

Revisions to Competitive Area

New § 351.402(e) provides that when an agency finds that a competitive area defined under § 351.402(b) includes pay band positions and positions not covered by a pay band, at its discretion the agency may define a competitive area otherwise consistent with § 351.402 to include only pay band positions.

Section 351.402(b) is also revised to include a reference to new § 351.402(e).

Revisions to Competitive Level

Section 351.403(a)(2) is renumbered as § 351.403(a)(2)(i) and revised to clarify that, except as provided in new § 351.403(a)(2)(ii) for pay band positions, competitive level determinations are based on each employee's official position of record (including the official position description), not the employee's personal qualifications.

New § 351.403(a)(2)(ii) provides that, to establish a competitive level comprised of pay band positions, an agency may supplement an employee's official position with other applicable records that document the employee's actual duties and responsibilities. Note that § 351.403(a)(2)(ii) also applies to RIF competition in a competitive area that includes pay band and other positions.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 351

Administrative practice and procedure, Government employees. U.S. Office of Personnel Management. Linda M. Springer, Director.

Accordingly, OPM is amending part 351 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503; sec. 351.801 also issued under E.O. 12828, 58 FR 2965.

2. In § 351.402, paragraph (b) is revised, and paragraph (e) is added, to read as follows:

§ 351.402 Competitive area.

* * * * *

(b) A competitive area must be defined solely in terms of the agency's organizational unit(s) and geographical location and, except as provided in paragraph (e) of this section, it must include all employees within the competitive area so defined. A competitive area may consist of all or part of an agency. The minimum competitive area is a subdivision of the agency under separate administration within the local commuting area.

* * * * *

(e) When an agency finds that a competitive area defined under paragraph (b) of this section includes pay band positions and positions not covered by a pay band, the agency may, at its discretion, define a separate (and additional) competitive area, otherwise consistent with paragraph (b) of this section, to include only pay band positions. The original competitive area would then include only the remaining positions (i.e., those positions not covered by a pay band).

3. In § 351.403, paragraph (a)(2) is revised to read as follows:

§ 351.403 Competitive level.

(a) * * *

(2)(i) Except as provided in paragraph (a)(2)(ii) of this section for pay band positions, competitive level determinations are based on each employee's official position of record (including the official position description), not the employee's personal qualifications.

(ii) To establish a competitive level comprised of pay band positions, an agency may supplement an employee's official position of record with other applicable records that document the employee's actual duties and responsibilities.

* * * * *

[FR Doc. E8-18447 Filed 8-8-08; 8:45 am] BILLING CODE 6325-39-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 24

[Docket ID OCC-2008-0010]

RIN 1557-AD12

Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim final rule with request for comment.

SUMMARY: On July 30, 2008, the President signed into law the Housing and Economic Recovery Act of 2008 (HERA). Section 2503 of the HERA revises the community development investment authority in 12 U.S.C. 24(Eleventh) to permit a national bank to make a broader range of investments designed primarily to promote the public welfare. This interim final rule implements the changes made to section 24(Eleventh) by the HERA.

DATES: Effective Date: This rule is effective on August 11, 2008.

Comment Date: Comments must be received by September 10, 2008.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Please use the title "Community Development Investments" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

Federal eRulemaking Portal—"Regulations.gov": Go to http://www.regulations.gov, under the "More Search Options" tab click next to the "Advanced Docket Search" option where indicated, select "Comptroller of the Currency" from the agency drop-down menu, then click "Submit." In the "Docket ID" column, select "OCC-2008-0010" to submit or view public comments and to view supporting and related materials for this interim final rule. The "How to Use This Site" link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

E-mail: regs.comments@occ.treas.gov.

- *Mail*: Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.

- *Fax*: (202) 874–4448.

- *Hand Delivery/Courier*: 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC–2008–0010” in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this interim final rule by any of the following methods:

- *Viewing Comments Electronically*:

Go to <http://www.regulations.gov>, under the “More Search Options” tab click next to the “Advanced Docket Search” option where indicated, select “Comptroller of the Currency” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OCC–2008–0010” to view public comments for this rulemaking action.

