, even if they are duplicated by others, to ensure that NMFS has the opportunity to include them in the deliberative process. The expert level of opinion and proof stimulated by the IHA application and EA challenges previous assumption and, CSI hopes, will stimulate adequate, directed research to enable appropriate

mitigations to satisfy various laws, including the MMPA.

Response: NMFS received numerous comments from interested parties on L–DEO's proposed IHA for a marine geophysical survey in SE Asia, March to July 2009. NMFS acknowledges CSI's and other interested parties' comments on the proposed IHA and EA during the public comment period. After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

L–DEO and NSF have formally consulted with NMFS' Permits, Conservation, and Education Division under the MMPA regarding the IHA and NMFS' Endangered Species Division regarding a Biological Opinion under Section 7 of the ESA for the marine geophysical survey in SE Asia. NMFS believes L–DEO and NSF have satisfied their responsibilities under the laws of the MMPA and ESA.

Comment 9: CSI states that the MMPA only authorizes the lethal taking of marine mammals under extraordinary circumstances that do not apply to the scientific research proposed by this project. In the opinion of experts, as expressed in the attachments, mortalities are likely. How can NMFS believe that all these experts are wrong, or that associated mortalities would not violate the MMPA? CSI urges NMFS to apply these experts comments to the EA and IHA application deficiencies and to require that the L–DEO proposal address them in the only legal format available to them, an application for a LOA under MMPA Section 101(a)(5)(A–C).

Because the L–DEO's geophysical research will have an incidental impact on marine mammals that experts predict will include mortalities and even extirpation it must apply for a letter of authorization under MMPA section 101(a)(5)(A–C).

Response: While an authorization for taking marine mammals by mortality cannot be authorized under Section 101(a)(5)(D) of the MMPA, those paragraphs do authorize taking by Level A harassment. Level A harassment means any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or a marine mammal stock in the wild. While it is true that an injury can be so severe that it later may result in mortality, the MMPA does not preclude issuance of an authorization under Section 101(a)(5)(D) of the MMPA for activities that have the potential to cause injury. However, as NMFS shows in this document morality and serious injury are not anticipated to occur during this seismic survey cruise due to implementation of mitigation measures (e.g., ramp-up, power-down, shut-down, temporal and spatial avoidance, procedures for species of particular concern, passive acoustic and visual monitoring, and quiet acoustic periods). Nor is take by injury, serious injury, or mortality authorized. Therefore, issuance of an IHA is appropriate. Monitoring and mitigation measures are discussed later in this document.

Comment 10: CSI states it is a relief to find so many experts willing to contribute their knowledge and experience to this process. They do a far better job than CSI or any NGO could of addressing the specific flaws found in this L–DEO IHA request. While some of these same flaws in previous L–DEO requests have been addressed, they may have been more easily dismissed by NMFS because very few were from world authorities and scientific experts. This time the experts have participated directly, and cannot be dismissed.

Response: NMFS acknowledges CSI's comments and considers all relevant public comments before making a determination on the issuance of the IHA. After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures in the study area. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures in the study area. NMFS believes that L–DEO's revised survey as well as the implementation of the monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

Comment 11: CSI states that the intent of LGL's comment is to manipulate NMFS into a fast and uncritical decision. By law, the schedules, as well as the scientific and economic values of this project, remain irrelevant to the scope of NMFS' deliberations on the fitness of the proposal.

Response: Section 101(a)(5)(D) establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization. NMFS received an IHA application from L–DEO on October 27, 2008. NMFS published a notice for the proposed IHA in the **Federal Register** on December 22, 2008 (73 FR 78294). A notice on the 15-day extension of the comment period for the proposed IHA was published on January 16, 2009. NMFS issued an IHA to L–DEO on March 31, 2009 and amended the IHA on May 1, 2009.

After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures in the study area. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. See L–DEO's Supplemental EA.

Comment 12: CSI states that it is well aware that the L–DEO, NSF, and other project supporters represent powerful influences that NMFS must respect. However, CSI trusts that these rational influences also recognize the overwhelming need to define and mitigate anthropogenic affects on the marine environment, with their rapidly accelerating influences on the planet and eventually human societies. Is it necessary to do significant, irrevocable damage to marine life in order to understand geophysical processes?

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures in the study area. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

On March 31, 2009, NMFS prepared a Finding of No Significant Impact for L–DEO's marine geophysical survey in SE Asia. NMFS determined that the issuance of an IHA for the take, by harassment, of small numbers of marine mammals incidental to L–DEO's March–July, 2009, seismic survey in SE Asia will not significantly impact the quality of the human environment.

Comment 13: CSI states that in lieu of such loft concerns economic efficiency is an excellent rationale for increased support of appropriate science to

determine adequate mitigations. Without better science this and future proposals will face further challenges that will cause delays in the L–DEO schedule that are likely to have economic consequence. The time and financial loss is neither the fault of the process or the responsibility of NMFS. Why not do the job responsibly?

Response: NMFS acknowledges CSI's comments. An authorization for incidental taking of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth.

After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures in the study area. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. NMFS and the applicant (L–DEO) have fulfilled their responsibilities under the MMPA and ESA for the issuance of the subject IHA.

Comment 14: CSI states that the fundamental point of CSI's comment and many others, is that this L–DEO project does not qualify for an IHA, according to the criteria at *www.nmfs.noaa.gov/pr/permits/incidental.htm.* The fact that previous L–DEO projects received IHAs does not provide a precedent under which this proposal also should receive an IHA, because no matter how NMFS rationalized those past IHAs this proposal is different, different in scale, scope, and expertise represented by the formal comments and less public complaints it has generated from scientific world authorities and regional and species experts. If these people had been consulted by LGL, the inadequate EA and request would never have been submitted for an IHA. The original intent of the IHA process was to expedite some requests, not all requests. Not this request.

Response: NMFS disagrees with CSI's comments. L–DEO's marine geophysical survey in SE Asia, March to July 2009, qualifies for an IHA according to the criteria on the NMFS Office of Protected Resources Incidental Take Authorizations Web site. Portions of L–DEO's project occurs on the high seas, which is applicable to the MMPA and ESA. Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment.

After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures in the study area. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

Comment 15: CSI states that there is little knowledge available for most of the species that inhabit the waters of SE Asia. Even the most basic knowledge about the presence/absence of species is incomplete. Only a small proportion of the large expanse of sea in the region (and mostly coastal waters) has been surveyed systematically for marine mammals. Few estimates of abundance or distribution exists for SE Asian marine mammals an in most cases, this information is for a limited region, often bounded by political rather than biological borders. What little is known clearly shows the region to be an area with a high diversity of marine mammal (and other marine) species.

Response: NMFS agrees that the SE Asia region is likely to have a high diversity of marine mammal species and that impacts on marine mammals should be assessed on the population or stock unit level whenever possible. L–DEO's IHA application provides information on stock abundance in SE Asia (when available), larger water bodies (such as the North Pacific Ocean), and the Eastern Tropical Pacific Ocean (if data was unavailable). NMFS believes that these data are the best scientific information available for estimating impacts on marine mammal species and stocks. However, Congress recognized that information on marine mammal stock abundance may not always be satisfactory. When information is lacking to define a particular population or stock of marine mammals then impacts are to be assessed with respect to the species as a whole (54 FR 40338, September 29, 1989). See relevant discussions throughout this document and L–DEO's Supplemental EA.

Comment 16: CSI states that the study area is a region where marine mammals are facing a myriad of serious threats that have made the continued existence of several marine mammal populations and possibly some species uncertain (note: some of the same threats and activities have resulted in the recent 'functional extinction' of the baiji (Turvey *et al.* 2007), which is endemic to the Yangtze River of China).

Response: L–DEO's EA acknowledges that there are numerous threats to cetaceans in SE Asia including vessel traffic, habitat loss, oil and gas industry, pollution, fisheries, and hunting.

After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. See L–DEO's EA and Supplemental EA.

Comment 17: CSI states that all small cetaceans in Taiwanese waters are threatened by fishermen using hand-harpoons, bycatch in fishing gear, and noise. Those that inhabit coastal waters of western Taiwan also face habitat degradation, pollution, and possibly prey reduction.

Response: NMFS does not regulate activities (including fishing) in Taiwanese waters. L–DEO's EA discusses direct and indirect effects on marine mammals. The numerous threats to cetaceans in SE Asia include vessel traffic, habitat loss, oil and gas industry, pollution, fisheries, and hunting.

After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

Comment 18: CSI states that some marine mammals have been reduced to numbers so low that even minimal 'takes' will have a large impact on the remaining population.

Response: After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

Comment 19: CSI states that a number of marine mammals are discussed in their comments to NMFS based on what

is known about their biology, conservation status and threats in the region. This does not imply other marine mammals that are not specifically discussed in detail are ''safer'' from the seismic surveys, in most cases, too little information is available to understand the impacts, which may be as great as or greater than the marine mammals discussed in detail in their comments to NMFS.

Response: NSF's and L–DEO's IHA application, EA, and Supplemental EA sufficiently discusses the marine mammals species and the possible impacts from seismic surveys in the SE Asia region. After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that the implementation of the required monitoring and mitigation measures will result in a negligible impact on affected species and stocks of marine mammals in the study area.

Comment 20: ETSSTAWG states that it should be noted that many seismic surveys are conducted in the Taiwan region every year without requesting IHAs. The actions of private oil and gas companies within the EEZ's of other countries is beyond the jurisdiction of the MMPA, thus they need no such U.S. authorizations. However, this means that L–DEO could become a scapegoat for all survey operation in the region, purely because they have to apply for authorization, as they will clearly be operating partly on the high seas (and thus fall under MMPA jurisdiction) and as they have government funding. This is acknowledged, but until such time as NMFS enforcement confirms the locations and tracks of every survey undertaken globally this situation is unlikely to change.

Response: NMFS is aware of seismic surveys and other activities undertaken worldwide that occur (that may result in incidental takes of marine mammals) without requesting IHAs or LOAs. NMFS may grant IHAs upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region. L–DEO and NSF are considered U.S. citizens under the MMPA. The MMPA applies to U.S. citizens in U.S. waters, and the high seas, but does not apply or authorize the incidental take of marine mammals in the territorial seas of foreign nations. The MMPA does not apply to non-U.S. citizens, unless they are conducting a specified activity (other than commercial fishing) that may result in incidental takes of marine mammals in U.S. waters. NMFS can refer reports of possible violations of the MMPA and this subject IHA issued to L–DEO to NOAA Enforcement for investigation.

The IHA is valid only for the *Langseth's* activities associated with seismic survey operations that are specified in L–DEO's EA, Supplemental EA, and IHA application. L–DEO is required to comply with the IHA and the terms and conditions of the Incidental Take Statement corresponding to NMFS' Biological Opinion. L–DEO and NSF will be required to reinitiate consultation with NMFS if the identified action is subsequently modified in a manner that causes an effect that was not considered during the analysis for making the necessary determinations for the issuance of the IHA. L–DEO is required to submit a draft report on all activities and monitoring results to the Office of Protected Resources, NMFS, within 90 days of the completion of the *Langseth's* cruise in SE Asia. The report must contain and summarize information stated in the IHA issued to L–DEO.

Comment 21: WaH is aware that this L–DEO survey proposal is one of a very small number of requests for authorization for geophysical surveys while other user groups, including the oil and gas industry, are not carrying out such EAs or are not subjected to public scrutiny in this way. Rather than allowing the focus to be limited to geological surveys such as L–DEO's, WaH recommends that measures be taken to ensure that all future marine seismic surveys (whether of an academic or commercial nature) are made subject to the same level of scrutiny and transparency, such as by requiring EAs or EISs to be submitted for professional and public review and with all relevant documents (including post-survey reports and relevant local permits, authorizations and licenses) being made publicly available.

Response: All applications submitted to NMFS are subject to public comment periods. During the public comment period, their NEPA documents and incidental take authorization applications are available on the NMFS Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm*) and are reviewed by the Commission. NMFS does not force an agency or other organization to apply for and consult on an incidental take authorization under the MMPA.

General Opposition

Comment 22: A private citizen questioned why this research was being conducted in SE Asia. The commenter also believes the U.S. should not be doing work in the region.

Response: Dr. McIntosh and Dr. Wu, the principal investigators on the seismic survey, state the primary purpose of the TAIGER project is to investigate the fundamental processes of mountain building, which plays a major role in shaping the face of the Earth. Oceanic island chains, or arcs, along convergent tectonic plate boundaries result from a process known as subduction where one of Earth's tectonic plates slides beneath another as they move toward each other. As the lower plate slides beneath the upper plate, its trajectory usually steepens with depth and eventually reaches depths of several hundred (to greater than 700) km. The arc is made up of a chain of volcanoes on the upper plate, and is typically situated above the point where the lower plate is at about 100 km (62 mi) depth. As this process of subduction and volcanism continues through time (millions of years) the crust of the upper plate becomes thicker, and develops properties more like continental crust, which is much thicker and less dense than ocean crust and allows for land surface above sea level. The results of many studies indicates that much of the crust that forms Earth's continents was accumulated through time by island arcs colliding with continents leaving remnants of the arcs attached to the edge of the continents. Despite this general interpretation, the actual processes of how this happens, including growth of collisional mountain belts and deformation of arc and continental crust, is poorly understood and poorly documented. Ancient collision zones have been studied, but they have typically undergone many stages of deformation and erosion, leaving them difficult to interpret. Currently active arc-continent collision zones include Taiwan, Papua New Guinea, and Timor. Of these active collisions, Taiwan is currently the most active. Taiwan is also the most favorable of these to examine the full spectrum of processes as a plate boundary changes from oceanic subduction to arc-continent collision. This transition is a major target of the TAIGER project requiring that L–DEO obtain a series of crustal-scale seismic transects from south of Taiwan, where subduction is active, to northern Taiwan, where the collision has reached mature steady state.

One of the by-products of the collision in Taiwan is the generation of frequent small earthquakes and less frequent, large, destructive earthquakes. By using the relatively small signals from the *Langseth* source array

(compared to those generated by nature) scientists can topographically image the mountains and thereby localize the major breaks or faults underneath the mountains and assess their seismic potential. In addition to linear arrays of seismographs, the *Langseth* signals will also be recorded, as an integrated TAIGER acquisition program, on over 200 land seismographs across the island and 20 OBSs, all of which have been recording earthquakes. Scientists expect to produce the most comprehensive subsurface images of the rapidly rising Taiwan mountains with L–DEO's data. These images, along with seismicity recorded by L–DEO's arrays, will form a greatly enhanced basis for evaluating earthquake and tsunami potentials of Taiwan and can thus be used to improve the safety and security of the human population at risk to these phenomena.

A previous U.S.-Taiwan project (the 1995 TAICRUST project) demonstrated the feasibility of the approach to be used in the TAIGER project, but this project did not include significant seismic data acquisition in the Taiwan Strait. Subsequent analysis showed that seismic profiles across the Taiwan, recorded by seismographs in the strait and on land in Taiwan, are necessary to determine the crustal structure of the Taiwan collisional mountain belt. Thus, the principal scientist's plans in the Taiwan Strait are one of the key elements required for the success of the TAIGER project.

Comment 23: LINC objects to the IHA application and states that other local NGOs have not had time to respond due to the lack of sufficient notice. LINC is concerned that NMFS is eager to approve the L–DEO application and authorize destructive activities in the SE Asia region without verifying that L–DEO has complied with relevant local conservation laws and regulations. LINC strongly urges the NMFS to reject the application of L–DEO until it can be proven that they have (1) complied with local laws and regulations, and (2) have completed a comprehensive consultation with local governments, scientists, researchers, and NGOs based in this region. LINC states that the approval of the current L–DEO application, as is, would demonstrate a clear lack of concern for the conservation laws, threats, and environmental protection efforts in this region.

Response: NMFS believes local NGOs have had sufficient time to respond to the proposed IHA published in the **Federal Register.** A 30-day comment period with a 15-day extension (for a total of 45 days) is more than an adequate time period for the public to address concerns and submit comments. The NMFS has received numerous comments from persons and organizations located nationally and worldwide. Generally, under the MMPA, NMFS may authorize the harassment of small numbers of marine mammals incidental to an otherwise lawful activity, provided NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth to achieve the least practicable adverse impact. L–DEO and NSF have consulted with the various governments in the action area. To date, L–DEO and NSF have received foreign clearance notices from the governments of the Philippines, Taiwan, and Japan. *See* International Legal Compliance below.

Comment 24: Given the large volume of evidence for the association between anthropogenic noise and disturbance in cetaceans and other marine mammal, a precautionary approach is surely required (as recommended by Gordon *et al.,* 2004). AAF urges NMFS to consider the application from L–DEO with information provided, and the findings and recommendations of the independent reviews of the Eastern Taiwan Strait Sousa Technical Advisory Working Group (ETSSTAWG) and others, in mind.

Response: NMFS has developed conservative monitoring, mitigation, and reporting requirements in order to reduce the potential effects of anthropogenic noise on marine mammals. L–DEO and NSF have considered the numerous public comments and revised the seismic survey described in its IHA application. L–DEO's Supplemental EA is in response to the comments received by NMFS through the public comment period associated with the IHA process. L–DEO considered the recommendations from several independent reviewers including ETSSTAWG. NSF received no direct public comments on the draft EA during (or after) the open comment period November 14, 2008 through December 15, 2008. Included in L–DEO's Supplemental EA are a number of changes to the survey design that were made by L–DEO to address specific comments, some received by a number of individuals and agencies, and to enhance measures already included in the original documents to mitigate effects of the proposed survey on marine mammals. NMFS has made its necessary determinations based on L–DEO's revised seismic survey and Supplemental EA.

Comment 25: Several commenters requested that NMFS deny issuing the IHA to L–DEO. They questioned: (1) The adequacy of L–DEO's scientific research and lack of consultation with local experts; (2) the survey's potential to expose ETS humpback dolphins to received levels of 180 dB re 1 μPa (rms) which they believed could cause permanent physiological damage, thus constituting at a minimum Level A harassment; (3) the number of ETS humpback dolphins that L–DEO proposed to harass, stating that the requested take of ETS humpback dolphins to be harassed was likely to exceed a sustainable level of take for the population; (4) the adequacy of the monitoring and mitigation measures for endangered or cryptic species that may be vulnerable to noise impacts (e.g., ETS humpback dolphin and finless porpoise); (5) the timing of the surveys and their impacts on migration routes; (6) biased and non-precautionary assumptions; and (7) the cumulative effects analyses in the EA.

Response: NMFS disagrees with the commenters' argument that NMFS should have denied L–DEO's application for an IHA.

(1) NMFS is charged with issuing IHAs for otherwise lawfully activity. L–DEO's research is otherwise lawful. NMFS opened the proposed IHA to public comment. L–DEO plans to conduct the seismic survey along the Taiwan arc-continental collision in the China and Philippine Seas. Taiwan is one of only a few sites of arc-continent collision worldwide—one of the primary tectonic environments for large-scale mountain building. The primary purpose for the TAIGER project is to investigate the processes of mountain building, a fundamental set of processes which plays a major role in shaping the face of the Earth. The vicinity of Taiwan is particularly well-suited for this type of study, because the collision can be observed at different stages of its evolution, from incipient, to mature, and finally to post-collision. As a result of its location in an ongoing tectonic collision zone, Taiwan experiences a great number of earthquakes; most are small, but many are large and destructive. This project will provide a great deal of information about the nature of the earthquakes around Taiwan and will lead to a better assessment of earthquake hazards in the area. The information obtained from this study will help the people and government of Taiwan to better prepare

for future seismic events and may thus mitigate some of the loss of life and economic disruptions that will inevitably occur.

(2) NMFS disagrees with the commenter's characterization of the potential risk to the ETS sub-population of Indo-Pacific humpback dolphins. After the issuance of the proposed IHA, L–DEO negotiated with the project's principal scientists to modify the cruise plan and adopt more precautionary mitigation measures. L–DEO will limit seismic survey lines to take place at least 20 km from the west coast of Taiwan, except for in the passage between the Penghu Islands and the Waishanding Jhou sandbar, where the survey will pass through the approximately 17.1 km mid-line distance between the two possibly sensitive areas, subject to the limitations imposed by other foreign nations, to minimize the potential for exposing Indo-Pacific humpback dolphins, finless porpoises, and other coastal species to SPLs greater than or equal to 160 dB re 1 μPa (rms). Thus, the precautionary buffer recommended by ETSSTAWG in their comments to NMFS will be maintained, ''at least 13 km and perhaps a more precautionary 15 km of the ETS *Sousa* population—meaning up to around 20 km from shore.'' L–DEO will also shut-down the airgun array if an ETS Indo-Pacific humpback dolphin is visually sighted regardless of the distance of the animal(s) to the sound source. The array will not resume firing until 15 minutes after the last documented whale visual sighting.

(3) NMFS disagrees with the commenter's assertion that the requested take of ETS Indo-Pacific humpback dolphins by harassment is likely to exceed a sustainable level of take for the population. L–DEO's seismic survey was modified after the issuance of the proposed IHA to include more precautionary mitigation measures. The incorporation of precautionary measures reduced the estimated number of ETS Indo-Pacific humpback dolphins expected to be harassed to zero, which is clearly a sustainable level of take for the sub-population.

(4) and (5) NMFS believes that the mitigation and monitoring measures in the IHA are adequate to protect species of concern that may be vulnerable to noise impacts. After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary mitigation measures, especially for species that are of particular concern and have cryptic behaviors that may be vulnerable to noise impacts as well as to address concerns on the timing of the surveys and their impacts on migration routes. See Monitoring, Mitigation, Species of Particular Concern, and Temporal and Spatial Avoidance sections below and L–DEO's Supplemental EA for more information. NMFS has included requirements to these effects in the IHA issued to L–DEO.

(6) After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary mitigation measures to address concerns of potential impacts of the seismic survey on affected species and stocks of marine mammals in the study area. NMFS believes that L–DEO's IHA application, EA, and Supplemental EA are not biased as they adequately consider alternatives, and provides analysis on the affected environment and environmental consequences of the study area.

(7) The EA adequately addresses the cumulative impacts of a relatively short-term seismic airgun survey in relation to long-term noise and events, such as vessel traffic, habitat loss, oil and gas industry, pollution, fishing, hunting, and other human activities. These other activities are long-term activities which are unaffected by NMFS' action here. Nor does this action, when considered in light of the other activities, become significant.

For more information, see further relevant discussions in this notice, L–DEO's IHA application, EA, and Supplemental EA.

Comment 26: HSI states that while they appreciate L–DEO's efforts to comply with the MMPA and the NEPA, HSI is concerned that this request for an incidental harassment authorization is premature and that in fact a letter of authorization for incidental take may be required. HSUS/HSI strongly urges the NMFS to deny this request as submitted and at a minimum to require L–DEO to resubmit its request with an updated review of the region's marine mammals, a more complete review of relevant literature, modified survey track lines and schedules, and additional mitigation measures.

Response: NMFS does not agree that a Letter of Authorization for incidental take is necessary in this case. Due to the incorporation of monitoring and mitigation measures, including L–DEO's revision of tracklines after the issuance of the proposed IHA and in response to public comments, NMFS does not anticipated a potential for injury, serious injury, or mortality to any marine mammals under the jurisdiction of the MMPA. Based on numerous concerns regarding the proposed IHA, L–DEO has revised its seismic survey and adopted more precautionary mitigation measures. L–DEO has prepared a Supplemental EA in response to the comments received. NSF received no direct public comments on the draft EA during (or after) the open comment period of November 14, 2008 through December 15, 2008. Included are a number of changes to the survey design that were made by L–DEO to address specific comments, some received by a number of individuals and agencies, and to enhance precautionary measures already included in the original documents to mitigate potential effects of the survey on marine mammals.

Comment 27: ETTSTAWG states the L–DEO project, as presently described in the U.S. **Federal Register,** poses an unacceptable risk to the 'critically endangered' population of ETS Indo-Pacific humpback dolphins.

Response: NMFS disagrees with ETSSTAWG's characterization of the risk to the sub-population of ETS Indo-Pacific humpback dolphins. After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary mitigation measures, especially considering the 'critically endangered' ETS sub-population of Indo-Pacific humpback dolphins. *See* ''Species of Particular Concern'' section below and other discussions presented in this document.

Comment 28: Dr. Linda Weilgart urges NMFS to reject this application for an IHA and states that L–DEO's powerful array of airguns, and argues that the permit application does not seriously consider the possibility of irreversible harm to marine mammals and the marine environment.

Response: NMFS disagrees with Dr. Weilgart's comments. After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary mitigation measures. NMFS believes L–DEO's planned seismic survey, as revised, will have a negligible impact on the affected species and stocks of marine mammals in the study area.

Comment 29: The strong bias in the **Federal Register** notice is disturbing. The notice should be an objective discussion that leaves open whether the agency should issue the authorization or not. As published, however, the notice's language leads inevitably to a decision to issue the authorization, despite the applicant's failure to argue convincingly, as required by law, that the surveys will not result in serious injury or death or even, in this case, Level A harassment. In fact, there is an insufficient scientific basis for concluding that no serious injury, death,

or Level A harassment of any marine mammal species will occur. Accordingly, the NMFS must deny this request as submitted and at a minimum request the applicant to submit a revised application with a more realistic and conservative analysis of potential impacts. If a compelling argument to support the conclusion that only harassment (Level B or Level A) will occur is not forthcoming, then the NMFS must deny the request outright and require the applicant to seek a letter of authorization for incidental take under Section 101(a)(5)(A–C) of the MMPA.

Response: NMFS disagrees with the commenter's characterization of the Notice of Proposed Issuance. Furthermore, as NMFS shows in this document mortality and serious injury are not expected to occur during this seismic survey cruise due to implementation of monitoring and mitigation measures (e.g., ramp-up, power-down, shut-down, passive acoustic and visual monitoring, and quiet acoustic periods) as well as L–DEO's revision of tracklines in the cruise plan. Nor is incidental take by injury, serious injury, or mortality authorized. Therefore, issuance of an IHA is appropriate. The revised survey and monitoring and mitigation measures are discussed further in this document.

Comment 30: Minor and Wilson, as scientists, are greatly saddened to see government funding being used to cause the ''Level B harassment'' of 71,669 cetaceans. Minor and Wilson also doubt that the data that might be gained from the proposed ''taking'' is worth the harm that it will do. Minor and Wilson are concerned about what the proposed undertaking will do to the reputation of U.S. science. Recently, one species of cetacean was declared extinct in this region, and several more endangered species are in the proposed study area. To have a U.S. flagged ship, owned by the NSF, cruising around in the critical habitat of multiple endangered species conducting seismic testing is clearly poor public relations. If another of these species goes extinct soon, the NSF will find itself trying to ''sell'' the notion that its contribution to the extinction was insignificant. The NMFS could make a positive contribution to the long term reputation of U.S. science if it could show some backbone and talk the NSF out of this idiocy.

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. See relevant discussions in this document as well as L–DEO's Supplemental EA.

Thresholds

Thresholds—Acoustic Thresholds for Behavior

Comment 31: The proposed IHA notice also draws conclusions that are heavily biased in favor of a finding of ''no impact.'' For example, the notice states that ''many cetaceans * * * are likely to show some avoidance of the area with high received levels of airgun sound * * * [and] the avoidance responses of the animals themselves will reduce or (most likely) avoid any possibility of hearing impairment'' (emphasis added, p. 78303). Setting aside the lack of scientific substantiation for the degree of certainty displayed by this claim, there is no presentation or discussion of the opposing (and equally likely) possibility that many cetaceans might not show avoidance of an area ensonified by airguns because it is important habitat.

Response: NMFS refers the commenter to L–DEO's EA (Chapter 4 and Appendix B) which summarized avoidance response levels to seismic pulses for a number of cetaceans. L–DEO provided ample evidence of avoidance behavior in marine mammals in response to seismic surveys from several peer-reviewed studies including data on gray, bowhead, and humpback whales (Richardson *et al.,* 1995); Gordon *et al.* (2004); humpback whale (McCauley *et al.,* 1998 and 2000a); bowhead whales (Miller *et al.,* 1999; Richardson *et al.,* 1999); and eastern Pacific gray whales (Malme *et al.,* 1986, 1988).

Conversely, the EA discussed the possibility that cetaceans might not exhibit avoidance behavior or may not be as sensitive to seismic sources. L–DEO presents data from peer-reviewed focusing on humpback whales (Malme *et al.,* 1985); bowhead whales (Miller *et al.,* 2005; Harris *et al.,* 2007); and fin and sei whales (Stone, 2003; Stone and Tasker, 2006). For marine mammals that do not avoid the vessel and sound source, L–DEO will implement mitigation measures such as power-downs and shut-downs for animals that enter the respective safety zones to prevent Temporary Threshold Shift (TTS)/Permanent Threshold Shift (PTS) for those respective species.

With the respect to the ETS population of humpback dolphins, NMFS has instituted precautionary mitigation measures to protect these species within their habitat in Taiwanese waters. L–DEO will limit seismic survey lines to take place at least 20 km from the west coast of Taiwan, except for in the passage between the Penghu Islands and the Waishanding Jhou sandbar, where the survey will pass through the approximately 17.1 km mid-line distance between the two possibly sensitive areas, subject to the limitations imposed by other foreign nations, to minimize the potential for exposing Indo-Pacific humpback dolphins, finless porpoises, and other coastal species to SPLs greater than or equal to 160 dB re μPa (rms).

Comment 32: The proposed IHA notice states that ''if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant'' (p. 78301). It does not, however, consider the reverse; that the failure of a sound source to displace animals from important feeding or breeding habitat may indicate that the area is so important that the animals are willing/forced to tolerate a level of noise exposure that is in fact harmful (see, e.g., the discussion of this concept in Richardson *et al.* 1995). The failure to consider the possibility of an animal not reacting because leaving a prime feeding spot is more costly than moving laterally along a migration pathway is an example of the bias permeating the entire analysis and has contributed to an unacceptably incomplete level of evaluation and discussion regarding impacts and mitigation.

Response: NMFS refers the commenter to page 78302 of the proposed IHA notice, Chapter 4 and Appendix B of the EA for L–DEO's presentation of cetaceans not exhibiting avoidance behavior when exposed to seismic pulses. L–DEO has acknowledged the public's concern for coastal dwelling species in Taiwan, has modified their cruise plan, and has adopted more precautionary monitoring and mitigation measures, especially for species of particular concern. See responses to comments regarding mitigation measures such as the implementation of power-downs and shut-downs for animals discussed within this document as well as within L–DEO's Supplemental EA.

Comment 33: The EA noted that ''captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.* 2000, 2002). However, the animals

tolerated high received levels of sound before exhibiting aversive behaviors.'' It should be noted, however, that the animals in the abovementioned Navy studies were reported by Nowacek *et al.* (2007) to be generally ''tested in a context where they were being rewarded for tolerating high levels of noise'' and were ''usually 'punished' in some way * * * for failing to return to the experimental station for additional exposures.'' This was not a problem for their main results as the focus of the work was on to TTS, but the setup does invalidate any conclusions based on the behavioral responses reported in the same studies. For further discussion of the need for precaution in the use of captive studies to set exposure criteria for wild animals, see Parsons *et al.* (2008) and Wright *et al.* (in press).

Response: NMFS acknowledges the commenter's interpretation of captive studies and have taken them into consideration. Thresholds for behavioral response are not based upon captive studies. The 160 dB re 1 µPa threshold was derived from data for mother-calf pairs of migrating gray whales (Malme *et al.,* 1983, 1984) and bowhead whales (Richardson *et al.,* 1985, 1986) responding when exposed to seismic airguns (impulsive sound source).

Comment 34: The idea that behavioral tolerance is a proxy for no impact has no scientific merit. In fact, some fairly sizable impacts have been reported in various species despite a lack of behavioral response. A recent panel of experts also noted that an apparently unresponsive animal may still be undergoing a chronic and/or severe acute stress response, with associated physiological and psychological consequences. These can result from exposure directly, or through masking and other phenomenon indirectly. Thus, taking is entirely possible without observable behavioral disturbance reactions and this needs to be accounted for.

Response: Section 101(a)(5)(D) of the MMPA allows citizens of the United States to take by harassment, small numbers of marine mammals incidental to a specified activity (other than commercial fishing) within a specified geographical region if NMFS is able to make certain findings. NMFS must issue an incidental harassment authorization if the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth.

The mitigation measures set forth in the IHA ensure that there will be negligible impacts on the marine mammals. Cetaceans are expected, at most, to show an avoidance response to the seismic pulses. Mitigation measures such as visual marine mammal monitoring, and shut-downs when marine mammals are detected within the defined ranges should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity. Due to these mitigation measures, and other reasons discussed in the Conclusions section of this document, NMFS believes the impacts will be negligible.

Comment 35: Mortality (by human causes) of even a single individual per year from this population may not be sustainable, and unless effective mitigation measures are taken immediately to reduce the threats to this population, it is unlikely that the population will continue to exist (Wang *et al.,* 2004, 2007b). Any single threat has the potential to be the final cause of extinction for this small population of dolphins.

Response: Please note that in response to public comments received on the application and EA, L–DEO has modified the survey design (see L–DEO's Supplemental EA) and adopted more precautionary mitigation measures to protect the critically endangered ETS population, as well as ease potential pressure on other coastal species.

Comment 36: One commenter was concerned about the masking of the noises made by threats, hindering detection of the threats and increasing the impact of the existing threats (e.g., water rushing past a gillnet, commercial shipping) and the chances of mortality.

Response: NMFS expects the masking effects of pulsed sounds on natural sounds or other anthropogenic sounds to be limited. Because of the intermittent nature and low duty cycle of seismic pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. Further, masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocetes, given the intermittent nature of seismic pulses plus the fact that sounds important to these species are predominantly found at much higher frequencies than are the dominant components of airgun sounds.

Marine mammal communications will not be masked appreciably by the multibeam echosounder signals given the low duty cycle of the echosounder and the brief period when an individual mammal is likely to be within its beam. The majority of energy should be concentrated in the beam (Kremser *et al.,* 2005). Furthermore, in the case of baleen whales, the MBES signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid any significant masking. Masking effects on marine mammals are discussed further in Appendix B(4) of L–DEO's EA.

Comment 37: Another commenter was concerned about the impacts on cetaceans due to displacement into other waters. He noted that for populations with low numbers, restricted distributions, displacement may increase energy expenditures by the species already compromised energetically (such as mothers with calves) and increase exposure to other threats (e.g., changes in migration routes may result in animals using waters with higher densities of fishing nets or lines and thus increase their risk of mortality due to entanglement).

Response: The incidental harassment authorization includes mitigation and monitoring measures to reduce potential effects on populations with low numbers and restricted distributions. L–DEO and TAIGER's principal investigators have modified the cruise plan and survey design to protect displacing populations with low numbers and restricted distributions. First, L–DEO will shut down the airgun array immediately if there is a sighting at any distance of the Indo-Pacific humpbacked dolphin or finless porpoise. Second, L–DEO has re-routed the cruise's tracklines offshore Taiwan's west coast by approximately 20 km (10.8 nautical mi) to protect the critically endangered Sousa population and the finless porpoise (except for in the passage between the Penghu Islands and the Waishanding Jhou (Wau-san-ting Chou) sandbar, where the survey will pass through the 17.1 km (9.2 nautical mi) mid-line distance between the two possibly sensitive areas). Finally, L–DEO is restricted to conducting seismic surveys in water depths greater than 200 m (656 ft) in the South China Sea, and as far east as possible from the mainland China side of the Taiwan Strait, to reduce potential for effects on eastern Pacific gray whales, Indo-Pacific humpback dolphins, and finless porpoises.

Comment 38: Given the serious conservation status of the ETS sub-population and the small population size of the JRE provisional population, there must be a higher level of precaution to avoid negative impacts of additional threats on these dolphins. Because even low level noise may increase risks to these dolphins by altering dolphin behavior, increasing ambient noise levels that can 'mask'

biologically important sounds as well as 'mask' sounds that allow the detection of other threats (e.g., the sound of water flowing past gillnets, approaching boats, etc.) should be avoided.

Response: Please see NMFS' responses to comments under the Species of Particular Concern section.

Thresholds—Acoustic Thresholds for TTS and PTS

Comment 39: The notice states that ''There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns'' (p. 78304). Such a statement is misleading on many levels. For one, marine mammal science has yet to develop ways to measure or identify PTS (permanent threshold shift or permanent hearing loss) in the field. For another, it is known that exposure to loud impulsive sounds such as are produced by airguns can deafen terrestrial species, including people. To state that no specific evidence exists of PTS in marine mammals exposed to airguns when science cannot yet identify such evidence is both specious and disingenuous.

Response: First, mitigation and monitoring requirements under the IHA are expected to prevent TTS, thus preventing PTS. NMFS acknowledges the limitations of current data on the measurement or identification of PTS in marine mammals, let along free-ranging animals.

Recent scientific research on marine mammals and noise, include: estimating hearing capabilities using various behavioral and anatomical techniques; measuring sub-injurious impacts on hearing (temporary threshold shift, or TTS); and estimating lethal and injurious effects of acoustic exposure. Richardson *et al.* (1995) noted, based on terrestrial mammal data, that the magnitude of TTS in marine mammals was expected to depend on the level and duration of noise exposure, among other considerations. Southall *et al.,* (2005) showed that long-term (four to seven years) noise exposure on three experimental pinniped species (northern elephant seal (*Mirounga angustirostris*), harbor seal (*Phoca vitulina*), and California sea lion (*Zalophus californianus*) had caused no change on their underwater hearing thresholds at frequencies of 0.2 to 6.4 kHz.

Finally, NMFS believes that the 180-dB re: 1 µPascal (rms) criteria is a reasonable and precautionary interpretation of the current data at this time. The precautionary nature of these criteria is discussed in Appendix B(6) of L–DEO's application and in previous **Federal Register** notices (*e.g.*, 67 FR 46711, July 16, 2002). The current safety zones of 180 dB re: 1 µPa (rms) for cetaceans is conservative and will protect marine mammals from injury (Level A harassment).

Comment 40: Recent research examining the propagation of airgun noise has shown that, contrary to predictions, received levels can decrease between 5 km and 9 km, but then increase at distances between 9 km and 13 km (Madsen *et al.* 2006). The researchers stated that received levels ''can be just as high * * * at 12 km as at a range of 2 km from the array'' (Madsen *et al.* 2006, p. 2374), ''beyond where visual observers on the source vessel can monitor effectively'' (Madsen *et al.* 2006, p. 2376). Arguably, this suggests that if the goal is to avoid subjecting animals to Level A harassment or worse, seismic surveys should be conducted at a minimum greater than 12 km from the offshore boundary of a coastal species' home range.

Response: With regards to the *Langseth's* survey offshore of Taiwan's west coast, L–DEO has re-routed the survey by approximately 20 km (10.8 nautical mi) to reduce potential effects for marine mammals. For the passage between the Penghu Islands and the Waishanding Jhou (Wau-san-ting Chou) sandbar, the survey will pass through the 17.1 km (9.2 nautical mi) mid-line distance between the two possibly sensitive areas. Please see the Mitigation—Tracklines section for additional information.

Comment 41: HSI notes that the **Federal Register** notice states (p. 78306): NMFS believes that to avoid the potential for permanent physiological damage (Level A harassment), cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 µPa (rms). The precautionary nature of these criteria is discussed in Appendix B (6) of L–DEO's application, including the fact that the minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely-detectable TTS and the level associated with the onset of TTS is often considered to be a level below which there is no danger of permanent damage [emphasis added]. The language (see emphasis) functionally defining Level A harassment is not found in the MMPA or in its implementing regulations. We advise the NMFS against inserting ''unofficial'' definitions of harassment into notices, regardless of the context (here, it could be argued only hearing impairment was in question, but these words could be taken out of context). This wording could be seen to encompass a broad range of ''damage''—from a wound that heals into a scar (clearly minor) to a crippling injury that leads to death (so clearly not Level A harassment but rather serious injury). It also could be seen to exclude reversible injuries that should be categorized as Level A, not Level B harassment (such as, for example, broken bones that, until healed, could result in lost mating opportunities). We strongly recommend that this language be expunged from any subsequent rule on this application and not used again in any future notices.

