Federal Register

6–13–06 Tuesday
Vol. 71 No. 113 June 13, 2006

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

Federal Register

6–13–06 Tuesday
Vol. 71 No. 113 June 13, 2006

Pages 33989–34230

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

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

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

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

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

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

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

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov*.

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

How To Cite This Publication: Use the volume number and the page number. Example: 71 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	202–512–1806
General online information	202–512–1530; 1–888–293–6498

Single copies/back copies:

Paper or fiche	202–512–1800
Assistance with public single copies	1–866–512–1800 (Toll-Free)

FEDERAL AGENCIES

Subscriptions:

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

FEDERAL REGISTER WORKSHOP

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

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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

WHEN: Tuesday, June 13, 2006
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741-6008

Contents

Federal Register
Vol. 71, No. 113
Tuesday, June 13, 2006

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

10 CFR
73.....33989
Proposed Rules:
20.....34024
32.....34024

14 CFR
39 (6 documents) 33992, 33994, 34000, 34003, 34004, 34006
Proposed Rules:
39 (2 documents) 34025, 34026
77.....34028

15 CFR
756.....34008

16 CFR
Proposed Rules:
18.....34045

26 CFR
1.....34009
602.....34009
Proposed Rules:
1 (2 documents) 34046, 34047

40 CFR
52 (2 documents) 34011, 34014
721.....34015
Proposed Rules:
52.....34050

50 CFR
679 (3 documents) 34021, 34022
Proposed Rules:
17.....34196

Rules and Regulations

Federal Register
Vol. 71, No. 113
Tuesday, June 13, 2006

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150–AH94

Relief From Fingerprinting and Criminal History Records Check for Designated Categories of Individuals

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing a new regulation to relieve certain categories of individuals who have been approved by the Commission for access to Safeguards Information (SGI) from the fingerprinting and criminal history records check requirements of section 149 of the Atomic Energy Act of 1954 (AEA), as amended.

DATES: *Effective Date:* June 13, 2006.

FOR FURTHER INFORMATION CONTACT: Jared K. Heck, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1623, e-mail, *jkh3@nrc.gov*, or Marjorie U. Rothschild, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1633, e-mail, *mur@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

SGI is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under section 147 of the AEA. Requirements governing access to and handling of SGI are presented in NRC regulations in § 73.21 and various NRC orders,[1] and are similar in some ways to requirements for the protection of Classified National Security Information. Consistent with its mission to promote common defense and security, the Commission shares SGI with a variety of licensees, Federal, State, and local law enforcement officials, members of Congress, and other individuals who need to know SGI to perform job functions related to the protection of nuclear facilities and materials.

Recently, Congress enacted legislation that imposes new requirements governing access to SGI. In section 652 of the Energy Policy Act of 2005,[2] which amended AEA section 149, Congress required the Commission to ensure that "any individual" who is permitted access to SGI be fingerprinted and undergo a criminal history records check. Previously, AEA section 149 only required fingerprinting and criminal history records checks of individuals seeking access to SGI (as defined in § 73.2) from a power reactor licensee or license applicant.

Under AEA section 149, as amended, the Commission must require the fingerprinting and submission of fingerprints to the Attorney General for an identification and criminal history records check of any individual permitted access to SGI, unless the Commission, by rule, has relieved that individual from the fingerprinting, identification, and criminal history records check requirements. The Commission may relieve individuals from those requirements "if the Commission finds that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public." Currently, the Commission has no rule that would relieve individuals who seek access to SGI from non-power reactor licensees or the Commission from the expanded fingerprinting and criminal history records check requirements.

Current regulations in §§ 73.21 and 73.57 relieve Governors or their designated representatives, certain members of Congress, certain representatives of the International Atomic Energy Agency (IAEA), and State and local law enforcement organizations from fingerprinting and criminal history records checks if those individuals seek access to SGI as defined in § 73.2. This final rule continues that relief and expands it so that individuals described in this final rule need not be fingerprinted or undergo a criminal history check before receiving access to SGI not currently subject to the requirements of 10 CFR part 73 (*i.e.*, SGI that the Commission has designated and required to be protected by order).

II. Need for Rule

When the Energy Policy Act became law on August 8, 2005, the Commission had already published a proposed SGI rule that would change requirements governing access to and handling of SGI.[3] The Commission planned to significantly revise (and subsequently republish) the proposed SGI rule to fully implement the fingerprinting, identification, and criminal history check requirements established by the Energy Policy Act, but the revision has taken longer than initially expected. The Commission still intends to publish a revised proposed SGI rule for public comment in the near future, but in the meantime, the Commission has an immediate and ongoing need to share SGI with certain international and domestic government representatives, and has decided to issue an immediately effective final rule of limited scope to relieve certain individuals from the fingerprinting and

[1] *See*, In the Matter of *All Licensees Authorized to Manufacture or Initially Transfer Items Containing Radioactive Material for Sale or Distribution and Possess Certain Radioactive Material of Concern and All Other Persons Who Obtain Safeguards Information Described Herein; Order Issued on November 25, 2003 Imposing Requirements for the Protection of Certain Safeguards Information (Effective Immediately)*, (January 23, 2004; 69 FR 3397). In this order and certain other common defense and security orders, the Commission has also used the term "SGI–M" to identify modified handling requirements for SGI related to materials licensees.

[2] Public Law 109–58 (August 8, 2005).

[3] *See* proposed rule, *Protection of Safeguards Information* (February 11, 2005; 70 FR 7196).

criminal history check requirements of AEA section 149.

The individuals relieved from fingerprinting and criminal history checks under the final rule include Federal, State, and local officials involved in security planning and incident response, Agreement State employees who evaluate licensee compliance with security-related orders, and members of Congress who request SGI as part of their oversight function. Interrupting those individuals' access to SGI to perform fingerprinting and criminal history checks would harm vital inspection, oversight, planning, and enforcement functions, thereby impairing day-to-day implementation of the NRC's regulatory programs to the detriment of the common defense and security. It might also impair communications among the NRC, its licensees, and first responders in the event of an imminent security threat or other emergency. The final rule will permit the Commission to provide SGI without interruption to government officials who need the information to be effective in their day-to-day efforts to ensure the continued security of nuclear facilities and materials. The final rule is also consistent with the Commission's obligations to promote the common defense and security and to protect the health and safety of the public.

The final rule will also permit the Commission to continue sharing SGI with its international partners. The information shared in these exchanges helps to maintain the security of nuclear facilities and materials domestically and abroad. Requiring fingerprinting and criminal history checks of foreign representatives who participate in these exchanges could strain the Commission's cooperative relationships with its international counterparts, and might delay needed exchanges of information to the detriment of current security initiatives both at home and abroad. The final rule will permit the Commission to avoid that result, and is consistent with the Commission's obligations to promote the common defense and security and to protect the health and safety of the public.

III. Analysis of Rule

The final rule provides relief from the fingerprinting and criminal history records check requirements set forth in AEA section 149 for the following individuals:

(1) An employee of the Commission or of the Executive Branch of the United States government who has undergone fingerprinting for a prior U.S. government criminal history check;

(2) A member of Congress;

(3) An employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. government criminal history check;

(4) The Governor of a State or his or her designated State employee representative;

(5) A representative of a foreign government organization that is involved in planning for, or responding to, nuclear or radiological emergencies or security incidents who the Commission approves for access to SGI;

(6) Federal, State, or local law enforcement personnel;

(7) State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;

(8) Agreement State employees conducting security inspections on behalf of the NRC under an agreement executed under section 274.i. of the AEA; and

(9) Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC.

The individuals described previously are considered trustworthy and reliable to receive SGI by virtue of their occupational status and have either already undergone a background or criminal history check as a condition of their employment, or are subject to direct oversight by government authorities in their day-to-day job functions. Under the final rule, if individuals in these categories need to know SGI to perform a job function, they may have access to SGI without being fingerprinted or undergoing a criminal history check.

Foreign representatives described in the final rule have been relieved from fingerprinting and criminal history checks because those checks would not likely yield any information probative of the representative's trustworthiness—domestic criminal databases typically would not have records on foreign representatives. In addition, requiring fingerprinting and criminal history checks of foreign government representatives could strain existing cooperative relationships with the Commission's foreign counterparts, thus undermining the Commission's international efforts to enhance nuclear security. Under the final rule, foreign representatives would only be granted access to SGI on a case-by-case basis with the approval of the Commission.