- *Viewing Comments Personally*: You may personally inspect and photocopy comments at the OCC’s Public Information Room, 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) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

- *Docket*: You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT:

Steven VanMeter, Assistant Director, Community and Consumer Law Division, (202) 874–5750; Stuart E. Feldstein, Assistant Director, Legislative and Regulatory Activities, (202) 874–5090; or Patrick T. Tierney, Senior Attorney, Legislative and Regulatory Activities, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Introduction

The Financial Services Regulatory Relief Act of 2006 (FSRRA)¹ made a number of changes to 12 U.S.C. 24(Eleventh), the authorizing statute for the Office of the Comptroller of the Currency’s (OCC) community development regulations.² Prior to its amendment by the FSRRA, 12 U.S.C. 24(Eleventh) authorized a national bank “[t]o make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs)” (the public welfare test). The FSRRA, among other things, narrowed the grant of authority in section 24(Eleventh) by providing that a national bank may “make investments directly or indirectly, each of which *promotes the public welfare by benefiting primarily* low- and moderate-income communities or families (such as by providing housing, services, or jobs).” (emphasis added)³

On April 24, 2008, the OCC issued a final rule that implemented the FSRRA’s narrowing of the public welfare test. In the Notice of Proposed Rulemaking that preceded that final rule, the OCC noted that Congress was considering a bill that would change the language of the public welfare test back to the way it existed prior to the FSRRA changes.⁴

On July 30, 2008, the President signed into law the Housing and Economic Recovery Act of 2008 (HERA), which, in part, reinstated the pre-FSRRA wording of the public welfare test.⁵ Specifically, section 2503 of the HERA revised section 24(Eleventh) to provide that a national bank may “* * * make investments directly or indirectly, each of which *is designed primarily to promote the public welfare, including the welfare of* low- and moderate-income communities or families (such as by providing housing, services, or jobs)” (emphasis added).⁶ Under section 2503 of the HERA and the revisions made by this interim final rule, national banks and their subsidiaries will now be able to make a broader range of investments.

Description of the Interim Final Rule

This interim final rule makes the following specific revisions to part 24 in

order to implement the statutory changes to the public welfare test.

Definition of “Community and Economic Development Entity” (CEDE) (§ 24.2(c))

The interim final rule amends the definition of a CEDE in § 24.2(c) to implement the HERA change to the public welfare test. The revised paragraph (c) defines a CEDE as “an entity that makes investments or conducts activities that primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment, or would receive consideration as “qualified investments” under 12 CFR 25.23.”

Removing the Definition of “Benefiting Primarily Low- and Moderate-Income Areas or Individuals” (§ 24.2(g))

As indicated above, the FSRRA authorized a national bank and its subsidiaries to make investments that promote the public welfare by “benefiting primarily” low- and moderate-income areas or individuals. OCC’s rule implementing the FSRRA added a definition for “benefiting primarily low and moderate-income areas or individuals.” The HERA revision removed the “benefiting primarily” language, thus, this definition is no longer needed and is removed by the interim final rule.

Public Welfare Investments (§ 24.3)

The interim final rule revises § 24.3, which contains the authorization to make investments pursuant to section 24(Eleventh), to conform to the changes made by the HERA.

Examples of Qualifying Public Welfare Investments (§ 24.6)

Section 24.6 contains examples of qualifying public welfare investments. The interim final rule revises the introductory language in § 24.6 to reflect the changes made by section 2503 of the HERA. The interim final rule also adds back, where appropriate, references to investments in “targeted redevelopment areas.” These references had been removed by the FSRRA implementing regulation.

Revision to Appendix 1 to Part 24, the CD–1 National Bank Community Development (Part 24) Investments Form

The interim final rule also revises Appendix 1 to part 24, the CD–1 National Bank Community Development (Part 24) Investments Form, to reflect the changes to the regulation.

¹ Pub. L. 109–351, 120 Stat. 1966 (Oct. 13, 2006).

² 12 CFR part 24 (2008).

³ Pub. L. 109–351, 120 Stat. 1966 (Oct. 13, 2006).

⁴ 72 FR 36559 (July 3, 2007).

⁵ Pub. L. 110–289, 122 Stat. 2654 (July 30, 2008).

⁶ *Id.*

Effective Date; Solicitation of Comments

This interim final rule will become effective immediately upon publication in the **Federal Register**. Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), general notice and an opportunity for public comment are not required prior to the issuance of a final rule when an agency, for good cause, finds that notice and public procedure are “impracticable, unnecessary, or contrary to the public interest.”⁷ Similarly, an agency may publish a final rule with an immediate effective date if the agency finds good cause and publishes such with the rule. 5 U.S.C. 553(d)(3).