Response: NMFS concurs with HSI and offers the following amendment to the language contained in the proposed rule: ''NMFS believes that to avoid the potential for Level A harassment from exposure to pulsed underwater noise, cetaceans and pinnipeds should not be exposed to received levels exceeding, respectively, 180 and 190 dB re 1 µPa (rms). The precautionary nature of these criteria is discussed in Appendix B(6) of L–DEO's application, including the fact that the minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely detectable TTS and the level associated with the onset of TTS is often considered to be a level below which there is no danger of permanent damage [emphasis added].''

However, while not redefining the statutory definition, it is necessary for NMFS to include functional definitions of effects that fall into the category of Level A (or B) harassment in order to meet our statutory responsibility to quantify take. For example, for acoustic effects, because the tissues of the ear appear to be the most susceptible to the physiological effects of sound, and because threshold shifts tend to occur at lower exposures than other more serious auditory effects, NMFS has determined that PTS is the best indicator for the smallest degree of injury that can be measured. Therefore, the acoustic exposure associated with onset PTS is used to define the lower limit of the Level A harassment for acoustic effects.

Comment 42: L–DEO should use the more precautionary 15 dB difference being employed in converting the SEL-based safety zones to SPL-based safety zones. (From the EA: ''At the distances where rms levels are 160–190 dB re 1 µPa, the difference between the SEL and SPL values for the same pulse measured at the same location usually average approximately 10–15 dB, depending on the propagation characteristics of the

location (Greene, 1997; McCauley *et al.,* 1998, 2000a; Appendix B). In this EA, we assume that rms pressure levels of received seismic pulses will be 10 dB higher than the SEL values predicted by L–DEO's model. Thus, we assume that 170 dB SEL ~ 180 dB re 1 μPa rms.''). Thus 180 dB rms SPL would be reached with a SEL of 165 dB.

Response: L–DEO's results indicate (for shallow water, at least) the difference between rms and SEL varies between 8 and 13 dB. This result is more or less in line with that found by Madsen *et al.* (2006). The difference is higher at offsets, where the more impulsive direct arrival dominates the sound field, and lower at larger offsets, where the signal is more reverbatory. The range at which the decrease occurs depends a lot on water depth, but it's obvious that to use a 15 dB correction elsewhere would nearly double the numbers as far as offsets. The length of the signal is an important factor as well since there are greater differences between SEL and SPL, which means the signal is shorter, since it stretches as it travels further.

Comment 43: The EA notes that Southall *et al.* (2007) stated that TTS is not injury. However I believe that they have overstated their conclusions. It is true that Southall *et al.* (2007) state: ''[impacts resulting in] * * * TTS rather than a permanent change in hearing sensitivity * * * are within the nominal bounds of physiological variability and tolerance and do not represent physical injury (Ward, 1997).'' However, they also note that ''at present, however, there are insufficient data to allow formulation of quantitative criteria for non-auditory injuries'' and later acknowledge that, while they believe that ''strong behavioral responses to single pulses * * * are expected to dissipate rapidly enough as to have limited long-term consequence'' there are occasions where such responses may ''secondarily result in injury or death (*e.g.,* stampeding)'' (Southall *et al.,* 2007).

Response: In its 2002 Final Rule for SURTASS LFA sonar, NMFS stated that temporary threshold shift (TTS) is not an injury. The required power-down and shut-down zones, if properly implemented, will avoid exposing marine mammals to levels associated with injury and minimize the number of marine mammals exposed to levels associated with TTS (*See* Mitigation section).

With regards to non-auditory injuries, the conclusion that the potential effects on the stocks of marine mammals from non-auditory injuries would be minimal is discussed in the L–DEO's EA. NMFS believes that L–DEO's seismic survey has met all of these requirements and has been operating since 2003 without any known physical injuries to marine animals.

Comment 44: ''Southall *et al.* (2007) also add the following caveat with regards to their report: Finally, we emphasize that exposure criteria for single individuals and relatively short-term (not chronic) exposure events, as discussed here, are insufficient to describe the cumulative and ecosystem-level effects likely to result from repeated and/or sustained human input of sound into the marine environment and from potential interactions with other stressors. Also, the injury criteria proposed here do not predict what may have been indirect injury from acoustic exposure in several cases where cetaceans of mass stranded following exposure to mid-frequency military sonar. Thus, since they did not attempt to consider all possible methods of injury in their deliberations and thus their final figures, they should not be directly applied to management decisions that must, by law, consider the full suite of potential impacts. Direct application of their criteria would thus not be precautionary enough to meet the required legal standards.''

Response: NMFS currently uses the existing thresholds for Level A harassment (sound pressure level of 180 dB re 1 μPa [rms]) (dB SPL), and Level B harassment (160 dB SPL for impulse noise and 120 dB SPL for continuous sound). The science in the field of marine mammals and underwater sound is evolving relatively rapidly. NMFS is in the process of revisiting our acoustic criteria with the goal of developing a framework (Acoustic Guidelines) that allows for the regular and scientifically-valid incorporation of new data into our acoustic criteria. We acknowledge that this model has limitations; however, the limitations are primarily based on the lack of applicable quantitative data. We believe that the best available science has been used in the development of the criteria used in this IHA. We appreciate the input from the public and intend to consider it further as we move forward and develop the Acoustic Guidelines.

Comment 45: It should be noted that repeated TTS can lead eventually to PTS, which would not be classed as injury under these criteria. Other potentially injurious impacts have also been shown to occur below levels that would cause TTS in humans. For example, impaired reading comprehension and recognition memory in children is linked to aircraft noise at exposure levels considerably less than 75 dB (Stansfeld *et al.,* 2005), which, according to the U.S. National Institute on Deafness and Other Communication Disorders (NIDCD, 2007), are unlikely to cause hearing loss (temporary or otherwise) even after long exposure (NIDCD, 2007).

Response: Mitigation and monitoring requirements under the IHA should prevent TTS. While there have been debates among scientists regarding whether a permanent shift in hearing threshold (PTS) can occur with repeated exposures of TTS, at least one study showed that long-term (four to seven years) noise exposure on three experimental pinniped species had caused no change on their underwater hearing thresholds at frequencies of 0.2–6.4 kHz (Southall *et al.,* 2005).

TTS may be considered to be an adaptive process (analogous to the dark adaptation in visual systems) wherein sensory cells change their response patterns to sound. Tissues are not irreparably damaged with the onset of TTS, the effects are temporary (particularly for onset-TTS), and NMFS does not believe that this effect qualifies as an injury.

Comment 46: It is strange that an entire special issue devoted to noise-related stress responses in marine mammals resulting from a multi-disciplinary panel of experts does not get a single mention in this section, even though a discussion of likely impacts is offered in Wright *et al.* (2007a, b) and the other papers within (all of which are cited therein). The papers are cited in Southall *et al.* (2007), which the authors have obviously read. I will not repeat the conclusions here, but suggest they are included within the EA (or more likely an EIS) before this survey begins.

Response: NSF/L–DEO presented the Southall *et al.* (2007) study as one of several pieces of information that relate to this topic. However, NMFS does not solely rely upon NSF's EA to arrive at its determinations. NMFS is aware of Wright *et al.* (2007a, b) paper as well as others published in the International Journal of Comparative Psychology. However, NMFS finds that the information is not such that it will affect NMFS' findings.

Comment 47: There is a high likelihood that many individuals will be exposed to sound levels that qualify as Level A harassment. Any additional threats (especially those where many uncertainties exist about their impacts and that have the potential to cause serious harm or even death) to cetaceans on the brink of extinction are not ''negligible'' for the affected species or stocks.

Response: The mitigation and monitoring requirements under the IHA are expected to prevent TTS (Level B harassment), thus preventing PTS (Level A harassment). NMFS believes that it is very unlikely that Level A harassment will result and, therefore, NMFS has not authorized Level A harassment in this IHA.

The IHA includes mitigation and monitoring measures to reduce the potential for injury or mortality, as well as instituting immediate shutdown protocols for the North Pacific right whale, Western Pacific gray whale, Indo-Pacific humpbacked dolphin, or finless porpoise.

The mitigation measures (e.g., ramp-up, passive acoustic and visual monitoring, and quiet acoustic periods) set forth in the IHA ensure that there will be negligible impacts on the marine mammals by reducing short-term reactions to disturbance and minimizing any effects on hearing sensitivity. Due to these measures, and other reasons discussed in the Conclusions of this document, NMFS believes the impacts will be negligible.

Comment 48: Until the effects of seismic surveys on these shallow water dolphins and the combined and cumulative impacts of all threats can be better understood, a ''safe'' exposure level cannot be determined.

Response: The temporary nature of the activity and the implementation of the new shut-down criteria and mitigation measures as described in the Species of Particular Concern and the Mitigation sections, leads NMFS to believe the activity will have a negligible impact on shallow water populations of the Indo-Pacific humpback dolphin and finless porpoise.

Comment 49: Variability and uncertainty in TTS threshold values. Furthermore the TTS threshold is based on limited information from only a few species of cetaceans. Most of the species of concern (*e.g.,* baleen whales, beaked whales, humpback dolphin, finless porpoise, etc.) have not been examined and there appears to be great variability amongst individual cetaceans tested so interspecific extrapolations need to be considered cautiously (for a review, see Weilgart, 2007).

Response: NMFS acknowledges that the test-animals may not fully represent the range of hearing responses across multiple taxa. However, NMFS has used the best science available to develop these thresholds which have been in effect for almost a decade. The current safety zone of 180 dB rms for cetaceans is conservative and will protect marine mammals from injury (Level A harassment).

Comment 50: The difficulty in predicting sound levels underwater must be taken into account. Madsen *et al.* (2006) reported that seismic sounds did not always attenuate predictably and sound levels can be the same at 2 km as well as at 12km. The same unpredictability was found for sounds from acoustic harassment and deterrent devices, where increasing distance from the sound source did not always result in a reduction of exposure levels (Shapiro *et al.,* 2009). Even within a fraction of a meter, sound level differences may be several orders of magnitude (Wahlberg, 2006 as cited in Shapiro *et al.,* 2009). These studies are inconsistent with classic ideas of sound propagation and attenuation (see Richardson *et al.,* 1995) and are very concerning because the very dynamic nature of the waters of western Taiwan and the concrete walls lining the shoreline may result in the sounds the airguns to reach unexpectedly dangerous exposure levels within the distribution of the ETS population.

Response: Please see NMFS' response to Comment # in this section.

Comment 51: The survey will bring the *Langseth* to waters within 1 km from the shores of Taiwan and right through the middle of almost the entire linear coastal distribution of the eastern Taiwan Strait population. At this distance from shore, the *Langseth* will inevitably subject the entire population to noise levels greater than 180 dB. Even staying at least 2 km from the coastline does absolutely nothing to reduce the noise exposure for these critically endangered (IUCN Red List) dolphins. And based on the values in Table 1 of the **Federal Register** notice, even at 8–10 km from shore, all dolphins will still be exposed to at least 160 dB with an unknown number that may be exposed to > 180 dB.

Response: Please see the Species of Particular Concern section.

Comment 52: Given the threat of noise on the health of the ETS dolphins, the ETSSTAWG recommended a buffer for noise threats out to at least 5 km from shore (note: for an area with an expansive littoral zone such as western Taiwan, ''shore'' can vary greatly with tides; for clarity, ''shore'' is defined here to include the littoral zone at the lowest tide of the year). Calculations of how far out the *Langseth* should be to prevent exposure of ETS dolphins to received levels greater than 160 dB should be based on at least the recommended 5 km buffer boundary (i.e., the waters from shore, as defined above, to 5 km offshore should not be exposed to levels >160dB). Based on the values presented in Table 1 (of the **Federal Register**) the source should not be closer than 13 km from shore. However, given the population's critical status and the underestimated predicted distances for each exposure threshold level (especially for shallow water; see above), greater precaution is needed (i.e., the airguns should be even further from shore).

Response: Please see the Mitigation section in this notice.

Comment 53: For whales that are using the shallow waters (e.g., Taiwan Strait), the predicted distance for exposure levels to be greater than 160 dB was 6,227 to 8,000 m and for 180 dB the distances were 2,761 to 3,694 m. At these distances, detection of whales by observers can be difficult to impossible depending on sighting conditions. Therefore, some whales may be exposed to greater than 180 dB without being detected by observers.

Response: A key factor in estimating the number of undetected mammals that might occur within the 180 dB radius is the fact that many marine mammals move away from an approaching seismic vessel (e.g., Richardson *et al.,* 1995; Stone, 2003). The conventional estimates of the proportions present but missed by visual observations, as described in 73 FR 78294, December 22, 2008, will overestimate (sometimes by very large factors) the numbers of mammals that might be exposed to high levels of sound near the ship. This is an important consideration in assessing possible exposures to high-level sound, especially for the more responsive species, notably some if not all baleen whales, beaked whales, and harbor porpoises. There is also some degree of avoidance by a variety of other odontocetes (Stone, 2003). In order to derive unbiased estimates of numbers that might be exposed to greater than 180 dB, density-based estimates that include allowance for g(0) and f(0) would need further adjustment to allow for an ''avoidance probability'' factor. Such factors are not generally available. They would depend on species and circumstances, and for some species would, if applied, result in a large decrease the estimates of the numbers that would be exposed to high-level sound.

Detectability is a measure of the probability of detecting a marine mammal that is present on a vessel's trackline (i.e., g(0)). L–DEO uses the most applicable detectability values as provided in Koski *et al.* (1998) whenever estimates of marine mammal detectability have not already been calculated. They have compiled previously reported detectability information for various species and

used data on surfacing/dive cycles to estimate detectability values for species or species groups of marine mammals for which there are no published detectability values. Thus the estimates of incidental take in L–DEO's IHA application and the associated NSF EA are either the same (if detectability had already been taken into account) or higher than would be obtained by direct application of previously reported density data.

NMFS acknowledges these limitations. However, acoustic detection has been demonstrated to augment visual detection of marine mammal in population estimates in a number of studies (e.g., Moore *et al.,* 1999; Swartz *et al.,* 2002). The use of PAM will improve the detection of marine mammals by indicating to the MMVOs when a vocalizing animal is potentially near and prompting a shut-down when necessary.

Comment 54: Statements such as ''However, there has been no specific documentation of TTS let alone permanent hearing damage, i.e., PTS, in free-ranging marine mammals exposed to sequences of airgun pulses during realistic field conditions'' are stupid.

Response: NMFS acknowledges the commenter's opinion. However, at the time of publication, the statement that ''there has been no specific documentation of TTS let alone permanent hearing damage, i.e., permanent threshold shift (PTS), in free-ranging marine mammals exposed to sequences of airgun pulses during realistic field conditions,'' was correct. Lucke *et al.,* (2009) recent auditory study on documenting threshold shift in harbor porpoises was published after L–DEO submitted their application.

Monitoring

Comment 55: ETSSTAWG states that a minimum of two MMOs should be used at all times, with one of those having considerable prior experience as a MMO (preferably within the area of Taiwan).

Response: Three MMOs are typically on watch at a time, two MMVOs on the observation tower conducting visual observations and the third monitoring the PAM equipment. On the observation tower, two MMOs are on watch during all daylight hours except during meal times. At least one MMO and one MMVO will be on watch during meal times. The MMOs onboard the *Langseth* are experienced and qualified, and additional regional experts have been brought onboard for this survey.

Comment 56: The Commission recommends that, before issuing the requested authorization, the NMFS provide additional justification for its preliminary determination that the planned monitoring program will be sufficient to detect, with a high level of confidence, all marine mammals within or entering the identified safety zones. At a minimum, such justification should (1) identify those species that it believes can be detected with a high degree of confidence using visual monitoring only, (2) describe detection probability as a function of distance from the observer, (3) describe changes in detection probability at night, and (4) explain how close to the vessel marine mammals must be for observers to achieve the anticipated high nighttime detection rate.

Response: NMFS believes that the planned monitoring program will be sufficient to detect (using visual detection and passive acoustic monitoring [PAM]), with reasonable certainty, most marine mammals within or entering identified safety zones. This monitoring, along with the required mitigation measures (see below), will result in the least practicable adverse impact on the affected species or stocks and will result in a negligible impact on the affected species or stocks.

The *Langseth* is utilizing a team of trained marine mammal observers (MMOs) to both visually monitor from the high observation tower of the *Langseth* and to conduct PAM. However, there are limitations on marine mammal detection, and ramp-ups are required as mitigation measures due to these limitations. This monitoring, along with the required mitigation measures (see below), will result in the least practicable adverse impact on the affected species and/or stocks and will result in a negligible impact on the affected species and/or stocks.

When stationed on the observation platform of the *Langseth,* the eye level will be approximately 17.8 m (58.4 ft) above sea level, so the visible distance (in good weather) to the horizon is 16.5 km (10.3 mi; the largest safety radii is approximately 3.7 km, 2.3 mi). Big eyes are most effective at scanning the horizon (for blows), while 7x50 reticle binoculars are more effective closer in (MMOs also use a naked eye scan). Night vision devices (NVDs) will be used in low light situations. Additionally, MMOs will have a good view in all directions around the entire vessel. Also, nearly 93 percent of the survey lines are in intermediate or deep water depths, where the safety radii are all less than 1.4 km (0.87 mi).

Theoretical distance of this PAM system is tens of kilometers. The PAM is operated both during the day and at night. Though it depends on the lights on the ship, the sea state, and thermal factors, MMOs estimated that visual detection is effective out to between 150 and 250 m (492 and 820 ft) using NVDs and about 30 m (98.4 ft) with the naked eye. However, the PAM operates equally as effectively at night as during the day, especially for sperm whales and dolphins.

The PAM has reliable detection rates out to 3 km (1.9 mi) and more limited ability out to 10s of km. The largest 180-dB safety radii (3.7 km, 2.3 mi), which is the radii within which the *Langseth* is required to shut down if a marine mammal enters, are found when the 36 airgun array is operating in shallow water at a 9 m (29.5 ft) tow depth. Only approximately seven percent of the total 15,902 km survey lines of the planned seismic survey (excluding contingency) will take place in water less than 100 m deep (shallow water). The species most likely to be encountered in the waters off of SE Asia are pantropical spotted, Fraser's, and spinner dolphins, which have relatively larger group sizes (10s to 100s to 1,000s of animals for these various dolphin species), are not cryptic at the surface, and have relatively short dive times (approximately 6 min for some dolphin species), all which generally make them easier to visually detect. Other species that are likely to be encountered during the seismic survey include Bryde's whales and humpback whales, which have relatively long dive times; however they are not cryptic at the surface, have large blows and distinct physical features, all which generally make them easier to visually detect. Furthermore, the vocalizations of most of these species are easily detected by the PAM. During the *Ewing* cruise in the GOM in 2003, MMOs detected marine mammals at a distance of approximately 10 km (6.2 mi) from the vessel and identified them to species level at approximately 2.7 km (1.7 mi) from the vessel, though the bridge of that vessel was only 11 m (36 ft) above the water (vs. the *Langseth* which is more than 17 m (55.8 ft) above sea level). All of the 180-dB safety radii for other water depths and tow depths and for the single 40 in^3 airgun to be used during ramp-ups and power-downs (see below) are less than 2 km (1.2 mi).

The likelihood of visual detection at night is significantly lower than during the day, though the PAM remains just as effective at night as during the day. However, the *Langseth* will not be starting up the airguns unless the safety zone is visible for the entire 30 min prior (i.e., not at night), and therefore in all cases at night, the airguns will already be operating, which NMFS

believes will cause many cetaceans to avoid the vessel, which therefore will reduce the number likely to come within the safety radii. Additionally all of the safety radii in intermediate and deep water depths are smaller than 3 km (1.9 mi) and fall easily with the reliable detection capabilities of PAM.

Comment 57: The Commission recommends that, before issuing the requested authorization, the NMFS clarify the qualifiers ''when practical'' and ''when feasible'' with respect to (1) using two MMOs to monitor the exclusion zone for marine mammals during daytime operations and nighttime start-ups of the airguns, and (2) using MMOs during daytime periods to compare sighting rates and animal behavior when the seismic airguns are operating and when they are not.

Dr. John Wang states that the inadequacy of MMVO coverage in this respect would be wholly inadequate even for small-scale marine mammal surveys where the consequence of failing to detect animals are much less serious.

Response: The *Langseth* carries five trained, NMFS-qualified and experienced MMOs for every seismic study involving use of an airgun system comparable to that planned for the TAIGER project. MMOs are appointed by L–DEO with NMFS concurrence. L–DEO plans to employ a regional expert as one of the MMOs, and negotiations were currently underway with experts from National Taiwan University, Academia Sinica, and National Taiwan Ocean University during the preparation of this notice. L–DEO will have a sixth MMO and regional expert during the second leg of the cruise as well. L–DEO will utilize two (except during meal times), NMFS-qualified, vessel-based MMVOs to watch for and monitor marine mammals near the seismic source vessel during all daytime airgun operations and before and during start-ups of airguns day or night. MMVOs will have access to reticle binoculars (7×50 Fujinon), big-eye binoculars (25x150), and night vision devices to scan the area around the vessel. MMOs will alternate between binoculars and the naked eye to avoid eye fatigue. During all daytime periods, two MMVOs will be on effort from the observation town to monitor greater than 90 percent of the time. During mealtimes it is sometimes difficult to have two MMOs on effort, but at least one MMVO will be on watch during those brief scheduled times. Three MMOs are typically on watch at a time, and typically observe for one to three hours. Two MMVOs will also be on watch during all nighttime start-ups of the seismic airguns. A third MMO will be monitoring the PAM equipment 24 hours a day to detect vocalizing marine mammals present in the action area.

Comment 58: Dr. John Wang states that in shallow waters (Taiwan Strait), the predicted distance for exposure levels of 180dB and 190dB was estimated by L–DEO to be 2,761 to 3,694m and 1,600 to 2,182 m, respectively. At these distances (which are underestimated) and under ideal sighting conditions, detection of finless porpoises by observers is of limited ineffectiveness at the closest range and very ineffective at the greater distances. Sighting effectiveness will drop dramatically even for highly experienced observers in slight seas. Under conditions where white caps are present, sightings of finless porpoises are rarely made and researchers generally stop observations. At several kilometers distance in shallow water, PAM would not be able to detect finless porpoises adequately because finless porpoises are not always actively vocalizing and the very high frequency sounds emitted by porpoises (Akamatsu *et al.,* 1998) attenuate quickly so the PAM's detection range will be limited. Therefore, finless porpoises can and will likely be exposed to >>180dB without being detected especially if sighting conditions are not ideal. For finless porpoises, L–DEO's airguns have the potential to inflict serious permanent injuries or even cause death, directly or indirectly.

Response: There is a scientific methodology to estimate the probability of detection marine mammal on the surface, as explained in detail in Buckland *et al.* (1993). This includes several components, including the probability that the mammal will be at the surface and potentially sightable while within visible range of the observers, the probability that an animal at the surface will in fact be detected, and the relationship between sighting probability and lateral distance from the trackline.

A certain portion of the population is presumed to be submerged at any given time and is therefore unavailable for detection. However, if the ship speed is slow, many of these animals would surface at some point while within visual range of MMVO's aboard the approaching vessel. The speed of the *Langseth,* and other seismic vessels while operating airguns, will generally be four to five knots of vessels conducting marine mammal line transect surveys.

All L–DEO estimates of potential numbers of animals take account of all these factors to the extent that available data allow. Detectability is a measure of the probability of detecting a marine mammal that is present on a vessel's trackline. L–DEO uses the most applicable detectability values as provided in Koski *et al.* (1998) whenever estimates of marine mammal detectability have not already been calculated. They compiled previously reported detectability information on various species and used data on surfacing/dive cycles to estimate detectability values for species or species groups of marine mammals for which there is no published detectability values. Thus the estimates of incidental take in L–DEO's IHA application and Supplemental EA are either the same (if detectability had already been taken into account) or higher than would be obtained by direct application of previously reported density data.

After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. See Effects Analysis, Species of Particular Concern, and L–DEO's Supplemental EA.

Monitoring—PAM

Comment 59: ETSSTAWG asks about the frequency range of the PAM system, and if it is suitable for detecting signals produced by all the marine mammals within the area.

Response: L–DEO's PAM system is suitable for detecting frequencies up to 96 kHz (192 sampling rate). The virtual bandwidth of the new digital array and sound analysis workstation is 96 kHz (the real bandwidth is around 90 kHz), which is at least double when compared to some of the best PAM systems normally available and four times that of most of the basic systems. L–DEO has the potential for expanding the PAM system to a bandwidth of 160 kHz, but a new hydrophone array will need to be designed to add the required special additional sensors. The array is capable of detecting porpoises, but not harbor porpoises (*Phocena phocena*), which have clicks at 140 kHz.

The low frequency sensor end of the PAM system can detect mysticetes, however there is a problem with low frequency noise and vibration induced in the array by movements in towing the acoustic array system, in particular if a short cable and a depressor are used. To allow detection of low frequency waves,

it is necessary to have a long cable towed with a good vibration damping system and the array should be deep and far from the ship. In the past, Right Wave's PAM system has been able to detect frequencies as low as 10 Hz for fin whales (on the NATO Alliance), but due to towing conditions on the *Langseth* the current configuration can detect a minimum low frequency of 100 Hz.

The digital array is suitable for detecting beaked whales, as it can monitor and record at 48 kHz to get their clicks. The PAM's sound analysis and display system has been proven effective for detecting Cuvier's beaked whale clicks (Sirena 2008 cruise in the Alboran Sea). It is important to note here that in order to detect very diverse sound categories, it is necessary to set up a very powerful computer that is able to signal process to produce and display different real-time views, each view well-tailored on that particular signals' characteristics.

The PAM system has been improved and now has a shot blanking system. A new piece of hardware compresses the shots without blanking them. It works on the PAM operator's headphone output and doesn't affect the recording system. This allows the PAM operator to hear faint signals along with the (volume compressed) ''shots'' so that they are always aware of what is occurring underwater.

Comment 60: ETSSTAWG states the MMO operating the PAM system (which should be in addition to the other two at all times) should have considerable experience working with the acoustic signals of many of the marine mammal taxa that are likely to be encountered in the survey.

Response: The MMO operating the PAM system will be on watch in addition to the two MMVOs watching from the observation tower. Right Waves, an Italian bioacoustics company, is providing L–DEO with state-of-the-art underwater acoustic equipment and skilled operators. Right Waves started their studies on underwater acoustics more than 15 years ago at the Interdisciplinary Center for Bioacoustics and Environmental Research (CIBRA) Institute, which is part of the University of Pavia in Italy. They have organized and conducted several research cruises in order to develop their software, hardware, and data collection protocols. The PAM operators have applied acoustic monitoring and mitigation worldwide for both civil and military institutions. Right Waves is currently working with organizations such as WHOI and NATO to provide their expertise in underwater acoustics. They are also involved in writing mitigation policies for the Italian Navy, NATO, and other European organizations. Part of their activities is described and can be found on the CIBRA Web site at *http://www.unipv.it/cibra.* The Right Waves Web site will be available online soon. NMFS considers the operators of L–DEO's PAM system to be qualified and experienced.

Comment 61: The Commission recommends that, before issuing the requested authorization, the NMFS consult with the applicant to clarify and describe the potential conditions that would render the use of PAM impracticable for complementing the visual monitoring program.

Response: Before the issuance of the requested authorization, NMFS consulted with L–DEO to clarify and describe the potential conditions that would render the use of PAM impracticable for complementing the visual monitoring program. L–DEO's lead bioacoustician has stated that there are difficulties with towing the PAM array because the space off the stern of the *Langseth* is mostly filled by the airgun array and streamers. L–DEO tried to tow the PAM from the paravane boom, paravane tow cable, and with floats. Using these methods was not acceptable because the quality of acoustics was considered poor due to tow depth and it also posed a higher risk of totally losing the array. During L–DEO's recent seismic survey near Tonga, PAM operators have found a more successful solution to towing the PAM array by using a depressor (intended to sink fishing gear) that can withstand rough weather and sea conditions. The depressor sinks the PAM array's lead-in cable so that it does not get too close to the airgun array cables. This technique, while it works, can still be improved for a series of reasons. Potential problems that the current PAM set up could experience on the *Langseth* include operations in very shallow waters (20 m or less) and operations in areas with large amounts of fishing gear (longlines, driftnets, etc.) that could lead to entanglement. L–DEO has been provided two new PAM hydrophone arrays that are state-of-the-art, one is a unique digital PAM array.

Comment 62: Dr. John Wang states that L–DEO should address the effectiveness of PAM for detecting very high frequency vocalizations of small cetaceans in shallow waters several kilometers away (due to rapid attenuation of high frequency sounds).

Response: Currently, the detection of high-frequency marine mammals signals in shallow water using PAM has limitations in terms of physics, and perhaps even more limitations in terms of the deployment of hydrophone arrays. The size of the cetacean is not likely to be a factor.

After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures, including temporal and spatial avoidance of species of particular concern, which includes some small cetacean species (e.g., Indo-Pacific humpback dolphins and finless porpoises). See NMFS' responses to comments above and L–DEO's Supplemental EA.

Comment 63: Dr. John Wang states that L–DEO should address the ineffectiveness of PAM at determining the location and direction of travel of cetaceans.

Response: One of the major reasons PAM is not a self standing mitigation tool is the limitations of determining range and bearing. For a seismic vessel on a fixed tract, the signal processing to determine a range has not yet arrived. Bearing is useful, but range is the critical measure for purposes of implementing mitigation measures for the safety radii. In a research vessel situation, free to change course, and with highly trained visual and acoustic teams, PAM can be quite effective to track and stay with vocal marine mammals. The potential to improve PAM technology certainly exists. See NMFS' responses to comments above.

Comment 64: CSI states that in shallow water, PAM is unlikely to be effective in detecting finless porpoises. Finless porpoises are not always vocalizing and the high frequency sounds produced by finless porpoises attenuate quickly.

Response: L–DEO's PAM system is capable of detecting the high frequency vocalizations of finless porpoises. See responses to comments regarding finless porpoises in Species of Particular Concern section below. See L–DEO's Supplemental EA for information. After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted additional monitoring and mitigation measures to reduce potential impacts on finless porpoises. NMFS has not authorized any takes of finless porpoises in the IHA issued to L–DEO.

Comment 65: Dr. John Wang states that in shallow water, PAM would be almost completely ineffective at detecting (never mind locating or tracking) cetaceans especially at the predicted rms distances for the different exposure levels. Furthermore, PAM is only capable of detecting cetaceans when they are vocalizing. Some species have been known to reduce

vocalizations during seismic surveys while other species do not vocalize much at or near the surface (e.g., beaked whales).

Response: MFS believes that visual observers and PAM are effective tools for monitoring marine mammals in the affected area during the seismic survey. PAM is required for monitoring on the *Langseth* (when practicable), but not for the implementation of mitigation measures. PAM is used by MMOs and the lead bioacoustician aboard the *Langseth* for the detection of vocalizing marine mammals. Any confirmed marine mammal vocalization detections using PAM are communicated to the MMVOs on watch on the observation tower to help alert the MMVOs to the presence of vocalizing marine mammals in the survey area (not necessarily the safety radii). The use of PAM is therefore used in aid of visual observers, who monitor the applicable safety radii for presence of marine mammals. The detection of marine mammals in the vicinity of the array in turn triggers mitigation requirements specified in the IHA issued to L–DEO.

After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that the L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

Monitoring—Visual

Comment 66: ETSSTAWG states L–DEO's ability to monitor the exclusion zone (''EZ'') proposed by NMFS cannot be properly evaluated because the EZ has not yet been established and awaits further data from L–DEO's 2007/2008 calibration study. *See* 73 FR 78297, December 22, 2008.

Response: Acoustic data analysis for L–DEO's 2007/2008 calibration study is ongoing. Results from the 2007/2008 calibration study in the Gulf of Mexico are in review and a scientific paper on the *Langseth's* airgun sound source will be published on a future date (Tolstoy, pers. comm.). After the analysis is complete and published, the empirical data from the 2007/2008 calibration study will be used to refine the EZ's for future proposed cruises as appropriate. NMFS considers the results from the 2004 calibration study to be the best scientific data available for L–DEO's purposes of monitoring the EZ's described in Table 1 (above).

Comment 67: Dr. John Wang states that although large pink/white animals (i.e., Indo-Pacific humpback dolphins) are highly visible within 1 km in calm conditions, younger grey and spotted animals can be easily missed. However, beyond 1 km, high atmospheric humidity and smog that is often present along the west coast of Taiwan can reduce visibility of these animals by a considerable but unquantified amount (personal observation) even with optical aids. Furthermore, because these dolphins are often swimming along the shoreline next to the surf, even pink/white dolphins can be easily missed by offshore observers looking inshore towards the surf. Jefferson (2000) showed that humpback dolphin sightings dropped off considerably beyond a perpendicular distance of about 400 to 500 m and none were observed beyond about 1,500 m. Within the predicted (but underestimated) distances for exposure to >180 dB, many dolphins can go undetected by MMVOs.

Response: NMFS agrees that some species of marine mammals can be difficult to visually detect in certain environmental conditions. In order to reduce potential impacts on the ETS sub-population of Indo-Pacific humpback dolphins, L–DEO will limit seismic survey lines to take place at least 20 km from the west coast of Taiwan, except for in the passage between the Penghu Islands and the Waishanding Jhou (Wau-san-ting Chou) sandbar, where the survey will pass through the approximately 17.1 km mid-line distance between the two possibly sensitive areas, subject to the limitations imposed by other foreign nations, to minimize the potential for exposing Indo-Pacific humpback dolphins to SPLs >=160 dB re 1 μPa (rms).

Comment 68: Dr. John Wang states that L–DEO should address the ineffectiveness of MMVOs at detecting cetaceans, especially small cetaceans, under non-ideal sighting conditions (low light, rough seas, rain) and the ineffectiveness of MMVOs at detecting cetaceans, especially small cetaceans, at distances beyond about 1 km but well within the waters ensonified by levels >180 dB in shallow waters (potentially farther than 3.7km).

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. L–DEO will be avoiding areas where some species of small cetaceans that are difficult to visually detect (e.g., Indo-Pacific humpback dolphins and finless porpoises) are likely to occur. A sixth MMO and regional expert will be onboard the *Langseth* for the duration of the survey in order to improve visual detection capabilities. L–DEO will also be using a PAM system in order to detect any vocalizing marine mammals. See L–DEO's Supplemental EA.

Comment 69: Dr. John Wang states that L–DEO should address the ineffectiveness of MMVOs at detecting finless porpoise at distances beyond 1 km under any conditions, but well within the waters ensonified by levels >180dB (possibly >190 dB) in shallow waters (potentially farther than 3.7km).

Response: The monitoring methods for detection of marine mammals on the *Langseth* are relatively standard methods used onboard vessels for conducting marine mammal abundance surveys and under IHA's. The PAM system onboard the vessel is capable of detecting the vocalizations of finless porpoises. A description of the monitoring methods can be found below (see Monitoring and Mitigation). In response to concerns about marine mammal species of particular concern, L–DEO will be avoiding the potential habitat of finless porpoises. L–DEO will shut-down the airgun array immediately if there is a sighting at any distance of finless porpoises in order to prevent exposure of animals to received levels greater than or equal to 160 dB and especially 180 dB. No incidental take of finless porpoises are anticipated or authorized in the IHA issued to L–DEO.

Comment 70: Dr. John Wang states that L–DEO should address the ineffectiveness of MMVOs with little experience with local marine mammal species and conditions (species identification can be problematic even for experienced researchers in this region due to the large number of species). MMVOs that are highly experienced with the fauna and conditions of the region need to be involved.

Response: The *Langseth* normally carries five qualified and experienced MMOs for every seismic study involving use of an airgun system comparable to the array used for this project. L–DEO will also employ a sixth MMO and regional expert for the duration of the survey. MMOs are appointed by L–DEO with NMFS concurrence.

Comment 71: Dr. John Wang states that L–DEO should address MMVO fatigue and lack of vigilance during search (on-duty search times of up to four hours is far too long; should be reduced to rotations of between 30 and 60 minutes at most).

Response: MMO's typically observe for one to three hours. Because there are usually two MMVO's on visual watch at a time, they alternate between visually observing with reticle binoculars (7x50

Fujinon), Big-eye binoculars (25x150), and the naked eye to avoid eye fatigue.

Comment 72: Dr. John Wang states that L–DEO should address the ineffectiveness of night vision equipment for small cetaceans, especially at distances beyond about 1 km but well within the waters ensonified by levels >180dB in shallow waters (potentially farther than 3.7km).

Response: Though it depends on the lights on the ship, the sea state, and thermal factors, MMVOs estimated that visual detection is effective out to between 150 and 250 m using NVDs and about 30 m with the naked eye. However, the PAM operates equally as effectively at night as during the day, especially for sperm whales and dolphins (dolphins and porpoises are the only species likely to be detected in the ''shallow'' depths, where the safety zones are the largest).

Marine geophysical surveys may continue into night and low-light hours is such segment(s) of the survey is initiated when the entire relevant safety zones are visible and can be effectively monitored. No initiation of airgun array operations is permitted from a shut-down position at night or during low-light hours (such as in dense fog or heavy rain) when the entire relevant safety zone cannot be effectively monitored by the MMVOs on duty. NMFS has included a requirement to this effect in the IHA issued to L–DEO.

Comment 73: Dr. John Wang states that L–DEO should address the ineffectiveness of MMVOs at detecting beaked whales, especially when they are very quiet near the surface (detection is known to be very low even for experienced observers in good conditions).

Response: NMFS agrees that beaked whales are difficult to detect at the surface. Three MMOs are typically on watch at a time, two on the observation tower conducting visual observations and the third monitoring the PAM equipment. The MMVOs will alternate between surveying with reticle binoculars (7x50 Fujinon), Big-eye binoculars (25x150), and the naked eye to avoid eye fatigue. The PAM system is capable of detecting beaked whale clicks as well.

Statements have been made in the past that little information is available on beaked whales because they avoid survey vessels. One can presume therefore, that MMOs onboard a vessel conducting seismic operations are unlikely to see beaked whales not only because they are cryptic, but also because beaked whales are likely to avoid an approaching sound source and leave the area.

When operating the sound source(s), L–DEO will minimize approaches to slopes, submarine canyons, seamounts, and other underwater geologic features, if possible, because of sensitivity of beaked whales and possible beaked whale habitat. If concentrations or groups of beaked whales are observed (by visual or passive acoustic detection) at a site such as on the continental slope, submarine canyon, seamount, or other underwater geologic feature just prior to or during the airgun operations, those operations will be powered/shut-down and/or moved to another location along the site, if possible, based on recommendations by the on-duty MMO aboard the *Langseth.* NMFS has included requirements to this effect in the IHA issued to L–DEO.

Comment 74: Dr. John Wang states that L–DEO should address the ineffectiveness of MMVOs at detecting, tracking and following animals entering and exiting the area being ensonified by sounds greater than the thresholds stated (in shallow waters >180dB can be farther than 3.7km).

Response: There are significant limitations to PAM as PAM technology is presently immature, yet constantly improving. PAM is a useful enhancement tool to visual observer efforts and every effort is made to use it when practicable. NMFS believes that visual observers and PAM are effective tools for monitoring marine mammals in the affected area during the seismic survey. PAM is required for monitoring on the *Langseth* (when practicable), but not for the implementation of mitigation measures. PAM is used by MMOs and the lead bioacoustician aboard the *Langseth* for the detection of vocalizing marine mammals. Any confirmed marine mammal vocalization detections using PAM are communicated to the MMVOs on watch on the observation tower to help alert the MMVOs to the presence of vocalizing marine mammals in the survey area (not necessarily the safety radii). The use of PAM is therefore used in aid of visual observers, who monitor the applicable safety radii for presence of marine mammals. The detection of marine mammals in the vicinity of the array in turn triggers mitigation requirements specified in the IHA issued to L–DEO.