The phrase "a representative of a foreign government organization" in the final rule includes more than employees of foreign governments. The phrase may encompass members of private industry, local first responders, vendors, law enforcement officials, or other individuals designated by a foreign government organization involved in nuclear emergency planning or incident response to serve as foreign government representatives before the NRC.

The categories of individuals relieved by the final rule from fingerprinting and criminal history checks are broader than those relieved by existing regulations in §§ 73.21 and 73.57 because the fingerprinting and criminal history records checks required by AEA section 149 now apply much more broadly. Prior to the Energy Policy Act amendments to AEA section 149, the Commission could provide SGI to its international and domestic government partners without first obtaining fingerprints and criminal history checks of those individuals, and without having to except them by rule. The fingerprinting and criminal history check requirements of AEA section 149 applied only when power reactor licensees provided SGI to an individual. To permit the Commission to continue its pre-Energy Policy Act practice of sharing SGI with international and domestic government representatives involved in nuclear security inspection, oversight, enforcement, planning, and emergency response, the final rule relieves individuals to whom the Commission has historically provided SGI from the expanded fingerprinting and criminal history records checks of AEA section 149, as amended. Accordingly, the list of individuals relieved from fingerprinting and criminal history check requirements has been lengthened.

The expanded relief is not limited to cases where the Commission is providing access to SGI. A licensee or other person with lawful access to SGI may share that information with an individual described in the final rule without first performing fingerprinting and a criminal history check of that individual, provided that individual needs to know the information.

Finally, the final rule also includes an expanded definition of "Safeguards Information" applicable only to new § 73.59 that would be coextensive in scope with AEA section 147. The expanded definition is necessary to make clear that the exceptions from fingerprinting and criminal history checks contained in the new § 73.59 apply regardless of whether the SGI being sought relates to source, byproduct, or special nuclear material. Without the expanded definition, the exceptions would only apply in cases

where an individual seeks access to "Safeguards Information" as defined in existing § 73.2, which is limited to information related to (1) security measures for the physical protection of special nuclear material, or (2) security measures for the physical protection and location of certain plant equipment vital to the safety of production and utilization facilities. The Commission intends the relief from the fingerprinting and criminal history check requirements embodied in the final rule to apply regardless whether the SGI being sought relates to source, byproduct, or special nuclear material, and regardless of who is providing access to the SGI at issue.

IV. Basis for Immediate Effectiveness and Dispensing With Notice and Comment

Generally, the Commission issues final rules using the public notice and comment procedures set forth in the Administrative Procedure Act (APA). Under 5 U.S.C. 553, the Commission may dispense with those procedures where it finds for "good cause" that public procedures are "impracticable, unnecessary, or contrary to the public interest." In this case, the Commission finds that notice-and-comment procedures are not required because the usual public rulemaking procedures are impracticable.

As set forth in Section II, the Commission has an immediate and ongoing need to share SGI with Federal, State, and local law enforcement officials, members of Congress, Governors and their designees, representatives of foreign government organizations, and certain other individuals described in the final rule to ensure that a range of inspection, enforcement, planning, oversight, and response functions related to the security of nuclear materials continues uninterrupted. The Commission has three options to meet this need: (1) Refrain from sharing SGI with individuals described in the rule until they undergo fingerprinting and a criminal history records check; (2) Refrain from sharing SGI with individuals described in the rule until the Commission completes notice-and-comment rulemaking to provide exceptions; or (3) Relieve individuals who require SGI to perform day-to-day inspection, enforcement, planning, oversight, and response functions from fingerprinting and criminal history records check requirements by rule.

The first option is impracticable because it would seriously inhibit sharing of SGI until fingerprinting and criminal history records checks could be completed, thus frustrating the ability of individuals described in the final rule to perform vital day-to-day nuclear security functions. The second option is impracticable because the Commission would have to continue to withhold access to SGI during the notice and comment period, which would have the same detrimental effects on security as would the first option. The only way to ensure the flow of SGI continues to foreign and domestic government personnel who have a need to know while complying with the requirements of AEA section 149, is to issue a final rule relieving those individuals from fingerprinting and criminal history records check requirements without following notice and comment procedures. Therefore, under 5 U.S.C. 553, good cause exists to dispense with those procedures.

As mentioned previously, the Commission still plans to revise and publish for comment its proposed SGI rule. At that time, the public will be able to comment on whether any additional categories of individuals should be relieved from the fingerprinting and criminal history records check requirements of AEA section 149.

Finally, this rule is immediately effective upon publication in accordance with 5 U.S.C. 553(d)(1), because it is a substantive rule which grants an exemption or relieves a restriction. Specifically, the rule relieves certain individuals from the fingerprinting and criminal history records check requirements of AEA section 149.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is granting relief from criminal history checks, including fingerprinting, for access to Safeguards Information by persons in certain occupational categories. This action does not involve the establishment of a standard that contains generally applicable requirements.

VI. Finding of No Significant Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. As permitted by section 149.b. of the AEA, this rulemaking relieves individuals in certain occupational categories from the criminal history records check and fingerprinting requirements imposed by the Energy Policy Act of 2005 to facilitate the sharing of SGI among international and domestic government representatives and officials. The rule does not require any individuals to take action that would have an environmental impact. A copy of the environmental assessment supporting this finding is available at *http://www.nrc.gov/reading-rm/adams.html* ML061520342.

VII. Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–002.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

VIII. Regulatory Analysis

A regulatory analysis has not been prepared for this regulation because it relieves restrictions and does not impose any regulatory burdens on licensees.

IX. Backfit Analysis

No backfit analysis is required because the final rule does not modify or add to systems, structures, components, or the design of a facility, or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility. Therefore, the final rule does not impose a backfit as defined in 10 CFR 50.109(a)(1), 70.76(a)(1), 72.62(a)(1) and (2), or 76.76(a)(1).

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of

Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

■ For the reasons set out in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Energy Policy Act of 2005, and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

Authority: Secs. 53, 161, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Public Law No. 109–58, 119 Stat. 594 (2005).

Section 73.1 also issued under secs. 135, 141, Public Law 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Public Law 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Public Law 99–399, 100 Stat. 876 (42 U.S.C. 2169).

■ 2. A new § 73.59 is added to read as follows:

§ 73.59 Relief from fingerprinting and criminal history records check for designated categories of individuals.

(a) For purposes of this section, the phrase "Safeguards Information" means information not otherwise classified as National Security Information or Restricted Data, which specifically identifies a licensee's or applicant's detailed—

(1) Control and accounting procedures or security measures (including security plans, procedures, and equipment) for the physical protection of special nuclear material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security;

(2) Security measures (including security plans, procedures, and equipment) for the physical protection of source material or byproduct material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security;

(3) Security measures (including security plans, procedures, and equipment) for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities involving nuclear materials covered by paragraphs (a)(1) and (a)(2) of this section; or

(4) Any other information within the scope of Section 147 of the Atomic Energy Act of 1954, as amended, the unauthorized disclosure of which, as determined by the Commission through order or regulation, could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of radiological sabotage or theft or diversion of source, byproduct, or special nuclear material.

(b) Notwithstanding any other provision of the Commission's regulations, fingerprinting and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, are not required for the following individuals prior to granting access to Safeguards Information:

(1) An employee of the Commission or of the Executive Branch of the United States government who has undergone fingerprinting for a prior U.S. government criminal history check;

(2) A member of Congress;

(3) An employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. government criminal history check;

(4) The Governor of a State or his or her designated State employee representative;

(5) A representative of a foreign government organization that is involved in planning for, or responding to, nuclear or radiological emergencies or security incidents who the Commission approves for access to Safeguards Information;

(6) Federal, State, or local law enforcement personnel;

(7) State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;

(8) Agreement State employees conducting security inspections on behalf of the NRC pursuant to an agreement executed under section 274.i. of the Atomic Energy Act;

(9) Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC.