Consistent with section 553(b)(B) of the APA, the OCC finds that good cause exists for a finding that notice and comment are impracticable and contrary to the public interest. In enacting the Foreclosure Prevention Act of 2008 (part of the HERA), which includes these changes to 12 U.S.C. 24(Eleventh), Congress stated that all provisions of that Act are designated as “emergency requirements and necessary to meet emergency needs.”⁸ An interim final rule will allow national banks and their subsidiaries immediately to make a broader range of investments to promote the public welfare, including investments in distressed communities affected by rising foreclosures. Immediate issuance of this interim final rule furthers the public interest because it will provide national banks and their subsidiaries with additional flexibility to make public welfare investments in low- and moderate-income individuals or areas or targeted redevelopment areas, or that would receive consideration under the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*) as “qualified investments.” For these same reasons, the OCC finds good cause to publish this rule with an immediate effective date. *See* 5 U.S.C. 553(d)(3).

Although notice and comment are not required prior to the effective date of this rule, the OCC invites comment on all aspects of this interim final rule, and intends to revise the interim final rule if necessary or appropriate in light of the comments received.

Regulatory Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354, Sept. 19, 1980) (RFA) applies only to rules for which an agency publishes a general notice of proposed

rulemaking pursuant to 5 U.S.C. 553(b).⁹ Pursuant to the Administrative Procedure Act (APA) at 5 U.S.C. 553(b)(B), general notice and an opportunity for public comment are not required prior to the issuance of a final rule when an agency, for good cause, finds that “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”¹⁰

As discussed above, the OCC has determined for good cause that the APA does not require general notice and public comment on this interim final rule and, therefore, we are not publishing a general notice of proposed rulemaking. Thus, the RFA, pursuant to 5 U.S.C. 601(2), does not apply to this interim final rule.

Executive Order 12866

The OCC has determined that this interim final rule is not a significant regulatory action under Executive Order 12866. We have concluded that the changes made by this interim final rule will not have an annual effect on the economy of \$100 million or more within the meaning of Executive Order 12866. The OCC further concludes that this interim final rule does not meet any of the other standards for a significant regulatory action set forth in Executive Order 12866.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), we have reviewed the interim final rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the interim final rule.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this interim final rule will not result in expenditures by State, local, and tribal governments, or by the

private sector, of \$100 million or more in any one year. Accordingly, the interim final rule is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 24

Community development, Credit, Investments, Low and moderate income housing, National banks, Reporting and recordkeeping requirements, Rural areas, Small businesses.

Authority and Issuance

■ For the reasons set forth in the preamble, part 24 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 24—COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

■ 1. The authority citation for part 24 continues to read as follows:

Authority: 12 U.S.C. 24(Eleventh), 93a, 481, and 1818.

- 2. Amend § 24.2 by:
 - a. Revising the first sentence of paragraph (c);
 - b. Removing paragraph (g); and
 - c. Redesignating paragraphs (h) through (j) as paragraphs (g) through (i), respectively.

The revision reads as follows:

§ 24.2 Definitions.

* * * * *

(c) *Community and economic development entity* (CEDE) means an entity that makes investments or conducts activities that primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment, or would receive consideration as “qualified investments” under 12 CFR 25.23. * * *

* * * * *

■ 3. Revise § 24.3 to read as follows:

§ 24.3 Public welfare investments.

A national bank or national bank subsidiary may make an investment directly or indirectly under this part if the investment primarily benefits low- and moderate income individuals, low- and moderate income areas, or other areas targeted by a governmental entity for redevelopment, or the investment would receive consideration under 12 CFR 25.23 as a “qualified investment.”

- 4. Amend § 24.6 by:
 - a. Revising the introductory text; and
 - b. Revising paragraphs (b)(1) through (4), (d)(1), and (d)(4).

⁷ 5 U.S.C. 553(b)(B).
⁸ See section 2002 of the HERA, Pub. L. 110–289, 122 Stat. 2654 (July 30, 2008).

⁹ 5 U.S.C. 601(2).
¹⁰ 5 U.S.C. 553(b)(B).

The revisions read as follows:

§ 24.6 Examples of qualifying public welfare investments.