After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

Comment 75: Dr. John Wang states that it is unclear how it can be visually observed that an animal has left the EZ if the EZ is more distant than 1 km and during poor sighting conditions. Not detecting an animal within the EZ boundary may be determined erroneously as the animal having left the area rather than observers failing to see the animal. Such situations are likely to occur very frequently when sightings conditions are not ideal and the EZ's distance from source extends beyond 1km. Obviously, this can have serious consequences.

Response: After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. L–DEO will alter speed or course during seismic operations if a marine mammal, based on its position and relative motion, appears likely to enter the relevant safety zone. If speed or course alteration is not safe or practicably, or if after alteration the marine mammal still appears likely to enter the safety zone, further mitigation measures, such as a power-down or shut-down, will be taken. Following a power-down, if the marine mammal approaches the smaller designated safety radius, the airguns must then be completely shut-down. Airgun activity will not resume until the MMVO has visually observed the marine mammal(s) exiting the safety radius and is not likely to return, or has not been seen within the radius for 15 min (species with shorter dive durations—smaller odontocetes) or 30 min (species with longer dive durations—mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales). Following a power-down or shut-down and subsequent animal departure, airgun operations may resume following ramp-up procedures described in the IHA. NMFS has included requirements to these effects in the IHA issued to L–DEO. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

Comment 76: Dr. John Wang states that secondary support vessels should be used to search for cetaceans with MMVOs to cover a sufficient amount of water to reduce the number of marine mammals being exposed to >160 dB.

Response: Prior to issuing this IHA, NMFS thoroughly investigated all

measures that might reduce the incidental taking of marine mammals to the lowest level practicable. Monitoring and mitigation measures are discussed later in this document. Mitigation measures, such as aerial overflights or support vessels to look for marine mammals prior to an animal entering a safety zone, may be given consideration if the safety zone cannot be adequately monitored from the source vessel. Consideration also must be given to aircraft/vessel availability, access to nearby airfields, distance from an airfield to the survey area, and the aircraft's flight duration. These are serious safety issues regarding aircraft flights over water that must be considered prior to requiring aerial overflights. Additional consideration must be give to the potential for aircraft to also result in Level B harassment since a plane or helicopter would need to fly at low altitudes to be effective.

Even if aircraft or a second vessel are not necessary or feasible to monitor a safety zone, they might be appropriate to monitor shorelines (presumably for strandings related to the activity). For this survey, the most appropriate monitoring is for the MMOs onboard the *Langseth* to observe visually and using the PAM system.

Comment 77: CSI states that based on the table of predicted rms distances for different received levels, MMVOs may be completely ineffective for detecting small cetaceans in shallow coastal waters because the distance from source will be great even for 190 dB received level (1,600 to 2,182 m); for 180 dB, the distances can be 2,761 to 3,694 m from source and for 160 dB, the distances are 6,227 to 8,000 m. Again, these distances must be considered underestimates because the coastal waters of western Taiwan in which some cetaceans inhabit are much shallower than 100 m (e.g., the critically endangered ETS sub-population of Indo-Pacific humpback dolphin are in waters from 1.5 to 15 m deep; finless porpoises and Indo-Pacific bottlenose dolphins are often commonly observed in waters shallower than about 50 m). Finless porpoises are difficult to detect even if they are within several hundred meters and sighting is during excellent conditions and by experienced observers (note: excellent weather conditions for sighting cetaceans in the waters around most of Taiwan, especially western Taiwan, are very limited). Nighttime visual detection of these coastal species is impossible at the distances shown above even with night-vision equipment. MMVOs have limited effectiveness in detecting many deep-diving species such as beaked whales and *Kogia* sp. These are all difficult species to observe and study by experienced researchers. Barlow (1999) reported that very few beaked whales are detected even in prime sighting conditions by cetacean researchers, Barlow and Gisiner (2006) estimated that less than 2% of the beaked whales are likely to be observed by typical mitigation monitoring (this estimation did not account for observer experience, which will greatly affect detection). With such a low detection rate, other mitigation measures dependent upon detection and tracking will be compromised. None of the mitigation measures takes into account sighting conditions. This is important as several of the mitigation measures are dependent upon observers sighting marine mammals.

Response: NMFS agrees that some deep-diving species (such as beaked whales and *Kogia* sp.), which may be found in the study area, are cryptic at the surface and difficult to observe. The *Langseth* carried five qualified and experienced MMOs for every seismic study involving use of an airgun system comparable to that used for this project. MMOs are appointed by L–DEO with NMFS concurrence. L–DEO is also employing a regional expert as a sixth MMO.

After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that the L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. See Species of Particular Concern and L–DEO's Supplemental EA.

Comment 78: CSI states that L–DEO claims that ''marine mammal detection by MMVOs is high at short distances from the source.'' With the possible exception of 180 dB at 950 m for deep water, the distances mentioned above (especially for operations in shallow waters) are not short for sighting cetaceans (small or large). Detection of most species drops off beyond 1 km from a ship. Even 25x150 (Big-eye) binoculars may have limited use in a region with high humidity and smog in coastal regions (e.g., western Taiwan), which can reduce the clarity of high power optical aids. The detection of finless porpoises at distances beyond 1 km is poor. At 3,694 m, detection for small cetaceans is limited and maybe questionable (especially for finless porpoises) when sighting conditions are sub-optimal. In no way can the detection of small cetaceans in shallow water at distances of several kilometers be considered high. For beaked whales, only a small proportion of the animals are detected by experienced observers in good sighting conditions (Barlow, 1999). As such, beaked whale detection cannot be considered to be high either. Because detection of both shallow water small cetaceans and beaked whales were wrongly concluded to be high, take by injury or death cannot be dismissed and the potential for temporary or permanent hearing impairment is not low and (as discussed above) cannot be avoided by implementing the inadequate mitigation measures proposed.

Response: The *Langseth* travels at a much slower operation speed (four to five kts) than vessels conducting cetacean surveys (typically 10 kts). Statements have been made in the past that little information is available on beaked whales because they avoid survey vessels. One can presume therefore, that MMVO's onboard a vessel conducting seismic operations are unlikely to see beaked whales not only because they are cryptic, but also because the animals would see or hear the slowly approaching vessel and leave the area. NMFS presumes that beaked whales will similarly avoid sources of anthropogenic noise, provided they are afforded sufficient notice of the activity through a gradual increase in noise levels rather than receiving a sudden, loud sound that might inflict a panic reaction or perhaps serious injury.

After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that the L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. *See* Species of Particular Concern and L–DEO's Supplemental EA.

Comment 79: Seismic surveys should not be conducted in poor cetacean sighting conditions (low light, SS>4, rain, heavy fog or haze) until a proven (acceptable to most marine mammal scientists) method for detecting cetaceans is developed for such conditions. Low light and night time seismic surveys should not be permitted at this time.

Dr. John Wang states that detection of marine mammals as part of a mitigation measure has to be at least as effective, but preferably better, at detecting cetaceans as cetacean survey projects because the consequences are more serious if cetaceans are not detected.

Response: MMO's effectively conduct systematic surveys for detecting cetaceans during the seismic cruise onboard the *Langseth.* In addition to visual observations using reticle binoculars, big-eye binoculars, night vision devices, and the naked eye, PAM is used day and night (as practical), which can detect vocalizing marine mammals present in the area. Many dedicated cetacean survey projects use the same or similar equipment as the MMO's onboard the *Langseth.* The *Langseth's* crew will also assist in detecting marine mammal, when practicable.

During ramp-ups of the airgun array, if for any reason the entire radius cannot be seen for the entire 30 min (i.e., rough seas, fog, darkness), or if marine mammals are near, approaching, or in the safety radius, the airguns may not be started up. Marine seismic surveys may continue into night and low-light hours if such segment(s) of the survey is initiated when the entire relevant safety zones are visible and can be effectively monitored. No initiation of airgun array operations is permitted from a shut-down position at night or during low-light hours (such as dense fog or heavy rain) when the entire relevant safety zone cannot be effectively monitored by the MMVOs on duty.

After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that the L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

Comment 80: The Commission recommends that, before issuing the requested authorization, the NMFS extend the monitoring period to at least one hour before initiation of seismic activities and at least one hour before the resumption of airgun activities after a power-down because of a marine mammal sighting within the safety zone.

Response: As the Commission points out, several species of deep-diving cetaceans are capable of remaining underwater for more than 30 minutes, however, for the following reasons NMFS believes that 30 minutes is an adequate length for the monitoring period prior to the start-up of airguns: (1) Because the *Langseth* is required to ramp-up the time of monitoring prior to start-up of any but the smallest array is effectively longer than 30 minutes (ramp-up will begin with the smallest gun in the array and airguns will be added in sequence such that the source level of the array will increase in steps not exceeding approximately 6 dB per 5 min period over a total duration of 20–30 min), (2) in many cases MMOs are making observations during times when seismic is not being operated and will actually be observing prior to the 30 min observation period anyway, (3) the majority of the species that may be exposed do not stay underwater more than 30 minutes, and (4) all else being equal and if deep diving individuals happened to be in the area in the short time immediately prior to the pre-start-up monitoring, if an animal's maximum underwater time is 45 min, there is only a one in three chance that the last random surfacing would be prior to the beginning of the required 30 min monitoring period.

Also, seismic vessels are moving continuously (because of the long, towed array) and NMFS believes that unless the animal submerges and follows at the speed of the vessel (highly unlikely, especially when considering that a significant part of their movements is vertical [deep-diving]), the vessel will be far beyond the length of the safety radii within 30 min, and therefore it will be safe to start the airguns again.

Mitigation

Comment 81: Dr. John Wang states that the effectiveness of the mitigation measures proposed by L–DEO for reducing threats range between having questionable effectiveness and being entirely inadequate.

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

Comment 82: NRDC is concerned that L–DEO's EA and NMFS' proposed IHA do not meet the rigorous standards of environmental review required by the NEPA and the MMPA. For example, L–DEO's EA does not properly analyze impacts or adopt adequate mitigation measures. Although the EA notes the lack of scientific information regarding species distribution and acoustic impacts of seismic activities, it nonetheless and without basis concludes that the proposed surveys will have only ''minor'' effects on marine mammal species. NMFS' proposed IHA also notes the lack of density data yet nevertheless concludes, again without basis, that the proposed seismic surveys will have only negligible impacts on marine mammals. And, like L–DEO, NMFS does not propose meaningful mitigation measures.

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. NMFS and NSF have satisfied all requirements of NEPA and the MMPA.

Comment 83: WaH states that while it may be true that some of the planned monitoring and mitigation measures ''would reduce the possibility of injurious effects,'' the proposed monitoring and mitigation measures are inadequate and cannot be argued to prevent the possibility of injurious effects to cetaceans, which are highly likely to occur. The claim in the EA that ''no long-term or significant effects are expected on individual marine mammals * * * the populations to which they belong, or their habitats'' is ill-founded and should be reconsidered in light of the above concerns.

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA issued to L–DEO will have a negligible impact on the affected species or stocks of marine mammals in the study area. *See* L–DEO's Supplemental EA.

Comment 84: WaH states that there is a lack of understanding of the distribution and status of the species and populations mentioned in their comments highlights the need for greater precaution and investigation prior to carrying out seismic surveys in this region. However several proposed monitoring and mitigation measures do not reflect the need for precaution, for example: (1) The proposed number of MMOs is insufficient (a minimum of only one observer working during daytime operations, except for 30 minutes before and after ramp-up when this will be increased to two observers); (2) nighttime seismic survey could be (but are not) prohibited, meaning impaired effectiveness of MMVOs and greater reliance on PAM, which

provides no certainty of detection of animals that are not vocalizing.

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. The *Langseth* carries five qualified and experience MMOs for every seismic study involving the use of an airgun system comparable to that planned for this project. L–DEO is employing a regional expert as a sixth MMO. Three MMOs are typically on watch at a time, two on the observation tower conducting visual watch and the third MMO monitoring the PAM equipment. On the tower, two MMVOs are on watch during all daylight hours except during meal times. The scientists conducting the survey have considered the recommendation for no nighttime seismic operations, and have decided that it is not feasible, as limiting the surveys to daytime only would either result in the loss of half of the data or would necessitate doubling the duration of the project. Doubling the duration of the surveys is not possible because the *Langseth* has other research commitments after this cruise, and because of weather conditions associated with the typhoon season. However, the seismic source will not be started if the observers cannot view the entire safety radius for any reason (darkness, for, or rough seas). In addition, PAM is being used day and night as practical, which can detect vocalizing marine mammals present in the study area. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

Comment 85: Minor and Wilson are greatly saddened to see the high proportion of cetaceans that are endangered in the proposed study area. Some of the species have population levels that are so low that the loss of a single individual could significantly increase the chances of extinction. Minor and Wilson do not feel that chasing these animals around with a boat that produces seismic ''bangs'' that are still 170 dB at a distance of 7,808 m from the boat will be anything other than harmful to these endangered animals.

Response: After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the monitoring and mitigation measures described in the IHA will have a negligible impact on affected species or stocks of marine mammals in the study area.

The principal investigator's intended work in the Taiwan Strait is designed so that seismic energy from the *Langseth* can be recorded by OBSs in the Taiwan Strait and by land instruments. By using both seismic reflections from various rock layers and refracted seismic energy they can determine the thickness of the crust and get an idea of the type of rocks in the crust. If they record data on a long profile they can compare the crustal structure, and, in the case of Taiwan, identify what the structure is before and after deformation caused by the collision with the Luzon volcanic arc. In Taiwan, the affects of collision increase from south to north and also from west to east.

Comment 86: Dr. Linda Weilgart states that the treatment of possible impact is very superficial, and does not take into account that ecological and population-level consequences may result. Especially where many depleted species in the area are faced with a myriad of threats and stressors already, the addition of noise may prove to be the final straw. In nature, cumulative stressors often interact synergistically, particularly if there are several stressors. Noise impacts should not be reduced to merely hearing impairment, though that is certainly possible and serious. Even TTS can compromise an animal's survival, in that its feeding, predator avoidance, and social behavior are impacted. Other behavioral responses such as permanent avoidance of an area that is associated with a frightening, loud noise are also possible.

Response: After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures in the study area. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

Comment 87: HSI states that the **Federal Register** notice for the proposed IHA and IHA application have failed to consider some key papers in the recent acoustics literature, at least one of which is a significant and telling omission. Madsen *et al.* (2006) is not cited by L–DEO in its application and although it is cited in the EA, the discussion there about its implications for marine mammals with high frequency hearing and the propagation of seismic airgun sounds is shallow. This is unacceptable. Clearly seismic airguns have the capacity to propagate well beyond the exclusion zones proposed by L–DEO and to affect marine mammals with higher frequency hearing, yet the mitigation measures discussed do not address this at all.

Response: A number of comments pointed out shortcomings in the EA and proposed IHA that do not alter the overall conclusions (e.g., particular publications that were not cited); NSF and NMFS are grateful for those comments and have taken note of them for future reference.

After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

Comment 88: CSI states that the current EA is deficient, but its critique will provide stakeholders with resources to define what truly adequate mitigations are possible, while meeting the project's goals. Not only that, but by example, the world's increasingly active, but unregulated seismic industry will benefit from learning what mitigations are most effective.

Response: NMFS disagrees with CSI's comment. NMFS reviewed the EA and determined that it contains an adequate description of the proposed action and reasonable alternatives, the affected environment, the effects of the action, and appropriate monitoring and mitigation measures.

After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

Comment 89: CSI states that previous L–DEO authorizations have proceeded on the assumption that there was no proof of significant impact, without supporting adequate, directed research to validate that claim. The attached expert reviews declare several significant research questions that need to be answered to judge the potential impacts from this proposal. Will L–DEO, the NSF, and other supporters work with the experts to enable adequately mitigated seismic research?

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. NMFS prepared a Finding of No Significant Impact and determined that the issuance of an IHA for the take, by harassment, of small numbers of marine mammals incidental to L–DEO's March to July, 2009, seismic survey in SE Asia will not significantly impact the quality of the human environment, as described in the EA.

Comment 90: Dr. McIntosh and Dr. Wu state that a mitigation plan has been developed that will insure the safety of marine mammals that may be present in the survey areas. With this mitigation plan and lack of documented historical impacts, they deem that injury to marine mammals is exceedingly unlikely and disturbance, if any, would be minimal, local, and short-term. In contrast, the impact of this research on our understanding of fundamental Earth processes is likely to be significant.

Response: NMFS acknowledges the principal investigators' comments and expects L–DEO to comply with all the requirements stipulated in the IHA. After issuance of the proposed IHA, L–DEO negotiated with the project's principal scientists (Dr. McIntosh and Dr. Wu) and modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

Comment 91: Dr. McIntosh and Dr. Wu state the *Langseth* is operated in strict compliance with requirements mandated by NMFS. The underlying guidelines are based on requirements of the ESA and the MMPA. The *Langseth* will have on board five marine mammal observers for visual and acoustic monitoring during all seismic operations. These operations will be ramped-down or shut down if marine mammals or sea turtles enter into the NMFS-approved safety zone. This mitigation plan is similar to those used during previous *Langseth* projects and previous seismic projects on the *Ewing,* the *Langseth's* predecessor. Based on past post-cruise reports, this plan has successfully avoided takes of marine mammals during numerous seismic projects.

Response: NMFS acknowledges the principal investigators' comments and expects L–DEO to comply with all the requirements stipulated in the IHA.

Comment 92: Dr. McIntosh and Dr. Wu state, as noted above, their seismic operations will be in strict compliance with the mitigation practices developed by the NMFS, and we will avoid the sensitive near-coastal habitat. This type of seismic project has been undertaken many times in the past, with marine biological observers present, and has not resulted in any observed impacts. Unlike many sources of marine noise, which emit continuous sound, seismic work involves a short pulse of acoustic energy followed by a significant period of quiet.

Response: NMFS acknowledges the information and comments provided by the principal investigators of L–DEO's TAIGER seismic survey. NMFS fully expects L–DEO to comply with all the requirements stipulated in the IHA.

Comment 93: Dr. McIntosh and Dr. Wu state that the seismic program will pass through any one area at a speed of about 8 km/hr, so any impact will be very limited in time, generally much less than one hour. Furthermore, the planned transects are very widely spaced, so most parts of the Taiwan Strait will be completely unaffected by the project.

Response: NMFS acknowledges the information and comments provided by the principal investigators of L–DEO's TAIGER survey. This information was used by NMFS in making its necessary negligible impact determinations.

Comment 94: ETSSTAWG states that the proposed mitigation practices are inadequate to prevent injury to cetaceans.

Response: NMFS disagrees with ETSSTAWG's comment. After issuance of the proposed IHA, L–DEO modified its cruise plan and adopted more precautionary monitoring and mitigation measures. The combination of all the mitigation and monitoring measures, along with the avoidance responses of many marine mammals, ensure that takings, incidental to this activity, will result in no more than a negligible impact on affected species and stocks of marine mammals and will result in the least practicable impact on these affected species or stocks in the study area. *See* L–DEO's Supplemental EA.

Comment 95: ETSSTAWG recommends that two cetacean observers, not just one, should be on watch at the same time. The duration of watch times should be reduced from 4 to 2 hours to prevent compromised efficiency as a result of fatigue. Also, observers should be familiar with the cetaceans expected in the area, the nature of the local environment (*i.e.*, a locally trained person), operation of the PAM system, and the observation methods required.

Response: The *Langseth* carries five qualified and experienced MMOs for every seismic study involving use of an airgun system comparable to that planned for this project. MMOs are appointed by L–DEO with NMFS concurrence. L–DEO has employed a regional expert as one of the MMOs for the duration of the survey. Three MMOs are typically on watch at a time, two on the observation tower conducting visual observations and the third monitoring the PAM equipment. On the tower, two observers are on watch during all daylight hours except during meal times. MMOs typically observe for one to three hours. Because there are usually two MMOs on the visual watch at a time, they alternate between observing with reticle binoculars (7x50 Fujinon), big-eye binoculars (25x150), and the naked eye to avoid eye fatigue.

Comment 96: Dr. Robert Brownell and Dr. Lien-Siang Chou from National Taiwan University's Institute of Ecology and Evolutionary Biology state that the permit application is only requesting permission for the incidental harassment of marine mammals (Level B) while conducting the proposed marine geophysical survey in SE Asia. The survey area includes the west coast of Taiwan, which is a hot spot for small cetacean mass stranding events (MSEs) or near mass stranding events (NMSEs). Since 1990, at least 16 MSEs or NMSEs involving six species of small cetaceans (pygmy killer whales, rough toothed dolphins, striped dolphins, pantropical spotted dolphins, melon-headed whales, and ginkgo-toothed beaked whales) have occurred during all months of the year except May, August, October, and December. Taiwan has the highest number of pygmy killer whales MSE compared to any other location in the world (Brownell *et al.,* 2009). It is possible that at least some of these MSEs may be related to anthropogenic noise. While ''NMFS has preliminarily determined that the impact of conducting the seismic survey in SE Asia may result, at worst, in temporary modification in behavior (Level B harassment) of small numbers of marine mammals,'' there is no conclusive evidence that the proposed seismic survey will not cause some small cetaceans to strand. Therefore, some mitigation and monitoring plans need to be developed in case any strandings or

NMSEs occur. In addition to the above noted MSEs for Taiwan, one unusual cetacean mortality event occurred in Taiwan between July 19 and August 13, 2005 that involved 23 small cetaceans of seven species. Most of the strandings (74 percent) were beaked and dwarf sperm whales (Yang *et al.,* 2008).

Response: After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. No injury (Level A harassment), serious injury, or mortality is anticipated or authorized. NMFS believes that the implementation of the monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species and stocks of marine mammals in the study area.

Comment 97: Minor and Wilson state that the EA and IHA documents also fail to deal with the reality of the strandings that have been associated with previous airgun operations (including one stranding associated with a previous survey conducted by the proponent, L–DEO). Minor and Wilson think that these strandings clearly constitute something greater than ''Level B harassment.''

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that the implementation of the monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. No injury (Level A harassment), serious injury, and mortality is anticipated or authorized. See NMFS' responses to relevant discussions in this document.

Comment 98: The Commission recommends that, before issuing the requested authorization, the NMFS require that observations be made during all ramp-up procedures to gather the data needed to analyze and provide a report on their effectiveness as a mitigation measure. CSI states that there are uncertainties about the effectiveness of ramp-up procedures and no data was presented to show that this was indeed useful in reducing impacts.

Response: The IHA requires that MMOs on the *Langseth* make observations for 30 minutes prior to ramp-up, during all ramp-ups, and during all daytime seismic operations and record the following information when a marine mammal is sighted:

(i) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (*e.g.*, none, avoidance, approach, paralleling, *etc.*, and including responses to ramp-up), and behavioral pace; and

(ii) Time, location, heading, speed, activity of the vessel (including number of airguns operating and whether in state of ramp-up or power-down), sea state, visibility, cloud cover, and sun glare.

NMFS has asked NSF and L–DEO to gather all data that could potentially provide information regarding effectiveness of ramp-ups as a mitigation measure. However, considering the low numbers of marine mammal sightings and low numbers of ramp-ups, it is unlikely that the information will result in any statistically robust conclusions for this particular seismic survey. Over the long term, these requirements may provide information regarding the effectiveness of ramp-up as a mitigation measure, provided animals are detected during ramp-up.

Comment 99: Dr. John Wang states that L–DEO did not provide any supporting evidence that ramp-up procedures are effective in reducing impacts on cetaceans. Given that it appears to be an important proposed mitigation measure, effectiveness of such a procedure should be convincing.

Response: As discussed in detail elsewhere in this document, NMFS believes that ramp-up of the seismic airgun array in combination with the slow vessel speed, use of trained and qualified MMOs, PAM, shut-down and power-down procedures, and the behavioral response of marine mammals to avoid areas of high anthropogenic noise all provide protection to marine mammals from injury (Level A harassment), serious injury, or mortality. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks in the study area.

Comment 100: CSI states that a shut-down of 30 minutes was proposed. This is clearly not sufficient as several species of concern can stay submerged for more than an hour and remain undetected.

Response: NMFS disagrees with CSI's comment. A shut-down of 30 minutes is a sufficient amount of time. For species with longer dive durations (e.g., mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales), a significant portion of their travel is spent diving vertically, while the *Langseth* will be traveling horizontally at an operational speed of 7.4 to 9.3 km/hour during seismic acquisition. The *Langseth* is also equipped with a PAM system to detect vocalizing marine mammals.

Comment 101: Dr. John Wang states that the resumption of airgun operations after not observing a small odontocete and ''large'' (following FR) odontocetes (i.e., sperm, dwarf and pygmy sperm whales and beaked whales) for 15 and 30 minutes is baseless. These periods are far too short for species that can stay submerged for greater than 60 minutes. For many species in the region, submergence maximum time is not known. To be precautionary, this shut-down and search time needs to be at least 60 minutes for small cetaceans with no information on submergence time and at least 90 minutes for the ''large'' odontocetes (listed above) to ensure animals have at least one chance of surfacing before power-up.

Response: Several species of deep-diving cetaceans are capable of remaining underwater for more than 30 minutes. However, NMFS believes that 30 minutes is an adequate length for the monitoring period prior to the start-up of airguns (1) because of ramp-up operations, (2) MMOs are usually visually observing and using the PAM system during non-seismic operations, (3) the majority of the marine mammal species in the study area that may be exposed do not stay underwater for more than 30 minutes, and (4) if deep diving animals happened to be in the operation area in the short time immediately prior to the pre-start-up monitoring, if an animal's maximum underwater time is 45 min, there is only a one in three chance that the last random surfacing would be prior to the beginning of the required 30 min monitoring period.

Seismic vessels are moving continuously (because of the long towed array) and NMFS believes that unless the animals submerge and follow at the speed of the vessel (highly unlikely, especially when considering that a significant part of their movements is vertical), the vessel will be far beyond the length of the safety radii within 30 min, and therefore it will be safe to start the airguns again.

The time periods determined for the resumption of airgun operations is based on the dive duration of certain marine mammal species, not necessarily the animal's physical size. Small odontocete and pinniped species are likely to have shorter dive durations than mysticetes and large odontocetes

(including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales), which may have longer dive durations. See NMFS' responses in Monitoring.

Comment 102: Dr. John Wang states that the effectiveness of any shut-downs would depend on: the ability to detect cetaceans, communication of the detection, amount of time for a decision to shut down, and how quickly a shut-down can be executed. No time frame as to how long such a procedure would take after a cetacean is detected was given. Clearly, timing is important for determining the effectiveness of this mitigation measure.

Response: The timing of the implementation of a shut-down or other mitigation measure is dependent on the judgment, recommendation, and communication of the on-duty MMOs aboard the *Langseth* to the airgun personnel. If a marine mammal is detected near, approaching, or in the safety radius, then the on-duty MMO communicates the appropriate mitigation measure via radio and/or phone to the science lab and airgun technicians for immediate action. MMVO's alternate between observing with reticle binoculars, big-eye binoculars, and the naked eye for visual detection and to avoid eye fatigue. PAM is used day and night as practical, which can detect vocalizing marine mammals present in the study area.

Comment 103: Dr. John Wang states that seismic surveys should not be conducted within at least 10 km from areas where a steep shelf wall exists (e.g., east coast of Taiwan) until the effects of reflection and constructive interference on sound levels are better understood.

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. The seismic survey line paralleling the east coast of Taiwan will be moved offshore at least 20 km to decrease potential impacts on species that occur in coastal waters and over the continental slope. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. *See* L–DEO's Supplemental EA.

Comment 104: HSUS/HSI is concerned about other aspects of the proposed mitigation measures, including the use of only one MMVO (two will be used only ''when practical''— p. 78314); visual detection as the primary mitigation measure, when several vulnerable species are extremely difficult to see even under the best of circumstances (e.g., beaked whales); the use of any mitigation measure(s) at night (there has yet to be designed any suite of nighttime mitigation measures that is even remotely as effective as daytime mitigation measures when it comes to detecting and avoiding marine mammals); the heavy reliance on ramp-up of the airgun arrays (even though there is little if any independent field testing of the assumption that ramp-up causes animals to move away from a sound source); and the failure to consider alternate schedules to avoid the overlap of the surveys with the calving season for several cetacean species in the region.

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. *See* relevant discussions regarding nighttime, ramp-up, temporal and spatial avoidance, and species of particular concern in NMFS' responses to comments here in this document.

Comment 105: ETSSTAWG states that the EA states that ''the current procedures are based on best practices noted by Pierson *et al.* (1998) and Weir and Dolman (2007)''. However, this is clearly not the case since Weir and Dolman (2007) call for, among other things the avoidance of sensitive areas—e.g., the western Taiwan coastline; suspension of airgun use at night; and additional restrictions in adverse weather conditions. For example, the EA states that ''when at all possible, seismic surveying will only take place at least 8–10 km from the Taiwanese coast, particularly the central western coast (~from Taixi to Tongshiao), to minimize the potential of exposing these threatened dolphins to SPLs >160 dB''. The use of the term ''when at all possible'' is not reassuring.

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. See NMFS' responses to relevant discussions regarding temporal and spatial avoidance, species of particular concern, nighttime operations, and others in this document.

Comment 106: ETTSTAWG states that the predicted protection ranges (i.e., safety zones) should be confirmed in the field at each point in the survey that the bottom geography changes substantially. The results should be reported to NMFS immediately and safety zone sizes should be adjusted accordingly.

Response: NMFS believes that a sound source verification field test is not necessary for this project. L–DEO conducted an acoustic calibration study of the *Langseth's* airgun array in late 2007/early 2008 in the Gulf of Mexico (LGL Ltd., 2006). Distances where sound levels were received in deep, intermediate, and shallow waters will be determined for various airgun configurations. Acoustic analysis is ongoing and a scientific paper on the *Langseth* calibration study is currently in review for future publication (Tolstoy, pers. comm.). After analysis, the empirical data from the 2007/2008 study will be used in future NEPA documents and IHA applications. NMFS believes the distances predicted in Table 1 (above) are the best science available.

Comment 107: ETTSTAWG states that the mitigation procedures offered (especially the use of visual detection at night) are known to be insufficient and ineffective. To make the most of the limited effectiveness, and thus offer the greatest protection, I recommend that L–DEO's surveys in the Taiwan Strait (and throughout the operation) shut down at night.

Response: A number of public comments concerned the inability to detect marine mammals from the *Langseth* at night and recommended no nighttime operations. The scientists conducting the survey have considered this recommendation, and have decided that it is not feasible, as limiting the surveys to daytime only would either result in the loss of half of the data or would necessitate doubling the duration of the project. Doubling the duration of the surveys is not possible because the *Langseth* has other research commitments after the TAIGER cruise, and because of weather conditions associated with the typhoon season. It would also incur other potential environmental effects. However, the seismic source will not be started if the MMVOs cannot view the entire safety radius for any reason (darkness, fog, or rough seas). In addition, PAM will be used day and night as practical, which can detect vocalizing marine mammals present in the area.

If a seismic survey vessel is limited to daylight seismic operations, efficiency would be much reduced. For seismic operators in general, a daylight-only requirement would be expected to result in one or more of the following outcomes: cancellation of potentially valuable seismic surveys, reduction in the total number of seismic cruises annually due to longer cruise durations, a need for additional vessels to conduct the seismic operations, or work conducted by non-U.S. operators or non-U.S. vessels when in waters not subject to U.S. law.

MMVOs using NVDs will be on watch during periods prior to and during a ramp-up at night. At other times during the night MMOs will be available, but it is not necessary or very effective for them to be on watch constantly. The use of PAM will improve the detection of marine mammals by indicating to the MMVOs when an animal is potentially near and prompting a power-down or shut-down when necessary. Marine mammals are unlikely to be injured, seriously injured or killed by the noise from approaching seismic arrays nor is it authorized. Thus, limiting seismic shooting to only daylight hours is unnecessary and unlikely to result in less Level B harassment to marine mammals than would conducting 24 hour survey operations.

Because of the need to keep a vessel at-speed in order to successfully tow the hydrophone streamers, the vessel would need to be underway throughout the night whether or not the airguns are fired at night. Additional down-time could be anticipated each day as the vessel maneuvers all night to come back to the shut-down location 30 minutes after daylight. This is unlikely to be successful very often and will likely result in additional time needed for surveys to be completed.

L–DEO completed two tests of the effectiveness of using NVDs (Smultea and Holst, 2003; Holst, 2004). Results of those tests indicated that the NVDs are effective at least to 150 to 200 m (492 to 656 ft) away from certain conditions. That type of NVD is not effective at the much larger 180 dB radii applicable when a large array of airguns is in use. However, it is the smaller zone where the received levels are well above 180 dB where detection of any marine mammals that are present would be of particular importance. The 205 dB zone, within which TTS might occur, is likely to approximately 100 m (328 ft) in radius. That is sufficiently within the range of the NVDs to allow some chance of detecting marine mammals visually within the area of potential TTS during ramp-up. Furthermore, a substantial proportion of the marine mammals that might be within that distance is expected to move away either during ramp-up or, if the airguns were already operating, as the vessel approaches.

Taking into consideration the additional costs of prohibiting nighttime operations and the likely low impact of the activity (given the required monitoring and mitigation measures), NMFS has determined that the IHA's requirements will ensure that the activity will have the least practicable impact on the affected species or stocks for the following reasons. Marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns, thereby giving them an opportunity to avoid the approaching array.

Comment 108: ETSSTAWG recommends that L–DEO must better incorporate changes in bottom topography during the survey into the designation of 'safety zones', and adapt the cruise accordingly.

Response: NMFS is unsure of what ETSSTAWG is stating in its recommendation. After issuance of the proposed IHA, L–DEO has modified its cruise plan and adopted more precautionary monitoring and mitigation measures. L–DEO has re-routed survey tracklines and will implement temporal and spatial restrictions to avoid certain areas that they may be considered significant or core habitat for certain species of particular concern (*see* L–DEO's Supplemental EA). Also, the predicted safety radii for the various sound isopleths from the *Langseth's* airgun array are related to water depth (*see* Table 1 above). Water depths have been categorized as deep (greater than 1,000 m), intermediate (100 to 1,000 m), and shallow (less than 100 m).

Comment 109: ETSSTAWG recommends that the survey effort should be suspended at night as night-time observations are of insufficient acuity to detect cetaceans and that the survey effort should be suspended when adverse weather conditions prevail that would preclude effective spotting (e.g. in fog, rain, heavy seas > Beaufort 3).

Response: NMFS and L–DEO have considered these recommendations, and have decided it is not feasible to include such restrictions, as limiting the surveys to daytime only would either result in the loss of half of the data or would necessitate doubling the duration of the project. Doubling the duration of the surveys is not possible because the *Langseth* has other research commitments after the TAIGER cruise, and because of weather conditions associated with the typhoon season. It would also incur other potential environmental effects. However, the seismic source will not be started if the MMVOs cannot view the entire safety radius for any reason (darkness, fog, or rough seas). In addition, PAM will be used day and night as practical, which can detect vocalizing marine mammals present in the area (see L–DEO's Supplemental EA).

Comment 110: HSI states that L–DEO has ignored the mitigation measure to avoid species temporally and must offer a strong rationale for doing so in any application resubmission. The rationale that resources have already been committed to conducting these surveys during this time period is of course not only unacceptable as a justification; it is also illegal under the NEPA.

Response: NMFS disagrees with HSI's comment. After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. The time for the cruise is the most suitable time logistically for the *Langseth* and the participating scientists. Given the limited weather window for the operations and the fact that marine mammals are widespread in the survey area throughout the year, altering the timing of the proposed project likely would result in no net benefits. Issuing the IHA for another period could result in significant delays and disruptions to the cruise as well as subsequent geophysical studies that are planned by L–DEO for 2009 and beyond. NMFS has fully complied with its obligations under NEPA. *See* Temporal and Spatial Avoidance section below in this document. *See* L–DEO's Supplemental EA for more information.

Comment 111: CSI is concerned with the timing of the proposed seismic surveys, especially regarding dates, locations, and species.

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures, which addressed concerns regarding certain locations and species of marine mammals. The time for the cruise is the most suitable time logistically for the *Langseth* and the participating scientists. Given the limited weather window for the operations and the fact that marine mammals are widespread in the survey area throughout the year, altering the timing of the proposed project likely would result in no net benefits. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have

a negligible impact on the affected species or stocks of marine mammals in the study area. *See* Temporal and Spatial Avoidance, Species of Particular Concern, and L–DEO's Supplemental EA.

Comment 112: HSI states that it is unclear why the surveys must take place during the proposed time period (March 21 to July 14, 2009). The applicant acknowledges that the best available science shows the ''highest number of marine mammal sightings and species occur during April and June'' (p. 78298) in the region—the overlap with the survey dates is obvious. This also happens to be the calving season for many species in the region. The NMFS should require at a minimum that L–DEO provide clear and substantive justification for the proposed survey schedule. The most effective mitigation measure known is to avoid species spatially and/or temporally.

Response: The seismic survey will provide data integral to advancing scientific understanding of the process of large-scale mountain building. The study is designed to characterize the birth and evolution of a mountain belt, which in turn can provide information on locations and source properties of regional earthquakes. The information is vital to understanding plate tectonic processes and their effects on earthquake occurrence and distribution. The time for the cruise is the most suitable time logistically for the *Langseth* and the participating scientists. Given the limited weather window for the operations and the fact that marine mammals are widespread in the survey area throughout the year, altering the timing of the proposed project likely would result in no net benefits. Issuing the IHA for another period could result in significant delays and disruptions to the cruise as well as subsequent geophysical studies that are planned by L–DEO for 2009 and beyond.

After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures, of which include temporal and spatial avoidance of species of particular concern (*see* Temporal and Spatial Avoidance and Species of Particular Concern below). NMFS has included requirements to these effects in the IHA issued to L–DEO. *See* L–DEO's Supplemental EA.

Comment 113: Dr. John Wang states that the period of the proposed survey also overlaps greatly with the presence of the most vulnerable members of marine mammal population (females with young calves) some of which may be found in aggregations or following certain migration routes during this time.

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures, which addressed concerns regarding certain locations and species of marine mammals. The time for the cruise is the most suitable time logistically for the *Langseth* and the participating scientists. Given the limited weather window for the operations and the fact that marine mammals are widespread in the survey area throughout the year, altering the timing of the proposed project likely would result in no net benefits. Issuing the IHA for another period could result in significant delays and disruptions to the cruise as well as subsequent geophysical studies that are planned by L–DEO for 2009 and beyond. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. *See* Temporal and Spatial Avoidance, Species of Particular Concern, and L–DEO's Supplemental EA.

Comment 114: NRDC states that NMFS' proposed IHA does not impose meaningful mitigation measures. For instance, it imposes only voluntary spatial and temporal restrictions, introducing caveats such as avoiding humpback winter concentration areas ''if practicable'' and limiting seismic operations to 8–10 km from the Taiwanese coast ''when possible'' to reduce harm to ETS Indo-Pacific humpback dolphins, effectively leaving decisions on habitat avoidance to the project proponent. 73 FR 78315; see also *NRDC* v. *Gutierrez,* 2008 WL 360852 (N.D. Cal., Feb. 6, 2008) (noting that it is improper for NMFS, as the agency tasked with implementing the MMPA, to shift its burden). Nor, given the distribution of species and the propagation of airgun pulses, would the proposed 2 km coastal avoidance do much to mitigate the harm to the ETS Indo-Pacific humpback dolphin population, whose entire distribution falls within the proposed survey areas. *See* comment letter submitted by Dr. John Wang. Such measures neither meet the agency's statutory burden nor satisfy the strong interest in marine mammal protection that is embodied in the MMPA.