Dated at Rockville, Maryland, this 7th day of June, 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E6–9178 Filed 6–12–06; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24245; Directorate Identifier 2005–NM–166–AD; Amendment 39–14643; AD 2006–12–17]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200C Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) which applies to all Boeing Model 737–200C series airplanes. That AD currently requires a one-time external detailed inspection for cracking of the fuselage skin in the lower lobe cargo compartment; repetitive internal detailed inspections for cracking of the frames in the lower lobe cargo compartment; repair of cracked parts; and terminating action for the repetitive internal detailed inspections. This new AD restates the requirements of the existing AD and adds a requirement to perform repetitive detailed inspections of the body station (BS) 360 and BS 500 fuselage frames, after accomplishing the terminating action, and repair if necessary. This AD results from multiple reports that the existing AD is not fully effective in preventing cracks in the BS 360 and BS 500 fuselage frames. We are issuing this AD to detect and correct cracking of the fuselage frames from BS 360 to BS 500B, which could lead to loss of the cargo door during flight and consequent rapid decompression of the airplane.

DATES: This AD becomes effective July 18, 2006.

On August 9, 1993 (58 FR 36863, July 9, 1993), the Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://*

dms.dot.gov or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Howard Hall, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6430; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 99–12–08, amendment 39–11192 (64 FR 31488, June 11, 1999). The existing AD applies to all Boeing Model 737–200C series airplanes. That NPRM was published in the **Federal Register** on March 30, 2006 (71 FR 16063). That NPRM proposed to require a one-time external detailed inspection for cracking of the fuselage skin in the lower lobe cargo compartment; repetitive internal detailed inspections for cracking of the frames in the lower lobe cargo compartment; repair of cracked parts; and terminating action for the repetitive internal detailed inspections. That NPRM also proposed to add a requirement to perform repetitive detailed inspections of the body station (BS) 360 and BS 500 fuselage frames, after accomplishing the terminating action, and repair if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the one comment received. The commenter, Boeing, supports the NPRM.

Conclusion

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

Costs of Compliance

There are about 90 airplanes of the affected design in the worldwide fleet. This AD will affect about 18 airplanes of U.S. registry.

The modification required by AD 99–12–08, and retained in this AD, takes approximately 160 work hours per airplane to accomplish, at an average labor rate of $80 per work hour. Required parts cost about $5,500 per airplane. Based on these figures, the estimated cost of the currently required modification for U.S. operators is $329,400, or $18,300 per airplane.

The new inspections will take about 3 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the new inspections specified in this AD for U.S. operators is $4,320, or $240 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–11192 (64 FR 31488, June 11, 1999) and by adding the following new airworthiness directive (AD):

2006–12–17 Boeing: Amendment 39–14643. Docket No. FAA–2006–24245; Directorate Identifier 2005–NM–166–AD.

Effective Date

(a) This AD becomes effective July 18, 2006.

Affected ADs

(b) This AD supersedes AD 99–12–08.

Applicability

(c) This AD applies to all Boeing Model 737–200C series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from multiple reports that the modification required by AD 99–12–08 is not fully effective in preventing cracks in the body station (BS) 360 and BS 500 fuselage frames. We are issuing this AD to detect and correct cracking of the fuselage frames from BS 360 to BS 500B, which could lead to loss of the cargo door during flight and consequent rapid decompression of the airplane.

Compliance

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

Restatement of Requirements of AD 99–12–08

One-Time External Detailed Inspection

(f) Prior to the accumulation of 29,000 total flight cycles or within 250 flight cycles after August 9, 1993 (the effective date AD 93–13–02, amendment 39–8615, which was superseded by AD 99–12–08), whichever occurs later, accomplish an external detailed inspection to detect cracks of the fuselage skin between stringers 19 left and 25 left and at BS 360 to BS 540, in accordance with Boeing Alert Service Bulletin 737–53A1160, dated October 24, 1991; or Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. If any crack is found, prior to further flight, accomplish the requirements of paragraphs (f)(1) and (f)(2) of this AD.

(1) Perform an internal detailed inspection to detect cracks of the frames between stringers 19 left and 25 left and at BS 360 to BS 500B, in accordance with either service bulletin.

(2) Repair all cracks in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), Transport Airplane Directorate, FAA.

Internal Detailed Inspections

(g) Within 3,000 flight cycles after completing the requirements of paragraph (f) of this AD, unless accomplished within the last 6,000 flight cycles prior to August 9, 1993, perform an internal detailed inspection to detect cracks of the frames between stringers 19 left and 25 left and at body stations 360 to 500B, in accordance with Boeing Alert Service Bulletin 737–53A1160, dated October 24, 1991; or Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. Thereafter, repeat the internal detailed inspection at intervals not to exceed 9,000 flight cycles. If any crack is found during any inspection required by this paragraph, before further flight, repair as specified in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) If any crack is found that does not exceed the limits specified in the Boeing 737 Structural Repair Manual (SRM), repair the crack in accordance with a method approved by the Manager, Seattle ACO; or in accordance with the procedures specified in paragraph (k)(4) of this AD. The SRM is one approved source of information for accomplishing the requirements of this paragraph. Repeat the internal detailed inspection thereafter at intervals not to exceed 9,000 flight cycles.

(2) If any crack is found that exceeds the limits specified in the SRM, repair the crack in accordance with a method approved by the Manager, Seattle ACO; or in accordance with the procedures specified in paragraph (k)(4) of this AD. Repeat the internal detailed visual inspection thereafter at intervals not to exceed 9,000 flight cycles.

Install Doublers

(h) Prior to the accumulation of 75,000 total flight cycles, or within 3,000 flight cycles after July 16, 1999 (the effective date of AD 99–12–08), whichever occurs later, install doublers on the specified frames located between stringers 19 left and 25 left from BS 360 to BS 500B, in accordance with Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. Installing these doublers on the specified fuselage frames ends the repetitive inspections required by paragraphs (f) and (g) of this AD.

New Requirements of This AD

Repetitive Inspection of Certain Frames

(i) Within 9,000 flight cycles after accomplishing the modification required by paragraph (h) of this AD, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later, perform an internal detailed inspection to detect cracking in the fuselage frame at BS 360 and the fuselage frame at BS 500, between stringers 19 left and 25 left, in accordance with Boeing Alert Service Bulletin 737–53A1160, dated October 24, 1991; or Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. Thereafter, repeat the internal detailed inspection of the BS 360 and BS 500 frames at intervals not to exceed 9,000 flight cycles.

(j) If any crack is found during any inspection required by paragraph (i) of this AD, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

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

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) AMOCs approved previously in accordance with AD 99–12–08, including AMOCs approved previously in accordance with AD 93–13–02, are approved as AMOCs for the corresponding provisions specified in paragraphs (f), (g), and (h) of this AD.

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

Material Incorporated by Reference

(l) You must use Boeing Alert Service Bulletin 737–53A1160, dated October 24, 1991; or Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993, as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents on August 9, 1993 (58 FR 36863, July 9, 1993). Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 5, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5287 Filed 6–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19002; Directorate Identifier 2003–NM–27–AD; Amendment 39–14639; AD 2006–12–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4 Series Airplanes; A300 B4–600, B4–600R, and F4–600R Series Airplanes; and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes)

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Airbus Model A300 and A300–600 series airplanes. That AD currently requires repetitive inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. That AD also requires modification of Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections. This new AD requires new repetitive inspections at reduced compliance times. This new AD also requires new repetitive inspections of certain areas of the

attachment fittings that were repaired in accordance with the actions specified in the existing AD. This AD results from new service information that was issued by the manufacturer and mandated by the French airworthiness authority. We are issuing this AD to prevent fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective July 18, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of July 18, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications, as listed in the AD, on April 12, 2000 (65 FR 12077, March 8, 2000).

The Director of the Federal Register approved the incorporation by reference of certain other publications, as listed in the AD, on October 20, 1999 (64 FR 49966, September 15, 1999).

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

For Model A300 B2 and A300 B4 series airplanes, contact Jacques Leborgne, Airbus Customer Service Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, fax (+33) 5 61 93 36 14, for service information identified in this AD. For Model A300–600 series airplanes, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2000–05–07, amendment 39–11616 (65 FR 12077, March 8, 2000), and applies to certain Airbus Model A300 B2 and A300 B4 series airplanes; and Model A300–600 series airplanes. That supplemental NPRM was published in the **Federal Register** on March 27, 2006 (71 FR 15068). That supplemental NPRM proposed to reduce the compliance times for all inspections required by AD 2000–05–07; to require inspections in accordance with new revisions of the service bulletins; and to require new repetitive inspections of certain areas of the attachment fittings that were repaired in accordance with the actions specified in the existing AD.