Investments that primarily support the following types of activities are examples of investments that meet the requirements of § 24.3:

* * * * *

(b) * * *

(1) Investments that finance small businesses (including equity or debt financing and investments in an entity that provides loan guarantees) that are located in low- and moderate-income areas or other targeted redevelopment areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

(2) Investments that finance small businesses or small farms, including minority- and women-owned small businesses or small farms, that, although not located in low- and moderate-income areas or targeted redevelopment

areas, create a significant number of permanent jobs for low- and moderate-income individuals;

(3) Investments in an entity that acquires, develops, rehabilitates, manages, sells, or rents commercial or industrial property that is located in a low- and moderate-income area or targeted redevelopment area and occupied primarily by small businesses, or that is occupied primarily by small businesses that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals; and

(4) Investments in low- and moderate-income areas or targeted redevelopment areas that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

* * * * *

(d) * * *

(1) Investments that provide credit counseling, financial literacy, job training, community development research, and similar technical

assistance for non-profit community development organizations, low- and moderate-income individuals or areas or targeted redevelopment areas, or small businesses, including minority- and women-owned small businesses, located in low- and moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

* * * * *

(4) Investments in minority- and women-owned depository institutions that serve primarily low- and moderate-income individuals or low- and moderate-income areas or targeted redevelopment areas.

■ 5. Revise appendix 1 to part 24 to read as follows:

**APPENDIX 1 TO PART 24—CD-1—
NATIONAL BANK COMMUNITY
DEVELOPMENT (PART 24)
INVESTMENTS**

BILLING CODE 4810-33-P



Comptroller of the Currency
Administrator of National Banks

CD-1 – National Bank Community Development (Part 24) Investments

For Official Use Only

OMB Number
1557-0194

A national bank or national bank subsidiary may make an investment directly or indirectly under this part if the investment primarily promotes the public welfare under the community development investment authority in 12 USC 24(Eleventh) and its implementing regulation, 12 CFR 24 (Part 24). Part 24 contains the OCC guidelines to determine whether an investment is designed primarily to promote the public welfare and procedures that apply to those investments. National banks must submit the completed form to provide an after-the-fact notice or to request prior approval of a public welfare investment to the Community Affairs Department, Office of the Comptroller of the Currency, Washington, DC 20219. Please contact the Community Affairs Department at (202) 874-4930 or CommunityAffairs@occ.treas.gov for more information.

PLEASE PROVIDE THE FOLLOWING INFORMATION ABOUT THE INVESTING BANK.

Bank name:	Mailing address (<i>street or P.O. box</i>):
Bank charter number:	City, State, ZIP Code:
Telephone number:	Fax number:
E-mail address:	URL:

CONTACT FOR INFORMATION:

Name of bank contact responsible for form's information:	Name of bank contact responsible for CD investment (if different):
Mailing address (<i>street or P.O. box</i>):	Mailing address (<i>street or P.O. box</i>):
City, State, ZIP Code:	City, State, ZIP Code:
Telephone number:	Telephone number:
Fax number:	Fax number:
E-mail address:	E-mail address:

PLEASE INDICATE THE PROCESS THE BANK REQUESTS BY CHECKING THE APPROPRIATE BOX, BELOW.

- After-the-fact notice (12 CFR 24.5(a)) - complete sections 1 and 2.
- Prior approval (12 CFR 24.5(b)) - complete section 2.

Section 1 – After-The-Fact Notice Only (12 CFR 24.5(a))

A bank may provide an after-the-fact notice of its Part 24 investment if the bank responds affirmatively to all of the following requirements.

The bank is "well-capitalized," as defined in 12 CFR 24.2(j). Yes No

The bank has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System. Yes No

The bank's most recent Community Reinvestment Act rating is satisfactory or outstanding. Yes No

The bank is not under a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive.

Yes No

Including this investment, the bank's aggregate outstanding investments and commitments under Part 24 do not exceed 5 percent of its capital and surplus, unless the OCC has provided written approval of a written request by the bank allowing the bank to provide after-the-fact notices for investments that would raise the aggregate amount of the bank's Part 24 investments beyond 5 percent of its capital and surplus.

Yes No

The investment does not involve properties carried on the bank's books as "other real estate owned." Yes No

The OCC has not determined, in published guidance, that the investment is inappropriate for the after-the-fact notification. Yes No

Has the bank responded affirmatively to all of the above requirements in order to provide an after-the-fact notice of its Part 24 investment? [The OCC may have provided written notification that the bank may submit Part 24 after-the-fact notices. If so, please provide the date or a copy of the OCC's written notification.]

Yes (The bank may make an investment authorized by 12 USC 24(Eleventh) and this part and notify the OCC within 10 working days by submitting a completed after-the-fact notice.)

No (The bank must seek prior OCC approval of its investment and submit a completed investment proposal before making the investment.)

(To complete the after-the-fact notice process or to request prior OCC approval, please proceed to section 2 of this form.)

Section 2 — All Requests

1. Please indicate how the bank's investment is consistent with Part 24 requirements for public welfare investments, under 12 CFR 24.3.

a. Check at least one of the following that applies to the bank's investment:

The investment primarily benefits low- and moderate-income individuals.