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. L–DEO will limit seismic survey lines to take place at least 20 km from the west coast of Taiwan, except for in the passage between the Penghu Islands and the Waishanding Jhou sandbar, where the survey will pass through the approximately 17.1 km mid-line distance between the two possibly sensitive areas, subject to the limitations imposed by other foreign nations, to minimize the potential for exposing Indo-Pacific humpback dolphins, finless porpoises, and other coastal species to SPLs greater than or equal to 160 dB re 1 μPa (rms). NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. *See* Temporal and Spatial Avoidance, Species of Particular Concern, and L–DEO's Supplemental IHA.

Comment 115: CSI states that calving for most cetacean species in this region is likely in the spring to early summer as evidenced by sightings of many females with young calves during cetacean surveys that have been conducted in Taiwan and the examination of hundreds of carcasses. The proposed survey schedule overlaps greatly with the calving seasons of many species or will occur as females are accompanied by and nursing young calves. This proposed period for the seismic surveys is probably the worst choice of seasons if minimizing the impacts of this activity on marine mammals in this region is a sincere goal.

Response: After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

In the EA and Supplemental EA, L–DEO and NSF addressed potential impacts of the proposed seismic survey on marine mammals, as well as other species of concern near the survey area, including sea turtles, fish, and invertebrates. The EA evaluates three alternatives: (1) The proposed seismic survey and the issuance of an associated IHA; (2) a corresponding seismic survey at an alternative time, along with issuance of an associated IHA; and (3) a no action alternative, with no IHA and

no seismic survey. The EA assessed impacts to marine mammals, including consideration of impacts to prey species and to marine mammal habitats. A number of monitoring and mitigation measures were proposed as part of the action evaluated in the EA. In consideration of public comments received the Supplemental EA particularly considered adjustments to the preferred alternative and additional mitigation measures. Taking into account the mitigation measures that are planned, the potential effects on marine mammals from the preferred alternative are generally expected to be limited to avoidance of the area around the seismic operation and short-term behavioral changes, falling within the MMPA definition of Level B harassment. No injury (Level A harassment), serious injury, or mortality is anticipated or authorized. Numbers of individuals of all species taken are expected to be small (relative to species abundance).

Comment 116: NRDC states that the additional review of the region's marine mammal population should be undertaken before authorizing incidental takes. Furthermore, meaningful spatial and temporal restrictions on seismic activities must be adopted, as described in further detail at Appendix A.

Response: After issuance of the proposed IHA, L–DEO reviewed information on the region's marine mammal populations, modified the cruise plan, and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. *See* Temporal and Spatial Avoidance below and L–DEO's Supplemental EA.

Comment 117: The Commission recommends that, before issuing the requested authorization, the NMFS require the applicant to take all measures necessary to ensure that the proposed activities are not conducted near the Ryukyu Islands and Babuyan Islands during peak occurrence of the humpback whales in those areas (i.e., February through April).

Response: To mitigate against the potential effects of the seismic survey on humpback whales, particularly mother and calves on the breeding grounds or during the beginning of migration to summer feeding grounds, the surveys that approach the Babuyan Islands have been rescheduled as late as possible to Leg 4 (June 18 to July 20, 2009) (*see* L–DEO's Supplemental EA). The humpback whales that winter and calve in the Ryuku Islands are near Okinawa (Nishiwaki, 1959; Rice, 1989; Darling and Mori, 1993), which is approximately 400 km (249 mi) north of the most northerly survey lines. The *Langseth's* closest approach to the Ryuku Islands is 51.5 km (32 mi), and 26.6 km (16.5 mi) and 8.8 km (5.5 mi) to the Babuyan and Batan Islands, respectively.

L–DEO will avoid the areas (Ogasawara and Ryuku Islands in southern Japan and the Batan and Babuyan Islands in Luzon Strait in the northern Philippines) at the time of peak occurrence (February to April), where concentrations of humpback whales are known to winter, calve, and nurse. Seismic survey lines will be scheduled for as late as possible (June to July) to avoid potential effects of the surveys on humpback whales, particularly mothers and calves on breeding grounds or during the beginning of migration to summer feeding grounds. If concentrations or groups of humpback whales are observed (by visual or passive acoustic detection) prior to or during the airgun operations, those operations will be powered/shut-down and/or moved to another location, if possible, based on recommendations by the on-duty MMO aboard the *Langseth.* Also, if humpback whale mother/calf pairs are visually sighted, the airgun array will be shut-down regardless of the distance of the animal(s) to the sound source. The array will not resume firing until 30 min after the last documented whale visual sighting.

NMFS concurs with the Commissions recommendation and has included a requirement to this effect in the IHA.

Comment 118: WaH states that the potential impacts on western North Pacific humpback whales in the waters of the Babuyan Islands (believed to be calving and nursing grounds for a small population of humpback whales) and Taiwan (e.g., along the east coast and in the Taiwan Strait) and the fact that surveys will occur during the northward migration of mothers and calves is worrying. Mothers and calves may be more sensitive to acoustic disturbance and are probably more susceptible to the impacts of stress responses to disturbance of any kind.

CSI states that the timing of the L–DEO surveys overlaps greatly in space and time with the whales wintering in the Babuyan Islands and coincides spatially and temporally with the northward migration of mothers and neonatal and other young calves from the calving/nursing grounds in the Babuyan waters.

NRDC urges NMFS to restrict L–DEO's access to the Ryuku Islands: exclusion to 200 m depth from December through May and year-round coastal exclusion to 20 km (this is important breeding ground for North Pacific humpback whale, particularly December through May).

Response: Many concerns were raised in public comments about the proposed survey lines scheduled for Leg 2 (April 20 to June 7, 2009) approaching humpback whale breeding areas in the Babuyan and Ryuku Islands. In fact, the humpback whales that winter and calve in the Ryuku Islands are near Okinawa (Nishiwaki, 1959; Rice, 1989; Darling and Mori, 1993), some 400 km north of the most northerly survey. However, a small population of humpbacks does winter and calve in the Babuyan Islands in Luzon Strait (Acebes and Lesaca, 2003; Acebes *et al.,* 2007). The whales may arrive in the area as early as November and leave in May or even June, with peak occurrence during February through March or April (Acebes *et al.,* 2007).

To mitigate against the potential effects of the surveys on humpbacks, particularly mothers and calves on the breeding grounds or during the beginning of migration to summer feeding grounds, the surveys that approach the Babuyan Islands have been rescheduled as late as possible, to Leg 4 (June 18 to July 20, 2009). The *Langseth's* closest approach to the Ryuku and Okinawa Islands are approximately 51.5 and 400 km, respectively.

L–DEO will avoid the areas (Ogasawara and Ryuku Islands in southern Japan and the Batan and Babuyan Islands in Luzon Strait in the northern Philippines) at the time of peak occurrence (February to April), where concentrations of humpback whales are known to winter, calve, and nurse. Seismic survey lines will be scheduled for as late as possible (June to July) to avoid potential effects of the surveys on humpback whales, particularly mothers and calves on breeding grounds or during the beginning of migration to summer feeding grounds. If concentrations or groups of humpback whales are observed (by visual or passive acoustic detection) prior to or during the airgun operations, those operations will be powered-down, shut-down, and/or moved to another location, if possible, based on recommendations by the on-duty MMO aboard the *Langseth.* If humpback whale mother/calf pair is visually sighted, the airgun array will be

shut-down regardless of the distance of the animal(s) to the sound source. The array will not resume firing until 30 min after the last documented whale visual sighting. NMFS has included requirements to these effects in the IHA issued to L–DEO.

Comment 119: CSI has concerns regarding particular mitigation measures. The mitigation measures proposed by L–DEO would be ineffective or have limited effectiveness at best. The claim is that surveys will be delayed as late as possible to avoid humpback whales, but the timing of the surveys overlap the presence of humpback whales greatly and during a time when newborn calves will be accompanying mothers. The surveys will also occur during or near the calving season for most species in the region; this is when females and calves are the most vulnerable. Given the entire period of the proposed survey overlaps with humpback whale concentrations in the Babuyan island sand during the migration period, there is no attempt to avoid this area, and surveying the lines near the Ryuku and Babuyan islands as late as possible within the scheduled period of the surveys does nothing but delay the impact on the animals to a slightly later period because the whales will still be in the area. As such, this measure does not mitigate anything.

Response: After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures, which addressed concerns regarding certain locations and species of marine mammals. The time for the cruise is the most suitable time logistically for the *Langseth* and the participating scientists. Given the limited weather window for the operations and the fact that marine mammals are widespread in the survey area throughout the year, altering the timing of the proposed project likely would result in no net benefits. Issuing the IHA for another period could result in significant delays and disruptions to the cruise as well as subsequent geophysical studies that are planned by L–DEO for 2009 and beyond. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. See NMFS responses above, Species of Particular Concern, and L–DEO's Supplemental EA.

Comment 120: CSI states that the schedule for surveying the Luzon Strait and the Philippine Sea overlaps completely with the period when humpback whales are still in the area (and includes the latter portion of the peak period (April) for humpback whale concentrations in the Babuyan Islands). Therefore it is unclear how the timing of the surveys reduces the impacts on humpback whales as claimed by L–DEO. A large proportion of this population of humpback whales will also be migrating through the Philippine Sea to northern waters at the same time as the proposed surveys. Although the exact migratory routes of most humpback whales are unknown, it is clear that at least some will follow a path that is parallel and fairly close to the shores of eastern Taiwan. One of the proposed survey tracklines of the *Langseth* also follows this course. Many females undertaking the migration at this time will also be accompanied by neonatal calves and these are the most sensitive individuals of the population (McCauley *et al.,* 2000).

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. Additionally, L–DEO will avoid the areas (Ogasawara and Ryuku Islands in southern Japan and the Batan and Babuyan Islands in Luzon Strait in the northern Philippines) at the time of peak occurrence (February to April), where concentrations of humpback whales are known to winter, calve, and nurse. Seismic survey lines will be scheduled for as late as possible (June to July) to avoid potential effects of the surveys on humpback whales, particularly mothers and calves on breeding grounds or during the beginning of migration to summer feeding grounds.

If concentrations or groups of humpback whales are observed (by visual or passive acoustic detection) prior to or during the airgun operations, those operations will be powered-down, shut-down, and/or moved to another location, if possible, based on recommendations by the on-duty MMO aboard the *Langseth. See* Species of Particular Concern and L–DEO's Supplemental EA.

Comment 121: NRDC urges NMFS to restrict L–DEO's access to the Ryukyu Islands: exclusion to 200 m depth from December through May and year-round coastal exclusion to 20 km (this is important breeding ground for North Pacific humpback whale, particularly December through May, as well as year-round habitat for Indo-Pacific bottlenose dolphin).

NRDC also states that mitigation measures should restrict access to the islands between northern Luzon and Taiwan including Babuyan, Batanes, Calayan Islands: exclusion to 200 m depth from December through May, as well as year-round coastal exclusion to 20 km (these are humpback whale breeding grounds, particularly December through May, and reflect high cetacean diversity year-round).

Response: L–DEO will avoid the areas (Ogasawara and Ryuku Islands in southern Japan and the Batan and Babuyan Islands in Luzon Strait in the northern Philippines) at the time of peak occurrence (February to April), where concentrations of humpback whales are known to winter, calve, and nurse. Seismic survey lines will be scheduled for as late as possible (June to July) to avoid potential effects of the surveys on humpback whales, particularly mothers and calves on breeding grounds or during the beginning of migration to summer feeding grounds. If Indo-Pacific bottlenose dolphins are visually sighted, the airgun array will be shut-down regardless of the distance of the animal(s) to the sound source. The array will not resume firing until 15 min after the last documented dolphin sighting. NMFS has included requirements to this effect in the IHA issued to L–DEO. See Species of Particular Concern and L–DEO's Supplemental EA.

Comment 122: CSI states that the routes and months when Western Pacific gray whales may undertake their migration from suspected wintering grounds in the South China Sea are unknown. However, it is likely that the period for the migration is in the spring. Scheduling the seismic surveys in the South China Sea to be conducted in March and April will likely coincide with at least some migrating gray whales. L–DEO did not address this possibility and have not proposed any mitigation measures to avoid this likely overlap of seismic surveys and migrating gray whales.

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. L–DEO will avoid shallow water areas near the mainland China coast and western part of the Taiwan Strait during the Western Pacific gray whale wintering period and migration (December to April). L–DEO will avoid shallow, coastal waters of the South China Sea, and limit seismic survey lines to water depths greater than 200 m in the South China Sea, and as far east as possible from the mainland China side of the Taiwan Strait to reduce potential for effects on Western Pacific gray whales. If a Western Pacific gray whale is visually sighted, L–DEO

will also shut-down the airgun array regardless of the distance of the animal(s) to the sound source. The array will not resume firing until 30 min after the last documented whale visual sighting. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. See L–DEO's Supplemental EA.

Comment 123: NRDC states that mitigation measures should restrict access to the Strait of Taiwan from October through May (due to gray whale migration, as well as high cetacean density including endangered population of Indo-Pacific humpback dolphins).

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. L–DEO will avoid shallow water areas near the mainland China coast and western part of the Taiwan Strait during Western Pacific gray whale wintering period and migration (December to April). L–DEO will limit seismic survey lines to water depths greater than 200 m in the South China Sea, and as far east as possible from the mainland China side of the Taiwan Strait, to reduce potential for effects on Western Pacific gray whales, Indo-Pacific humpback dolphins, and finless porpoises. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. *See* Species of Particular Concern, Temporal and Spatial Avoidance, and L–DEO's Supplemental EA.

Comment 124: NRDC urges NMFS to restrict L–DEO's access to all South China Sea from December through May (due to gray whale migration).

Response: L–DEO will avoid shallow water area near the mainland China coast and western part of the Taiwan Strait during the Western Pacific gray whale wintering period and migration (December to April). L–DEO will also avoid shallow, coastal waters of the South China Sea. L–DEO will limit seismic survey lines to water depths greater than 200 m in the South China Sea, and as far east as possible from the mainland China side of the Taiwan Strait, to reduce potential for effects on Western Pacific gray whales. NMFS has included requirements to this effect in the IHA issued to L–DEO.

Comment 125: CSI states that the critically endangered ETS sub-population of Indo-Pacific humpback dolphins will be subjected to greater than 180 dB received levels even if mitigation measures are taken (i.e., to remain offshore of 2 km from shore). Even if the mitigation measures proposed by L–DEO are fully implemented, there will likely be ''Level A harassment'' to the ETS population that could have serious and likely irreversible impacts on this population. Based on the tabled predicted RMS distances for different received levels and accepting the recommendations of the ETSSTAWG for this population that for noise issues an additional (i.e., additional to the 3 km from shore distribution that is known presently for the ETS sub-population) 2 km buffer should be considered, the *Langseth* should not be within 13 km of western coast of Taiwan to avoid exposing dolphins to >160 dB levels. However, the model underestimates the actual levels at different distances. Further compounding the underestimation of levels is the fact that shallow water category is less than 100 m but the ETS population lives in waters less than 25 m. Much better predicted RMS distances for different received levels are needed for very shallow waters. Being 2 km from shore puts the *Langseth* in the middle of the distribution of the ETS population and does absolutely nothing to reduce the exposure level to any dolphin. The only reduction of noise is possibly with the statement that surveying will only take place 8 to10 km from shore but the condition of when possible is not acceptable because this can be a subjective determination by someone not concerned about the impacts on critically endangered populations of cetaceans. Furthermore, as discussed above, 8 to 10 km from shore still may not be sufficient to reduce exposure of the animals to greater than 160 dB and the distribution for the ETS population is further south than Taixi (Wang *et al.,* 2007b). Chou (2006) also believes that some of the waters south of Taixi are an important breeding/nursing area for the ETS population. These mitigation measures are not effective and still pose unacceptable risks to the dolphins of being exposed to greater than 180 dB. The proposed seismic surveys will exposure almost the entire ETS population of humpback dolphins to levels greater than 180 dB. As such, all or almost all ETS dolphins will be exposed to greater than 160 dB levels even if the *Langseth* remains 8 to 10 km from shore.

Response: After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. L–DEO will limit seismic survey lines to take place at least 20 km from the west coast of Taiwan, except for in the passage between the Penghu Islands and the Waishanding Jhou sandbar, where the survey will pass through the approximately 17.1 km mid-line distance between the two possibly sensitive areas, subject to the limitations imposed by other foreign nations, to minimize the potential for exposing Indo-Pacific humpback dolphins finless porpoises, and other coastal species to SPLs greater than or equal to 160 dB re 1 μPa (rms). *See* Species of Particular Concern and L–DEO's Supplemental EA.

Comment 126: The Commission recommends that, before issuing the requested authorization, the NMFS describe the reasons why and the conditions under which the application would need to conduct surveys closer than 8 to 10 km off the coast of Taiwan where threatened Indo-Pacific humpback dolphins are more likely to be exposed to sound pressure levels greater than 160 dB re 1 μPa (rms). The Commission also notes that it makes more sense to use a single distance, rather than a range, to prevent the survey from approaching the Taiwan coast too closely.

Response: The critically endangered ETS sub-population of the Indo-Pacific humpback dolphin is considered a foreign species and is not listed under the ESA. Foreign species are those that occur entirely outside of U.S. territory. NMFS does not, and is not obligated to, designate critical habitat or develop recovery plans for foreign species. NSF and L–DEO's action is planned to take place in the territorial seas and EEZ's of foreign nations, and will be continuous with the activity that takes place on the high seas. NMFS does not authorize the incidental take of marine mammals in the territorial seas of foreign nations, as the MMPA does not apply in those waters. However, NMFS still needs to calculate the level of incidental take in territorial seas as part of the proposed issuance of an IHA in regards to NMFS' analysis of small numbers and negligible impact determination.

After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures, especially for the ETS sub-population of Indo-Pacific humpback dolphins. Off

Taiwan's west coast, the cruise tracks have been re-routed offshore by approximately 20 km (12.4 mi) to protect the critically endangered ETS subpopulation of Indo-Pacific dolphins and finless porpoises, as well as ease potential pressure on other coastal species. Thus, L–DEO now plans to maintain the precautionary buffer recommended by ETSSTAWG in their comments to NMFS, ''at least 13 km (8.1 mi) and perhaps a more precautionary 15 km (9.3 mi) of the ETS Sousa population—meaning up to 20 km from shore.''

L–DEO will limit seismic survey lines to take place at least 20 km from the west coast of Taiwan, except for in the passage between the Penghu Islands and the Waishanding Jhou sandbar, where the survey will pass through the approximately 17.1 km mid-line distance between the two possibly sensitive areas, subject to the limitations imposed by other foreign nations, to minimize the potential for exposing Indo-Pacific humpback dolphins, finless porpoises, and other coastal species to SPLs greater than or equal to 160 dB re µPa (rms). NMFS concurs with the recommendations made by interested parties and has included a requirement to this effect in the IHA issued to L–DEO.

Comment 127: CSI states that if the *Langseth* approaches to within 10 km from shore, dolphins using waters east of the Chinmen Islands may be exposed to levels greater than 160 dB and some may be exposed to 180 dB or more depending on where the dolphins are found in their distribution and how close the *Langseth* is to the 25–30 m isobath.

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. The Chinmen Islands are located in the western portion of the Taiwan Strait, approximately 15 km from the coast of mainland China. L–DEO will avoid shallow water areas near the mainland China coast and western part of the Taiwan Strait during December to April. L–DEO will also limit seismic survey lines to water depths greater than 200 m in the South China Sea, and as far east as possible from the mainland China side of the Taiwan Strait, to reduce potential for effects on Western Pacific gray whales, Indo-Pacific humpback dolphins, and finless porpoises. L–DEO has been denied access to the waters of China as well. *See* L–DEO's Supplemental EA.

Comment 128: HSI states that although the **Federal Register** notice and the application note that the rms received level distances are potentially very large for shallow water, there is no effort to address the shortcomings of the proposed mitigation measures under those circumstances. As an example, the most vulnerable cetacean population to be affected by these surveys (i.e., ETS *Sousa*) could be routinely exposed to sound pressure levels of 180 dB re 1 µPa (rms) or greater (the level beyond which Level A harassment might occur), given the track lines proposed. Individual *Sousa* could be at risk of Level A harassment (or worse) at a distance as far from the *Langseth* as 4 km (*see* Table 1, p. 78297). This is well beyond visual (and probably acoustic) detection range, yet there is little effort in the application (or the **Federal Register** notice) to address this shortcoming. The proposal to come no nearer to the west coast of Taiwan than 2 km (and to remain ''when possible''—p. 78315—at least 8 to 10 km offshore) is not sufficient.

Response: After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. L–DEO will limit seismic survey lines to take place at least 20 km from the west coast of Taiwan, except for in the passage between the Penghu Islands and the Waishanding Jhou sandbar, where the survey will pass through the approximately 17.1 km mid-line distance between the two possibly sensitive areas, subject to the limitations imposed by other foreign nations, to minimize the potential for exposing Indo-Pacific humpback dolphins, finless porpoises, and other coastal species to SPLs greater than or equal to 160 dB re 1 µPa (rms).

Comment 129: NRDC states that mitigation measures should include a year-round coastal exclusion in the waters surrounding Taiwan to 20 km (because of Indo-Pacific humpback dolphin and finless porpoise habitat).

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. L–DEO will limit seismic survey lines to take place at least 20 km from the west coast of Taiwan, except for in the passage between the Penghu Islands and the Waishanding Jhou sandbar, where the survey will pass through the approximately 17.1 km mid-line distance between the two possibly sensitive areas, subject to the limitations imposed by other foreign nations, to minimize the potential for exposing Indo-Pacific humpback dolphins, finless porpoises, and other coastal species to SPLs greater than or equal to 160 dB re 1 µPa (rms). The seismic survey line paralleling the east coast of Taiwan will be moved offshore at least 20 km to decrease potential impacts on species that occur in coastal waters and over the continental slope. If an Indo-Pacific humpback dolphin or finless porpoise is visually sighted, the airgun array will be shut-down regardless of the distance of the animal(s) to the sound source. The array will not resume firing until 15 min after the last documented dolphin/porpoise sighting. NMFS has included requirements to these effects in the IHA issued to L–DEO. *See* L–DEO's Supplemental EA.

Comment 130: ETSSTAWG states that the lack of separate consideration of the genetically distinct ETS population of *Sousa* is, of course, a concern. One of the most effective ways to protect cetaceans and their habitat from the impacts of noise (and the cumulative and synergistic impacts in combination with other stressors) is through spatio-temporal restrictions, including marine protected areas (Weilgart, 2006).

Response: NMFS, NSF, and L–DEO have considered the genetically distinct ETS sub-population on Indo-Pacific humpback dolphins in L–DEO's Supplemental EA and issuance of the IHA to L–DEO. Several temporal and spatial restrictions for several cetacean species have been incorporated in the revision of the proposed survey and have been incorporated in NMFS' IHA issued to L–DEO. *See* Temporal and Spatial Avoidance section of this document and L–DEO's Supplemental EA.

Comment 131: WaH states that abundance and other data in SE Asia for sperm whales, which are known to 'startle' in response to seismic surveys and to face numerous threats in the SE Asia region (including acoustic), are unknown, justifying precautionary measures.

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. L–DEO is expected to implement any and all monitoring and mitigation measures described in the IHA that are applicable to sperm whale visual and acoustic detections. If concentrations or groups of sperm whales are observed (by visual or passive acoustic detection) prior to or during the airgun operations, those operations will be powered/shut-down and/or moved to another location, if possible, based on recommendations by the on-duty MMO aboard the *Langseth.* NMFS has included a requirement to this effect in the IHA issued to L–DEO,

as well as additional monitoring and mitigation measures for marine mammals.

Comment 132: Dr. John Wang states that recognizing the sensitivity of beaked whales, L–DEO proposed that as a 'special mitigation procedure' for beaked whales, ''approach to slopes and submarine canyons, if possible, during the proposed survey.'' It is unclear what is meant by 'if possible'. With this condition it is not convincing that the procedure will actually be implemented.

Response: When operating the sound source(s), L–DEO will minimize approaches to slopes, submarine canyons, seamounts, and other underwater geologic features, whenever possible, because of sensitivity of beaked whales and to avoid possible beaked whale habitat. If concentrations or groups of beaked whales are observed (by visual or passive acoustic detection) at a site such as on the continental slope, submarine canyon, seamount, or other underwater geologic feature just prior to or during the airgun operations will be powered-down, shut-down, and/or moved to another location, if possible, based on recommendations by the on-duty MMO aboard the *Langseth.* NMFS has included requirements to this effect in the IHA issued to L–DEO.

After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that the revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

Comment 133: NRDC states that NMFS' proposed mitigation measures focus primarily on visual monitoring. However, research has cast doubt on the ability of shipboard observers to detect whales or for vessels to avoid collisions through visual monitoring, particularly as the size of the vessel increases or visibility decreases (Clyne and Leaper, 1999). Notably, detection rates for marine mammals generally approach only 5 percent. It has been estimated that in anything stronger than a light breeze, only one in fifty beaked whales surfacing in the direct track line of a ship would be sighted; as the distance approaches 1 km, that number drops to zero (Barlow and Gisiner, 2006).

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's visual monitoring efforts is successful for detecting marine mammals. In addition to extra MMOs and high-powered binoculars, L–DEO will be using a PAM system for acoustically detecting marine mammals in the vicinity of the *Langseth.* NMFS expects that the impacts of the seismic survey action on marine mammals will be temporary in nature and not result in substantial impact to marine mammals or to their role in the ecosystem. The IHA anticipates, and would authorize, Level B harassment only, in the form of temporary behavioral disturbance, of species of cetaceans. Neither Level A harassment (injury), serious injury, nor mortality is anticipated or authorized, and the Level B harassment is not expected to affect biodiversity or ecosystem function. NMFS believes that L–DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. *See* Monitoring, Mitigation, and L–DEO's Supplemental EA.

Comment 134: NRDC urges NMFS to restrict L–DEO's access to submarine canyons off of southwest Taiwan (due to probable sperm and beaked whale habitat); and marine protected areas.

Response: After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures in the study area. If concentrations of groups of sperm whales and/or beaked whales are observed (by visual or passive acoustic detection) at a site such as on the continental slope, submarine canyon, seamount, or other underwater geologic feature just prior or during the airgun operations, those operations will be powered/shut-down and/or moved to another location, if possible based on recommendations by the on-duty MMO aboard the *Langseth.* When operating the sound source(s), minimize approaches to slopes, submarine canyons, seamounts, and other underwater geologic features, if possible, because of sensitivity of beaked whales. NMFS expects NSF and L–DEO to adhere to local conservation laws and regulations of nations while in foreign waters, and known rules and boundaries of Marine Protected Areas. In the absence of local conservation laws and regulations or Marine Protected Area rules, L–DEO will continue to use the monitoring and mitigation measures identified in the IHA. NMFS has included requirements to these effects in the IHA issued to L–DEO. *See* Species of Particular Concern below.

Comment 135: NRDC urges NMFS to restrict L–DEO's access to the coastal waters of the South China Sea out to 200 m depth, >20 km including islands from April through June (because of the presence of beaked whales and potential gray whale breeding sites).

Response: L–DEO will limit seismic survey lines to water depths greater than 200 m in the South China Sea, and as far east as possible from the mainland China side of the Taiwan Strait, to reduce potential for effects on Western Pacific gray whales, Indo-Pacific humpback dolphins, and finless porpoises. L–DEO will avoid shallow water areas near the mainland China coast and western part of the Taiwan Strait during the Western Pacific gray wintering period and migration (December to April). L–DEO will avoid shallow, coastal waters of the South China Sea to avoid populations of finless porpoises. NMFS has included requirements to these effects in the IHA issued to L–DEO.

Mitigation—Tracklines

Comment 136: Several interested parties state that with tracklines overlapping known and suspected important habitat for beaked whales, which are known to be particularly sensitive to acoustic impacts, extremely difficult to detect visually, and already facing numerous threats (including acoustic) within their habitat at least in Taiwanese waters, and with almost no data on abundance for beaked whales in SE Asia (as reflected by the IUCN Red List status of three species in the region as ''Data Deficient''), there is a clear potential for significant impacts on beaked whales, and hence a need for great precaution.

Waters along the edge of the continental shelf (especially where the strong, warm, and oligotrophic Kuroshio Current meets the shelf edge and nutrient input from terrestrial sources) are particularly productive and appear to attract cetaceans, including beaked whales. Tracklines that run near and parallel to the edge of the continental shelf around Taiwan will have the greatest impact on cetaceans, being possibly most damaging to beaked whales. However, without more cetacean survey information it is uncertain if just moving tracklines offshore from the shelf edge would be effective in reducing impacts on beaked whales or if the relocation of tracklines would harm different species or other populations offshore.

Response: During the public comment period, concerns were expressed about the survey line that was parallel to and within a few km of the east coast of

Taiwan because of potential effects on coastal species and those that frequent the narrow continental shelf break and steep slopes (e.g., beaked whales and sperm whales). After the issuance of the proposed IHA, L–DEO has moved the survey line further offshore by more than 20 km to decrease potential impacts on species that occur in coastal water and over the continental slope, such as beaked whales. When operating the sound source(s), L–DEO will minimize approaches to slopes, submarine canyons, seamounts, and other underwater geologic features, if possible, because of sensitivity of beaked whales. Also, if concentrations of groups of beaked whales are observed (by visual or passive acoustic detection) prior to or during airgun operations, those operations will be powered-down or shut-down and/or moved to another location along the site, if possible, based on recommendations by the on-duty MMO aboard the *Langseth.* NMFS has included requirements to this effect in the IHA issued to L–DEO.

Comment 137: Dr. John Wang states that many of the proposed tracklines appear to maximize risk to cetacean populations in the waters of Taiwan, some of which are critically endangered under the 2008 IUCN Red List.

Response: NMFS does not authorize the incidental take of marine mammals in the territorial sea of foreign nations, as the MMPA does not apply in those waters. However, NMFS still calculates the level of incidental take in territorial seas as part of the analysis supporting issuance of an IHA in order to determine the biological accuracy of the small numbers and negligible impact determinations for species which cross boundaries. In this case, after the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary mitigation measures, especially for species of particular concern. See responses to comments discussed within this document as well as L–DEO's Supplemental EA.

Comment 138: Dr. John Wang states that several tracklines of the proposed seismic survey immediately standout as being very likely to cause great risk to marine mammals in the region. Some of the problematic tracklines include: (1) Coastal waters of western Taiwan; (2) approaches to the mainland of China; (3) the shelf edge along eastern Taiwan and oceanic islands off eastern and northern Taiwan, northern Philippines and the Ryuku archipelago; (4) the shelf edge along the eastern side of the Penghu Channel; and (5) all waters of the Taiwan Strait.

Response: After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures to reduce potential effects to marine mammals in the region. NMFS has included requirements to these effects in the IHA issued to L–DEO. *See* responses to comments in this document for further information, as well as L–DEO's Supplemental EA.

Comment 139: Dr. John Wang states L–DEO claimed that when conducting the Luzon Strait/Philippine sea leg of their survey, they will ''attempt to avoid these [for humpback whale] wintering areas at the time of peak occurrence by surveying a * * * slate as possible during each leg of the cruise''. However, the proposed survey schedule overlaps with the peak period of humpback whales in the Babuyan waters (the latter portion of the peak period being April) and a considerable number of humpback whales will still be in the survey area throughout the survey period (many will also be migrating through the waters at the same time the seismic surveys are planned).

Although the exact migratory routes of most humpback whales are unknown, it is clear that at least some will follow a path that is parallel and fairly close to the shores of eastern Taiwan, which is the same path of one of the proposed survey tracklines of the *Langseth.* Some females undertaking the migration at this time will be accompanied by neonatal calves, which are the most sensitive individuals of the population (McCauley *et al.,* 2000). Such a frivolous and empty statement by L–DEO attempting to mitigate its impact is concerning and raises questions about the sincerity of its mitigation measure proposed.

Response: Concerns were raised in several comments about survey lines scheduled for Leg 2 (April 20 to June 7, 2009) approaching humpback whale breeding areas in the Babuyan and Ryukyu Islands. In fact, the humpback whales that winter and calve in the Ryukyu Islands are near Okinawa (Nishiwaki, 1959; Rice, 1989; Darling and Mori, 1993), some 400 km north of the most northerly survey. However, a small population of humpbacks does winter and calve in the Babuyan Islands in Luzon Strait (Acebes and Lesaca, 2003; Acebes *et al.,* 2007). The whales may arrive in the area as early as November and leave in May or even June, with peak occurrence during February through March or April (Acebes *et al.,* 2007).

To mitigate against the potential effects of the surveys on humpbacks, particularly mothers and calves on the breeding grounds or during the beginning of migration to summer feeding grounds, the surveys that approach the Babuyan Islands have been rescheduled as late as possible, to Leg 4 (June 18 to July 20, 2009). L–DEO will avoid areas (Ogasawara and Ryuku Islands in southern Japan and the Batan and Babuyan Islands in Luzon Strait in the northern Philippines) at the time of peak occurrence (February to April), where concentrations of humpback whales are known to winter, calve, and nurse. Seismic survey lines will be scheduled for as late as possible (June to July) to avoid potential effects of the surveys on humpback whales, particularly mothers and calves on breeding grounds or during the beginning of migration to summer feeding grounds. Also, if concentrations or groups of humpback whales are observed (by visual or passive acoustic detection) prior to or during the airgun operations, those operations will be powered/shut-down and/or moved to another location, if possible, based on recommendations by the on-duty MMO aboard the *Langseth.* If humpback whale mother/calf pairs are visually sighted, the airgun array will be shut-down regardless of the distance of the animal(s) to the sound source. The array will not resume firing until 30 min after the last documented whale visual sighting. NMFS has included requirements to these effects in the IHA issued to L–DEO.

Comment 140: Dr. John Wang states that there is a need for cetacean surveys before seismic surveys. Clearly, all tracklines over or near the shelf edge will likely impact many cetaceans. However, without more cetacean survey information, it is uncertain if (a) just moving tracklines away from the shelf edge would be effective in reducing impacts on beaked whales; or (b) if the relocation of tracklines would harm different species in waters further offshore. Recent multiple sightings of ginkgo-toothed beaked whales during dedicated cetaceans surveys of waters off southeast Taiwan demonstrate the importance of such studies. Cetacean surveys in the waters off southwest Taiwan where the important deep Penghu Channel exists are limited. This channel has a steep eastern wall that borders against the southwest shores of Taiwan and helps to funnel a branch of the Kuroshio Current or the South China Sea current to the northern tip of the channel ending in an important area of complex seasonal mixing with the cold China Coastal current (Jan *et al.,* 2002).

Response: L–DEO has moved the seismic survey line paralleling the east

coat of Taiwan offshore at least 20 km to decrease potential impacts on species that occur in coastal waters and over the continental slope. To the maximum extent practicable, L–DEO will schedule seismic operations in inshore and shallow waters during daylight hours and OBS operations to nighttime hours. To the maximum extent practicable, seismic surveys (especially inshore) will be conducted from the coast (inshore) and proceed towards the sea (offshore) in order to avoid trapping marine mammals in shallow water. When operating the sound source(s), L–DEO will minimize approaches to slopes, submarine canyons, seamounts, or other geologic features, if possible, because of sensitivity of beaked whales. If concentrations or groups of beaked whales are observed (by visual or passive acoustic detection) at a site such as on the continental slope, submarine canyon, seamount, or other underwater geologic feature just prior to or during the airgun operations, those operations will be powered-down/shut-down and/or moved to another location, if possible, based on recommendations by the on-duty MMO aboard the *Langseth.* NMFS has included requirements to this effect in the IHA issued to L–DEO.

Comment 141: ETSSTAWG recommends that the section of Leg # 4 running along the western coast of Taiwan should be removed from the L–DEO survey as this represents core habitat for the critically endangered population of ETS *Sousa*.

Response: L–DEO will limit seismic survey lines to take place at least 20 km from the west coast of Taiwan, except for in the passage between the Penghu Islands and the Waishanding Jhou (Wau-san-ting Chou) sandbar, where the survey will pass through the approximately 17.1 km mid-line distance between the two possibly sensitive areas, subject to the limitations imposed by other foreign nations, to minimize the potential for exposing Indo-Pacific humpback dolphins, finless porpoises, and other coastal species to SPLs greater than or equal to 160 dB re μPa (rms). NMFS has included a requirement to this effect in the IHA issued to L–DEO.

Comment 142: Based on the map of the proposed survey track lines found in the L–DEO application (*see* Figure 1, p. 3 of the application), the survey vessel *Langseth* will be operating in the known and suspected habitat of at least two critically endangered cetacean species, the Western Pacific gray whale and the ETS *Sousa.* L–DEO must provide better justification for the track lines—if these are the only tracklines that will accomplish the goals of the research, then L–DEO must explain why and offer a rationale that justifies exposing critically endangered marine mammal populations to Level B harassment and, despite the applicant's assurances to the contrary, potentially Level A harassment and serious injury.

Response: During the public comment period, many concerns were expressed about the potential effects of the proposed survey on Western Pacific gray whales and Indo-Pacific humpback dolphins. After issuance of the proposed IHA, L–DEO modified the cruise plan in a number of ways: (1) L–DEO re-routed the survey lines in the South China Sea south of the Taiwan Strait so that they are now located in water depths >200 m; (2) L–DEO dropped the seismic lines in western Taiwan Strait, and (3) L–DEO adopted more precautionary monitoring and mitigation measures. For example, L–DEO will also shut-down the airgun array if a Western Pacific gray whale is visually sighted at any distance from the vessel. NMFS has included requirements to this effect in the IHA. *See* NMFS' responses to comments for more information regarding the ETS sub-population of Indo-Pacific humpback dolphins, as well as L–DEO's Supplemental EA. NMFS has not authorized the incidental take of Western Pacific gray whales or Indo-Pacific humpback dolphins.

Comment 143: CSI states that with the exception of a very small area where the proposed tracklines take the *Langseth* to the mainland Chinese coast and back to western Taiwan, the *Langseth* will operate in waters within 1 km from the shore of Taiwan and right through the middle (longitudinally) of almost the entire linear coastal distribution of the ETS sub-population, i.e., the proposed trackline almost completely overlaps with the entire distribution of the ETS sub-population. At this distance from shore, the *Langseth* will subject the entire ETS sub-population to noise levels much greater than 180 dB.

CSI also states that even staying greater than or equal to 2 km from the coastline (a proposed mitigation measure to reduce the impact on the ETS sub-population) does absolutely nothing to reduce the noise exposure to these critically endangered dolphins. Even at 8 to 10 km from shore, the survey will still expose all animals to greater than 160 dB and an unknown number would still be exposed to greater than 180 dB. The above statements are conservative because they are based on the predicted rms distances for different levels of exposure (Table 1 in the proposed IHA **Federal Register** notice), which a) underestimates actual exposure levels in shallow waters and b) does not consider reverberations that are likely to occur as a result of the solid concrete walls that are found along much of the central western coast of Taiwan, the very shallow water depths of western Taiwan (also, tidal fluctuation is up to about 5 to 6 m and can affect the depth in which the dolphins are found during exposure), or many sandbars that may force animals to be further offshore from the solid shoreline during lower tides. The grouping of exposures into the very broad category of 'shallow' water (being less than 100 m) is not sufficient to understand the exposure level for a species that occupies water depths at the lowest end of the 'shallow' water category. It is expected that the exposure levels will be much higher at the any given distance from source than the predicted values in the tables. The distance to reduce exposure to noise levels of 160 dB or greater is unknown for dolphins in water depths less than 25 m and could be much greater.

HSI states that the only way to avoid exposing these critically endangered dolphins to Level A harassment (or serious injury)—and also to avoid Level B harassment, to which this fragile population should arguably not be exposed either—is to move the proposed trackline considerably farther offshore than 10 km. There is no way to avoid them on the proposed trackline seasonally, as they are year-round residents. It is unacceptable that L–DEO proposes to run the *Langseth* directly through the only known habitat for this critically endangered population, employing mitigation measures that will clearly be ineffective at preventing Level A harassment and serious injury, let alone Level B harassment.