Comments

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

Request To Give Credit for Previous Revisions of Certain Service Bulletins

Airbus states that Service Bulletins A300–57–6088, Revision 03, dated March 13, 2003; and A300–57–0235, Revision 02, dated September 27, 1999; are not referenced in Table 3 of the supplemental NPRM for the terminating modification. Airbus notes that these service bulletins are listed in the document index of Docket No. FAA–2004–19002. Airbus reviewed the technical content of these two service bulletins and states that there is no technical reason why they should not be acceptable for complying with the actions proposed in the supplemental NPRM. Airbus therefore requests that we include these service bulletins in Table 3 of the final rule.

We partially agree. We agree that both service bulletins are acceptable for compliance with the corresponding actions proposed in the supplemental NPRM. We do not agree with adding these service bulletins to Table 3 of the final rule. Table 3 refers only to service bulletins that were required by either AD 2000–05–07 or the AD that it superseded, which was AD 99–19–26, amendment 39–11313 (64 FR 49966, September 15, 1999); or that are the latest revisions proposed for the supplemental NPRM. Table 6 of the supplemental NPRM refers to issues of service bulletins that are not the latest revisions, and were not required by the superseded ADs, but are still acceptable for compliance. Both Airbus Service Bulletin A300–57–6088, Revision 03, and A300–57–0235, Revision 02, are listed in Table 6 of the final rule. We have not changed the final rule in this regard.

Explanation of Editorial Changes to the Final Rule

We inadvertently removed words from the following paragraph of the supplemental NPRM: "§ 39.13 [Amended] 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD)." We have changed this paragraph in the final rule to include words that remove the original NPRM as follows: "§ 39.13 [Amended] 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–11616 (65 FR 12077, March 8, 2000), and adding the following new airworthiness directive (AD)."

We have revised paragraph (i)(1) of the final rule to identify model designations as published in the most recent type certificate data sheet for the affected models.

Paragraphs (g)(2), (j)(2), (l), and (m) of the supplemental NPRM specify making repairs using a method approved by either the FAA or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). The European Aviation Safety Agency (EASA) has assumed responsibility for the airplane models subject to this AD. Therefore, we have revised paragraphs (g)(2), (j)(2), (l), and (m) of the final rule to specify making repairs using a method approved by either the FAA or the EASA (or its delegated agent).

Conclusion

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

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-cost registered airplanes	Fleet cost
Modification (required by AD 2000–05–07)	70	$65	$10,270	$14,820	164	$2,430,480
Pre-modification inspections (new action), per inspection cycle	6	65	(1)	2 390	164	2 63,960
Post-modification inspections (new action), per inspection cycle	2	65	(1)	2 130	164	2 21,320

1 None.
2 Per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–11616 (65 FR 12077, March 8, 2000), and adding the following new airworthiness directive (AD):

2006–12–13 Airbus: Amendment 39–14639. Docket No. FAA–2004–19002; Directorate Identifier 2003–NM–27–AD.

Effective Date

(a) This AD becomes effective July 18, 2006.

Affected ADs

(b) This AD supersedes AD 2000–05–07, amendment 39–11616.

Applicability

(c) This AD applies to Airbus Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes, as identified in Airbus Service Bulletin A300–57A0234, Revision 05, dated February 19, 2002; and Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes, as identified in Airbus Service Bulletin A300–57A6087, Revision 04, dated February 19, 2002; except airplanes on which Airbus Modification 11912 or 11932 has been installed; certificated in any category.

Unsafe Condition

(d) This AD was prompted by new service information that was issued by the manufacturer and mandated by the French airworthiness authority. We are issuing this AD to prevent fatigue cracking of the main landing gear (MLG) attachment fittings, which could result in reduced structural integrity of the airplane.

Compliance

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

Restatement of the Requirements of AD 2000–05–07

Repetitive Inspections

(f) Perform a detailed inspection and a high-frequency eddy current (HFEC) inspection to detect cracks in Gear Rib 5 of the MLG attachment fittings at the lower flange, in accordance with the Accomplishment Instructions of any applicable service bulletin listed in Table 1 and Table 2 of this AD, at the time specified in paragraph (f)(1) or (f)(2) of this AD. After April 12, 2000 (the effective date of AD 2000–05–07), only the service bulletins listed in Table 2 of this AD may be used. Repeat the inspections thereafter at intervals not to exceed 1,500 flight cycles, until paragraph (h), (i), or (k) of this AD is accomplished.

TABLE 1.—REVISION 01 OF SERVICE BULLETINS

Model	Airbus Service Bulletin	Revision level	Date
A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and A300 C4–605R Variant F airplanes.	A300–57–6087	01	March 11, 1998.

TABLE 1.—REVISION 01 OF SERVICE BULLETINS—Continued

Model	Airbus Service Bulletin	Revision level	Date
A300 B2 and A300 B4 series airplanes	A300–57–0234	01	March 11, 1998.

TABLE 2.—FURTHER REVISIONS OF SERVICE BULLETINS

Model	Airbus Service Bulletin	Revision level	Date
A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, FA–605R, F4–622R, and A300 C4–605R Variant F airplanes.	A300–57A6087	*02	June 24, 1999.
		*03	May 19, 2000.
		*04	February 19, 2002.
A300 B2 and A300 B4 series airplanes	A300–57A0234	02	June 24, 1999.
		*03	September 2, 1999.
		*04	May 19, 2000.
		*05	February 19, 2002.

*Including Appendix 01.

(1) For airplanes that have accumulated 20,000 or more total flight cycles as of March 9, 1998 (the effective date of AD 98–03–06, amendment 39–10298): Inspect within 500 flight cycles after March 9, 1998.

(2) For airplanes that have accumulated less than 20,000 total flight cycles as of March 9, 1998: Inspect prior to the accumulation of 18,000 total flight cycles, or within 1,500 flight cycles after March 9, 1998, whichever occurs later.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 2: Accomplishment of the initial detailed and HFEC inspections in accordance with Airbus Service Bulletin A300–57A0234 or A300–57A6087, both dated August 5, 1997, as applicable, is considered acceptable for compliance with the initial inspections required by paragraph (f) of this AD.

Repair

(g) If any crack is detected during any inspection required by paragraph (f) of this AD, prior to further flight, accomplish the requirements of paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) If a crack is detected at one hole only, and the crack does not extend out of the spotface of the hole, repair in accordance with the Accomplishment Instructions of the applicable service bulletin in Table 2 of this AD.

(2) If a crack is detected at more than one hole, or if any crack at any hole extends out of the spotface of the hole, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the European Aviation Safety Agency (EASA) (or its delegated agent).

Terminating Modification

(h) Prior to the accumulation of 21,000 total flight cycles, or within 2 years after October 20, 1999 (the effective date of AD 99–19–26, amendment 39–11313), whichever occurs later: Modify Gear Rib 5 of the MLG attachment fittings at the lower flange in accordance with the Accomplishment Instructions of the applicable service bulletin in Table 3 of this AD. After the effective date of this AD, only Revision 04 of Airbus Service Bulletin A300–57–6088, and Revisions 04 and 05 of Airbus Service Bulletin A300–57–0235 may be used. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of paragraphs (f) and (i) of this AD.

TABLE 3.—SERVICE BULLETINS FOR TERMINATING MODIFICATION

Model	Airbus Service Bulletin	Revision level	Date
A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, A300 C4–605R Variant F airplanes.	A300–57–6088	*01	February 1, 1999.
		02	September 5, 2002.
		04	December 3, 2003.
A300 B2 and A300 B4 series airplanes	A300–57–0235	*01	February 1, 1999.
		03	September 5, 2002.
		04	March 13, 2003.
		05	December 3,-2003.

*Including Appendix 01.

Note 3: Accomplishment of the modification required by paragraph (h) of this AD prior to April 12, 2000, in accordance with Airbus Service Bulletin A300–57–6088 or A300–57–0235, both dated August 5, 1998; as applicable; is acceptable for compliance with the requirements of that paragraph.