The investment primarily benefits low- and moderate-income areas.

The investment primarily benefits areas targeted for redevelopment by a government entity.

The investment is a "qualified investment" under 12 CFR 25.23 for purposes of the Community Reinvestment Act.

2. Please indicate how the bank's investment is consistent with Part 24 requirements for investment limits under 12 CFR 24.4 by responding to the following questions.

a. Dollar amount of the bank's investment that is the subject of this submission: _____.

b. Percentage of the bank's capital and surplus represented by the bank's investment that is the subject of this submission: _____%.

c. Percentage of the bank's capital and surplus represented by the aggregate outstanding Part 24 investments and commitments, including this investment: _____%.

d. Does this investment expose the bank to unlimited liability?

Yes (This investment cannot be made under Part 24.)

No

3. Please attach a brief description of the bank's investment. (See 12 CFR 24.5(a)(3)(i) and (b)(2)(i)). Include the following information in the description.

a. The name of the community and economic development entity (CEDE) into which the bank's investment has been (or will be) made.

b. The type of bank investment (equity, debt, or other).

c. The activity or activities of the CEDE in which the bank has invested (or will invest). (See examples of qualifying investment activities described in 12 CFR 24.6 (a), (b), (c), and (d).)

d. How the investment is structured so that it does not expose the bank to unlimited liability, such as by describing the structure of the CEDE (e.g., CDC subsidiary, multi-bank CDC, multi-investor CDC, limited partnership, limited liability company, community development bank, community development financial institution, community development entity, community development venture capital fund, community development lending consortia, community development closed-end mutual funds, non-diversified closed-end investment companies, or any other CEDE) and by providing any other relevant information.

e. The geographic area served by the CEDE.

- f. The total funding or other support by community development partners involved in the project (e.g., government or public agencies, nonprofits, other investors), if known.
- g. Supplemental information (e.g., prospectus, annual report, Web address that contains information about the CEDE in which the investment is or will be made), if available.

4. Evidence of qualification is readily available for examination purposes.

The bank maintains information concerning this investment in a form readily accessible and available for examination that supports the certifications contained in this form and demonstrates that the investment meets the standards set out in 12 CFR 24.3, including, where applicable, the criteria of 12 CFR 25.23.

Yes No

5. Certification

The undersigned hereby certifies that the foregoing information in this form is accurate and complete. It is further certified that the undersigned is authorized to file this form on Part 24 investments for the bank.

Name: _____

Title: _____

Signature: _____

Date: _____

DESCRIPTION OF THE BANK'S CD INVESTMENT. (See information previously requested)

(Type the description of the bank's Part 24 investment here. You may type as much text as necessary. You will have access to all of MS Word's editing features.)

Dated: August 5, 2008.

John C. Dugan,

Comptroller of the Currency.

[FR Doc. E8-18410 Filed 8-8-08; 8:45 am]

BILLING CODE 4810-33-C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM391; Special Conditions No. 25-273-SC]

Special Conditions: Embraer S.A., Model ERJ 190-100 ECJ Airplane; Flight-Accessible Class C Cargo Compartment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Embraer S.A. Model ERJ 190-100 ECJ airplane. This airplane will have novel or unusual design features

associated with access during flight of the main deck Class C cargo compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* September 10, 2008.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, FAA, Airframe/Cabin Safety Branch, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone 425-227-2194; facsimile 425-227-1232.

SUPPLEMENTARY INFORMATION:

Background

Embraer S.A., made the original application for certification of the ERJ 190 on May 20, 1999. The Embraer

application includes six different models, the initial variant being designated as the ERJ 190-100. The application was submitted concurrently with that for the ERJ 170-100, which received an FAA type certificate (TC) on February 20, 2004. Although the applications were submitted as two distinct TCs, the airplanes share the same conceptual design and general configuration. On July 2, 2003, Embraer S.A., submitted a request for an extension of its original application for the Embraer S.A., Model ERJ 190 series, with a new application date of May 30, 2001, for establishing the type certification basis. The FAA certification basis was adjusted to reflect this new reference date. In addition, Embraer has elected to voluntarily comply with certain 14 CFR part 25 amendments introduced after the May 30, 2001, application date.

On May 30, 2001, Embraer S.A., amended the application to include the Embraer S.A., Model ERJ 190-100 ECJ. The Embraer S.A., Model ERJ 190-100 ECJ is a derivative of the Embraer S.A.,