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. L–DEO will limit seismic survey lines to take place at least 20 km from the west coast of Taiwan, except for in the passage between the Penghu Island and the Waishanding Jhou sandbar, where the survey will pass through the approximately 17.1 km mid-line distance between the two possibly sensitive areas, subject to the limitations imposed by other foreign nations, to minimize the potential for exposing Indo-Pacific humpback dolphins, finless porpoises, and other coastal species to SPLs greater than or equal to 160 dB re 1 μPa (rms). Thus, L–DEO is maintaining the precautionary buffer recommended by ETSSTAWG in their comments to NMFS, ''at least 13 km and perhaps a more precautionary 15 km of

the ETS *Sousa* population—meaning up to around 20 km from shore.'' NMFS has included requirements to this effect in the IHA issued to L–DEO.

Comment 144: CSI states that calculations of how far the *Langseth* should be to prevent the ETS population from being exposed to levels greater than 160 dB should be based on at least the recommended 5 km buffer boundary (i.e., the waters from shore to 5 km offshore should not be exposed to levels greater than 160 dB). However, given the population's critical status and the fact that Table 1 underestimates the actual exposure levels in shallow water, the recommended distance should be even more precautionary, i.e., greater than 13 km from shore based on the values presented in Table 1 of the **Federal Register** notice.

Response: After issuance of the proposed IHA, L–DEO negotiated with the project's principal scientists to modify the cruise plan and adopt more precautionary mitigation measures. Off Taiwan's west coast the cruise tracks have been re-routed by approximately 20 km, except for in the passage between the Penghu Islands and the Waishanding Jhou sandbar, where the survey will pass through the approximately 17.1 km mid-line distance between the two possibly sensitive areas, subject to the limitations of foreign nations, to protect the critically endangered ETS Indo-Pacific humpback dolphin sub-population and the finless porpoise as well as ease potential pressure on other coastal species. Thus, L–DEO is maintaining the precautionary buffer recommended by ETSSTAWG in their public comments to NMFS, ''at least 13 km and perhaps a more precautionary 15 km of the ETS *Sousa* population—meaning up to around 20 km from shore.''

Comment 145: Dr. John Wang states the predicted rms distances for different levels of exposure (Table 1 of the proposed IHA's **Federal Register** notice), underestimates actual exposure levels in shallow waters and does not consider the issues with: reflection, reverberation, rarefaction, superposition and constructive interference (*see* Shapiro *et al.,* 2009) of sound waves in waters that abut concrete sea walls found along much of the central western coast of Taiwan; the very shallow water depths of western Taiwan (with a tidal fluctuation up to about 5–6 m that can affect the depth in which the dolphins are found during exposure); and the many sandbars and some extensive mudflats that can force animals to be further 'offshore' during lower tides.

Response: NMFS believes that while oceanographic conditions may alter sound levels, for purposes of this seismic survey, the model used for predicting received levels in L–DEO's IHA application and EA is the best science available. After the issuance of the proposed IHA, L–DEO has modified the cruise plan and adopted more precautionary monitoring and mitigation measures to reduce impacts on species and stocks of marine mammals in the study area. See NMFS' responses to comments in this document for relevant information.

Comment 146: Dr. John Wang states the water depths in the very broad category of ''shallow'' water (being <100 m in the proposed IHA's **Federal Register** notice) are not sufficient to understand the exposure level for a species (e.g., ETS Indo-Pacific humpback dolphins) that occupies water depths at the lowest end of the ''shallow'' water category. It is expected that the exposure levels will be much higher at any given distance from the source than the predicted values suggested.

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. The revised survey will maintain the precautionary buffer recommended by ETSSTAWG in their comments to NMFS, ''at least 13 km and perhaps a more precautionary 15 km of the ETS *Sousa* population—meaning up to around 20 km from shore.'' *See* L–DEO's Supplemental EA for more information.

Comment 147: Dr. John Wang states the waters of western Taiwan are highly dynamic with seasonal, monthly, daily and diel changes in water salinity, tidal fluctuations, water temperature and surface conditions that can not be explained by the simple model for predicting levels that was used in the L–DEO proposal. Given that a critically endangered population (the ETS sub-population of *Sousa chinensis*), two vulnerable and very difficult species to detect (*i.e.,* finless porpoises) and the Indo-Pacific bottlenose dolphin are found in very shallow waters it is crucial that sound levels under differing conditions in shallow waters be better understood before impacts to cetaceans are trivialized.

Response: NMFS believes that while oceanographic conditions may alter sound levels, for purposes of this seismic survey, the model used for predicting received levels in L–DEO's IHA application and EA is the best science available. After the issuance of the proposed IHA, L–DEO has modified the cruise plan and adopted more precautionary monitoring and mitigation measures to reduce impacts on species and stocks of marine mammals in the study area. See NMFS' responses to comments in this document for more relevant information.

MMPA Concerns

Comment 148: Dr. Robert Brownell states that the possible numbers of marine mammals exposed to sound levels greater than or equal to 160 dB, during the proposed L–DEO seismic survey in SE Asia, should be considered erroneous based on regional population estimates from two main sources. Of the 37 cetacean populations listed in Table 2 of the **Federal Register** notice (78 FR 78294, December 22, 2008), 22 are from the ETP and have no relationship at all to the region to be surveyed in the western North Pacific. Humpback whales are correct. The minke whale and Bryde's whale estimates are generally correct. Omura's whale may be common in some parts of the survey area. Sei, fin, and blue whales are likely to be rare at best in the survey area. For the small cetacean, 15 of the 28 population estimates are from the ETP and these should not be used for the proposed survey area. Sperm whales may be common as opposed to ''uncommon'' in deeper waters off the eastern side of Taiwan and in some parts of the Philippines. The estimate for Pacific white-sided dolphins is for the entire North Pacific and this species as noted is rare or does not occur in most of the proposed survey area. Most of the estimated 5,220 to 10,220 finless porpoise occur in the coastal waters of Japan, not in Taiwan or along the coast of China. In the case of Indo-Pacific humpback dolphins, the estimate of 1,680 animals includes about 100 from Taiwan. The IUCN has listed the subpopulation of these dolphins along the limited part of the western coast of Taiwan as ''critically endangered'' and the subpopulation is estimated at 100 individuals. Based on the problems of the population estimates noted above, the estimates of the possible number of cetaceans exposed in Table 3 of the **Federal Register** notice (78 FR 78294, December 22, 2008) are unrealistic either as the best estimate or maximum.

Response: NMFS acknowledges Dr. Robert Brownell's comment and the information provided. The information included in the proposed IHA has been updated in this *Federal Register* notice based on comments from the public. As noted previously, when information is unavailable on a local population size, NMFS uses either stock or species information on abundance. Since NMFS, uses the best information that is

available, estimating impacts on marine mammals in this manner is appropriate. *See* responses to comments below.

Comment 149: Dr. Robert Brownell states the NMFS Permit Office appears to have preliminarily determined that the proposed seismic surveys will not cause any death or serious injury to cetaceans in the survey area. This is not a precautionary approach and some consideration should be given to the possibility that some beaked whales or schools of other small cetaceans may mass strand in response to the surveys. Brownell *et al.* (2008) reviewed the numerous fisheries that have used sounds to hunt cetaceans. The success of these fisheries shows that numerous species of small cetaceans avoid and move away from a wide variety of anthropogenic sounds, some as simple as hitting two rocks together underwater. Therefore, some advanced plan must be made to respond to any stranding of live animals during the proposed seismic surveys.

Response: The preliminary determination made by NMFS in L–DEO's proposed IHA was not a final determination. NMFS requested comments on its proposal to authorize L–DEO to incidentally take, by Level B harassment only, small numbers of marine mammals during the marine seismic survey in SE Asia during March–July 2009. Based on comments received from the public, L–DEO revised the proposed seismic survey in SE Asia. Conservative monitoring and mitigation measures were enhanced, as compared to those described in the proposed IHA notice. The mitigation and monitoring measures ensure the least practicable adverse impact on marine mammals in the SE Asia study area. L–DEO is not using sound for purposes of creating a drive fishery targeted at hunting or capturing cetaceans as discussed in Brownell *et al.* (2008). Any takes of marine mammals incidental to L–DEO's seismic activities would be Level B harassment due to the implementation of the monitoring and mitigation measures described in the IHA and no injury, serious injury, or mortality is authorized. L–DEO, to the maximum extent practicable, will schedule seismic operations in inshore and shallow waters during daylight hours and OBS operations in nighttime hours; as well as conduct seismic surveys (especially inshore) from the coast (inshore) and proceed towards the sea (offshore) in order to avoid trapping marine mammals in shallow water. Requirements to these effects have been included in the NMFS-issued IHA. NMFS believes L–DEO's revised seismic survey and the implementation of the required monitoring and mitigation measures will have a negligible impact on affected species and stocks of marine mammals in the study area.

Comment 150: NRDC states that there are two types of general exemptions available through the MMPA for activities that incidentally ''take'' marine mammals: permits and incidental harassment authorizations. Until 1994, the only exemptions available under the MMPA were permits, which require the wildlife agencies to promulgate regulations specifying permissible methods of taking. In 1994, however, the MMPA was amended to provide a streamlined mechanism by which proponents can obtain authorization for projects whose takings are by incidental harassment only. 16 U.S.C. 1371(a)(5)(D). Regardless of which process is used, NMFS must prescribe ''methods'' and ''means of effecting the least practicable impact'' on protected species as well as ''requirements pertaining to the monitoring and reporting of such taking.'' 16 U.S.C. 1371(a)(5)(A)(ii), (D)(vi).

Response: The mitigation measures described in the proposed IHA notice have been enhanced subsequently by increased observer personnel, temporal and spatial avoidance of areas, as well as for species of particular concern. NMFS believes that the mitigation and monitoring measures that were imposed under the IHA are complete to the fullest extent practicable, and ensure that the takings will be limited to Level B harassment and will result in a negligible impact on the affected species or stocks of marine mammals in the study area. The mitigation measures described in the proposed IHA notice have been enhanced subsequently by increased observer personnel, temporal and spatial avoidance of areas, as well as for species of particular concern.

Comment 151: Dr. John Wang and CSI state that it has been suggested that recent mass strandings of melon-headed whales were related to the use of naval sonar (in Hawaiian waters—Southall *et al.,* 2006) and seismic surveys (in Madagascan waters) so there is growing concern about the potential impact of such activities on this species. Melon-headed whales, although not a commonly-observed species have been sighted on several occasions in the waters of eastern Taiwan and southwest Taiwan, respectively (Wang *et al.,* 2001a). Seismic surveys along the shelf edge of eastern Taiwan during the daytime will likely have an impact.

Response: NMFS is also concerned about potential impacts on this species due to these recent events. The behavior of melon-headed whales near oceanic islands was recently described in Brownell *et al.* (2009). Due to concerns, the survey line paralleling the east coast of Taiwan was moved offshore by more than 20 km after issuance of the proposed IHA to decrease potential impacts on species that occur in coastal waters and over the continental slope. L–DEO will also, to the maximum extent practicable, schedule seismic operations in inshore and shallow waters during daylight hours and OBS operations during nighttime hours. Requirements to these effects have been included in the NMFS-issued IHA. L–DEO's revised seismic survey incorporating the implementation of the required monitoring and mitigation measures are expected to have a negligible impact on the affected marine mammal species and stocks in the study area.

Comment 152: Dr. John Wang states that seismic surveys should not be conducted in the spring (when many species give birth). The survey period (from 21 March to 14 July) proposed by L–DEO is probably the worst choice of seasons if minimizing impacts to marine mammals is sought. The above scheduling overlaps almost entirely with the confirmed presence of humpback whales, likely presence of gray whales and possible presence of right whales in the region. Calving for most cetacean species (including those that are critically endangered—see above) in this region appear to be in the spring to early summer as evidenced by sightings of many females with neonates and other young calves during cetacean surveys and the examination of hundreds of carcasses (J.Y. Wang, unpublished data). Seismic surveys should not be conducted in the autumn and winter until more information about marine mammals in these waters during these seasons is available.

Response: Conducting the seismic survey during a different time of year is not feasible, as the *Langseth* has other research commitments after the TAIGER cruise. Also there are concerns with weather conditions associated with the typhoon season. Due to concerns regarding humpback whales, Western Pacific gray whales, and other species, L–DEO has revised their planned survey, after issuance of the proposed IHA, to avoid breeding and feeding areas as well as migration routes. See L–DEO's Supplemental EA and relevant discussions in this document. NMFS has included temporal and spatial avoidance restrictions to these effects in the IHA. NMFS believes that the revised survey as well as the implementation of the required monitoring and mitigation

measures will protect species of particular concern in the study area.

Comment 153: CSI states that there is an inappropriate use of data from other areas. The use of data from the Eastern Tropical Pacific for estimating the densities and number of individuals impacted by the proposed seismic survey is completely inappropriate as there is no evidence that the two sites of the Pacific Ocean are comparable. Such extrapolation would not be acceptable to most cetacean scientists. This should be re-examined carefully.

Response: NMFS agrees that impacts should be assessed on the population or stock unit whenever possible. L–DEO's application provides information on stock abundance of some species in SE Asia and larger water bodies (such as the North Pacific Ocean). The data source for each stock estimate is provided. NMFS believes that these data are the best scientific information available for estimating impacts on marine mammal species and stocks. However, information on marine mammal stock abundance may not always be satisfactory. When information is lacking to define a particular population or stock of marine mammals then impacts are assessed with respect to the species as a whole (54 FR 40338, September 29, 1989).

MMPA Concerns—Small Numbers

Comment 154: Minor and Wilson state the summary in the **Federal Register** listing says the proposal is to take ''small'' numbers of marine mammals. However, the actual proposed ''take authorization'' by L–DEO is for 71,669 cetaceans. Minor and Wilson propose that a reasonable upper bound for a small number is what can be counted on their fingers and toes. The **Federal Register** summary that twice used the word ''small'' to describe the number 71,669, while failing to mention the actual number, so misinformed the public that the resulting public consultation process is clearly invalid.

Response: NMFS disagrees with Minor and Wilson's comment. The number stated by Minor and Wilson is the total number of individuals requested in the proposed IHA and must be considered in the appropriate context. An activity affects ''small numbers'' of a species or stock when it is determined that the total taking will be small relative to the estimated population size and relevant to the behavior, physiology, and life history of the species or stock. Furthermore, after issuance of the proposed IHA, L–DEO has revised its seismic tracklines and reduced the estimates of the possible number of marine mammals exposed to certain sound levels during the TAIGER seismic survey. NMFS believes L–DEO's revised seismic survey and the implementation of the required monitoring and mitigation measures will have a negligible impact on affected species and stocks of marine mammals in the study area.

Comment 155: Dr. John Wang disagrees that the proposed survey will have a negligible impact on local species of stocks of marine mammals. The estimated number of individuals affected (>50,000 and with 68.7% of one critically endangered population of dolphins being affected) cannot be considered ''small.''

Response: NMFS believes that the revised seismic survey described in L–DEO's Supplemental EA incorporating the implementation of the monitoring and mitigation measures required in the IHA will have a negligible impact on affected local species and stocks of marine mammals in the TAIGER study area. NMFS believes that the monitoring and mitigation measures described below, which have been enhanced when compared to the proposed IHA notice, ensure the least practicable adverse impact on marine mammals in the SE Asia study area. See response to comment above.

Comment 156: Several interested parties are concerned about impacts of any level of take on small or vulnerable populations. Several cetaceans are in such critically low numbers that even minimal 'takes' can contribute greatly to the demise of these populations. Most of the values in Table 3 do not make any sense to those who have experience with local marine mammal populations in the region (*e.g.,* the take of 64 Cuvier's beaked whales compared with 168 Blainville's beaked whales; a take of 189 killer whales compared with only 68 finless porpoises). These numbers are little better than random guesses. The statement from the **Federal Register** notice is incorrect. L–DEO estimated that 68.7% of the critically endangered ETS population of humpback dolphins will be impacted. Although this is a serious underestimate (explained earlier), it is already a very high proportion of this distinct population and the mitigation measures proposed do not minimize the exposure level to these dolphins. The taking is also expected to include Level A harassment rather than just Level B as claimed by L–DEO. The taking (both Level A and B) of such a large proportion of the ETS dolphins could have an irreversible impact on the continued survival of the population.

Response: Since the issuance of the proposed IHA, L–DEO has revised their seismic survey and will implement additional mitigation measures to address concerns regarding several species of cetaceans in the study area. NMFS has included these as requirements in the IHA. There have been few, if any, systematic aircraft- or ship-based surveys conducted for marine mammals in waters near Taiwan, and the species of marine mammals that occur there is not well known. In the absence of any other density data, L–DEO used the survey effort and sightings in Yang *et al.* (1999) and Wang *et al.* (2001a) to estimate densities of marine mammals in the TAIGER study area. For other areas with an absence of density data, density data from the Eastern Tropical Pacific was used. There is some uncertainty about the representativeness of the density data and the assumptions used in the calculations. Furthermore, NMFS believes that the data provided is the best available information and likely overestimates the potential number of animals affected. NMFS believes that L–DEO's revised seismic survey incorporating the implementation of the monitoring and mitigation measures described in the IHA will have a negligible impact on the affected marine mammal species and stocks in the study area.

Comment 157: Several interested parties have stated that the number of ETS Indo-Pacific humpback dolphins potentially affected by sound levels greater than or equal to 160 dB in L–DEO's proposed IHA is an unacceptably high proportion (68.7 percent of the sub-population). This is by far the largest proportion of any cetacean in the region to be affected. This high proportion in itself is a severe underestimation of the population being impacted, as the *Langseth* will transect the entire distribution of the ETS sub-population. The dolphins, which have no acoustic shelters in these waters, are not capable of escaping to quieter waters and will be completely exposed for the duration of the seismic survey. Over two-thirds cannot be reasonably argued to constitute a ''small number'' of dolphins in any context, let alone the context of there being less than 100 individuals in existence, therefore, the requested level of impacts of this survey exceeds the coverage provided by IHAs. Also, given the proposed tracklines, a likely large but unknown number of ETS Indo-Pacific humpback dolphins will be exposed to levels >180 dB, which may result not only in Level A harassment,

but also permanent injuries or even death.

Response: Since the issuance of the proposed IHA, L–DEO negotiated with the project's principal scientists to modify the cruise plan and adopt more precautionary monitoring and mitigation measures. Off Taiwan's west coast, the cruise tracks have been re-routed offshore by approximately 20 km to protect critically endangered ETS Indo-Pacific humpback dolphins as well as other coastal species. Thus, it is now planned to maintain the precautionary buffer recommended by ETSSTAWG in their comments to NMFS, ''at least 13 km and perhaps a more precautionary 15 km of the ETS *Sousa* population—meaning up to around 20 km from shore'' (see L–DEO's Supplemental EA). L–DEO will also shut-down immediately if there is a sighting of an Indo-Pacific humpback dolphin sighted at any distance from the vessel. Based on the re-routed tracklines, has revised estimates of the possible numbers of ETS Indo-Pacific humpback dolphins exposed to sound levels that would constitute Level B harassment to zero (0 percent of the ETS sub-population). NMFS considers zero to be a ''small number'' and considered the revision in its determinations towards the issuance of the IHA.

L–DEO's action is planned to take place in the territorial seas and EEZ's of foreign nations, and will be continuous with the activity that takes place on the high seas. NMFS does not authorize the incidental take of marine mammals in the territorial seas of foreign nations, as the MMPA does not apply in those waters. However, NMFS still needs to calculate the level of incidental take in territorial seas as part of the analysis supporting issuance of an IHA in order to determine the biological accuracy of the small numbers and negligible impact determinations.

NEPA

Comment 158: WaH states the EA contains several erroneous claims, omissions, and unacceptable proposals with regards to the critically endangered ETS population of Indo-Pacific humpback dolphins (*Sousa chinensis*).

Response: NMFS acknowledges WaH's concerns with the EA's analysis of the ETS population of Indo-Pacific humpback dolphins. Because WaH did not offer specific details, NMFS cannot respond directly to this comment. Please note that in response to public comments received on the application and EA, L–DEO has modified the survey design (see L–DEO's Supplemental EA) and adopted more precautionary mitigation measures to protect the critically endangered ETS population, as well as ease potential pressure on other coastal species.

Comment 159: Several commenters believed that NSF violated the tenets of the NEPA by committing resources for the seismic survey before completing the EA, which they described as pre-decisional, biased, and falling short of the high standard of environmental analysis prescribed by NEPA.

Response: In accordance with NEPA, an irreversible or irretrievable commitment of resources refers to impacts on or losses to resources that cannot be recovered or reversed, i.e., losses are permanent or effects to uses of resources (e.g., mineral resources, natural productivity) that are renewable only over long periods of time. The referenced discussion in the EA is specific to the scheduling of the *Langseth* to make the best use of the vessel to support the NSF science mission. Advance vessel scheduling does not constitute an irreversible or irretrievable commitment of resources as that term is intended under NEPA.

Comment 160: The most comprehensive study undertaken on the impacts of seismic surveys on the fishing industry in Norway in 1996 showed that fishing catches were impacted to as far as 33 km from seismic testing. I can only assume this is also not good for marine mammals who have a limited range, such as *Sousa.* The paper can be found in Norwegian at *http://www.fiskeribladetfiskaren.no/filarkiv/vedlegg/96.pdf.*

Response: NMFS thanks the commenter for providing the link to the article. As the study is in Norwegian, it is not appropriate to compare the size of the airgun array, water depth, and zones of influence between the two activities, for marine mammals until NMFS is able to obtain a translation of the article.

Engas *et al.* (1996) studied on the effects of seismic shooting on local abundance and catch rates of cod (*Gadus morhua*) and haddock (*Melanogrammus aeglefinus*) in the Barents Sea (near Norway). Although the authors reported that trawl catches of cod and haddock and longline catches of haddock declined on average by about 50% (by mass) after seismic operations commenced, they observed that abundance and catch rates returned to pre-shooting levels five days after the cessation of seismic operations.

Finally, NMFS has reviewed L–DEO's EA and supplemental EA and has determined that no more than Level B harassment of marine mammals would occur. Any marine mammal that could be exposed to the seismic survey would likely experience short-term disturbance as supported by prior studies. Marine mammals are expected, at most, to show an avoidance response to the seismic pulses. Further, mitigation measures such as controlled speed, course alteration, visual and passive acoustic marine mammal monitoring, and shut-downs when marine mammals are detected within the defined ranges should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Comment 161: NSF's EA and L–DEO's Assessment Report did not fully analyze impacts on marine mammals; lacked abundance and distribution data for marine mammal species in the proposed waters; failed to assess cumulative impacts, reasonable alternatives, or mitigation measures; and provided no evidence of consultation with local marine mammal experts.

Response: NMFS disagrees with the commenter's assertions. *Please see* NMFS' response to comments in the Effects Analysis and Species of Particular Concern sections.

Comment 162: NEPA requires decision-makers to consider alternatives to their proposed actions. Thus, L–DEO must evaluate reasonable alternatives that would avoid or minimize adverse impacts to the proposed seismic surveys. *See, e.g.,* CFR 1502.1. Yet L–DEO's alternatives analysis analyzes only the specified dates and does not even consider conducting the proposed study during an alternate season, such as winter and fall, which would avoid breeding, calving and migration for many marine mammal species in the proposed survey areas. As discussed in Section II and Appendix A, temporal and spatial avoidance is necessary in order to minimize impacts on marine mammals and therefore must be considered by NMFS and L–DEO.

Response: NMFS disagrees with the commenter's assertion. NMFS has reviewed NSF's EA, and determined that it contains an adequate description of NMFS' proposed action and reasonable alternatives, including a No Action and Another Time Alternative Action (See pages 16 to 17 of the EA). The impacts of the seismic survey action on marine mammals are specifically related to acoustic activities, and these are expected to be temporary in nature and not result in substantial impact to marine mammals. The IHA anticipates, and would authorize, Level B harassment only, in the form of temporary behavioral disturbance, of several species of cetaceans. Neither Level A harassment (injury), serious injury, nor mortality is anticipated nor authorized.

For the purposes of NMFS' Federal action (i.e., the issuance of an MMPA authorization) the alternatives are adequate. Thus, for the reasons stated throughout the text of this notice, NMFS believes that the agency is in compliance with both the MMPA and NEPA.

Comment 163: Several commenters disagreed with the EA's conclusion that the TAIGER seismic survey would add little to the cumulative impacts of anthropogenic noise in the survey area. As such, they alleged that L–DEO: (1) Did not assess the cumulative impacts of multiple sources of noise; (2) failed to consider the synergistic effects of noise with other stressors in producing or magnifying a stress-response; and (3) presented an invalid argument that impacts on marine mammals were expected to be no more than minor and short-term.

Response: NMFS has determined that the EA adequately addressed the cumulative impacts of a short-term, low-intensity seismic airgun survey in relation to long-term noise and taking events, such as vessel traffic, habitat loss, oil and gas industry, pollution, fisheries, and hunting.

NMFS endangered species scientists have conducted a thorough review of the best available information on the cumulative effects of the proposed project. As a result, NMFS issued a BiOp on the proposed action on March 31, 2009 (NMFS, 2009), which stated that the survey was not likely to jeopardize the continued existence of listed marine mammals in the survey area.

L–DEO discusses cumulative effects of noise in the EA (*see* pages 71–79) and drew comparisons between TAIGER and other sources of anthropogenic noise (i.e., vessel traffic, habitat loss, oil and gas industry, pollution, fisheries, and hunting) in the proposed survey areas. These multiple sources of anthropogenic noise are considered to be long-term, continuous activities which are unaffected by NMFS' issuance of an incidental take authorization for Level B harassment only, in the form of temporary behavioral disturbance.

In regards to stating that the impacts of seismic surveys are small compared to other activities, NMFS believes that the signals do not add appreciably to the ambient noise levels, and therefore do not accumulate, or collect, to greater effects. The conclusion reached in the EA that even when considered in combination with other underwater sounds, seismic sound does not add appreciably to the underwater sounds that fish, sea turtles and marine mammals are exposed to, remains valid.

Precautionary Approach

Comment 164: WaH states the proposed mitigation measures are inadequate, do not sufficiently allow for local marine mammal observation conditions, and are weaknesses which augment the risk of impacts in a region where cetacean status and distribution are relatively poorly understood. According to WaH, the lack of reliable information from systematic surveys in the relatively poorly-studied SE Asian region, as in other regions, necessitates the highest levels of precaution in estimating and attempting to mitigate potential impacts. WaH states that even best practice marine mammal visual observation, shut down, and other measures can provide no guarantee against significant impacts on populations in these regions (citing inherently low observation sighting rates for species such as beaked whales and evidence that some species decrease or cease vocalizing in response to seismic surveys). WaH states that L–DEO has not attempted to adopt all available precautionary measures that may help to reduce impacts.

Response: NMFS disagrees with WaH's comments. NMFS believes that the monitoring and mitigation measures ensure the least practicable impacts and ensure that any incidental takings will be limited to Level B harassment and will result in a negligible impact on the affected species or stocks of marine mammals in the study area. As discussed elsewhere in this document, after issuance of the proposed IHA, L–DEO has modified the cruise plan and adopted more precautionary monitoring and mitigation measures to reduce potential impacts on marine mammals. NMFS believes that the implementation of these monitoring and mitigation measures described in the IHA issued to L–DEO will ensure that the seismic survey will have a negligible impact on the affected species and stocks of marine mammals in the study area. *See* L–DEO's Supplemental EA.

Comment 165: HSI states the agency and the applicant focus in great detail on specific results from the limited number of scientific studies on acoustic impacts on marine mammals (when, for example, results show some marine mammal species do not avoid vessels conducting seismic surveys) in order to support their conclusion that impacts from the proposed surveys will be negligible. When specific study results do not support their conclusion of negligible impacts (when, for example, results show that some marine mammal species cease vocalizing when exposed to seismic airguns), they pass over them quickly with little discussion. Similarly, the **Federal Register** notice frequently emphasizes the lack of evidence for impacts, in what seems to be an effort to make the classic (and inappropriate) argument that absence of evidence is evidence of absence of impacts. At no time does the **Federal Register** notice take the position that a lack of information should be treated as grounds for a precautionary approach.

Response: NMFS disagrees with this characterization of the **Federal Register** notice. NMFS relies on the best scientific information available. NMFS believes that the mitigation and monitoring measures that have been imposed under the IHA issued to L–DEO are conservative and ensure the least practicable adverse impacts. Mitigation measures such as power-downs, shut-downs, speed and course alterations, and the use of MMVO's and PAM for visual and acoustic detection will ensure that marine mammals that do not avoid the *Langseth* while operating seismic sound sources will not be potentially impacted during the survey. The monitoring and mitigation measures also ensure that the takings will be limited to Level B harassment and will result in a negligible impact on the affected species or stocks of marine mammals in the study area. After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. L–DEO has also subsequently increased observer personnel and re-routed survey tracklines. *See* L–DEO's Supplemental EA.

Comment 166: ETTSTAWG states that the project description must adopt a 'precautionary approach' when extrapolating from the literature to the particular acoustic environment of the study area, and when considering 'unknowns' ('absence of evidence is not evidence of absence').

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. NMFS believes that L–DEO's revised survey as well as the implementation of the monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area. *See* NMFS' responses to comments in Precautionary Approach above and other relevant discussions throughout this document.

Comment 167: ETTSTAWG states that since empirical data is not available for L–DEO operations (and what is

available at deep and shallow was from shorter arrays) in intermediate distances, the extrapolation in the EA (''On the expectation that results would be intermediate between those from shallow and deep water, a correction factor of 1.1 to 1.5x was applied to the estimates provided by the model for deep-water situations to obtain estimates for intermediate-depth sites.'') should be much more precautionary. Perhaps L–DEO should use a mean between the shallow and deep water ranges, rather than one adjusted by the apparently arbitrary correction factor. *See* Table 1.

Response: L–DEO acknowledges in their application the shortcomings of the models for predicted sound levels in shallow water. Regarding the model, L–DEO conducted an acoustic calibration study of the *Ewing*'s 20 airgun, 8600 in3 array in the Gulf of Mexico in 2003 (Tolstoy *et al.* 2004a,b). During the study, researchers conducted calibration measurements for a 6, 10, 12, and 20 airgun array configurations at a depth of approximately 30 m (98 ft) to gather empirical data on the measured values (i.e., received sound level) for the 160 to 190 dB re 1 μPa (rms) radii. In the 2003 study, Tolstoy *et al.* (2004b) reported that for the 20 airgun array, the 160-dB radius in shallow water was 33% higher than predicted (Predicted = 9 km [5.5 mi]; Measured = 12 km [7.4 mi]). According to Tolstoy *et al.* (2004b), the results indicated that reverberations played a significant role in received levels of sound in shallow water and that previously estimated radii for 160 and 180 dB had not accounted for bottom reverberations. Thus, the predicted radii were underestimates of the actual distances where the 160 and 180 dB levels occurred in shallow water. The authors recommended that L–DEO extend the radii by an appropriate factor to account for this underestimation. As a result, L–DEO developed correction factors for water depths 100 to 1,000 m (328–3,281 ft) and less than 100 m (328 ft).

For the TAIGER cruise, L–DEO has applied conservative correction factors to develop appropriate shallow water exclusion zones (see Table 1 in 72 FR 78294, December 22, 2008) to mitigate for potential effects on marine mammals. At this time, NMFS believes that this is the best available scientific data for estimating seismic sound propagation and establishing isopleths for the *Langseth*'s airgun configuration. L–DEO has measured the *Langseth*'s seismic source array, and initial results, which do not significantly vary from those stated here, will be published in the future.

Comment 168: Dr. John Wang states the applicant has not attempted to minimize the impacts of its survey; has not taken a precautionary approach in addressing potential impacts, and has not adopted mitigation measures that are effective. Wherever uncertainties in impacts and knowledge exist, the applicant consistently interpreted the uncertainties as supporting its position of little or no impact. Not only are such interpretations biased, misleading and contradictory, but they are scientifically incorrect. Absence of evidence is not evidence of absence of impacts.

Response: After issuance of the proposed IHA, L–DEO revised its seismic survey and adopted more precautionary mitigation measures. NMFS believes that the monitoring and mitigation measures that have been imposed under the IHA issued to L–DEO ensure that the takings will be limited to Level B harassment and will result in a negligible impact on the affected species or stocks of marine mammals in the study area. See L–DEO's Supplemental EA.

Effects Analysis

Comment 169: The concern over anthropogenic noise and its potential effect on cetaceans has led to repeated resolutions by multinational groups and organizations including the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS, 2006), the Agreement on the Conservation of Cetaceans of the Black and Mediterranean Seas (ACCOBAMS, 2004), and the European Commission (2004), for member countries to take precautionary mitigating measures, although to date there has been a continuing failure of most countries to do so (Parsons *et al.,* 2008).

Response: The MMPA requires NMFS to prescribe mitigation measures to achieve the least practicable adverse impact whenever NMFS authorizes take of marine mammals. In this IHA, NMFS prescribed mitigation measures that achieve the least practicable adverse impact, such as: re-routing the cruises tracklines further offshore by approximately 20 km to protect the critically endangered ETS Indo-Pacific humpback dolphins and the finless porpoise; visual marine mammal monitoring, and shut-downs when marine mammals are detected within the defined ranges should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity. The best available scientific information demonstrates that shut-down at 180 dB is conservative. (Southall *et al.,* 2007).

Comment 170: WAHLDA states that even the high number of dolphins estimated in the EA to be potentially harassed does not accurately reflect the potential impact, as the entire ETS humpback dolphin habitat could be ensonified at received levels of >160 dB re 1 μPa (rms), with some dolphins being exposed to received levels of >180dB (rms), with some dolphins being exposed to received levels of >180 dB (rms), given that the survey tracklines pass within 1 km of shore (or 2 km if proposed mitigation measures are applied) [as described in 73 FR 78294, December 22, 2008]; and therefore directly through the shallow, narrow, linear coastal ETS humpback dolphin habitat which extends to 5 km from shore.

Response: The exposure estimates produced by the EA model: (1) Do not take into consideration the implementation of mitigation measures to avoid incidentally harassing marine mammals; (2) assume that the animals do not move away from the *Langseth* before ensonification at received levels greater than or equal to 160 dB; and (3) are based on overestimated densities of several species of marine mammals. As a result, NMFS believes that the exposure estimates are conservative and that the seismic survey may actually affect far fewer marine animals that predicted.

In response to comments received from the public, L–DEO has completed a Supplemental EA for the TAIGER survey. As a result of changes made to the location and timing of survey lines made after the publication of the proposed IHA and **Federal Register** notice, L–DEO has revised take estimates of the possible numbers of marine mammals exposed to different sound levels during L–DEO's proposed TAIGER seismic survey.

L–DEO and TAIGER's principal investigators have modified the cruise plan and survey design, adopted more precautionary mitigation measures to protect the critically endangered ETS population, as well as ease potential pressure on other coastal species. They have re-routed the cruise's tracklines offshore Taiwan's west coast by approximately 20 km (10.8 nautical mi) to protect the critically endangered Sousa population and the finless porpoise (except for in the passage between the Penghu Islands and the Waishanding Jhou (Wau-san-ting Chou) sandbar, where the survey will pass through the 17.1 km (9.2 nautical mi) mid-line distance between the two possibly sensitive areas); and are restricted to conducting seismic surveys in water depths greater than 200 m (656

ft) in the South China Sea, and as far east as possible from the mainland China side of the Taiwan Strait, to reduce potential for effects on western Pacific gray whales, Indo-Pacific humpback dolphins, and finless porpoises. In response to concerns about marine mammal species of special concern because of their low population sizes, L–DEO will shut down the airgun array immediately if there is a sighting at any distance of the Indo-Pacific humpbacked dolphin or finless porpoise. Correspondingly, take estimates of most of the other species will be lower because of the reduction in the ensonified area.

Comment 171: Many of the commenters expressed concern on the possible effects of the seismic surveys on the small population of Indo-Pacific humpback dolphins. They believed that the proposed survey: would cause minor impacts to individuals which may lead to threats to the existence of the ETS population; would expose individuals to noise levels greater than 180 dB leading to serious injury or death; and expose individual to noise levels that may increase the likelihood of negative interactions with boats and gillnets.

Response: NMFS appreciates the outpouring of concern for the well-being of the marine mammals in and around the Taiwan Strait and South China Sea. For reasons discussed in the **Federal Register** notice of receipt of the application (73 FR 78294, December 22, 2009), L–DEO only requested Level B harassment (behavioral harassment) of small numbers of marine mammals, not Level A (injury).

NMFS does not believe that there is any potential for marine mammal mortality to occur incidental to conducting the TAIGER seismic surveys in 2009. NMFS does not expect, nor did it authorize take by mortality or for this proposed activity. Incidental taking will be limited to a temporary and localized disturbance of animals from elevated sound levels from seismic airguns only. The incidental harassment authorization includes mitigation and monitoring measures to reduce the potential for injury or mortality, as well as instituting immediate shutdown protocols for the North Pacific right whale, Western Pacific gray whale, Indo-Pacific humpbacked dolphin, or finless porpoise.

The 160 dB isopleth is currently used for estimating the onset of Level B behavioral harassment for impulse noise sounds. However, as NMFS shows in this document, mortality and serious injury are not expected to occur during this seismic survey cruise due to implementation of mitigation measures (e.g., ramp-up, passive acoustic and visual monitoring, and quiet acoustic periods). NMFS believes that it is highly unlikely that a marine mammal will be exposed to levels of sound likely to result in Level A harassment or mortality given the mitigation measures. Cetaceans are expected, at most, to show an avoidance response to the seismic pulses. Mitigation measures such as visual marine mammal monitoring, and shut-downs when marine mammals are detected within the defined ranges should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Finally, detecting and scientifically validating a change in a marine mammal population (e.g., trend, demographics) is extremely difficult. It is also unrealistic to expect a single factor to explain population changes. To date, there is no evidence that seismic sound has an effect on individual survival or reproductive success, or population trends or demographics. However, because research on the appropriate temporal and spatial scales has not been conducted, questions concerning the level of impact at such scales remain. NMFS relies on the best available scientific information in determining whether to issue incidental take authorizations and in developing appropriate mitigation and monitoring measures.

Comment 172: Seismic airgun noise has been shown to impact a variety of species from cetaceans, to fish species, to squid, to even invertebrates. The fact that this noise covers a large area at high levels makes this survey potentially dangerous to marine life. There are indications that similar surveys have caused fatal giant squid and beaked whale strandings. While I understand that the *Langseth* probably has a better airgun configuration (safer for marine life) than its predecessor, the *Ewing,* it appears very little was learned from past experience.

Response: The IHA issued to L–DEO, under section 101(a)(5)(D) of the MMPA, provides mitigation and monitoring requirements that will protect marine mammals from any injury or mortality. L–DEO is required to comply with the IHA's requirements. Detailed analyses of underwater noise, especially those from airguns, and impacts to cetaceans, fish, and invertebrates are provided in various documents related to the proposed project. These include: (1) The **Federal Register** notice for the receipt of L–DEO's application (73 FR 78294, December 22, 2008); (2) the EA and SEA for the TAIGER seismic; (3) and the BiOp and ITS. These analyses are supported by extensive scientific research and data. These reviews have led NMFS to conclude that the proposed seismic surveys would have a negligible impact on the affected species or stocks of marine mammals and are not likely to jeopardize the continued existence of any ESA listed species.