New Requirements of This AD

New Repetitive Inspections

(i) For airplanes on which the modification specified in paragraph (h) or (k) of this AD has not been done as of the effective date of this AD, perform a detailed and an HFEC inspection to detect cracks of the lower flange of Gear Rib 5 of the MLG at holes 43, 47, 48, 49, 50, 52, and 54, in accordance with the applicable service bulletin listed in Table 4 of this AD. Perform the inspections at the applicable time specified in paragraph (i)(1), (i)(2), (i)(3), or (i)(4) of this AD. Repeat the inspections thereafter at intervals not to exceed 700 flight cycles until the terminating modification required by paragraph (k) of this AD is accomplished. Accomplishment of the inspections per paragraph (i) of this AD,

terminates the inspection requirements of paragraph (f) of this AD.

TABLE 4.—SERVICE BULLETINS FOR REPETITIVE INSPECTIONS

Model	Airbus Service Bulletin	Revision level	Date
A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes.	A300–57A6087	*04	February 19, 2002.
A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes	A300–57A0234	*05	February 19, 2002.

*Including Appendix 01.

(1) For Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes; and Model C4–605R Variant F airplanes that have accumulated 18,000 or more total flight cycles as of the effective date of this AD: Within 700 flight cycles after the effective date of this AD.

(2) For Model A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes that have accumulated less than 18,000 total flight cycles as of the effective date of this AD: Prior to the accumulation of 18,000 total flight cycles, or within 700 flight cycles after the effective date of this AD, whichever occurs later.

(3) For Model A300 B4–2C, B4–103, and B4–203 airplanes that have accumulated less than 18,000 total flight cycles as of the effective date of this AD: Prior to the accumulation of 14,500 total flight cycles, or within 700 flight cycles after the effective date of this AD, whichever occurs later.

(4) For Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes that have accumulated less than 18,000 total flight cycles as of the effective date of this AD: Prior to the accumulation of 11,600 total flight cycles, or within 700 flight cycles after the effective date of this AD, whichever occurs later.

Crack Repair

(j) If any crack is detected during any inspection required by paragraph (i) of this AD, prior to further flight, accomplish the requirements of paragraph (j)(1) and (j)(2) of this AD, as applicable.

(1) If a crack is detected at only one hole, and the crack does not extend out of the spotface of the hole, repair in accordance with Airbus Service Bulletin A300–57A0234, Revision 05, including Appendix 01, dated February 19, 2002 (for Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes); or A300–57A6087, Revision 04, including Appendix 01, dated February 19, 2002 (for Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R airplanes); as applicable.

(2) If a crack is detected at more than one hole, or if any crack at any hole extends out of the spotface of the hole, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or the EASA (or its delegated agent).

Terminating Modification

(k) For airplanes on which the terminating modification in paragraph (h) of this AD has not been accomplished before the effective date of this AD: At the earlier of the times specified in paragraphs (k)(1) and (k)(2) of this AD, modify Gear Rib 5 of the MLG attachment fittings at the lower flange. Except as provided by paragraph letter (l) of this AD, do the modification in accordance with the applicable service bulletin in Table 5 of this AD. This action terminates the repetitive inspections requirements of paragraphs (f) and (i) of this AD.

(1) Prior to the accumulation of 21,000 total flight cycles, or within 2 years after October 20, 1999, whichever is later.

(2) Within 16 months after the effective date of this AD.

TABLE 5.—SERVICE BULLETINS FOR TERMINATING MODIFICATION

Model	Airbus Service Bulletin	Revision level	Date
A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes.	A300–57–6088	04	December 3, 2003.
A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 05 2003 airplanes.	A300–57–0235	04	March 13, 2003.
		05	December 3, 2003.

(l) Where the applicable service bulletin in paragraph (k) of this AD specifies to contact Airbus for modification instructions; or if there is a previously installed repair at any of the affected fastener holes; or if a crack is found when accomplishing the modification: Prior to further flight, modify in accordance with a method approved by the Manager, International Branch, ANM–116, or the EASA (or its delegated agent).

Post-Modification Inspections

(m) Within 700 flight cycles after doing the modification in accordance with paragraph (h), (k), or (l) of this AD, or within 6 months after the effective date of this AD, whichever occurs later, except as provided by paragraph (o) of this AD: Do a detailed and an HFEC inspection for cracks at holes 47 and 54 in the lower flange of Gear Rib 5, and do all related investigative and corrective actions before further flight, by doing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–57A0246, including Appendix 01, dated May 20, 2005; or Airbus Service Bulletin A300–57A6101, including Appendix 01, dated May 20, 2005; as applicable. Where the applicable service bulletin specifies to contact Airbus for repair instructions: Prior to further flight, modify in accordance with a method approved by the Manager, International Branch, ANM–116, or the EASA (or its delegated agent). Repeat the inspection and related investigative and corrective actions thereafter at intervals not to exceed 700 flight cycles. If no crack is detected during the repeat inspection performed at or above 2,100 flight cycles after doing the modification in accordance with paragraph (h), (k), or (l) of this AD, then no further inspection is required. Except, at least one inspection is required after the accumulation of 2,100 flight cycles after installing the modification in accordance with paragraph (h) or (k) of this AD.

Actions Accomplished Per Previous Issues of the Service Bulletins

(n) Actions accomplished before the effective date of this AD, per the service bulletins listed in Table 6 of this AD, are considered acceptable for compliance with the corresponding action specified in this AD.

TABLE 6.—PREVIOUS ISSUES OF SERVICE BULLETINS

Airbus Service Bulletin	Revision level	Date
A300–57–0235	*02	September 27, 1999.
	03	September 5, 2002.
A300–57–6088	02	September 5, 2000.
	03	March 13, 2003.

*Including Appendix 01.

Reporting

(o)(1) Although Airbus Service Bulletins A300–57A0234, A300–57–0235, A300–57A6087, A300–57–6088, A300–57A0246, and A300–57A6101, specify to submit certain information to the manufacturer, this AD does not include such a requirement, except as provided by paragraph (o)(2) of this AD.

(2) Where Airbus Service Bulletins A300–57A0246 and A300–57A6101 specify to submit a report of positive and negative findings of the post-modification inspection required by paragraph (m) of this AD, within 30 days after the effective date of this AD, submit a report only of the positive findings of post-modification inspections to Airbus, Customer Service Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance (AMOCs)

(p)(1) The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) AMOCs approved previously per AD 2000–05–07 are approved as AMOCs with this AD.

Related Information

(q) French airworthiness directives 2003–318(B), dated August 20, 2003; and F–2005–113 R1, dated July 20, 2005; also address the subject of this AD.

Material Incorporated by Reference

(r) You must use the service information listed in Table 7 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 7.—MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A300–57A0234	02	June 24, 1999.
A300–57A0234	*03	September 2, 1999.
A300–57A0234	*04	May 19, 2000.
A300–57A0234	*05	February 19, 2002.
A300–57A0246	Original*	May 20, 2005.
A300–57A6087	*02	June 24, 1999.
A300–57A6087	*03	May 19, 2000.
A300–57A6087	*04	February 19, 2002.
A300–57A6101	Original*	May 20, 2005.
A300–57–0234	01	March 11, 1998.
A300–57–0235	*01	February 1, 1999.
A300–57–0235	03	September 5, 2002.
A300–57–0235	04	March 13, 2003.
A300–57–0235	05	December 3, 2003.
A300–57–6087	01	March 11, 1998.
A300–57–6088	*01	February 1, 1999.
A300–57–6088	02	September 5, 2002.
A300–57–6088	04	December 3, 2003.

*Including Appendix 01.

(1) The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 8 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 8.—NEW MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A300–57A0234	*04	May 19, 2000.
A300–57A0234	*05	February 19, 2002.
A300–57A0246	Original*	May 20, 2005.
A300–57A6087	*03	May 19, 2000.
A300–57A6087	*04	February 19, 2002.
A300–57A6101	Original*	May 20, 2005.
A300–57–0235	03	September 5, 2002.
A300–57–0235	04	March 13, 2003.

TABLE 8.—NEW MATERIAL INCORPORATED BY REFERENCE—Continued

Airbus Service Bulletin	Revision level	Date
A300–57–0235	05	December 3, 2003.
A300–57–6088	02	September 5, 2002.
A300–57–6088	04	December 3, 2003.

*Including Appendix 01.

(2) On April 12, 2000 (65 FR 12077, March 8, 2000), the Director of the Federal Register approved the incorporation by reference of the documents listed in Table 9 of this AD.

TABLE 9.—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A300–57A0234	02	June 24, 1999.
A300–57A0234	*03	September 2, 1999.
A300–57A6087	*02	June 24, 1999.

*Including Appendix 01.

(3) On October 20, 1999 (64 FR 49966, September 15, 1999), the Director of the Federal Register approved the incorporation by reference of the documents listed in Table 10 of this AD.

TABLE 10.—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A300–57–0234	01	March 11, 1998.
A300–57–0235	*01	February 1, 1999.
A300–57–6087	01	March 11, 1998.
A300–57–6088	*01	February 1, 1999.

*Including Appendix 01.

(4) Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on May 31, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5244 Filed 6–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24076; Directorate Identifier 2006–NM–015–AD; Amendment 39–14640; AD 2006–12–14]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira del Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes. This AD requires replacing the shut-off and crossbleed valves of the bleed air system with new valves having hermetically sealed switches. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent a potential source of ignition near a fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD becomes effective July 18, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 18, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes. That NPRM was published in the **Federal Register** on March 7, 2006 (71 FR 11333). That NPRM proposed to require replacing the shut-off and crossbleed valves of the bleed air system with new valves having hermetically sealed switches.

Comments

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

Request To Withdraw the NPRM

Charter Air Transport states that installing modified flow control valves (bleed air) valves that include hermetically sealed switches is specified in both EMBRAER Service Bulletin 120–36–0016, Revision 01, dated October 4, 2004 (which was specified in the NPRM as the appropriate source of service information for accomplishing the proposed requirements of this AD), and Service Bulletin 120–30–0034, Revision 01, dated September 22, 2004. (EMBRAER Service Bulletin 120–30–0034, Revision 01, is cited as the appropriate source of service information for accomplishing a related NPRM that has the same applicability as this NPRM.) Charter Air Transport states that it will cost $13,451 per airplane to comply with both service bulletins. Charter Air Transport asserts that a more effective method of correcting the unsafe condition at a much-reduced cost would be to install air-purging louvers in certain rear lower fuselage and leading edge fairings, which would vent any fuel vapors away from any potential ignition source in the affected area. Charter Air Transport requests that EMBRAER consider this suggestion as an appropriate method of compliance to address the unsafe condition.

We infer that the commenter is asking us to withdraw the NPRM until EMBRAER reviews the specified modification and determines a more appropriate method to correct the unsafe condition. We do not agree. EMBRAER has determined that installing modified flow control valves is the appropriate method of correcting this unsafe condition. Further, Charter Air Transport provided no data to demonstrate that the proposed louver installation provides an equivalent level of safety or is more effective than installing modified flow control valves. We have not changed the AD in this regard. However, Charter Air Transport may request an alternative method of compliance (AMOC) in accordance with paragraph (i) of the AD, provided that sufficient data are submitted to substantiate that the proposed AMOC would provide an acceptable level of safety.

Request To Remove Paragraph (g) of the NPRM

A private citizen asserts that paragraph (g) of the NPRM would result in a big waste of parts for the operator and would incur additional costs to replace those parts before the compliance time specified in the AD. In addition the commenter states that there are currently no parts available.

We infer that the commenter is requesting that we remove paragraph (g) of the AD. We do not agree to remove that paragraph. In general, once we have determined that an unsafe condition exists, our normal policy specifies not to allow that condition to be re-introduced into the fleet. In developing the technical information on which every AD is based, we consider the availability of spare parts that the AD will require to be installed. When we have determined that those (safe) parts are immediately available to operators, our policy prohibits installation of the unsafe parts after the effective date of the AD.

In this case, we contacted the manufacturer and vendor to verify the parts availability, and have determined that the parts may not be available until August of this year. To accommodate this delay in parts availability, we have revised paragraph (g) of the AD to specify that, as of 90 days after the effective date of this AD, no person may install any shut-off or crossbleed valve of the bleed air system with any shut-off or crossbleed valve that does not have hermetically sealed switches.

Request for Additional Information

The same commenter also states that he is unable to get the following information from the manufacturer: "Can existing valves be modified? Do we have to purchase new valves? Cost of the modification? Can valves be modified in-house? Is there an exchange program?"

We have contacted the manufacturer and have been advised of the following in reference to the commenter's questions: Yes, the existing valves may be modified. Yes, you do have to purchase new valves. A repair and upgrade would cost $4,575. No, valves cannot be modified in-house. And, finally, no, there is not an exchange program. However, the valves may be returned for upgrade at an estimated cost of $2,322.

Request To Determine Compliance

The same commenter also states that it is cumbersome to control AD updating on individual part replacements. He specified two scenarios in which he requested whether or not the conditions in the scenarios met the AD requirements. In the first scenario, the commenter states that a valve is cannibalized from one airplane to the other, specifically, a "-1" removed and a "-1" installed. The vacated position was replaced with a new valve. The commenter asks if the position the cannibalized part was installed in does not meet the requirements of the AD. In the second scenario, the commenter states that a valve was moved from one position on the same airplane to another for troubleshooting purposes. The valve was verified to be bad. The bad valve was replaced with a valve having a new part number. The valves were not swapped back to original positions prior to replacing with a new valve. The commenter asks whether or not the airplane meets the requirements of the AD?

We acknowledge that it may be time consuming to track individual part replacements. However, in this case, it is necessary to ensure the safety of the fleet. In response to the question of whether the airplanes meet the requirements of the AD in both of the scenarios described above, the intent of this AD is to require replacement of the valves with the new valves in each of the three positions. When that has been accomplished, compliance with paragraph (f) of the AD has been achieved.

Request To Clarify Costs

This same commenter states that EMBRAER has not verified the cost of new valves that were specified in the NPRM.

We infer that the commenter would like the cost of the new valves that were specified in the NPRM verified by the manufacturer. We have contacted the manufacturer and verified that the figure in the NPRM is correct.

Request To Revise the Reason for the NPRM

One commenter, EMBRAER, requests that we add additional wording to the explanation for the reason the NPRM was issued. EMBRAER requests that, in addition to the words "This AD results from fuel system reviews conducted by the manufacturer," we add the words "associated to new regulations related to prevention of sources of ignition near fuel tanks applicable to several aircraft categories."

We do not agree to revise the AD. The statement that the manufacturer has conducted fuel system reviews is sufficient. The statement following that sentence in the AD provides the fact that we are issuing this AD to prevent a potential source of ignition near a fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane. In addition, the "Discussion" section of the NPRM explains the background and issuance of the FAA regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements' (67 FR 23086, May 7, 2001). No change is necessary to this AD in that regard.

Editorial Change

Since the issuance of the NPRM, we have received a copy of EMBRAER Service Bulletin 120–36–0016, dated October 30, 2003. We have added a new paragraph (h) to the AD to provide credit for accomplishing the actions specified in that service bulletin. Subsequent paragraphs of the AD have been re-identified.

Conclusion

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

Costs of Compliance

This AD will affect about 180 airplanes of U.S. registry. The required actions will take about 3 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $10,305 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $1,890,000, or $10,500 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2006–12–14 Empresa Brasileira de Aeronautica S.A. (Embraer): Amendment 39–14640. Docket No. FAA–2006–24076; Directorate Identifier 2006–NM–015–AD.

Effective Date

(a) This AD becomes effective July 18, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–120,—120ER, –120FC, –120QC, and –120RT airplanes, as identified in EMBRAER Service Bulletin 120–36–0016, Revision 01, dated October 4, 2004; certificated in any category.

Unsafe Condition

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

Compliance

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

Replacing the Shut-off and Crossbleed Valves

(f) Within 5,000 flight hours after the effective date of this AD, replace the shut-off and crossbleed valves of the bleed air system with new shut-off and crossbleed valves having hermetically sealed switches, in accordance with EMBRAER Service Bulletin 120–36–0016, Revision 01, dated October 4, 2004.

Parts Installation

(g) As of 90 days after the effective date of this AD, no person may install any shut-off or crossbleed valve of the bleed air system with any shut-off or crossbleed valve that does not have hermetically sealed switches.