The evidence linking giant squid (*Architeuthis dux*) strandings and seismic surveys remains inconclusive at best. Most of the information on acoustic effects on squid is derived from non-peer reviewed sources such as industry reports, government reports, conference proceedings, and news articles. NMFS is aware of two sources that attempted to link giant squid strandings and seismic surveys. The first is a presentation given at the International Council for Exploration of the Sea (ICES) Annual Science Conference in 2004 (Geurra *et al.,* 2004). The authors reported that a total of nine squid stranded or surfaced in the Bay of Biscay in 2001 and 2003 and conducted necropsies on seven of the specimens which were previously frozen and then thawed for examination. In that presentation, Guerra *et al.* (2004) speculated that the mortalities were the result of geologists conducting marine geophysical surveys in the vicinity. However, the authors failed to describe the seismic sources, locations, and durations of the surveys which resulted in a lack of knowledge regarding the spatial and temporal correlation between the squid and the sound source. In addition, there were no controls and the examined animals had been dead long enough for commencement of tissue degradation. The second source, an article in *New Scientist* magazine (MacKenzie, 2004), only summarizes and repeats Guerra *et al.* (2004) claims without additional empirical evidence. Thus, it cannot be used as the best available information for assessing impacts of airgun sounds on marine invertebrates.

As in the case of the giant squid, the scientific evidence linking beaked strandings and seismic surveys still remains inconclusive. However, the association of mass strandings of beaked whales with naval exercises (Malakoff, 2002), has raised the possibility that beaked whales exposed to strong ''pulsed'' sounds may be susceptible to injury and/or behavioral reactions that can lead to stranding (e.g., Hildebrand, 2005; Southall *et al.,* 2007). Suggestions that there was a link between seismic surveys and strandings of humpback whales in Brazil (Engel *et al.,* 2004) were not well founded (IAGC, 2004; IWC, 2007). In September, 2002, two

Cuvier's beaked whales stranded in the Gulf of California, Mexico. The *Ewing* had been operating a 20 airgun, 8,490-in^3 airgun array 22 km offshore the general area at the time that strandings occurred. The link between the stranding and the seismic surveys was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002) as some vacationing marine mammal researchers who happened upon the stranding were ill-equipped to perform an adequate necropsy. Furthermore, the small numbers of animals involved and the lack of knowledge regarding the spatial and temporal correlation between the beaked whales and the sound source underlies the uncertainty regarding the linkage between seismic sound sources and beaked whale strandings (Cox *et al.,* 2006).

No injuries of beaked whales are anticipated during the proposed study because of: (1) The high likelihood that any beaked whales nearby would avoid the approaching vessel before being exposed to high sound levels; (2) the proposed monitoring and mitigation measures; and (3) differences between the sound sources operated by the *Langseth* and the *Ewing,* as the *Langseth's* source arrays have a smaller airgun volume than the *Ewing's*.

Comment 173: The possibility of trophic cascades was also unaddressed. Most marine animals are acoustically sensitive. Since components in the marine ecosystem are particularly interlinked, such effects cannot be discounted. It is time serious consideration be given to (possibly) subtle, long-term impacts at the level of the population and ecosystem. These are the effects we should be most concerned about, yet they barely receive any attention in this application.

Response: NMFS acknowledges the public's concern about the effects of seismic sound on prey items of marine mammals. However, NMFS would refer the commenter to Chapter 4 section 5 of the final EA titled ''Direct Effects on Fish and Their Significance''; section 6 titled ''Direct Effects on Invertebrates and Their Significance''; Appendix D: Review Of Potential Impacts Of Airgun Sounds On Fish; and Appendix E: Review Of Potential Impacts Of Airgun Sounds on Marine Invertebrates to see the applicant's analysis and consideration of potentially affected trophic species. NMFS believes that L–DEO sufficiently analyzed the current research on the effects of seismic sound sources on fish and invertebrates.

Comment 174: Minor and Wilson have read the IHA request and are disappointed about the lack of balance in its presentation. The numerous graphs and tables that describe the activity and levels of take are not well supported with data. ''Little is known about'' is a common refrain concerning biological effects, and the document notes that models used underestimate the actual sound levels by as much as 15x (which is a 1,500 percent modeling error).

Response: The L–DEO application, the NSF's EA and SEA, and the BiOp and ITS provided the necessary information and analyses needed for NMFS to determine whether the proposed incidental harassment takings would be of small numbers of marine mammals and would have no more than a negligible impact on marine mammals pursuant to the MMPA. Because Minor and Wilson did not offer specific details on the specific graphs and tables in question, NMFS cannot respond directly to their concerns on the lack of supported data.

NMFS disagrees with the commenters' assertions about the lack of balance in the application. NMFS published the proposed regulations on December 22, 2008 (72 FR 78294) and on January 16, 2009 (74 FR 2995), providing required notice and opportunity for the public to address concerns and submit comments on the application and EA. By its very nature, the process of public review ensures that NMFS' analyses will be balanced and would incorporate the best available scientific information. In response to the public comments received during the public comment period, L–DEO has modified the survey design (see L–DEO's Supplemental EA) and enhanced mitigation measures included in the proposed IHA. Finally, NMFS has incorporated additional mitigation measures to the IHA.

As Minor and Wilson point out in their letter, L–DEO acknowledges in their application the shortcomings of the models for predicted sound levels in shallow water. Regarding the model, L–DEO conducted an acoustic calibration study of the *Ewing's* 20 airgun 8,600-in^3 array in the Gulf of Mexico in 2003 (Tolstoy *et al.,* 2004a,b). During the study, researchers conducted calibration measurements for a 6-, 10-, and 12-, and 20-airgun array configurations at a depth of approximately 30 m (98 ft) to gather empirical data on the measured values (i.e., received sound level) for the 160–190-dB re 1 μPa (rms) radii. In the 2003 study, Tolstoy *et al.* (2004b) reported that for the 20 airgun array, the 160 dB radius in shallow water was 33 percent higher than predicted (predicted = 9 km (5.5 mi); measured = 12 km (7.4 mi)). According to Tolstoy *et al.* (2004b), the results indicated that reverberations played a significant role in received levels of sound in shallow water and that previously estimated radii for 160 and 180 dB had not accounted for bottom reverberations. Thus, the predicted radii were underestimates of the actual distances where the 160 and 180 dB levels occurred in shallow water. The authors recommended that L–DEO extend the radii by an appropriate factor to account for this underestimation. As a result, L–DEO developed correction factors for water depths 100 to1,000 m (328 to 3,281 ft) and less than 100 m (328 ft).

For the TAIGER cruise, L–DEO has applied conservative correction factors to develop appropriate shallow-water exclusion zones (*see* Table 1 in 72 FR 78294, December 22, 2008) to mitigate effects on marine mammals. At this time, this is the best available scientific data for estimating seismic sound propagation for the *Langseth's* airgun configuration. L–DEO has measured the *Langseth's* seismic source array, and has stated that initial results, which do not significantly vary from those stated here, will be published in the future.

Comment 175: The problem that permeates the EA and IHA documents (and the **Federal Register** listing) is the silly assumption that since nobody has done this (impossible) task that there is no reason to suspect that sending 170 dB pulses out for 7,808 m either side of a boat traveling for 1,113 km through the shallow water critical habitat of several endangered species is wrong.

Response: To clarify, NMFS has determined that safety zones should be established at 180 dB (rms) for cetaceans not, 170 dB (rms). The commenter is referring to L–DEO's predicted root mean square (rms) distance for the safety radius/exclusion zone at 170 dB shown in Table 1 of the application (*see* also Table 1 in 72 FR 78294, December 22, 2008). The predicted rms distance of 7,808 m (4.8 mi) is the most precautionary distance which the 170 dB sound level is expected to be received from the 36-airgun array in shallow water.

L–DEO establishes and closely monitors safety zones to ensure, to the greatest extent practicable, that no marine mammals would be injured by the proposed activity. NMFS recognizes that absence of evidence is not the same as having no effect or impact on the marine mammal species. However, NMFS is not relying solely on absence of evidence. All parties involved have used the best information currently available to analyze the impacts to marine mammals as shown in: (1) The **Federal Register** notice for the receipt of

L–DEO's application (73 FR 78294, December 22, 2008); (2) the EA and SEA for the TAIGER seismic; (3) the BiOp and ITS; and (4) numerous and salient public comments received by NMFS during the public comment period. Some of the new information used by NMFS to make its determinations under the MMPA are discussed and summarized in this **Federal Register** notice. Based on the evidence cited, NMFS concludes that the proposed seismic surveys would have a negligible impact on the affected species or stocks of marine mammals and are not likely to jeopardize the continued existence of any ESA-listed species.

Comment 176: The notice in the **Federal Register** states in several places that scientific information on marine mammal species in the SE Asia survey area is minimal or even non-existent. It also notes that data on the impacts of seismic airgun sounds on marine mammals are minimal or lacking. Nevertheless, the NMFS and L–DEO inexplicably and without basis or precaution conclude that the surveys will have negligible impacts on marine mammals. This is unacceptable.

Response: The NMFS recognizes that absence of evidence is not the same as having no effect or impact on the marine mammal species. However, NMFS is not relying solely on absence of evidence to support its determinations. All parties involved have used the best information currently available to analyze the impacts to marine mammals as shown in: (1) The **Federal Register** notice for the receipt of L–DEO's application (73 FR 78294, December 22, 2008); (2) the EA and SEA for the TAIGER seismic; (3) the BiOp and ITS; and (4) numerous and salient public comments received by NMFS during the public comment period. NMFS has incorporated new information to make its determinations under the MMPA are discussed and summarized in this **Federal Register** notice. Based on the evidence cited, NMFS concludes that the proposed seismic surveys would have a negligible impact on the affected species or stocks of marine mammals and are not likely to jeopardize the continued existence of any ESA-listed species.

Comment 177: The discussion of the critically endangered Western Pacific gray whale (*Eschrichtius robustus*) is similarly problematic and does not adequately consider that the surveys will occur in waters presumed to include the population's breeding grounds and migration pathways (which are currently unknown but are placed by expert opinion in the South China Sea). Any resubmission of this application must do a far better job of evaluating the region's marine mammal populations, especially those that are critically endangered.

Response: Please see NMFS' responses to comments under the Species of Particular Concern section. Because of concerns about effects of the proposed survey lines on Western Pacific gray whales, L–DEO has re-routed the survey lines in the South China Sea, south of the Taiwan Strait. The survey lines are now located in water depths greater than 200 m.

Comment 178: The NMFS and L–DEO also ignore the growing body of literature addressing the possible infliction of stress on animals, including marine mammals, due to exposure to noise and how this stress can have significant impacts on individuals and populations (e.g., Wright and Kuczaj, 2007). The discussion in the notice and application (and no doubt the EA) still relies overmuch on observable behavioral reactions, when in fact research (also not cited in the L–DEO documentation) is available that suggests already stressed animals or animals in poor condition may not observably react in the face of human disturbance when more robust animals will (e.g., Beale and Monaghan, 2004). Any resubmission of this request for authorization must expand and improve its discussion of the relevant scientific literature.

Response: The Beale and Monaghan study investigated the effects of disturbance on cliff-dwelling birds. NMFS is aware of only two studies that directly address the physiological stress responses of marine mammals when exposed to sound. Thomas *et al.* (1990) examined behavioral responses of four captive belugas (*Delphinapterus leucas*) to playbacks of noise from SEDCO 708, a semi-submersible drilling platform. Results indicated no elevation in blood epinephrine and norepinephrine levels immediately after the playback. The authors observed no differences in swim patterns, social groupings, and respiration/dive rates before and during playbacks. In the second study, Romano *et al.* (2004) investigated nervous system activation and immune function in two species of captive marine mammals after exposure to a seismic water gun and/or single pure tones and observed that norepinephrine, epinephrine, and dopamine levels increased with increasing sound levels. However, Wright *et al.* (2007) noted that extrapolating these results to wild species should proceed with caution due to the study's small sample sizes, use of captive animals, and other technical limitations with the baseline measurements.

L–DEO's EA (see Chapter 3) provided information on non-auditory physiological effects (including stress) in relation to seismic survey sounds in the EA. However, few studies exist on the quantification of a specific exposure level above which non-auditory effects can be expected. At present, NMFS is unaware of quantitative predictions of the numbers of marine mammals that might exhibit stress when exposed to seismic sounds. NMFS believes that these data presented in the EA were the best scientific information available for estimating impacts on marine mammal species and stocks. [Romano, T. A., Keogh, M. J., Kelly, C., Feng, P., Berk, L., Schlundt, C. E., Carder, D. A. & Finneran, J. J. (2004). Anthropogenic sound and marine mammal health: Measures of the nervous and immune systems before and after intense sound exposure. *Canadian Journal of Fisheries and Aquatic Sciences,* 61, 1,124 to 1,134].

Comment 179: The assumption (repeated several times in the **Federal Register** notice) that animals will move away from the approaching *Langseth* is simply wishful thinking—there is no evidence that this will occur for most species and in some cases (again, e.g., ETS *Sousa*), this is not even an option, as there is essentially nowhere for the animals to move to that will allow them to escape exposure to high levels of seismic sound. These issues are all discussed at greater length by other parties submitting comments and we urge the NMFS to require L–DEO to address these concerns in any resubmission of the application.

Response: Several studies have reported observations of marine mammals exhibiting localized avoidance from areas with operating seismic airgun arrays. L–DEO provides this information in the Chapter 4 and Appendix B of the EA. In the case of critically endangered ETS population and other coastal species, L–DEO and TAIGER's principal investigators have modified the cruise plan and survey design by re-routing the cruise's tracklines offshore Taiwan's west coast by approximately 20 km to protect the ETS and the finless porpoise populations (except for in the passage between the Penghu Islands and the Waishanding Jhou (Wau-san-ting Chou) sandbar, where the survey will pass through the approximately 17.1 km (9.2 nautical mi) mid-line distance between the two possibly sensitive areas); re-routing the proposed survey lines in the South China Sea south of the Taiwan Strait to water depths greater than 200 m; and eliminating survey tracklines in the western Taiwan Strait.

Comment 180: The applicant and the agency must improve their consultation with regional experts on the protected species in the region(s) of interest. Many of the omissions and inaccuracies of the application (and, quite frankly, much of the local resistance to this proposed research) could have been avoided if the applicants had sought out and consulted with regional scientific experts and regional non-governmental organizations (NGO) with relevant expertise.

Response: The conditions of the IHA encourage NSF and L–DEO to coordinate with the Taiwanese government regarding the proposed seismic activity. In December 2008, NMFS published notice of the proposed IHA in the **Federal Register.** During the public comment period, regional scientific experts and regional NGOs with relevant expertise were free to provide comments on the survey. NMFS considered these requests during the 30 day public comment period and published a notice in the **Federal Register** (74 FR 2995, January 16, 2009) extending the public comment period for the proposed IHA to facilitate additional review by regional scientific experts. If a regional expert or regional NGO representative requests to consult on the effects of the seismic survey on protected species in the region, NMFS encourages them to discuss this directly with a representative from L–DEO or NSF.

Finally, based on comments received from the public, including regional experts, L–DEO completed a Supplemental EA for the TAIGER survey. NMFS believes that the monitoring and mitigation measures, which have been enhanced when compared to the proposed IHA notice, ensure the least practicable adverse impact on marine mammals in the SE Asia study area.

Comment 181: According to the tables within the EA, more *Sousa* will be impacted than there actually are *Sousa* in the area. I am unclear on how this meets the ''small number'' criteria. This number would, of course, go up further if the distances reported by Madsen *et al.* (2006—noted above) were taken into account. Of course, these distances would increase the take numbers for all animals in the area.

Response: Since the issuance of the proposed IHA notice, L–DEO negotiated with the project's principal scientists to modify the cruise plan and adopt more precautionary monitoring and mitigation measures. Based on the re-routed tracklines, L–DEO has revised estimates of the possible numbers of ETS Indo-Pacific humpback dolphins exposed to sound levels that would constitute Level B harassment to zero (zero percent of the ETS sub-population). NMFS took the revised tracklines into account when making the necessary MMPA determinations, including small numbers, towards the issuance of the IHA.

Comment 182: The *Langseth* will deploy an 8 km long streamer for most transects requiring a streamer; however, a shorter streamer (500 m to 2 km) will be used during surveys in Taiwan (Formosa) Strait (EA2). Do the effective source levels offered in the EA pertain to the longer or shorted streamers?

Response: The effective source level output from the *Langseth's* airgun array pertains to both the longer and shorter streamers. Streamer lengths generally relate to hydrophones, not airguns, and changes are often due to convenience, particularly to improve maneuverability.

Comment 183: According to the EA, the Multibeam Echosounder and Sub-bottom Profiler have outputs up to 204 dB re 1 μPa m, at the dominant frequency of 3.5 kHz. This is perilously close to the US Navy's AN/SQS–53C tactical mid-frequency sonar system implicated in many of the mass strandings of beaked whales and other cetaceans, which produces 'pings' primarily in the 2.6 to 3.3 kHz range. Another LDEO survey has been associated with a stranding (as acknowledged in the EA: ''* * * association of mass strandings of beaked whales with naval exercises and, in one case, an L–DEO seismic survey (Malakoff, 2002)''). There may thus also be concern for beaked whales and other animals, because, while ''[t]here is no conclusive evidence of cetacean strandings or deaths at sea as a result of exposure to seismic surveys'' (EA), there is also no conclusive evidence that seismic surveys do not lead to strandings or death either.

Response: The evidence linking beaked whale strandings and seismic surveys remains inconclusive at best. In September, 2002, two Cuvier's beaked whales stranded in the Gulf of California, Mexico. The *Ewing* had been operating a 20-airgun, 8,490-in^3 airgun array 22 km offshore the general area at the time that strandings occurred. However, the link between the stranding and the seismic surveys was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002) as some vacationing marine mammal researchers who happened upon the stranding were ill-equipped to perform an adequate necropsy. In addition, Cox *et al.* (2006) noted the ''lack of knowledge regarding the temporal and spatial correlation between the [stranding] and the sound source.'' Finally, Hildebrand (2005) illustrated the approximate temporal-spatial relationships between the stranding and the *Ewing's* tracks, but noted that the time of the stranding was not known with sufficient precision for accurate determination of the closest point of approach (CPA) distance of the whales to the *Ewing.*

The MBES and SBP have anticipated radii of influence significantly less than that for the airgun array. For reasons noted in the EA, the 160 dB and 180 dB isopleths of the MBES and SBP are either too small or the acoustic beams are very narrow, making the duration of the exposure and the potential for taking marine mammals by harassment small to non-existent. NMFS believes that it is unlikely that marine mammals would be affected by sub-bottom profiler signals whether operating alone or in conjunction with other acoustic devices since the animals would need to be swimming immediately adjacent to the vessel or directly under the vessel. Additionally, NMFS believes that the MBES and SBP are not likely to be capable of causing marine mammal strandings because of their short duration and brief pings

Comment 184: Several commenters expressed that the impacts of masking (including the physiological and psychological consequences potentially resulting from masking) were likely to be greatest for baleen whales throughout the survey area and requested that the *Langseth* should avoid calving grounds at breeding season, and feeding and migratory habitat for several species of threatened and endangered marine mammals. Several expressed concern for the range of the critically endangered Eastern Taiwan Strait (ETS) population of Indo-Pacific humpbacked dolphin; the partial range of Jiulong River Estuary (JRE) population of Indo-Pacific humpbacked dolphin; calving and migratory habitat for western Pacific humpback whales; a migratory pathway for the critically endangered western Pacific gray whale; and beaked and sperm whale habitat in southeastern and southwestern Taiwan.

Response: Please see NMFS' responses to comments under the Species of Particular Concern section and the response to Comment EA2 under this section. The IHA contains measures to mitigate against the potential effects of the surveys on mother/calf pairs, ETS and JRE humpbacked dolphins, and western Pacific gray whales.

Comment 185: NMFS has determined that the proposed activity ''may result,

at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals'' and proposes to issue an IHA, which demonstrates that either the reviewers of the proposal lacked knowledge of SE Asian marine mammals or chose to ignore the potential damage such seismic surveys can have on small and critically endangered populations of marine mammals in the region. With a lack of knowledge about even the most basic biology of marine mammals in the region, any determination of the level of impact of the seismic surveys would be little more than a random guess.

Response: Please see NMFS response to Comment EA2 (above) in this section.

Comment 186: The principal investigators responded that the bulk of the energy produced by the *Langseth* sound source is below a frequency of 200 Hz. They also noted that odontocetes communicate in a much higher band of frequencies, typically in the range of 10,000 Hz to several 100,000 Hz. Thus there is very little, if any, overlap in the frequency bands of acoustic energy used by these marine mammals and that of the seismic system. In summary, the investigators agreed with the EA that the surveys were not likely to result in any significant impact on marine life in the area.

Response: NMFS acknowledges the comments from the principal investigators.

Comment 187: NMFS is charged with implementing the MMPA and, to that end, must prescribe methods and means of effecting the least practicable adverse impact on marine mammals. NMFS' proposed IHA falls short of the mark.

Response: Please see NMFS' response to comments (above) under this section. In this IHA, NMFS prescribed mitigation measures that achieve the least practicable adverse impact, such as: re-routing the cruises tracklines further offshore by approximately 20 km (10.8 nautical mi) to protect the critically endangered Sousa population and the finless porpoise (except for in the passage between the Penghu Islands and the Waishanding Jhou (Wau-santing Chou) sandbar, where the survey will pass through the 17.1 km (9.2 nautical mi) mid-line distance between the two possibly sensitive areas); visual marine mammal monitoring, and shut-downs when marine mammals are detected within the defined ranges should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity. The IHA includes mitigation and monitoring measures to reduce the potential for injury or mortality, as well as instituting immediate shutdown protocols for the North Pacific right whale, western gray whale, Indo-Pacific humpbacked dolphin, or finless porpoise. No injury, serious injury, or mortality of any marine mammal is anticipated nor is authorized.

Comment 188: Several other baleen whales have been recorded from Taiwanese waters. However, due to almost no survey effort in the waters beyond about 20 km from shore and surveys being most in summer months, little is known about these species, which include: fin, sei, minke, Bryde's and Omura's whales. There are reports of several distinct stocks of some of these species. As a minimum, the impact on each stock of each species should be assessed rather than just at the species level and more work is needed on understanding stock structure before impacts can be understood.

Response: Please see NMFS' response to comments above. Detailed analyses of underwater noise, especially those from airguns, and impacts to cetaceans, fish, and invertebrates are provided in various documents related to the proposed project. NMFS' review of these documents have led to the determination that the proposed seismic surveys would have a negligible impact on the affected species or stocks of marine mammals and are not likely to jeopardize the continued existence of any ESA listed species.

Comment 189: Consideration of cumulative noise impacts. The exposure of these dolphins to total cumulative noise has not been considered. The ETS dolphins live in an environment which is already very noisy (e.g., pile driving and other noise-generating activities during coastal construction, shipping, other seismic surveys (oil and gas, local researchers, etc.). The cumulative impact of all noise sources needs to be examined in context of the contributions by the intense sounds source of the airguns.

Response: Please NMFS' response to NEPA comments. NMFS has determined that the EA adequately addressed the cumulative impacts of a short-term, low-intensity seismic airgun survey in relation to long-term noise and taking events, such as vessel traffic, habitat loss, oil and gas industry, pollution, fisheries, and hunting. NMFS' endangered species scientists have conducted a thorough review of the best available information on the cumulative effects of the proposed project. As a result, NMFS issued a BiOp on the proposed action on March 31, 2009 (NMFS, 2009), which stated that the survey was not likely to jeopardize the continued existence of ESA-listed marine mammals in the survey area.

Comment 190: The blue whale is given the highest level of legislative protection by the Wildlife Conservation Act of Taiwan. If small numbers of western North Pacific blue whales still exist, seismic surveys can have a large impact on the few remaining individuals.

Response: Please see NMFS' response to comments under the Species of Particular Concern section. L–DEO's revised seismic survey is expected to have a negligible impact on populations of blue whales in the study area. Blue whales can be easily detected visually so that L–DEO may implement appropriate mitigation measures.

Comment 191: The project description does not adequately consider the relevant scientific literature on risks of seismic activities to cetaceans. Also, L–DEO completely overlooked physiological impacts on cetaceans (*see* Wright *et al.,* 2007a,b).

Response: L–DEO's EA (see Chapter 3) provided information on non-auditory physiological effects (including stress) in relation to seismic survey sounds in the EA. However, few studies exist on the quantification of a specific exposure level above which non-auditory effects can be expected. At present, NMFS is unaware of quantitative predictions of the numbers of marine mammals that might exhibit stress when exposed to seismic sounds. NMFS believes that these data presented in the EA were the best scientific information available for estimating impacts on marine mammal species and stocks.

All parties involved have used the best information currently available to analyze physiological impacts to marine mammals as shown in: (1) The **Federal Register** notice for the receipt of L–DEO's application (73 FR 78294, December 22, 2008); (2) the EA and SEA for the TAIGER seismic; (3) the BiOp and ITS; and (4) numerous and salient public comments received by NMFS during the public comment period.

International Legal Compliance

Comment 192: L–DEO has stated that it will ''coordinate with Taiwan, China, Japan, and the Philippines, as well as applicable U.S. agencies (e.g., NMFS) and will comply with their requirements'' (p. 78316). This is a promise of action but there is no indication in the **Federal Register** notice how fulfillment of this promise will be verified. HSI and other interested parties state that before NMFS issues an authorization, NMFS must verify that L–DEO has complied with all relevant laws and regulations of the countries

within whose EEZs it will be conducting surveys. NMFS must request and receive the relevant paperwork from the applicant, that L–DEO has a minimum initiated and preferably completed. It cannot take at face value the assurances of L–DEO that such compliance will occur. It is a long-standing concern of HSUS/HSI (and other NGOs, both domestic and international) that U.S. agencies issue environmental permits and authorizations for activities that will in part be conducted within foreign jurisdictions without first verifying that the applicant has complied or even initiated compliance with local laws and regulations of these four nations.

Response: NMFS has communicated with NSF and L–DEO regarding the seismic survey in SE Asia. NMFS has received copies of L–DEO's foreign clearances from Taiwan, Japan, and the Philippines. L–DEO has been denied access to the waters of China. NMFS expects NSF and L–DEO to coordinate with the governments of Taiwan, Japan, and the Philippines, as well as adhere to local conservation laws and regulations of nations while in foreign waters, and known rules and boundaries of Marine Protected Areas (MPA), regarding the marine geophysical activity in SE Asia. In the absence of local conservation laws and regulations or MPA rules, L–DEO will continue to use the monitoring and mitigation measures identified in the IHA. NMFS has included conditions to these effects in the IHA. L–DEO is required to submit a draft report on all activities and monitoring results to the Office of Protected Resources, NMFS, within 90 days of the completion of the *Langseth's* SE Asia cruise (*see* ''Reporting'' section below).

Comment 193: HSI states that far too often, applicants for MMPA Incidental Harassment Authorizations, who are working on geophysical and other projects that do not directly concern marine mammals, but result in their incidental harassment and that will occur at least partially within foreign jurisdictions, fail to consult much or at all with regional entities who can be considered stakeholders in the decisions to authorize such projects. The authorizing agency compounds this failing by accepting the applicant's assurances at face value that sufficient consultation has occurred or will occur. HSI strongly advises the NMFS (and applicants such as L–DEO) to rectify this problem in the future.

Response: NMFS acknowledges HSI's recommendation and expects applicants to comply with all foreign and domestic laws. NMFS encourages applicants to consult with all stakeholders regarding projects in a specified region.

Recommendations for Consultation and Research

Comment 194: Dr. McIntosh and Dr. Wu state they have already contacted marine biologists highly knowledgeable and very concerned about the ecology of all marine mammals in the National Taiwan University, Academica Sinica and the National Taiwan Ocean University. They will continue to provide guidance to the planning of the TAIGER program.

Response: NMFS acknowledges the principal investigators comment.

Comment 195: CSI states that in December, 2008, for the ETSSTAWG (an international working group established in early 2008 to provide scientific guidance and advice to all interest groups) recommended that a buffer for noise threats be out to at least 5 km from shore for the ETS population after reviewing a proposal for designation of Majore Wildlife Habitat for the ETS population (review letter to Wild At Heart Legal Defense Association—dated 29 December, 2008).

Response: After issuance of the proposed IHA, L–DEO negotiated with the project's principal scientists to modify the cruise plan and adopt more precautionary mitigation measures. Off Taiwan's west coast, the cruise tracks have been re-routed offshore by approximately 20 km to protect the 'critically endangered' ETS Indo-Pacific humpback dolphin population and the finless porpoise, as well as ease potential pressure on other coastal species. Thus, the precautionary buffer recommended by ETSSTAWG in their comments to NMFS, ''at least 13 km and perhaps a more precautionary 15 km of the ETS Indo-Pacific humpback dolphin subpopulation—meaning up to around 20 km from shore'' will be adopted. L–DEO will limit seismic survey lines to take place at least 20 km from the west coast of Taiwan, expect for in the passage between the Penghu Islands and the Waishanding Jhou (Wau-san-ting Chou) sandbar, where the survey will pass through the approximately 17.1 km mid line distance between the two possibly sensitive areas, subject to the limitations imposed by other foreign nations, to minimize the potential for exposing the ETS sub-population and other coastal species to SPLs greater than or equal to 160 dB re 1 μPa (rms). NMFS has included conditions to this effect in the IHA as well.

Comment 196: CSI recommends that activities that would increase the risk of extinction of *Sousa chinensis* populations, including physiological and behavioral impacts, not be permitted.

Response: NMFS disagrees with CSI's recommendations. NMFS believes that L–DEO's revised seismic survey as well as the implementation of the required monitoring and mitigation measures will have a negligible impact on the affected species or stocks of marine mammals in the planned study area. L–DEO will limit seismic survey lines to water depths greater than 200 m in the South China Sea, and as far east as possible from the mainland China side of the Taiwan Strait, to reduce potential for effects on Western Pacific gray whales, Indo-Pacific humpback dolphins, and finless porpoises. L–DEO will limit seismic survey lines to take place at least 20 km from the west coast of Taiwan, except for in the passage between the Penghu Islands and the Waishanding Jhou sandbar, where the survey will pass through the approximately 17.1 km mid-line distance between the two possibly sensitive areas, subject to the limitations imposed by other foreign nations, to minimize the potential for exposing Indo-Pacific humpback dolphins, finless porpoises, and other coastal species to SPLs greater than or equal to 160 dB re 1 μPa (rms).

Comment 197: Several interested parties recommend dedicated marine mammal systematic surveys in waters off eastern Taiwan (particularly in waters beyond 20 km from shore where almost no cetacean survey effort exists) and of the Penghu Channel to better understand the region's waters, determine concentrations of beaked whales, and reduce impacts on other cetaceans. Systematic cetacean surveys of the waters of these waters are needed before seismic surveys are conducted so that better planning with adequate information can reduce impacts on marine mammals. Better coverage of the region's waters by cetaceans surveys can also allow fine turning of spatial and temporal avoidance of humpback whales by seismic surveys. Simple strategic scheduling of seismic surveys can eliminate or at least greatly reduce the impacts on this population.

Response: In this case, NMFS does not agree that marine mammal assessment surveys are needed prior to issuing an IHA. When information is unavailable on a local marine mammal population size, NMFS uses either stock or species information on abundance. Also, while information may be lacking for many species of cetaceans, information on some of the locally-found species is found in the L–DEO's IHA application, EA, and Supplemental EA. *See* L–DEO's IHA application, EA,

and Supplemental EA for more information.

In order to reduce impacts on marine mammals, NMFS has included temporal and spatial avoidance requirements in the IHA. See the information in the Monitoring and Mitigation sections below. Also, after the issuance of the proposed IHA, L–DEO has revised the planned seismic survey to reduce potential impacts on marine mammal populations in the study area.

Comment 198: Several interested parties recommend greater local consultation. Extensive consultation with experts on these regions and more studies to better understand the biology of cetaceans in this region can provide expert guidance to greatly reduce the impacts on the seismic surveys. More information exists in publications in local languages that have not been considered by this proposal. Conduct a consultation workshop with scientists who have expertise in local marine mammals, reptiles, fish, and invertebrates to understand better the local sensitive species and waters. Consultation with ETSSTAWG is needed.

Response: L–DEO and NSF have formally consulted with NMFS' Permits, Conservation, and Education Division regarding the IHA and NMFS' Endangered Species Division regarding a Biological Opinion under Section 7 of the ESA for the marine geophysical survey in SE Asia. L–DEO and NSF have also consulted with numerous persons and organizations in the SE Asia region. Below is a timeline of L–DEO's consultation process and issues discussed:

- December 18, 2007—Initial consultation began with LGL Ltd. when Dr. John Richardson contacts Dr. John Wang for a reprint. Dr. John Wang expresses concerns about seismics and mentions that the Indo-Pacific humpback dolphin is being reviewed for critically endangered status.
- August 9, 2008—Meike Holst of LGL Limited contacts Dr. John Wang for reprints. The L–DEO program is discussed via e-mail.
- August 14, 2008—Dr. John Wang copies Robin Winkler of WaH and asks for details on the cruise.
- August 19, 2008—Meike Holst shared details with Dr. John Wang and consults with him further.
- August 20, 2008—Meike Holst assures Robin Winkler of the planned mitigation measures in place and asks about relevant local laws.
- August 30, 2008—Chao-Shing Lee referred Meagan Cummings of L–DEO to Dr. Lien-Siang Chou. Meagan Cummings e-mailed Dr. Lien-Siang Chou and informed her that she planned to send copies of the EA when it became available.
- September 19, 2008—Robin Winkler responds to Meike Holst and copies Dr. Peter Ross. Meike Holst never hears back from Dr. Peter Ross.
- October 2, 2008—Hong Young, Prof. K. T. Shao from the Center for Biodiversity Research (Academica Sinica), and Prof. F. C. Chiu, Director of the Taiwan Ocean Research Institute are contacted by Claudio Fossati, one of L–DEO's lead bioacousticians and MMOs.
- January 13, 2009—Dr. Randall Reeves reviews the EA and recommends contacting Dr. Lien-Siang Chou or Benjamin Kahn based in Cairns, Australia.
- January 19, 2009—Dr. Francis Wu recommends Dr. Lien-Siang Chou. *http://ecology.lifescience.ntu.edu.tw/english/faculty_chou_ls.htm.*
- February 27, 2009—Meagan Cummings contacts Dr. Peter Ross. Dr. Peter Ross recommended an independent review of the program. Meagan Cummings assured him that NMFS was the reviewing agency and they wrote back and forth a few times and was informed that there was a regional expert.
- February 27, 2009 to present—L–DEO has been consulting mainly with Dr. Lien-Siang Chou and her department's graduate students. Meagan Cummings met with Dr. Lien-Siang Chou on March 21, 2009 in Taiwan. L–DEO scheduled a workshop for March 27, 2009 to discuss mitigation measures and visual sighting techniques for finless porpoises.
- March 27, 2009—L–DEO met with Dr. Lien-Siang Chou and her graduate students at National Taiwan University. The discussion points during the meeting included: MMO operations (Big-eye and 7x50 binoculars, visible distances from the observation tower, safety radii, ramp-up, power-down, and shut-down explanations), the Supplemental EA (revised tracklines, proximity to Taiwan, the ETS Indo-Pacific humpback dolphins, finless porpoises), possible carcass and stranding procedures (stranding density and locations during the past 10 years, current protocols for live and dead animals, reporting protocols and notification of the Taiwan Cetacean Society, funding to conduct necropsies, investigate resources to process more animals if there are a significant number of strandings, possible MRI of smaller cetaceans to look at possible effects of sound or pressure, fewer recent strandings than average, public concern has dropped, Taiwan's marine mammal stranding response team, stranding teams divided up between the north and south of Taiwan, discovery and reporting of possible carcasses at sea, and taking carcass samples for DNA analysis), NMFS notification requirements, finless porpoise sighting techniques, current MMO protocols, sampling considerations, regions of concern, beaked whales in Taiwan, population and density of Taiwanese cetaceans, and addressing the media.

Comment 199: Recent estimates of habitat boundaries and noise buffer zones specifically for the ETS Indo-Pacific humpback dolphins are not referred to yet could have easily been acquired through consultation with the ETSSTAWG. The existence of this expert advisory team dedicated to ETS humpback dolphin matters was brought to the attention of one of the principal preparers of the EA by the directors of Wild at Heart Legal Defense Association in an e-mail dated September 19, 2008.

Response: After the issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. L–DEO will maintain the precautionary buffer recommended by ETSSTAWG in their comments to NMFS, ''at least 13 km and perhaps a more precautionary 15 km of the ETS Sousa population—meaning up to around 20 km from shore.'' L–DEO will limit seismic survey lines to take place at least 20 km from the west coast of Taiwan, except for in the passage between the Penghu Islands and the Waishanding Jhou (Wau-san-ting Chou) sandbar, where the survey will pass through the approximately 17.1 km mid-line distance between the two possibly sensitive areas, subject to the limitations imposed by other foreign nations, to minimize the potential for exposing Indo-Pacific humpback dolphins, finless porpoises, and other coastal species to SPLs greater than or equal to 160 dB re 1 μPa (rms). See relevant responses to comment above for information on consultation.

Comment 200: WaH states that in the event that no attempt was made by LGL to consult with the ETSSTAWG prior to completion of the EA, WaH would recommend that this is done immediately with a view to clarifying some of the concerns relating to harassment of Indo-Pacific humpback dolphins, and that similar consultations be held with other experienced researchers through the region in question.

Response: During the preparation of the IHA application and EA, LGL Ltd. contacted and consulted with regional experts. After the issuance of the proposed IHA, L–DEO modified the

cruise plan and adopted more precautionary monitoring and mitigation measures to address concerns for species of particular concern (*e.g.,* ETS sub-population of Indo-Pacific humpback dolphins). L–DEO also prepared a Supplemental EA. The Supplemental EA is in response to the comments received by NMFS through the public comment period associated with the IHA process. See relevant discussions in this document as well as L–DEO's Supplemental EA.

Species of Particular Concern

Comment 201: NRDC states many genetically distinct populations of cetaceans are found within the enclosed seas of the western Pacific, including the ETS population of Indo-Pacific humpbacked dolphin, South China Sea population of finless porpoise, fin whales, gray whales, and humpback whales. Take estimates should use abundance and density estimates for these distinct populations (rather than estimates for the entire North Pacific) where appropriate.

Response: NMFS agrees that impacts should be assessed on the population or stock unit whenever possible. Due to the lack of systematic aircraft- or ship-based surveys conducted for marine mammals in waters near Taiwan, the species of marine mammals that occur there are not well known. A few surveys have been conducted from small vessels with low observation platforms. In the absence of any other density data, L–DEO used the survey effort and sightings in Yang *et al.* (1999) and Wang *et al.* (2001a) to estimate densities of marine mammals in the TAIGER study area. L–DEO's application provides information on stock abundance and local and regional populations. The data source for each stock estimate is provided in Table 2 of L–DEO's IHA application. There is some uncertainty about the representatives of the density data and the assumptions used in the calculations. Perhaps the greatest uncertainty results from using survey results from the northeast Pacific Ocean.

NMFS believes that this approach and these data are the best scientific information available for estimating impacts on marine mammal species and stocks. However, information on marine mammal stock abundance may not always be complete. When information is lacking to define a particular population or stock of marine mammals then impacts are assessed with respect to the species as a whole (54 FR 40338, September 29, 1989).

Comment 202: Dr. John Wang states that for gray, right, and humpback whales, some common issues arise from the seismic surveys. The timing of the L–DEO surveys overlaps, spatially and temporally, with whales wintering (calving and nursing) in the region's waters (see above) and during the northward migrations of mothers with neonatal or other young calves from these calving/nursing grounds.