Acceptable Method of Compliance

(h) Accomplishment of the actions specified in EMBRAER Service Bulletin 120–36–0016, dated October 30, 2003, before the effective date of this AD is an acceptable method of compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(j) Brazilian airworthiness directive 2005–12–03, effective January 19, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use EMBRAER Service Bulletin 120–36–0016, Revision 01, dated October 4, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 31, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5245 Filed 6–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21691; Directorate Identifier 2005–NE–13–AD; Amendment 39–14645; AD 2006–12–19]

RIN 2120–AA64

Airworthiness Directives; Hamilton Sundstrand Model 14RF–19 Propellers

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Hamilton Sundstrand model 14RF–19 propellers. This AD requires replacing certain actuator yokes with improved actuator yokes. This AD results from certain propeller system actuator yoke arms breaking during flight. We are issuing this AD to prevent actuator yoke arms breaking during flight, which could cause high propeller vibration and contribute to reduced controllability of the airplane.

DATES: This AD becomes effective July 18, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of July 18, 2006.

ADDRESSES: You can get the service information identified in this AD from Hamilton Sundstrand, A United Technologies Company, Publication Manager, Mail Stop 1A–3–Z63, One Hamilton Road, Windsor Locks, CT 06096; fax 1–860–654–5107.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7158; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: We proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to Hamilton Sundstrand Model 14RF–19 propellers. We published the proposed AD in the **Federal Register** on December 8, 2005 (70 FR 72947). That action proposed to require replacing certain actuator yokes with improved actuator yokes.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Comments

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

Conclusion

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

Costs of Compliance

We estimate that 80 actuator yoke arms installed on airplanes of U.S. registry will be affected by this AD. We also estimate that the required parts will cost approximately $1,350 per propeller and that it will take about 2 workhours per propeller to perform the actions, and that the average labor rate is $65 per workhour. Based on these figures, we estimate the total cost of the AD to be $118,400.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of

this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–12–19 Hamilton Sundstrand: Amendment 39–14645. Docket No. FAA–2005–21691; Directorate Identifier 2005–NE–13–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 18, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hamilton Sundstrand Model 14RF–19 propellers with propeller system actuator yoke arms, part number (P/N) 810436–2, which might be installed in actuator assemblies P/N 790119–6. These propellers are installed on, but not limited to, SAAB 340 airplanes.

Unsafe Condition

(d) This AD results from propeller system actuator yoke arms breaking during flight. We are issuing this AD to prevent actuator yoke arms breaking during flight, which could cause high propeller vibration and contribute to reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within 60 days after the effective date of this AD, unless the actions have already been done.

Install Improved Actuator Yoke Arms

(f) Using the Accomplishment Instructions of Hamilton Sundstrand Service Bulletin 14RF–19–61–113, Revision 1, dated September 2, 2003, replace all actuator yoke arms, P/N 810436–2 with improved actuator yoke arms, P/N 810436–3.

(g) Mark newly installed actuators using the Accomplishment Instructions of Hamilton Sundstrand Service Bulletin 14RF–19–61–113, Revision 1, dated September 2, 2003.

(h) After the effective date of this AD, do not install any actuator yoke arms, P/N 810436–2, into any propeller assembly.

Alternative Methods of Compliance

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

Related Information

(j) None.

Material Incorporated by Reference

(k) You must use Hamilton Sundstrand Service Bulletin 14RF–19–61–113, Revision 1, dated September 2, 2003, to perform the replacements and marking required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Hamilton Sundstrand, A United Technologies Company, Publication Manager, Mail Stop 1A–3-Z63, One Hamilton Road, Windsor Locks, CT 06096; fax 1–860–654–5107, for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001, on the internet at *http://dms.dot.gov*, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on June 6, 2006.

Thomas A. Boudreau,

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

[FR Doc. 06–5284 Filed 6–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24365; Directorate Identifier 2006–NM–022–AD; Amendment 39–14641; AD 2006–12–15]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model DHC–8–400 series airplanes. This AD requires repetitive inspections for cracks of the first fuel access panel outboard of the nacelle on the left- and right-hand wings, and related investigative/corrective actions if necessary. This AD also requires eventual replacement of each access panel with a new access panel having a new part number. The replacement terminates the repetitive inspection requirements. This AD results from reports of cracks of the fuel access panels. We are issuing this AD to detect and correct cracked fuel access panels, which could lead to arcing and ignition of fuel vapor during a lightning strike, and result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD becomes effective July 18, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 18, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, New York Aircraft Certification Office, FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7325; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Bombardier Model DHC–8–400 series airplanes. That NPRM was published in the **Federal Register** on April 11, 2006 (71 FR 18239). That NPRM proposed to require repetitive inspections for cracks of the first fuel access panel outboard of the nacelle on the left- and right-hand wings, and related investigative/corrective actions if necessary. That NPRM also proposed to require eventual replacement of each access panel with

a new access panel having a new part number. The replacement would terminate the repetitive inspection requirements.

Comments

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

Conclusion

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

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor per rate hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection, per inspection cycle	1	$80	(1)	$80	5	2 $400
Replacement (for both wings)	4	80	8,200	8,520	5	42,600

1 None.
2 Per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2006–12–15 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–14641. Docket No. FAA–2006–24365; Directorate Identifier 2006–NM–022–AD.

Effective Date

(a) This AD becomes effective July 18, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400, DHC–8–401, and DHC–8–402 airplanes, certificated in any category; serial numbers 4001, and 4003 through 4106 inclusive.

Unsafe Condition

(d) This AD results from reports of cracks of the fuel access panels. We are issuing this AD to detect and correct cracked fuel access panels, which could lead to arcing and ignition of fuel vapor during a lightning strike, and result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Inspection and Related Investigative and Corrective Actions

(f) Within 400 flight hours after the effective date of this AD: Do an ultrasonic inspection for cracks of the first fuel access panel, part number (P/N) 85714230–001, outboard of the nacelle, on the left- and right-hand wings, by doing all of the actions specified in the Accomplishment Instructions of Bombardier Service Bulletin 84–57–13, dated August 17, 2005, except as provided by paragraph (i) of this AD. Do all applicable related investigative and corrective actions before further flight in accordance with the service bulletin. Repeat the applicable inspection, including the detailed inspection, thereafter at intervals not to exceed 1,200 flight hours.

Note 1: Bombardier Service Bulletin 84–57–13, refers to Bombardier Repair Drawing (RD) 8/4–57–451, dated February 2005, as an additional source of service information for doing certain corrective actions.

Note 2: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Terminating Action—Replacement

(g) Within 6,000 flight hours after the initial inspection done in accordance with paragraph (f) of this AD: Replace any access panel P/N 85714230–001, with a new panel P/N 85714230–003 or P/N 85714230–005. Do the replacement in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–57–13, dated August 17, 2005. Replacing one access panel terminates

the repetitive inspection requirements of this AD for that panel only. Replacing both access panels terminates all repetitive inspection requirements of this AD.

Parts Installation

(h) As of the effective date of this AD, no person may install a fuel access panel, P/N 85714230–001, on any airplane unless the panel has been inspected, and all applicable related investigative and corrective actions have been accomplished, in accordance with paragraph (f) of this AD.

No Report Required

(i) Although the Accomplishment Instructions of Bombardier Service Bulletin 84–57–13, dated August 17, 2005, specify to report certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(k) Canadian airworthiness directive CF–2005–37, dated October 11, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Bombardier Service Bulletin 84–57–13, dated August 17, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 5, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5285 Filed 6–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24411; Directorate Identifier 2006–NM–033–AD; Amendment 39–14642; AD 2006–12–16]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 Airplanes; Equipped With Certain Cockpit Door Installations

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 airplanes. This AD requires certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 airplanes. This AD results from a report that, during structural testing of the cockpit door, the lower hinge block rotated and caused the mating hinge pin to disengage, and caused excessive door deflection. We are issuing this AD to prevent failure of a door attachment, which could result in uncontrolled release of the cockpit door under certain fuselage decompression conditions, and possible damage to the airplane structure.

DATES: This AD becomes effective July 18, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of July 18, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, New York Aircraft Certification Office, FAA, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7325; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 airplanes. That NPRM was published in the **Federal Register** on April 11, 2006 (71 FR 18244). That NPRM proposed to require modifying the hinge attachment for the cockpit door from a single-point attachment to a two-point attachment.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the one comment received. The commenter, the Air Line Pilots Association, supports the NPRM.