Response: After issuance of the proposed IHA, L–DEO revised their seismic survey to include temporal and spatial concerns regarding marine mammals in the study area. Because of concerns about effects of the proposed survey lines on gray whales, the proposed survey lines in the South China Sea south of the Taiwan Strait were re-routed so that they are now located in water depths >200 m. To mitigate against the potential effects of the surveys on humpback whales, particularly mothers and calves on the breeding grounds or during the beginning of migration to summer feeding grounds, the surveys that approach the Babuyan Islands have been rescheduled as late as possible, to Leg 4. Also, L–DEO will shut-down the airgun array immediately if a Western Pacific gray, North Pacific right, and/or humpback whale mother/calf pair are visually sighted at any distance. Requirements to these effects have been included in the NMFS-issued IHA. See responses to comments pertaining to Western Pacific gray and humpback whales below.

Comment 203: CSI states that if small numbers of Western North Pacific blue whales still exist in the region's waters, seismic surveys can have a large impact on the few remaining individuals (even if only a very few whales are disturbed).

Response: After issuance of the proposed IHA, L–DEO modified the cruise plan and adopted more precautionary monitoring and mitigation measures. L–DEO's revised seismic survey is expected to have a negligible impact on populations of blue whales in the study area. Blue whales can be easily detected visually so that the proper mitigation measures may be implemented.

Species of Particular Concern—Pearl River Estuary (PRE), Jiulong River Estuary (JRE), and Eastern Taiwan Strait (ETS) Indo-Pacific Humpback Dolphins

Comment 204: Several interested parties are concerned about the acoustic disturbance that can seriously affect several coastal populations of Indo-Pacific humpback dolphins, notably the ones at the PRE in Guangdong Province, the JRE in Fujian Province (near Xiamen), and along the coastal waters of the ETS. The JRE sub-population of Indo-Pacific humpback dolphins is estimated to be less than 90 individuals (Chen *et al.,* 2008) and faces similar threats. The JRE sub-population is distinct from the ETS sub-population (Wang *et al.,* 2008a), but the level of exchange (if any) with other provisional populations along the mainland Chinese coast is unknown. Other Chinese sub-populations have been studied and have a distribution in adjacent waters of the Chinmen islands and further east are completely unknown and were not surveyed by Chen *et al.* (2008) due to political border issues. Not enough is known about this population to estimate what proportion of dolphins in this small sub-population will be impacted, but it is clear that some will be impacted and with such a small population size, even minimal disturbance can have a large impact on the sub-population. Far less is known about *Sousa chinensis* in other regions so the impact on these dolphins cannot be estimated. However, given the proposed trackline which meets the mainland Chinese coast perpendicularly and closes near the area of Xiamen/Chinmen Islands and near Pingtan (where records of *Sousa chinensis* also exist—*see* Wang, 1999; Zhou, 2004), dolphins of these coastal waters would be expected to be impacted.

The proposed tracklines of these seismic surveys will traverse through areas that will overlap or are in close proximity to these resident humpback dolphin populations, posing serious risks and threats to the livelihood of their daily lives. One of the *Langseth's* proposed tracklines approaches to the mainland Chinese coast is directly in line with the heart of the JRE population. At a distance of 10 km from shore, dolphins using waters east of the Chinmen islands may be exposed to levels greater than 160 dB and some may be exposed to greater than 180 dB depending on where the dolphins are found in their distribution and how close the *Langseth* is to the 25–30 m isobath (which appears to be the depth limit for the species—see Jefferson and Karczmarski, 2001). Not enough is known about this population to estimate the numbers of dolphins that will be impacted. Given such a small population size, even minimal disturbance can have a large impact on the lives of the populations. The animals may be exposed to received levels >180 dB, which would exceed the type of take which L–DEO has applied for.

Response: Because of these concerns about effects of the proposed surveys on Western Pacific gray whales, populations of Indo-Pacific humpback dolphins, and finless porpoises, the

proposed survey lines in the South China Sea south of the Taiwan Strait were re-routed after the issuance of the proposed IHA so that they are now located in water depths >200 m, as recommended by NRDC. The seismic lines in the western Taiwan Strait were dropped. Requirements to these effects have been included in the IHA and no takes of any of the three sub-populations of Indo-Pacific humpback dolphins found in the SE Asia study area is authorized for this seismic survey.

Comment 205: Several interested parties have expressed concern with the safety of the ETS Indo-Pacific humpback dolphin. This 'critically endangered' sub-population is very small at <100 individuals. The distinct population is a year-round resident of a very restricted stretch of shallow coastal waters along western Taiwan (i.e., the ETS). Any single threat (*e.g.,* loss of habitat, pollution, bycatch, and noise) has the potential to be the final cause of extinction. Unless effective mitigation measures are taken to reduce these threats, it is unlikely that the population will continue to exist. Mortality (by human causes) of even a single individual per year from this population is not sustainable.

Seismic surveys in June and July (as well as any other time of the year) will have a serious impact on this critically endangered population. Given their year round residency, there is no season that will reduce the serious impacts of seismic surveys in inshore waters on this population. In June and July, large numbers of cetaceans are found along and near the shelf edge of eastern Taiwan. Conducting seismic surveys close to the shores of Taiwan risks greatly impacting on these cetaceans.

Response: After the issuance of the proposed IHA, L–DEO negotiated with the project's principal scientists to modify the cruise plan and adopt more precautionary mitigation measures. Off Taiwan's west coast, the cruise tracks have been re-routed offshore by approximately 20 km to protect the critically endangered ETS Indo-Pacific humpback dolphins and the finless porpoise, as well as ease potential pressure on other coastal species. Thus, the revised survey will maintain the precautionary buffer recommended by ETSSTAWG in their comments to NMFS, ''at least 13 km and perhaps a more precautionary 15 km of the ETS Sousa population—meaning up to around 20 km from shore.'' *See* L–DEO's Supplemental EA.

Concerns were expressed about the survey line that was parallel to and within a few km of the east coast of Taiwan because of potential effects on coastal species and those that frequent the shelf break and steep slopes, where the continental shelf is narrow. Due to these concerns, the survey line has been moved offshore by more than 20 km to decrease potential impacts on species that occur there.

Requirements to these effects have been included in the IHA. No injury, serious injury, or mortality has been authorized.

Comment 206: HSI states the application and the **Federal Register** notice never indicate that the Eastern Taiwan Strait (ETS) population of the Indo-Pacific humpback dolphin, *Sousa chinensis,* is listed as ''critically endangered'' on the International Union for Conservation of Nature (IUCN) Red List. Instead these two documents lump the entire region's *Sousa* populations together. While the IUCN did list the larger regional Sousa population as ''near threatened,'' it specifically identified the ETS population as separate and ''critically endangered.'' This designation was made well before the December publication of the **Federal Register** notice. The failure to note this, to address the fact that two-thirds of this population (the maximum proportion the notice indicates could be taken—see p. 78311) cannot be considered a ''small number,'' or to address the fact that the survey track lines cover the entire length of this imperiled population's home range is unacceptable and must be rectified by a resubmission of the application.

Response: NMFS acknowledges HSI's comment. L–DEO's Supplemental EA states the ETS sub-population of Indo-Pacific humpback dolphins is considered 'critically endangered' on the IUCN Red List of Threatened Species (IUCN, 2008). *See* L–DEO's Supplemental EA for a detailed description of the revised survey as well as monitoring and mitigation measures. No takes of the ETS Indo-Pacific humpback dolphin sub-population are authorized under the NMFS-issued IHA. *See* response to comment below.

Comment 207: Dr. John Wang and CSI states that *Sousa chinensis* is considered a slow swimming species with average speeds between 3.6 and 7.2 km/hr (Saayman and Tayler, 1979; Jefferson, 2000) but much slower during resting periods (Saayman and Tayler, 1979)—observations of the ETS population (unpublished data) are consistent. As such, the ETS Indo-Pacific humpback dolphins will not be able to outrun the *Langseth* (even while towing airguns, the operating speed is reported to be between 7.4–9.3 km/hr) for extended periods. Even if they were able to outrun the *Langseth,* there would be no escape within their distribution because: (a) The tracklines cover nearly the entire longitudinal length of the ETS sub-population's total distribution and beyond, and (b) no safe acoustic shelters exist. Therefore, nearly the entire population (especially the most vulnerable members: mothers with young calves and other compromised individuals) will be affected by the seismic surveys along western Taiwan regardless of where the dolphins are in their distribution and an unknown but substantial number will be exposed to levels >180dB. Clearly, the proportion of the ETS sub-population to be impacted by the seismic survey (and at dangerous exposure levels) is far too high for any cetaceans let alone one that is critically endangered.

Response: After issuance of the proposed IHA, L–DEO has negotiated with the project's principal scientists to modify the cruise plan and adopt more precautionary mitigation measures. L–DEO will limit seismic survey lines to take place at least 20 km from the west coast of Taiwan, except for in the passage between the Penghu Islands and the Waishanding Jhou sandbar, where the survey will pass through the approximately 17.1 km mid-line distance between the two possibly sensitive areas, subject to the limitations imposed by other foreign nations, to minimize the potential for exposing Indo-Pacific humpback dolphins, finless porpoises, and other coastal species to SPLs greater than or equal to 160 dB re 1 μPa (rms). The buffer zone will reduce the potential impacts to animals, especially to protect the 'critically endangered' ETS Indo-Pacific humpback dolphin sub-population. Requirements to this effect have been included in the NMFS-issued IHA.

Comment 208: Dr. McIntosh and Dr. Wu state that a specific concern expressed by Dr. John Wang is with the safety of the ETS Indo-Pacific humpback dolphin; this species is considered critically endangered. The principal scientists share Dr. Wang's desire to protect this species and plan to avoid seismic work in or near its habitat. This species is known to live in very shallow water environments, primarily in water depths less than 25 meters and typically close to the coast. Dr. McIntosh and Dr. Wu expect seismic operations to occur generally in water depths of 50 m or greater, especially along Taiwan's west coast. With the generally shallow slope of the seafloor in this area this means that our work will typically be farther than 10 km from the coast. Furthermore, we are willing to adjust line positions to provide an adequate buffer zone for the

coastal habitat of these humpback dolphins.

Response: NMFS acknowledges the principal investigators comments. A description of the revised seismic survey can be found in L–DEO's Supplemental EA.

Species of Particular Concern—Deep Diving Species

Comment 209: ETTSTAWG states beaked whales can be expected to be at heightened risk from the L–DEO project, in part because their extended dives make it exceedingly difficult for even trained personnel to spot them.

Response: NMFS agrees that beaked whales are difficult to detect visually, even by trained and experienced MMVOs. In order to minimize potential effects of the seismic surveys, L–DEO will (when operating the sound source), minimize approaches to slopes, submarine canyons, seamounts, an other underwater geologic features, if possible, because of sensitivity to beaked whales. If concentrations of beaked whales are observed (by visual or passive acoustic detection) at a site such as on the continental slope, submarine canyon, seamount, or other underwater geologic feature just prior to or during the airgun operations, those operations will be moved to another location along the site based on recommendations by the on-duty MMVO aboard the *Langseth.* After the issuance of the proposed IHA, L–DEO also re-routed the seismic survey line paralleling the east coast of Taiwan further offshore to decrease potential impacts on species (including beaked whales) over the continental slope, and seismic surveys (to the maximum extent practicable) will be conducted from the coast (inshore) and proceed towards the sea (offshore) in order to avoid trapping marine mammals in shallow water. NMFS believes these mitigation measures should lessen the potential risks to beaked whales.

Species of Particular Concern—Finless Porpoises

Comment 210: Several interested parties have stated that finless porpoises are arguably one of the most difficult species to detect at sea by observers, even in calm conditions, because of its small size, lack of dorsal fin, brief surface time, and usually occurring individually or in small groups, so many will be missed by MMVOs during seismic operations. Depending on the behavior of the animals, they can be near impossible to detect. Jefferson *et al.* (2002) reported that during calm sighting conditions, finless porpoises were observed primarily within 300 m from the trackline (perpendicular distance) and none were observed beyond about 700 m. In low light conditions or even slight seas, detecting finless porpoises is challenging even for researchers experienced with the species. MMVOs will be ineffective at detecting animals within the predicted distance, therefore, an unknown (potentially large) number of finless porpoises will be exposed to much greater noise levels than suggested by L–DEO (especially since detection is effectively zero beyond 1 km, yet the predicted distance for received levels >190 dB is more than 2 km from the source).

Response: NMFS agrees that finless porpoises are arguably one of the most difficult species to detect at sea by observers. NMFS has not authorized any takes of finless porpoises in the IHA issued to L–DEO for this survey. Take estimates for finless porpoises have been reduced to zero because of the elimination of seismic tracklines in shallow water areas where they are likely to occur. In addition to having additional MMVOs and the use of PAM onboard the *Langseth* to detect animals, L–DEO will also shut-down immediately if there is a sighting at any distance of finless porpoises. See responses to previous comments and L–DEO's Supplemental EA.

Comment 211: Dr. John Wang states finless porpoises are arguably the most difficult cetacean to detect at sea by observers, so many will be missed by MMVOs during seismic operations. Therefore, an unknown (potentially large) number of finless porpoises will be exposed to much greater noise levels than suggested by L–DEO (especially since detection is effectively zero beyond 1 km, yet the predicted distance for received levels >190 dB is more than 2 km from the source.

Response: NMFS agrees that finless porpoises are arguably the most difficult cetacean to detect by MMVOs due to their small body size, lack of a dorsal fin, and shy behavior. However, the PAM system onboard the *Langseth* is capable of detecting the clicks of finless porpoises. Finless porpoises are unlikely to be encountered during the survey as L–DEO will avoid shallow water areas near the China coast, western Taiwan Strait, and South China Sea in order to avoid this species. L–DEO will also limit seismic survey lines to water depths greater than 200 m (656 ft) in the South China Sea and as far east as possible from the mainland side of the Taiwan Strait, to reduce potential for effects on finless porpoises. L–DEO is not authorized incidental take of finless porpoise and will shut-down the airgun array if any finless porpoises are visually sighted.

Comment 212: Dr. John Wang states finless porpoises appear to go undergo inshore-offshore migrations seasonally (*see* Jefferson and Hung, 2004) but this is not well understood. During the timing of the proposed seismic surveys, many finless porpoises will be in the Taiwan Strait (as evidenced by bycatch records and some sighting data—J.Y. Wang, unpublished data) and an unknown (but potentially large) number will be exposed to the airgun sounds. Furthermore, the timing also coincides with the presence of many female with newborn calves in these waters. These will be the most vulnerable individuals as they will be less able to escape the wide range of the airguns in shallow waters. The potential impact on finless porpoises is far from negligible and none of the mitigation measures proposed would be effective in reducing the harm.

Response: After issuance of the proposed IHA, L–DEO has negotiated with the project's principal scientists to modify the cruise plan and adopt more precautionary monitoring and mitigation measures. Off Taiwan's west coast, the cruise tracks have been re-routed offshore by approximately 20 km to protect finless porpoise. Because of concerns about effects of the proposed surveys on finless porpoises, the proposed survey lines in the South China Sea south of the Taiwan Strait were also re-routed so that they are now located in water depths >200 m, as recommended by NRDC. The seismic lines in the western Taiwan Strait have been dropped. The proposed survey line paralleling the east coast of Taiwan has also been moved offshore by more than 20 km to decrease potential impacts on species that occur in coastal waters and over the continental slope. The airgun array will be shut-down immediately if there is a sighting at any distance of finless porpoises. Requirements to this effect have been included in the IHA.

Comment 213: CSI and WaH states the anticipated presence of female finless porpoises and their (neonatal) calves in the survey region during the proposed seismic surveys is of great concern, particularly given the fact that these animals will likely be difficult if not completely impossible to detect visually at distances at which they may still be exposed to noise levels >180 dB (rms), and do not vocalize at all times. These will be the most vulnerable individuals as they will be less able to maintain swimming speeds that will allow them to escape the range of the airguns.

Finless porpoises are generally slow-swimmers, but are capable of high speed

bursts. However it is unlikely that such speeds can be maintained for more than a few minutes.

Response: See responses to previous comments pertaining to finless porpoises.

Species of Particular Concern—Western Pacific Gray Whales

Comment 214: CSI states the route(s) and months when Western Pacific gray whales may undertake their migration from a suspected wintering ground(s) in the South China Sea are unknown. However, it is likely that the period for the migration is in the spring. The proposed L–DEO surveys overlap with the period during which these gray whales are expected to be either in their wintering grounds or are undergoing their northward migration through the Taiwan Strait. Scheduling the seismic surveys in the South China Sea to be conducted in March and April will likely coincide with at least some migrating gray whales, and are an additional threat to these highly threatened gray whales. L–DEO did not address this possibility and have not proposed any mitigation measures to avoid this likely overlap of seismic surveys and migrating gray whales. Even the take of a few individuals is projected to cause a continuing decline in the population towards extinction (Cooke *et al.,* 2006).

Response: Winter breeding grounds of the Western Pacific gray whale are not known, but are thought to be located in the South China Sea, along the coast of Guangdong province and Hainan (Wang, 1984; and Zhu, 1998 in Weller *et al.,* 2002a; Rice, 1998). Also, the migration route of the gray whale is ill defined, but very likely extends through Taiwanese waters, probably through the Taiwan Strait. Their occurrence there is possible from December to April. If migration timing is similar to that of the better-known Eastern Pacific gray whale through similar latitudes, southbound migration probably occurs mainly in December to January, and northbound migration mainly in February to April, with northbound migration of newborn calves and their mothers probably concentrated toward the end of that period. Even during migration, gray whales are found primarily in shallow coastal waters. Because of these concerns about the effects of the proposed surveys on gray whales, the proposed survey lines in the South China Sea south of the Taiwan Strait were re-routed after the issuance of the proposed IHA so that they are now located in water depths >200 m, as recommended by NRDC. The seismic lines in the western Taiwan Strait have been dropped. L–DEO will also immediately shut-down the airgun array if there is a sighting of a Western Pacific gray whale at any distance (see L–DEO's Supplemental EA).

Comment 215: In its discussion of disturbance reactions, HSI also notes the proposed IHA's **Federal Register** notice (73 FR 78294, December 22, 2008) use of the Eastern Pacific gray whale's status as an example of a species experiencing ''no impact'' despite living in a noisy environment. The notice states that the whales ''continued to migrate annually * * * with substantial increases in the population over recent years, despite intermittent seismic exploration and much ship traffic'' (73 FR 78302, December 22, 2008). However, the notice ignores the drastic drop in Eastern Pacific gray whale numbers between 1998 and 2000, by perhaps as many as 9,000 animals (Angliss and Outlaw, 2007). While it is certainly debatable to what (if any) degree exposure to various noise sources contributed to this population's decline, to ignore the decline when using the population as an example of a population's increase in the face of exposure to various noise sources is simply bad science.

Response: As a coastal population, the Eastern North Pacific stock of gray whales, are subject to a wide variety of direct and indirect anthropogenic effects off of Mexico, California, Oregon, Washington, Canada, and Alaska. Some of the effects include pollution from chemical contaminants, subsistence harvesting, fishery interactions, ship strikes, and potentially impacts from noise. The population size of the Eastern North Pacific gray whale stock has been increasing over the past several decades. Due to the steady increases in population abundance, this stock of gray whales was removed from the List of Endangered and Threatened Wildlife in 1994, as it was no longer considered Endangered or Threatened under the ESA.

The decline in Eastern Pacific gray whale numbers between 1998 and 2000 may be an indication that the abundance was responding to environmental limitations as the population approaches the carrying capacity of its environment. Visibly emaciated whales (LeBoeuf *et al.,* 2000; Moore *et al.,* 2001) suggest a decline in food resources associated with unusually high sea temperatures in 1997 (Minobe, 2002), which may factor in to the high mortality rates observed in 1999 and 2000 (Gulland *et al.,* 2005). Several factors since this mortality event suggest that the high mortality rate was a short-term acute event and not a chronic situation or trend: (1) Counts of stranded dead gray whales dropped to levels below those seen prior to this event, (2) in 2001 living whales no longer appeared to be emaciated, and (3) calf counts in 2001–2002, a year after the event ended, were similar to averages for previous years (NMFS, 2007; Rugh *et al.,* 2005). It is expected that a population close to or at the carrying capacity of the environment will be more susceptible to fluctuations in the environment (Moore *et al.,* 2001), and assessments indicated that the population is likely close to or above its unexploited equilibrium level (IWC, 2002). It can be predicted that the population will undergo fluctuations in the future that may be similar to the 2-year event that occurred in 1999–2000 (Norman *et al.,* 2000; Perez-Cortes *et al.,* 2000; Brownell *et al.,* 2001; Gulland *et al.,* 2005).

Species of Particular Concern—Humpback Whales

Comment 216: CSI states the schedule for surveying the Luzon Strait and the Philippine Sea overlaps completely with the period when humpback whales are still in the area (and includes the latter portion of the peak period (April) for humpback whale concentrations in the Babuyan Islands). Therefore it is unclear how the timing of the surveys reduces the impacts on humpback whales as claimed by L–DEO. A large portion of this population of humpback whales will also be migrating through the Philippine Sea to northern waters at the same time as the proposed surveys. Although the exact migratory routes of most humpback whales are unknown, it is clear that at least some will follow a path that is parallel and fairly close to the shores of eastern Taiwan. One of the proposed survey tracklines of the *Langseth* also follows this course. Many females undertaking the migration at this time will also be accompanied by neonatal calves and these are the most sensitive individuals of the population (McCauley *et al.,* 2000).

Response: Several commenters raised concerns about survey lines scheduled for Leg 2 (April 20 to June 7, 2009) approaching humpback whale breeding areas in the Babuyan and Ryuku Islands. In fact, the humpback whales that winter and calve in the Ryuku Islands are near Okinawa (Nishiwaki, 1959; Rice, 1989; Darling and Mori, 1993), some 400 km north of the most northerly survey. However, a small population of humpback whales does winter and calve in the Babuyan Islands in Luzon Strait (Acebes and Lesaca, 2003; Acebes *et al.,* 2007). The whales may arrive in the area as early as

November and leave in May or even June, with peak occurrence during February through March or April (Acebes *et al.,* 2007).

To mitigate against the potential effects of the surveys on humpback whales, particularly mothers and calves on the breeding grounds or during the beginning of migration to summer feeding grounds, the surveys that approach the Babuyan Islands have been rescheduled as late as possible, to Leg 4 (June 18 to July 20, 2009). L–DEO will also be required to shut-down immediately if there is a visual sighting at any distance for mother/calf pairs of humpback whales.

Description of Marine Mammals in the Proposed Activity Area

A total of 34 cetacean species, including 25 odontocete (dolphins and small- and large-toothed whales) species and 9 mysticetes (baleen whales) are known to occur in the proposed TAIGER study area (*see* Table 2 of L–DEO's application). Cetaceans and pinnipeds are managed by NMFS and are the subject of this IHA application. Information on the occurrence, distribution, population size, and conservation status for each of the 34 marine mammal species that may occur in the proposed project area is presented in the Table 2 of L–DEO's application as well as here in the table below (Table 2). The status of these species is based on the U.S. Endangered Species Act (ESA), the International Union for Conservation of Nature (IUCN) Red List of Threatened Species, and Convention on International Trade in Endangered Species (CITES). Several species are listed as Endangered under the ESA, including the Western North Pacific gray, North Pacific right, sperm, humpback, fin, sei, and blue whales, and the dugong (*Dugong dugon*). In addition, the Indo-Pacific humpback dolphin is listed as Near Threatened and the finless porpoise is listed as Vulnerable under the 2008 IUCN Red List of Threatened Species (IUCN, 2008).

Although the dugong may have inhabited waters off Taiwan, it is no longer thought to occur there (March *et al.,* n.d.; Chou, 2004; Perrin *et al.,* 2005). Similarly, although the dugong was once widespread through the Philippines, current data suggest that it does not inhabit the Batan or Babuyan Islands or northwestern Luzon (Marsh *et al.,* n.d.; Perrin *et al.,* 2005), where seismic operations will occur. However, the dugong does occur off northeastern Luzon (Marsh *et al.,* n.d.; Perrin *et al.,* 2005) outside the study area. In China, it is only known to inhabit the waters off Guangxi and Guangdong and the west coast of Hanain Island (Marsh *et al.,* n.d.; Perrin *et al.,* 2005), which do not occur near the study area. It is rare in the Ryuku Islands, but can be sighted in Okinawa, particularly off the east coast of the island (Yoshida and Trono, 2004; Shirakihara *et al.,* 2007); some individuals may have previously occurred in the southernmost of the Ryuku Islands, Yaeyama (Marsh *et al.,* n.d.), but these animals have not been documented there recently (Shirakihara *et al.,* 2007). The dugong is managed under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS). The USFWS concurred with L–DEO's determination that the survey is likely to have no effects on the species and no consultation under Section 7 of the ESA is required, therefore, it is not considered further in this analysis.

Wang *et al.* (2001a) noted that during the spring/summer off southern Taiwan, the highest number of marine mammal sightings and species occur during April and June. The number of sightings per survey effort and the number of species were highest directly west of the southern tip of Taiwan and northeast off the southern tip.

Table 2 (below) outlines the cetacean species, their habitat and abundance in the proposed project area, and the requested take levels. Additional information regarding the distribution of these species expected to be found in the project area and how the estimated densities were calculated was included in the notice of the proposed IHA (73 FR 78294, December 22, 2008) and may be found in L–DEO's application.

The occurrence, habitat, regional abundance, conservation status, best and maximum density estimates, number of marine mammals that could be exposed to sound level at or above 160dB re 1μPa, best estimate of number of individuals exposed, and best estimate of number of exposures per marine mammal in or near the proposed seismic survey area in SE Asia. *See* Tables 2–4 in L–DEO's application for further detail.

TABLE 2

Species	Occurrence in study area in SE Asia	Habitat	Regional population size	Density/ 1000km [b] (best)	Density/ 1000km [c] (max)	Number of indiv. exposed to ≥ 160 dB	Percent of estimated population exposed to ≥ 160 dB
Mysticetes							
Western Pacific gray whale (*Eschrichtius robustus*).	Rare	Coastal	131 [d]	0	0	0	0
North Pacific right whale (*Eubalaena japonica*).	Rare	Pelagic and coastal.	Less than 100 [e]	0	0	0	0
Humpback whale (*Megaptera novaeangliae*).	Uncommon	Mainly near shore waters and banks.	938–1107 [f]	0.89	1.33	6	0.60
Minke whale (*Balaenoptera acutorostrata*).	Uncommon	Pelagic and coastal.	25,000 [g]	0.03	0.04	0	0
Bryde's whale *Balaenoptera brydei*).	Common	Pelagic and coastal.	20,000–30,000 [e h].	0.27	0.41	43	0.17
Omura's whale (*Balaenoptera omurai*).	Common?	Pelagic and coastal.	N.A.	0.03	0.04	4	N.A.
Sei whale (*Balaenoptera borealis*).	Rare	Primarily off-shore, pelagic.	7,260–12,620 [i]	0.03	0.04	4	0.04
Fin whale (*Balaenoptera physalus*).	Rare	Continental slope, mostly pelagic.	13,620–18,680 [j]	0.03	0.04	4	0.03

TABLE 2—Continued

Species	Occurrence in study area in SE Asia	Habitat	Regional population size	Density/ 1000km[b] (best)	Density/ 1000km[c] (max)	Number of indiv. exposed to ≥ 160 dB	Percent of estimated population exposed to ≥ 160 dB
Blue whale (*Balaenoptera musculus*).	Rare	Pelagic and coastal.	N.A.	0.03	0.04	4	N.A.
Odontocetes:							
Sperm whale (*Physeter macrocephalus*).	Common?	Usually pelagic and deep seas.	26,674[k]	0.03	0.04	4	0.01
Pygmy sperm whale (*Kogia breviceps*).	Uncommon	Deep waters ...	N.A.	0	0	.....	N.A.
Dwarf sperm whale (*Kogia sima*).	Common?	Deep waters off shelf.	11,200[e]	4.25	6.68	703	6.28
Kogia sp. (unidentified)	Common?	Deep waters ...	N.A.	0.26	0.40	38	N.A.
Cuvier's beaked whale (*Ziphius cavirostris*).	Likely Common	Pelagic	20,000[e]	0.34	0.75	58	0.29
Longman's beaked whale (*Indopacetus pacificus*).	Rare	Deep water	N.A.	N.A.	N.A.	.....	N.A.
Blainville's beaked whale (*Mesoplodon densirostris*).	Uncommon? ...	Pelagic	25,300[l]	0.89	1.60	153	0.61
Ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*).	Rare	Pelagic	N.A.	N.A.	N.A.	.....	N.A.
Mesoplodon sp. (unidentified).	Uncommon? ...	Pelagic	N.A.	1.55	1.60	268	N.A.
Unidentified beaked whale	Rare	Pelagic	N.A.	0.72	0.94	118	N.A.
Rough-toothed dolphin (*Steno bredanensis*).	Common	Deep water	146,000 ETP[e]	1.33	5.44	212	0.14
Indo-Pacific humpback dolphin (*Sousa chinensis*).	Uncommon	Coastal	1,680 China + Taiwan[e].	24.30	35.36	0	0
Common bottlenose dolphin (*Tursiops truncatus*).	Common	Coastal and oceanic, shelf break.	243,500 ETP[e]	24.30	35.36	4,021	1.65
Indo-Pacific bottlenose dolphin (*Tursiops aduncus*).	Common?	Coastal and shelf waters.	N.A.	43.60	65.40	0	N.A.
Pacific white-sided dolphin (*Lagenorhynchus obliquidens*).	Rare, Likely Absent.	Coastal and pelagic.	930,000–990,000[e].	N.A.	N.A.	0	0
Pantropical spotted dolphin (*Stenella attenuata*).	Common	Coastal and pelagic.	800,000 ETP[e]	120.80	140.97	20,169	2.52
Spinner dolphin (*Stenella longirostris*).	Common	Coastal and pelagic.	800,000 ETP[e]	54.84	88.89	9,485	1.19
Striped dolphin (*Stenella coeruleoalba*).	Common	Coastal and pelagic.	1,000,000 ETP[e].	0.20	0.32	38	0.01
Fraser's dolphin (*Lagenodelphis hosei*).	Common	Waters greater than 1,000 m.	289,000 ETP[e]	96.84	124.14	16,749	5.80
Short-beaked common dolphin (*Delphinus delphis*).	Rare	Shelf and pelagic, seamounts.	3,000,000 ETP[e].	N.A.	N.A.	0	0
Long-beaked common dolphin (*Delphinus capensis*).	Uncommon	Coastal	N.A.	0.05	0.12	10	N.A.
Risso's dolphin (*Grampus griseus*).	Common	Pelagic	175,000 ETP[e]	41.88	67.18	7,209	4.12
Melon-headed whale (*Peponocephala electra*).	Common?	Oceanic	45,000 ETP[e] ..	13.37	20.86	2,173	4.83
Pygmy killer whale (*Feresa attenuata*).	Uncommon	Deep, pantropical waters.	39,000 ETP[e] ..	2.01	3.16	327	0.84
False killer whale (*Pseudorca crassidens*).	Common?	Pelagic	40,000[n]	4.56	4.77	789	1.97
Killer whale *(Orcinus orca*)	Uncommon? ...	Widely distributed.	8,500 ETP[e]	1.00	1.73	166	1.95
Short-finned pilot whale (*Globicephala macrorhynchus*).	Common?	Mostly pelagic, relief topography.	500,000 ETP[e]	3.83	6.43	630	0.13
Finless porpoise (*Neophocaena phocaenoides*).	Common?	Coastal	5,220–10,220 Japan + HK[e].	4.36	6.54	0	0
Sirenians:							

TABLE 2—Continued

Species	Occurrence in study area in SE Asia	Habitat	Regional population size	Density/ 1000km [b] (best)	Density/ 1000km [c] (max)	Number of indiv. exposed to ≥ 160 dB	Percent of estimated population exposed to ≥ 160 dB
Dugong (*Dugong dugon*) ..	Uncommon? ...	Coastal	N.A.	N.A.	N.A.	N.A.	N.A.

N.A.—Data not available or species status was not assessed, ETP—Eastern Tropical Pacific, HK = Hong Kong.
[a] U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed.
[b] Best estimate as listed in Table 3 of the application.
[c] Maximum estimate as listed in Table 3 of the application.
[d] Vladimirov *et al.* (2008).
[e] North Pacific unless otherwise indicated (Jefferson *et al.,* 2008).
[f] Western North Pacific (Calambokidis *et al.,* 2008).
[g] Northwest Pacific and Okhotsk Sea (IWC, 2007a).
[h] Kitakado *et al.* (2008).
[i] Tillman (1977).
[j] Ohsumi and Wada (1974).
[k] Western North Pacific (Whitehead, 2002b).
[l] ETP; all Mesoplodon spp. (Wade and Gerrodette, 1993).
[m] IUCN states that this species should be re-assessed following taxonomic classification of the two forms. The chinensis-type would be considered vulnerable (IUCN, 2008).
[n] ETP (Wade and Gerrodette, 1993).

Potential Effects on Marine Mammals

Potential Effects of Airguns

The sounds from airguns might result in one or more of the following: tolerance, masking of natural sounds, behavioral disturbances, temporary or permanent hearing impairment, and non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). With the possible exception of some cases of temporary threshold shift in harbor seals, it is unlikely that the project would result in any cases of temporary or especially permanent hearing impairment, or any significant non-auditory physical or physiological effects. Some behavioral disturbance is expected, but this would be localized and short-term.

The notice of the proposed IHA (73 FR 78294, December 22, 2008) included a discussion of the effects of sounds from airguns on mysticetes, odontocetes, and pinnipeds, including tolerance, masking, behavioral disturbance, hearing impairment, and other non-auditory physical effects. Additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to seismic vessels can be found in L–DEO's application and associated EA.

The notice of the proposed IHA also included a discussion of the potential effects of the multibeam echosounder (MBES) and the sub-bottom profiler (SBP). Because of the shape of the beams of these sources and their power, NMFS believes it unlikely that marine mammals will be exposed to either the MBES or the SBP at levels at or above those likely to cause harassment. Further, NMFS believes that the brief exposure of cetaceans to a few signals from the multi-beam bathymetric sonar system is not likely to result in the harassment of marine mammals.

Estimated Take by Incidental Harassment

The notice of the proposed IHA (73 FR 78294, December 22, 2008) included an in-depth discussion of the methods used to calculate the densities of the marine mammals in the area of the seismic survey and the take estimates. Additional information was included in L–DEO's application. A summary is included here.

All anticipated ''takes by harassment'' authorized by this IHA are Level B harassment only, involving temporary changes in behavior. The mitigation measures are expected to minimize the possibility of injurious takes. Take calculations were based on maximum exposure estimates (based on maximum density estimates) vs. best estimates and are based on the 160 dB isopleths of a larger array of airguns. Given these considerations, the predicted number of marine mammals that might be exposed to sounds 160 dB or greater may be somewhat overestimated.

No systematic aircraft- or ship-based surveys have been conducted for marine mammals in waters near Taiwan, and the species of marine mammals that occur there are not well known. A few surveys have been conducted from small vessels (approximately 10–12 m or 33–40 ft long) with low observation platforms (approximately 3 m or 10 ft above sea level) as follows:

- Off the east central coast of Taiwan to a maximum of approximately 20 km (12.4 mi) from shore in water depths up to approximately 1,200 m deep between June 1996 and July 1997 (all cetacean; Yang *et al.,* 1999);
- Off the south coast of Taiwan to a distance of approximately 50 km (mi) and depths greater than 1,000 m (3,280 ft) during April 13–September 9, 2000 (all cetaceans; Wang *et al.,* 2001a);
- Off the west coast of Taiwan close to shore during early April–early August, 2002–2006 (Indo-Pacific humpback dolphins; Wang *et al.,* 2007); and
- Around and between the Babuyan Islands off northern Philippines in waters less than 1,000 m deep during late February-May 2000–2003 (humpback whales; Acebes *et al.,* 2007).

The only density calculated by the authors was for the Indo-Pacific humpback dolphin (Wang *et al.,* 2007). In addition, a density estimate was also available for the Indo-Pacific bottlenose dolphin (Yang *et al.,* 2000 in Perrin *et al.,* 2005).

In the absence of any other density data, L–DEO used the survey effort and sightings in Yang *et al.* (1999) and Wang *et al.* (2001a) to estimate densities of marine mammals in the TAIGER study area. To correct for detection bias (bias associated with diminishing sightability with increasing lateral distance from the trackline), L–DEO used mean group sizes given by or calculated from Wang *et al.* (2001a, 2007) and Yang *et al.,* (1999), and a value for $f(0)$ of 5.32 calculated from the data and density equation in Wang *et al.* (2007); Yang *et al.* (1999), and Wang *et al.* (2001a) did

not give a value for $f(0)$, but they used a vessel and methods similar to those of Wang *et al.* (2007). To correct for availability and perception bias, which are attributable to the less than 100 percent probability of sighting an animals present along the survey trackline, L–DEO used $g(0)$ values calculated using surfacing and dive data from Erickson (1976), Barlow and Sexton (1996), Forney and Barlow (1998), and Barlow (1999): 0.154 for *Mesoplodon* sp., 0.102 for Cuvier's beaked whale, 0.193 for the dwarf sperm whale and *Kogia* sp., 0.238 for the killer whale, and 1.0 for delphinids.

The surveys of Yang *et al.* (1999) and Wang *et al.* (2001a) were carried out in areas of steep slopes and complex bathymetric features, where many cetacean species are known to concentrate. It did not seem reasonable to extrapolate those densities to the overall survey area, which is predominantly in areas of deep water without complex bathymetry. For latter areas, L–DEO used density data from two 5° x 5° blocks in the eastern tropical Pacific Ocean (ETP) surveyed by Ferguson and Barlow (2001): Blocks 87 and 88[2], bounded by 20° N to 25° N (the same latitudes as the proposed survey area and 115° W to 125° W, in deep water and just offshore from Mexico. L–DEO then calculated an overall estimate weighted by the estimated lengths of seismic lines over complex bathymetry or slope (approximately 1,200 km or 746 mi) and over deep, flat, or gently sloping bottom (approximately 12,934 km or 8,037 mi).

The density estimate for the Indo-Pacific hump-backed dolphin is from Wang *et al.* (2007) and applies only to the population's limited range on the west coat of Taiwan. No density data were available for the Pacific white-sided or short-beaked common dolphin for the study area. As these species are rare in the area, densities are expected to be near zero. In addition, density data were unavailable for striped and long-beaked common dolphins. As these two species were not seen during the above-mentioned surveys and are considered uncommon in the TAIGER study area, L–DEO assigned these two species 10 percent of the density estimate of the delphinid occurring in similar habitat in the area with the lowest density (i.e., pygmy killer whale). Also no density estimate was available for finless porpoise. As this species was not sighted during surveys of southern Taiwan in 2000 (Wang *et al.,* 2001a), L–DEO assigned it 10 percent of the lowest density (i.e., Indo-Pacific bottlenose dolphin). Density data were unavailable for Longman's beaked and ginkgo-toothed beaked whales; however, these two species are represented by densities for unidentified beaked whales.

Large whales were not sighted during the surveys by Yang *et al.* (1999) or Wang *et al.* (2001a). The only available abundance estimate for large whales in the area (except that for humpbacks, see below) is that of Shimada *et al.* (2008), who estimated abundances of Bryde's whales in several blocks in the northwestern Pacific based on surveys in 1998–2002, the closest of which to the proceed survey area is the block bounded by 10° N–25° N and 130° E–137.5° E. The resulting abundance and area were used to calculate density. Sperm, sei, Omura's, fin, minke, and blue whales are less common than Bryde's whales in these waters, so L–DEO assigned a density of 10 percent of that calculated for Bryde's whale. North Pacific right, and Western Pacific gray whales are unlikely to occur in the TAIGER study area, thus, densities were estimated to be zero.

For humpback whales in the Babuyan Islands, L–DEO used the population estimate of Acebes *et al.* (2007) and applied it to an area of approximately 78,000 km[2], extending from the north coast of Luzon to just south of Orchid Island to derive a density estimate. That area is a historically well-documented breeding ground that whaling records indicate was used until at least the 1960s (Acebes *et al.,* 2007), and an area where humpbacks have been sighted more recently.

There is some uncertainty about the representatives of the density data and the assumptions used in the calculations. For example, the timing of the surveys of Indo-Pacific humpback dolphins (early April-early August) and humpback whales (late February–May) overlaps the timing of the proposed surveys, but the Bryde's whale surveys (August and September), and those of Yang *et al.* (1999) (year-round) include different seasons, and would not be as representative if there are seasonal density differences. Perhaps the greatest uncertainty results from using survey results from the northeast Pacific Ocean. However, the approach used here is believed to be the best available approach. Also, to provide some allowance for these uncertainties, ''maximum estimates'' as well as ''best estimates'' of the densities present and numbers of marine mammals potentially affected have been derived. Best estimates for most species are based on average densities from the surveys of Yang *et al.* (1999), Wang *et al.* (2001a), and Ferguson and Barlow (2001), weighted by effort, whereas maximum estimates are based on the higher of the two densities from the Taiwan surveys and the eastern Pacific survey blocks. For the sperm whales, mysticetes, two delphinids (Indo-Pacific humpback and Indo-Pacific bottlenose dolphins), as well as for the finless porpoise, the maximum estimates are the best estimates multiplied by 1.5. Densities calculated or estimated as described above are given in Table 3 of L–DEO's application.

The estimated numbers of individuals potentially exposed on each leg of the survey are based on the 160 dB re 1 μPa (rms) Level B harassment exposure threshold for cetaceans and pinnipeds. It is assumed that marine mammals exposed to airgun sounds at these levels might experience disruption of behavioral patterns.

It should be noted that the following estimates of takes by harassment assume that the surveys will be fully completed. As is typical during offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-km to seismic operations that can be undertaken. Furthermore, any marine mammal sightings within or near the designated EZ will result in the power-down or shut-down of seismic operations as a mitigation measure. Thus, the following estimates of the numbers of marine mammals exposed to 160 dB sounds probably overestimate the actual numbers of marine mammals that might be involved. These estimates assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely.

The number of different individuals that may be exposed to airgun sounds with received levels ≥160 dB re 1 μPa (rms) on one or more occasions was estimated by considering the total marine area that would be within the 160 dB radius around the operating airgun array on at least one occasion. The number of possible exposures (including repeated exposures of the same individuals) can be estimated by considering the total marine area that would be within the 160 dB radius around the operating airguns, including areas of overlap. The seismic lines are widely spaced in the survey area, and are further spaced in time because the survey is planned in discrete legs separated by several days. Thus, an individual mammal would not be exposed numerous times during the survey; the areas including overlap are 1.1 to 1.3 times the areas excluding overlap, depending on the leg, so the numbers of exposures are not discussed further. Moreover, it is unlikely that a particular animal would stay in the area during the entire survey.

The number of different individuals potentially exposed to received levels ≥160 dB re 1 μPa (rms) was calculated by multiplying:

- The expected species density, either ''mean'' (i.e., best estimate) or ''maximum,'' times
- The anticipated minimum area to be ensonified to that level during airgun operations excluding overlap.

The area expected to be ensonified was determined by entering the planned survey lines into a MapInfo Geographic Information System (GIS), using the GIS to identify the relevant areas by ''drawing'' the applicable 160 dB buffer around each seismic line (depending on water and tow depth) and then calculating the total area within the buffers. Areas where overlap occurred were limited and included only once to determine the area expected to be ensonified when estimating the number of individuals exposed.

Applying the approach described above and in L–DEO's Supplemental EA, approximately 160,132 km^2 (61,827 mi^2), which is approximately 5 percent less than the original 168,315 km^2, would be within the 160 dB isopleth on one or more occasions during the survey. Because this approach does not allow for turnover in the mammal populations in the study area during the course of the survey, the actual number of individuals exposed could be underestimated. However, the approach assumes that no cetaceans will move away from or toward the trackline as the *Langseth* approaches in response to increasing sound levels prior to the time the levels reach 160 dB, which will result in overestimates for those species known to avoid seismic vessels.

Table 3 (*see* below) outlines the species, estimated stock population (minimum and best), and estimated percentage of the stock exposed to seismic pulses in the project area. Additional information regarding the status, abundance, and distribution of the marine mammals in the area and how densities were calculated was included in Table 2 (*see* above), the notice of the proposed IHA (73 FR 78294, December 22, 2008) and may be found in L–DEO's application.

The estimates of the possible numbers of marine mammals exposed to sound levels greater than or equal to 160 dB during L–DEO's proposed seismic survey in SE Asia in March–July 2009. The proposed sound source consists of a 36-airgun, 6,600 in^3 array. Received levels are expressed in dB re 1 μPa (rms) (averaged over pulse duration), consistent with NMFS' practice. Not all marine mammals will change their behavior when exposed to these sound levels, but some may alter their behavior when levels are lower (*see* text). *See* Tables 2–4 in L–DEO's application for further detail.

TABLE 3

Species	Number of individuals exposed (best)[1]	Number of individuals exposed (max)[1]	Approx. percent regional population (best)[2]
Mysticetes:			
Western Pacific gray whale			
(*Eschrichtius robustus*)	0	0	0
North Pacific right whale			
(*Eubalaena japonica*)	0	0	0
Humpback whale			
(*Megaptera novaeangliae*)	6	9	0.60
Minke whale			
(*Balaenoptera acutorostrata*)	0	0	0
Bryde's whale			
(*Balaenoptera brydei*)	43	65	0.17
Omura's whale			
(*Balaenoptera omurai*)	4	6	N.A.
Sei whale			
(*Balaenoptera borealis*)	4	6	0.04
Fin whale			
(*Balaenoptera physalus*)	4	6	0.03
Blue whale			
(*Balaenoptera musculus*)	4	6	N.A.
Odontocetes:			
Sperm whale			
(*Physeter macrocephalus*)	4	6	0.01
Pygmy sperm whale			
(*Kogia breviceps*)	.....	.....	N.A.
Dwarf sperm whale			
(*Kogia sima*)	703	1,124	6.28
Kogia sp.			
(unidentified)	38	58	N.A.
Cuvier's beaked whale			
(*Ziphius cavirostris*)	58	131	0.29
Longman's beaked whale			
(*Indopacetus pacificus*)	.....	.....	N.A.
Blainville's beaked whale			
(*Mesoplodon densirostris*)	153	276	0.61
Ginkgo-toothed beaked whale			
(*Mesoplodon ginkgodens*)	.....	.....	N.A.
Mesoplodon sp.			
(unidentified)[3]	268	276	1.06
Unidentified beaked whale[4]	118	155	N.A.
Rough-toothed dolphin			
(*Steno bredanensis*)	212	865	0.14

TABLE 3—Continued

Species	Number of individuals exposed (best)[1]	Number of individuals exposed (max)[1]	Approx. percent regional population (best)[2]
Indo-Pacific humpback dolphin			
(*Sousa chinensis*)	0	0	0
Common bottlenose dolphin			
(*Tursiops truncatus*)	4,021	5,886	1.65
Indo-Pacific bottlenose dolphin			
(*Tursiops aduncus*)	0	0	N.A.
Pacific white-sided dolphin			
(*Lagenorhynchus obliquidens*)	0	0	0
Pantropical spotted dolphin			
(*Stenella attenuata*)	20,169	23,646	2.52
Spinner dolphin			
(*Stenella longirostris*)	9,485	15,373	1.19
Striped dolphin			
(*Stenella coeruleoalba*)	38	60	0.01
Fraser's dolphin			
(*Lagenodelphis hosei*)	16,749	21,470	5.80
Short-beaked common dolphin			
(*Delphinus delphis*)	0	0	0
Long-beaked common dolphin			
(*Delphinus capensis*)	10	23	0.01
Risso's dolphin			
(*Grampus griseus*)	7,209	11,478	4.12
Melon-headed whale			
(*Peponocephala electra*)	2,173	3,424	4.83
Pygmy killer whale			
(*Feresa attenuata*)	327	520	789
False killer whale			
(*Pseudorca crassidens*)	789	825	1.97
Killer whale			
(Orcinus orca)	171	297	2.01
Short-finned pilot whale			
(*Globicephala macrorhynchus*)	630	1,069	0.13
Finless porpoise			
(*Neophocaena phocaenoides*)	0	0	0
Sirenians			
Dugong			
(*Dugong dugon*)	.....	.....	N.A.

N.A.—Data not available or species status was not assessed.
[1] Best estimate and maximum estimate density are from Table 3 of L–DEO's application. There will be no seismic acquisition data during Leg 3 of the survey; this, it is not included here in this table.
[2] Regional population size estimates are from Table 2.
[3] Requested takes include Blainville's, and ginkgo-toothed beaked whales.
[4] Requested takes include Cuvier's, Blainville's, ginkgo-toothed, and Longman's beaked whales.

Table 1 of L–DEO's Supplemental EA shows the best and maximum estimates of the number of exposures and the number of individual marine mammals that potentially could be exposed to greater than or equal to 160 dB re 1 µPa (rms) during the different legs of the seismic survey if no animals moved away from the survey vessel.

The ''best estimate'' of the number of individual marine mammals that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re 1 µPa (rms) (but below Level A harassment thresholds) during the survey is shown in Table 1 of L–DEO's Supplemental EA and Table 3 (shown above). The ''best estimate'' total includes 65 baleen whale individuals, 25 of which are listed as Endangered under the ESA: 6 humpback whales (0.60 percent of the regional population), 4 sei whales (0.04 percent), 4 fin whales (0.03 percent), and 4 blue whales (regional population unknown). These estimates were derived from the best density estimates calculated for these species in the area (*see* Table 1 of L–DEO's Supplemental EA). In addition, 4 sperm whales (0.01 percent of the regional population), as well as 0 Indo-Pacific humpback dolphins (0 percent population, and 0 percent of the eastern Taiwan Strait (ETC) population), 0 finless porpoise (0 percent), and 597 beaked whales (including Longman's and ginkgo-toothed beaked whales) are included in the ''best estimate'' total. Most (97.8 percent) of the cetaceans potentially exposed are delphinids; pantropical spotted, Fraser's, and spinner dolphins are estimated to be the most common species in the area, with best estimates of 20,169 (2.52 percent of the regional population), 16,749 (5.80 percent), and 9,485 (1.19 percent) individuals exposed to greater or equal to 160 dB re µPa (rms) respectively.

Potential Effects on Habitat

A detailed discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine fish and invertebrates was included in the proposed IHA (73 FR 78294, December 22, 2008). Based on the discussion in the proposed IHA notice and the nature of the activities (limited duration), the authorized operations are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine

mammals or their populations or stocks. Similarly, any effects to food sources are expected to be negligible.

The L–DEO seismic survey will not result in any permanent impact on habitats used by marine mammals, or to the food sources they use. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, as described above. The following sections briefly review effects of airguns on fish and invertebrates, and more details are included in L–DEO's application and EA, respectively.

Subsistence Activities

There is no legal subsistence hunting for marine mammals in the waters of Taiwan, China, or the Philippines, so the proposed activities will not have any impact on the availability of the species or stocks for subsistence users. Today, Japan still hunts whales and dolphins for ''scientific'' purposes. Up until 1990, a drive fishery of false killer whales occurred in the Penghu Islands, Taiwan, where dozens of whales were taken. Although killing and capturing of cetaceans has been prohibited in Taiwan since August 1990 under the Wildlife Conservation Law (Zhou *et al.,* 1995; Chou, 2004), illegal harpooning still occurs (Perrin *et al.,* 2005). Until the 1990's, there was a significant hunt of around 200 to 300 dolphins annually in the Philippines. Catches included dwarf sperm, melon-headed, and short-finned pilot whales, as well as bottlenose, spinner, Fraser's, and Risso's dolphins (Rudolph and Smeenk, 2002). Reports also indicate that perhaps 5 Bryde's whales were caught annually (Rudolph and Smeenk, 2002), although the last Bryde's whales were caught in 1996 (Reeves, 2002). Successive bans on the harvesting of whales and dolphins were issued by the Philippine Government during the 1990's.

Mitigation and Monitoring

Mitigation and monitoring measures for the seismic survey have been developed and refined during previous L–DEO seismic studies and associated environmental assessments (EAs), IHA applications, and IHAs. The mitigation and monitoring measures described herein represent a combination of procedures required by past IHAs for other similar projects and on recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman (2007). The measures are described in detail below.

Mitigation measures that will be adopted during the TAIGER survey include:

(1) Speed or course alteration, provided that doing so will not compromise operational safety requirements;

(2) Power-down procedures;

(3) Shut-down procedures;

(4) Ramp-up procedures;

(5) Temporal and spatial avoidance of sensitive species and areas, provided that doing so will not compromise operational safety requirements (see ''temporal and spatial avoidance,'' below);

(6) Special procedures for situations or species of particular concern, e.g., emergency shutdown procedures if a North Pacific right whale, Western Pacific gray whale, humpback whale mother/calf pairs, Indo-Pacific humpback and bottlenose dolphins, and finless porpoise are sighted from any distance (*see* ''shut-down procedures'' and ''special procedures for species of particular concern'' below); and minimization of approaches to slopes and submarine canyons, if possible, because of sensitivity for beaked whales; and

(7) Additional mitigation measures (*see* ''additional mitigation measures'' below). The thresholds for estimating take are also used in connection with mitigation.

Vessel-Based Visual Monitoring

Vessel-based Marine Mammal Visual Observers (MMVOs) will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during daytime airgun operations and during start-ups of airguns at night. MMVOs will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations and after an extended shutdown of the airguns (i.e., 8 minutes). When feasible, MMVOs will also make observations during daytime periods when the seismic system is not operating for comparison of sighting rates and animal behavior with vs. without airgun operations. Based on MMVO observations, the airguns will be powered-down, or if necessary, shut-down completely (see below), when marine mammals are detected within or about to enter a designated EZ. The MMVOs will continue to maintain watch to determine when the animal(s) are outside the safety radius, and airgun operations will not resume until the animal has left that zone. The predicted distances for the safety radius are listed according to the sound source, water depth, and received isopleths in Table 1.

During seismic operations in SE Asia, at least four MMOs and one bioacoustician will be based aboard the *Langseth* (five total MMOs). MMVOs will be appointed by L–DEO with NMFS concurrence. At least two MMVOs (except during meal times) will monitor the EZ from the observation tower for marine mammals during ongoing daytime operations and nighttime startups of the airguns. Three MMOs are typically on watch at a time, two on the observation tower conducting and the third monitoring the PAM equipment. Use of two simultaneous MMVOs and one bioacoustician will increase the effectiveness of detecting animals near the sound source. MMVOs typically visually observe for one to three hours, and MMVOs will be on duty in shifts of duration no longer than three hours. MMOs and/or the lead bioacoustician will monitor the PAM equipment at all times in shifts of one to six hours. L–DEO has employed a regional expert as at least one of the MMOs, and has negotiated with experts from National Taiwan University, Academia Sinica, and the National Taiwan Ocean University. L–DEO is carrying an additional MMO (six total MMOs), who is a Taiwan regional expert from Dr. Lien-Siang Chou's team, during Leg 2 of the seismic survey (and during Leg 4 as well). The vessel crew will also be instructed to assist in detecting marine mammals and implementing mitigation measures (if practical). Before the start of the seismic survey the crew was given additional instruction regarding how to do so.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level will be approximately 18 m (58 ft) above sea level, and the observer will have a good view around the entire vessel. During the daytime, the MMVO(s) will scan the area around the vessel systematically with reticle binoculars (e.g., 7x50 Fujinon), Big-eye binoculars (25x150), and with the naked eye to avoid eye fatigue. During darkness, night vision devices will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Those are useful in training MMVOs to estimate distances visually, but are generally not useful in measuring distances to animals directly; that is done primarily with the reticles on the binocular's lenses.

Speed or Course Alteration—If a marine mammal is detected outside the safety radius and based on its position

and the relative motion, is likely to enter the EZ, the vessel's speed and/or direct course may be changed. This would be done if practicable while minimizing the effect on the planned science objectives. The activities and movements of the marine mammal(s) (relative to the seismic vessel) will then be closely monitored to determine whether the animal(s) is approaching the applicable EZ. If the animal appears likely to enter the EZ, further mitigative actions will be taken, i.e., either further course alterations or a power-down or shut-down of the airguns. Typically, during seismic operations, major course and speed adjustments are often impractical when towing long seismic streamers and large source arrays, thus alternative mitigation measures (see below) will need to be implemented.

Power-down Procedures—A power-down involves reducing the number of airguns in use such that the radius of the 180 dB or 190 dB zone is decreased to the extent that marine mammals are no longer in or about to enter the EZ. A power-down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power-down for mitigation, one airgun will be operated. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut-down occurs when all airgun activity is suspended.

If a marine mammal is detected outside the EZ but is likely to enter it, and if the vessel's speed and/or course cannot be changed to avoid the animal(s) entering the EZ, the airguns will be powered down to a single airgun before the animal is within the EZ. Likewise, if a mammal is already within the EZ when first detected, the airguns will be powered down immediately. During a power-down of the airgun array, the 40 in^3 airgun will be operated. If a marine mammal is detected within or near the smaller EZ around that single airgun (see Table 1 of L–DEO's application and Table 1 above), all airguns will be shut down (see next subsection).

Following a power-down, airgun activity will not resume until the marine mammal is outside the EZ for the full array. The animal will be considered to have cleared the EZ if it:

(1) Is visually observed to have left the EZ, or

(2) Has not been seen within the EZ for 15 minutes in the case of species with shorter dive durations—small odontocetes and pinnipeds; or

(3) Has not been seen within the EZ for 30 minutes in the case of species with longer dive durations—mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales.

During airgun operations following a power-down (or shut-down) whose duration has exceeded the limits specified above and subsequent animal departures, the airgun array will be ramped-up gradually. Ramp-up procedures are described below.

Shut-down Procedures—The operating airgun(s) will be shut down if a marine mammal is detected within or approaching the EZ for a single airgun source. Shut-downs will be implemented (1) if an animal enters the EZ of the single airgun after a power-down has been initiated, or (2) if an animal is initially seen within the EZ of a single airgun when more than one airgun (typically the full array) is operating. Airgun activity will not resume until the marine mammal has cleared the EZ, or until the MMVO is confident that the animal has left the vicinity of the vessel. Criteria for judging that the animal has cleared the EZ will be as described in the preceding subsection.

Considering the conservation status for North Pacific right whales and Western Pacific gray whales, and Indo-Pacific humpback dolphins, the airgun(s) will be shut-down immediately if either of these species are observed, regardless of the distance from the *Langseth.* Due to additional concerns, shut-downs will also occur for visual sightings of humpback whale mother/calf pair, Indo-Pacific bottlenose dolphins and/or finless porpoises. Ramp-up will only begin 30 min after the last documented whale visual sighting, and 15 min after the last documented dolphin/porpoise sighting.

Ramp-up Procedures—A ramp-up procedure will be followed when the airgun array begins operating after a specified period without airgun operations or when a power-down has exceeded that period. It is proposed that, for the present cruise, this period would be approximately 8 minutes. This period is based on the largest modeled 180 dB radius for the 36-airgun array (*see* Table 1 of L–DEO's application and Table 1 here) in relation to the planned speed of the *Langseth* while shooting. Similar periods (approximately 7–10 minutes) were used during previous L–DEO surveys.

Ramp-up will begin with the smallest airgun in the array (40 in^3). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5 min period over a total duration of approximately 35 minutes. During ramp-up, the MMVOs will monitor the EZ, and if marine mammals are sighted, a course/speed change, power-down, or shut-down will be implemented as though the full array were operational.

If the complete EZ has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime, ramp-up will not commence unless at least one airgun (40 in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the airgun array will not be ramped up from a complete shut-down at night or in thick fog, because the other part of the EZ for that array will not be visible during those conditions. If one airgun has operated during a power down period, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away if they choose. Ramp-up of the airguns will not be initiated if a marine mammal is sighted within or near the applicable EZ during the day or close to the vessel at night.

Temporal and Spatial Avoidance—The *Langseth* will not acquire seismic data in the humpback winter concentration areas during the early part of the seismic program. North Pacific humpback whales are known to winter and calve around Ogasawara (400 km north of the most northerly survey) and Ryuku Islands in southern Japan and in the Babuyan Islands in Luzon Strait in the northern Philippines (Perry *et al.,* 1999a; Acebes *et al.,* 2007; Calambokidis *et al.,* 2008). In the Luzon Strait, a small population of humpback whales may arrive in the area as early as November and leave in May or even June, with a peak occurrence during February through March or April (Acebes *et al.,* 2007). To mitigate against the potential effects of the surveys on humpback whales, particularly mothers and calves on the breeding grounds or during the beginning of migration to summer feeding grounds, the *Langseth* will avoid these wintering areas at the time of peak occurrence, by surveying the lines that approach the Babuyan Islands as late as possible to Leg 4 (June 18 to July 20).

Due to the conservation status of Indo-Pacific humpback dolphins in the Taiwan Strait, particularly the central western coast off Taiwan's west coast (including the Waishanding Jhou sandbar), the cruise tracks will be approximately 20 km (12.4 mi) offshore to protect this sub-population and finless porpoises, as well as to ease potential pressure on other coastal species. This is consistent with the

conservative buffer recommended by ETSSTAWG in their comments to NMFS, ''at least 13 km (8.1 mi) and perhaps a more precautionary 15 km (9.3 mi) to the ETS *Sousa* population (Indo-Pacific humpback dolphin)—meaning up to 20 km from shore'' to minimize the potential of exposing these threatened dolphins to SPLs greater than 160 dB re 1 µPa (rms), subject to the limitations imposed by other foreign nations. Regarding the buffer for the area between the Penghu Islands and the Waishanding Jhou sandbar, the widest point between the closest Penghu island and the sandbar is 34.2 km (21.3); therefore the mid-line for the planned survey is 17.1 km (10.6 mi). The total distance between Taiwan and the Penghu Islands is approximately 45 km and the planned seismic survey line off the west coast of Taiwan is within the territorial sea of Taiwan.

Because of the concerns about potential effects of the seismic surveys on Western Pacific gray whales (wintering areas and migration), Indo-Pacific humpback dolphins, and finless porpoises, the seismic survey lines in the South China Sea south of the Taiwan Strait have been re-routed so that they are now located in water depths greater than 200 m (656 ft), as recommended by NRDC. Those in the Taiwan Strait will be as far east as possible from the mainland China side. The seismic lines that were proposed in the IHA application in the western Taiwan Strait have been dropped.

Because of concerns about potential effects of the seismic surveys on coastal species and those that frequent the continental shelf break and steep slopes (e.g., beaked and sperm whales), the proposed survey line paralleling the east coast of Taiwan (the continental shelf is narrow there) has also been moved offshore by more than 20 km to decrease potential impacts on these species (*see* Figure 1 of L–DEO's Supplemental EA).

Procedures for Species of Particular Concern—Several species of particular concern could occur in the study area. Special mitigation procedures will be used for these species as follows:

(1) The airguns will be shut-down if a North Pacific right whale, Western Pacific gray whale, humpback whale mother/calf pair, Indo-Pacific humpback and bottlenose dolphin, and/or finless porpoise is sighted at any distance from the vessel;

(2) Because of the sensitivity of beaked whales, approach to slopes, submarine canyons, and other underwater geologic features will be minimized, if possible, during the survey (Figure 1 of L–DEO's application); and

(3) If visually sighted, avoidance of concentrations of humpback, sperm, and beaked whales, and dugongs.

Additional Mitigation Measures

(1) To the maximum extent practicable, L–DEO will schedule seismic operations in inshore or shallow waters during daylight hours and OBS operations to nighttime hours.

(2) To the maximum extent practicable, inshore seismic surveys will be conducted from the coast (inshore) and proceed towards the sea (offshore) in order to avoid trapping marine mammals in shallow water.

(3) NSF and L–DEO have coordinated with the governments of Taiwan, Japan, and the Philippines regarding the marine geophysical activity.

(4) NMFS expects NSF and L–DEO to adhere to conservation laws and regulations of nations while in foreign waters, and known rules and boundaries of Marine Protected Areas (MPA). In the absence of local conservation laws and regulations or MPA rules, L–DEO will continue to use the monitoring and mitigation measures identified in the IHA.

Passive Acoustic Monitoring

Passive Acoustic Monitoring (PAM) will take place to complement the visual monitoring program, if practicable. Visual monitoring typically is not effective during periods of poor visibility (e.g., bad weather) or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustical monitoring can be used in addition to visual observations to improve detection, identification, localization, and tracking of cetaceans. The acoustic monitoring will serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night and does not depend on good visibility. It will be monitored in real time so visual observers can be advised when cetaceans are detected. When bearings (primary and mirror-image) to calling cetacean(s) are determined, the bearings will be relayed to the visual observer to help him/her sight the calling animal(s).

The PAM system consists of hardware (i.e., hydrophones) and software. The ''wet end'' of the system consists of a low-noise, towed hydrophone array that is connected to the vessel by a ''hairy'' faired cable. The array will be deployed from a winch located on the back deck. A deck cable will connect from the winch to the main computer lab where the acoustic station and signal condition and processing system will be located. The lead-in from the hydrophone array is approximately 400 m (1,312 ft) long, and the active part of the hydrophone is approximately 56 m (184 ft) long. The hydrophone array is typically towed at depths less than 20 m (65.6 ft).

The towed hydrophone array will be monitored 24 hours per day while at the survey area during airgun operations, and also during most periods when the *Langseth* is underway while the airguns are not operating. One MMO will monitor the acoustic detection system at any one time, by listening to the signals from two channels via headphones and/or speakers and watching the real time spectrographic display for frequency ranges produced by cetaceans. MMOs monitoring the acoustical data will be on shift for 1–6 hours. Besides the ''visual'' MMOs, an additional MMO with primary responsibility for PAM will also be aboard. However, all MMOs are expected to rotate through the PAM position, although the most experienced with acoustics will be on PAM duty more frequently.

When a vocalization is detected, the acoustic MMO will, if visual observations are in progress, contact the MMVO immediately to alert him/her to the presence of the cetacean(s) (if they have not already been seen), and to allow a power down or shutdown to be initiated, if required. The information regarding the call will be entered into a database. The data to be entered include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded for further analysis.

L–DEO will coordinate the planned marine mammal monitoring program associated with the TAIGER seismic survey in SE Asia with other parties that may have interest in the area and/or be conducting marine mammal studies in the same region during the proposed seismic survey. L–DEO and NSF will coordinate with Taiwan, Japan, and the Philippines, as well as applicable U.S. agencies (e.g., NMFS), and will comply with their requirements.

Reporting

MMVO Data and Documentation

MMVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a shut-down of the seismic source when a marine mammal or sea turtle is within or near the EZ.

When a sighting is made, the following information about the sighting will be recorded:

(1) Species, group size, and age/size/sex categories (if determinable); behavior when first sighted and after initial sighting; heading (if consistent), bearing, and distance from seismic vessel; sighting cue; apparent reaction to the seismic source or vessel (e.g., none, avoidance, approach, paralleling, etc.); and behavioral pace.

(2) Time, location, heading, speed, activity of the vessel, sea state, visibility, cloud cover, and sun glare.

The data listed (time, location, etc.) will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations, as well as information regarding seismic source shutdown, will be recorded in a standardized format. Data accuracy will be verified by the MMVOs at sea, and preliminary reports will be prepared during the field program and summaries forwarded to the operating institution's shore facility and to NSF weekly or more frequently. MMVO observations will provide the following information:

(1) The basis for decisions about powering down or shutting down airgun arrays.

(2) Information needed to estimate the number of marine mammals potentially 'taken by harassment.' These data will be reported to NMFS per terms of MMPA authorizations or regulations.

(3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

(4) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

A report will be submitted to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways.

All injured or dead marine mammals (regardless of cause) will be reported to NMFS as soon as practicable. Report should include species or description of animal, condition of animal, location, time first found, observed behaviors (if alive) and photo or video, if available.

Monitoring to Date

During Leg 1 of the TAIGER survey, L–DEO's MMOs onboard the *Langseth* have reported four visual sightings and four acoustic detections during operations in the study area. MMOs have visually sighted a group of sperm whales (approximately 3 individuals), a group of short-finned pilot whales (approximately 36 individuals), an unidentified toothed whale, and a single unidentified sea turtle during the four visual sightings. For the four acoustic detections made, spectrograms resembling known sounds made by sperm whales and melon-headed whales were recorded during visual observations of the sperm whale and unidentified toothed whale, respectively. Spectrograms resembling a call of a melon-headed whale and an unidentified whistle were recorded on different nights. Two of the visual sightings of cetaceans occurred while one airgun was in operations and did not require additional mitigation action. The visual sighting of a group of pilot whales occurred during a period of no seismic activity. A power-down was initiated for the sighting of the single unidentified sea turtle.

During Leg 2 of the TAIGER survey, L–DEO's MMOs onboard the *Langseth* have reported 11 visual sightings and 8 acoustic detections during operations in the study area. No visual or acoustic detections were made during week one of Leg 2. During week two of the Leg 2, MMOs on the *Langseth* recorded six visual sightings of marine mammals (all during seismic operations), two of which sightings required a power-down. MMOs have visually sighted two groups of unidentified dolphins, two groups of unidentified toothed whales (both probable false killer whales), a group of pantropical (approximately 100 individuals), and a group of Fraser's dolphins (approximately 50 individuals). A total of five acoustic detections were of unidentified toothed whales and three of unidentified dolphins. Only one of those acoustic detections was concurrent with a visual sighting (unidentified toothed whale).

During week three of Leg 2, MMOs on the *Langseth* recorded four visual sightings of marine mammals (all during seismic operations), one of which required a power-down. MMOs have visually sighted four groups of unidentified dolphins (one probably bottlenose dolphin group). The groups ranged from approximately 12 to 75 individuals. No acoustic detections were made during week three.

During week four of Leg 2, MMOs on the *Langseth* recorded one visual sighting of spinner dolphins (approximately 75 individuals), and implemented a power-down during the sighting. No other sightings were made during week four. Three acoustic detections of delphinids were made during week three, all on the same day.

No monitoring for marine mammals was conducted during Leg 3 of the TAIGER survey, as it only consisted of OBS operations. During week one of Leg 4, three marine mammal sightings were made. No sightings occurred during seismic periods; thus, not shut-downs or power-downs of the airgun array were required. The sightings included an unidentified sea turtle, sperm whales (approximately two individuals), melon-headed whales (approximately 20 individuals), and unidentified dolphins (approximately 12 individuals). On June 23, 2009, two acoustic detections of delphinids were made, and another delphinid acoustic detection was made on June 28, 2009. All acoustic detections occurred during seismic activity, but none required mitigation measures.

During week one of Leg 4, MMOs on the *Langseth* recorded three marine mammal sightings and an unidentified sea turtle. No sightings occurred during seismic periods; thus, no shut-downs or power-downs of the airgun array were required. The marine mammal sightings included one of sperm whales (approximately 2 individuals), a group of melon-headed whales (approximately 20 individuals), and a group of unidentified dolphins (approximately 12 individuals). On June 23, 2009, two acoustic detections of delphinids were made. On June 28, 2009, an additional delphinid acoustic detection was made. All acoustic detections occurred during seismic activity, but none required mitigation measures.

During week two of Leg 4, MMOs on the *Langseth* recorded two marine mammal sightings. Both sightings of unidentified dolphins (approximately 2

and 100 individuals) occurred during seismic activity, but only one sighting required a power-down of the airgun array. There were no shut-downs due to marine mammal sightings during this period. There were four acoustic detections, all of which occurred during seismic activity.

During week three of Leg 4, MMOs on the *Langseth* recorded one marine mammal sighting. The group of five individual sperm whales consisted of four adults and one calf. This sighting occurred during seismic activity, but did not require the implementation of any mitigation measures. No acoustic detections were made during this period.

During week four of Leg 4, MMOs on the *Langseth* recorded one marine mammal sighting. One sighting of 36 pantropical spotted dolphins (24 adults and 12 calves) was made during this period. This sighting occurred during seismic activity, but did not require the implementation of any mitigation measures. There were two acoustic detections made during this period, both of which occurred during seismic activity.

IHA Modifications

On March 31, 2009, NMFS issued an IHA to L–DEO to take small numbers of marine mammals incidental to conducting a marine geophysical survey in SE Asia, under a cooperative agreement with NSF, as part of the TAIGER program from March–July, 2009. On April 21, 2009, NMFS received a request from L–DEO, asking that IHA conditions (10(u) and 10(w)) be modified for clarification because as currently written, the conditions would effectively preclude the complete execution of Leg 2—the seismic survey line along the west coast of Taiwan. Specifically, condition 10(u) only allowed the survey to occur if the Taiwan Strait were more than 170 km wide throughout its entire length or only in the southern portion of the area. The area between Taixi and Tongshiao, which demarcates the primary distribution of the 'critically endangered' (IUCN, 2008) Indo-Pacific humpback dolphin Eastern Taiwan Strait sub-population, is typically narrower than 170 km. L–DEO stated that the 150 km distance probably originated as an error with an early draft of the Supplemental EA.

Condition 10(w) did not specifically address the maintenance of a conservative buffer from the Penghu Islands and the Waishanding Jhou sandbar. Under the modification to condition 10(w) the planned seismic survey line will only change in the area between the Penghu Islands and the Waishanding Jhou sandbar. The widest point between the closest Penghu island and the sandbar is 34.2 km (21.3 mi); therefore the mid-line for the planned survey is 17.1 km (10.6 mi). The total distance between Taiwan and the Penghu Islands is approximately 45 km and the planned seismic survey line off the west coast of Taiwan is within the territorial sea of Taiwan. Additionally, as requested by L–DEO, distances stated in the IHA now include nautical miles for navigational purposes.

In addition, NMFS clarified condition 10(s). Condition 10(s) needed to be modified to more specifically describe the geographical area of the Taiwan Strait where the first and second legs of the TAIGER survey are being conducted. Prior to the issuance of the original IHA, L–DEO voluntarily dropped the seismic survey tracklines in the western Taiwan Strait for a number of reasons, including concerns about the effects of the surveys on Western Pacific gray whales, Indo-Pacific humpback dolphins, and finless porpoises, and because China denied L–DEO access to their waters. Condition 10(s), as modified, better reflects these circumstances.

A copy of the modified IHA can be found online at: *http://www.nmfs.noaa.gov/pr/pdfs/permits/taiger_iha_modified.pdf.*

On July 13, 2009, NMFS received a request from L–DEO for an additional 16 authorized takes of sperm whales for the remainder of the seismic survey. It is unlikely that his many animals will be exposed to these sound levels, but with the group dynamic for this particular species, additional numbers have been requested to allow for a chance encounter of a large sperm whale group. During vessel operations in the TAIGER study area, there have been 13 individual sperm whales sighted in three groups. On July 8, 2009, five individuals were identified by MMOs to have been exposed to sound levels greater than or equal to 160 dB re 1 μPa (rms) in the study area. These five animals were observed in a single group about 2 km (1.24 mi) from the MMO observation tower (approximately 2.2 km [1.37 mi] from the closest airgun) onboard the *Langseth*. These animals showed similar movement and behavioral responses as those observed outside the 160 dB isopleths. L–DEO has provided additional sighting data as well. Authorized takes of 20 sperm whales (0.08 percent of the regional population) are included in the IHA modified on July 15, 2009.

Endangered Species Act (ESA)

Pursuant to Section 7 of the ESA, NSF has consulted with the NMFS, Office of Protected Resources, Endangered Species Division on this seismic survey. NMFS has also consulted internally pursuant to Section 7 of the ESA on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. On March 31, 2009, NMFS concluded consultation with NMFS and NSF and issued a Biological Opinion (BiOp), which concluded that the proposed action and issuance of an IHA are not likely to jeopardize the continued existence of North Pacific right, Western Pacific gray, blue, fin, sei, humpback, and sperm whales, and leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*), loggerhead (*Caretta caretta*), hawksbill (*Eretmochelys imbricata*), and olive ridley (*Lepidochelys olivacea*) sea turtles. The BiOp also concluded that designated critical habitat for these species does not occur in the action area and would not be affected by the survey. Relevant Terms and Conditions of the Incidental Take Statement in the BiOp have been incorporated into the IHA.

Since NMFS modified the IHA issued to L–DEO, a review under Section 7 was conducted. On May 1, 2009, NMFS concluded that the proposed revisions to the IHA would not cause adverse effects on species or designated critical habitat. Given this, the consultation requirements have been met and no additional consultation is required for the issuance of the revised IHA.

National Environmental Policy Act (NEPA)

NSF prepared an EA titled ''Marine Seismic Survey in Southeast Asia, March–July 2009'' that references L–DEO's EA and Supplemental EA of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in Southeast Asia, March–July 2009. LGL Limited, Environmental Research Associates, prepared the EA and Supplemental EA on behalf of L–DEO and NSF. NMFS has adopted NSF's EA and issued a Finding of No Significant Impact (FONSI) for the issuance of the IHA. The modification of the IHA was within the scope of the impacts considered in the EA and used to support the FONSI.

Determinations

NMFS has determined that the impact of conducting the seismic survey in SE Asia may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact

on the affected species or stocks. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock for subsistence uses is not implicated for this action.

For reasons stated previously in this document, this negligible impact determination is supported by:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The fact that marine mammals would have to be closer than 40 m (131 ft) in deep water, 60 m (197 ft) at intermediate depths, or 296 m (971 ft) in shallow water when a single airgun is in use from the vessel to be exposed to levels of sound (180 dB) believed to have even a minimal chance of causing TTS;

(3) The fact that cetaceans would have to be closer than 950 m (0.6 mi) in deep water, 1,425 m (0.9 mi) at intermediate depths, and 3,694 m (2.3 mi) in shallow water when the full array is in use at a 9 m (29.5 ft) tow depth from the vessel to be exposed to levels of sound (180 dB) believed to have even a minimal chance of causing TTS;

(4) The fact that marine mammals would have to be closer than 6,000 m (3.7 mi) in deep water, 6,667 m (4.1 mi) at intermediate depths, and 8,000 m (4.9 mi) in shallow water when the full array is in use at a 9 m (29.5 ft) tow depth from the vessel to be exposed to levels of sound (160 dB) believed to have even a minimal chance at causing TTS;

(5) The likelihood that marine mammal detection ability by trained observers is high at that short distance from the vessel;

(6) The use of PAM, which is effective out to tens of km, will assist in the detection of vocalizing marine mammals at greater distances from the vessel;

(7) The incorporation of other required mitigation measures (i.e., ramp-up, power-down, shut-down, temporal and spatial avoidance, special measures for species of particular concern, and additional mitigation measures); and

(8) The relatively limited duration and geographically widespread distances of the seismic survey in the SE Asia study area (approximately 103 days). As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the required monitoring and mitigation measures.

While the number of marine mammals potentially incidentally harassed will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small, relative to the affected species and stock sizes (less than a few percent of any of the estimated population sizes), and has been mitigated to the lowest level practicable through incorporation of the measures mentioned previously in this document.

Authorization

As a result of these determinations, NMFS issued and modified an IHA to L–DEO for conducting a marine geophysical survey in SE Asia from March–July, 2009, including the previously mentioned mitigation, monitoring, and reporting requirements.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

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Federal Register

Friday,

August 14, 2009

Part IV

The President

Notice of August 13, 2009—Continuation of Emergency Regarding Export Control Regulations

Federal Register
Vol. 74, No. 156
Friday, August 14, 2009

Presidential Documents

Title 3—

The President

Notice of August 13, 2009

Continuation of Emergency Regarding Export Control Regulations

On August 17, 2001, consistent with the authority provided to the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.),* the President issued Executive Order 13222. In that order, he declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.).* Because the Export Administration Act has not been renewed by the Congress, the national emergency declared on August 17, 2001, must continue in effect beyond August 17, 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 13222.

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

THE WHITE HOUSE,
August 13, 2009.

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