Conclusion

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

Costs of Compliance

This AD will affect about 16 airplanes of U.S. registry. The required actions will take between 3 and 6 work hours per airplane, depending on the airplane configuration. The average labor rate is $80 per work hour. Required parts will cost about $2,000 per airplane. Based on these figures, the estimated cost of this AD for U.S. operators is between $35,840 and $39,680, or between $2,240 and $2,480 per airplane.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2006–12–16 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–14642. Docket No. FAA–2006–24411; Directorate Identifier 2006–NM–033–AD.

Effective Date

(a) This AD becomes effective July 18, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 airplanes, certificated in any category; serial numbers 003 through 557 inclusive; equipped with cockpit door installation part numbers (P/Ns) identified in Table 1 of this AD.

TABLE 1.—COCKPIT DOOR INSTALLATIONS AFFECTED BY THIS AD

P/N	Dash No.(s)
82510074	All.
82510294	All.
82510310	–001
8Z4597	–001
H85250010	All.
82510700	All.
82510704	All except –502 and –503.

Unsafe Condition

(d) This AD results from a report that, during structural testing of the cockpit door, the lower hinge block rotated and caused the mating hinge pin to disengage, and caused excessive door deflection. We are issuing this AD to prevent failure of a door attachment, which could result in uncontrolled release of the cockpit door under certain fuselage decompression conditions, and possible damage to the aircraft structure.

Compliance

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

Modification

(f) Within 24 months after the effective date of this AD, modify the cockpit door from a single-point attachment to a two-point attachment in accordance with the Accomplishment Instructions of the applicable service bulletin in Table 2 of this AD.

TABLE 2.—BOMBARDIER SERVICE BULLETINS

Use this Bombardier service bulletin—	For airplane serial numbers—
8–52–54, Revision A, dated November 5, 2004	003 through 451 inclusive, 453 through 463 inclusive, 465 through 489 inclusive, 491 through 505 inclusive, and 507.
8–52–58, dated May 12, 2004	452, 464, 490, 506, and 508 through 557 inclusive.

Note 1: Bombardier Service Bulletin 8–52–54 refers to Bombardier Series 100/300 Modification Summary (Modsum) 8Q100859 as an additional source of service information for installing a hinge pin with a two-point attachment. Bombardier Service Bulletin 8–52–58 refers to Bombardier Series 100/300 Modsum 8Q900267 as an additional source of service information for reworking and installing the cockpit door, and reworking the lower hinge attachment to provide a downward-facing pin with a two-point attachment.

Prior/Concurrent Requirements

(g) Prior to or concurrently with the modification in paragraph (f) of this AD, do the applicable actions specified in Table 3 of this AD according to a method approved by either the Manager, New York Aircraft Certification (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent). One approved method is the applicable modification or Modsum listed in the "One approved method for doing these actions" column of Table 3 of this AD.

TABLE 3.—BOMBARDIER SERVICE BULLETINS

For airplanes affected by Bombardier Service Bulletin—	That have these serial numbers—	Do these actions—	One approved method for doing these actions—
8–52–54, Revision A, dated November 5, 2004.	003 through 407 inclusive, 409 through 412 inclusive, and 414 through 433 inclusive.	Rework the cockpit door emergency release.	De Havilland Aircraft of Canada, Limited, Modification 8/2337.
		Install a new label regarding alternate release of the door.	De Havilland Aircraft of Canada, Limited, Modification 8/3339.

TABLE 3.—BOMBARDIER SERVICE BULLETINS—Continued

For airplanes affected by Bombardier Service Bulletin—	That have these serial numbers—	Do these actions—	One approved method for doing these actions—
8–52–58, dated May 12, 2004	452, 464, 490, 506, and 508 through 557 inclusive.	Install the cockpit door	Bombardier Series 100/300 Modsum 8Q200015.
		Install the cockpit door	Bombardier Series 100/300 Modsum 8Q420101.
		Install the cockpit door with a blow-out door panel.	Bombardier Series 100/300 Modsum 8Q420143.

Actions Done In Accordance With Previous Revision of Service Bulletin

(h) Actions done before the effective date of this AD in accordance with Bombardier Service Bulletin 8–52–54, dated May 12, 2004, are acceptable for compliance with the corresponding requirements in paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(j) Canadian airworthiness directive CF–2005–34, dated August 29, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use the Bombardier service information identified in Table 4 of this AD to perform the actions that are required by this AD, as applicable, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

TABLE 4.—MATERIAL INCORPORATED BY REFERENCE

Bombardier Service Bulletin	Revision level	Date
8–52–54	A	Nov. 5, 2004.
8–52–58	Original ..	May 12, 2004.

Issued in Renton, Washington, on June 5, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5286 Filed 6–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 756

[Docket No. 060602146–6146–01]

RIN 0694–AD78

Authorization To Appoint Any Commerce Department Employee To Be Appeals Coordinator in Certain Administrative Appeals

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule revises Section 756.2 of the Export Administration Regulations (EAR) to authorize the Under Secretary for Industry and Security to designate any employee of the Department of Commerce to be the appeals coordinator for appeals of administrative actions taken under part 756 of the EAR. Such designation of employees from outside the Bureau of Industry and Security shall require the concurrence of the head of the operating unit in which that employee is employed. Prior to publication of this rule, only a "BIS official" might have been designated as appeals coordinator.

DATES: This rule is effective June 13, 2006.

FOR FURTHER INFORMATION CONTACT: William Arvin, Regulatory Policy Division, Office of Exporter Services, *warvin@bis.doc.gov*, 202 482 2440.

SUPPLEMENTARY INFORMATION:

Background

Part 756 of the EAR provides the procedures for appeal of administrative actions taken by BIS under the Export Administration Act or the Export Administration Regulations. The procedures of part 756 apply to actions other than the issuance, amendment, revocation or appeal of a regulation, and most enforcement actions taken under part 764 or 766 of the EAR. Part 756 authorizes the Under Secretary for Industry and Security to designate an "appeals coordinator to assist in the review and processing of an appeal * * *." Prior to publication of this rule, part 756 authorized the Under Secretary for Industry and Security to designate "any BIS official" as appeals coordinator. This rule authorizes the Under Secretary for Industry and Security to designate any employee of the Department of Commerce to be the appeals coordinator. The Under Secretary for Industry and Security must have the concurrence of the head of the operating unit in which the employee is employed to make such a designation of a Department of Commerce employee who is not an employee of BIS.

The agency is making this change, which is administrative in nature, in order to provide the Under Secretary and the Department of Commerce with additional flexibility in allocating limited legal and official staff resources to the review and processing of appeals under part 756. The authority to decide appeals will remain with the Under Secretary, in accordance with section 756.2(c)(1) of the EAR, subject to the Under Secretary's authority to delegate that function to the Deputy Under Secretary or another BIS official in accordance with section 756.2(a). Moreover, this change will not affect the Under Secretary's authority to consider recommendations or other relevant information (from either the appeals coordinator or any other source) in deciding appeals, in accordance with section 756.2(c)(1). Nor will this change affect the substance of the agency's ongoing decision-making activities.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required

to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule does not involve any collections of information that are subject to the Paperwork Reduction Act.

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

4. Pursuant to 5 U.S.C. 553, the provisions of the Administrative Procedure Act requiring a notice of proposed rulemaking and the opportunity for public comment are waived, because this regulation involves a rule of agency procedure. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 756

Administrative practice and procedure, Exports, Penalties.

■ Accordingly, part 756 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 756—[AMENDED]

■ 1. The authority citation for 15 CFR part 756 continues to read:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 2. Section 756.2 is amended by revising the second sentence of paragraph (a), by adding a sentence immediately following the second sentence of paragraph (a) and by revising paragraph (b)(4)(v) to read as follows:

§ 756.2 Appeal from an administrative action.

(a) *Review and appeal officials.* * * * In addition, the Under Secretary may designate any employee of the Department of Commerce to be an appeals coordinator to assist in the review and processing of an appeal under this part. If such employee is not an employee of BIS, such designation may be made only with the concurrence of the head of the operating unit in which that employee is employed. * * *

(b) * * *

(4) * * *

(v) *Report.* Any person designated by the Under Secretary to conduct an informal hearing shall submit a written report containing a summary of the hearing and recommend action to the Under Secretary.

* * * * * *

Dated: June 6, 2006.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. E6–9220 Filed 6–12–06; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9258 and TD 9264]

RIN 1545–BE86; RIN 1545–BF26

Guidance Under Section 1502; Amendment of Tacking Ruie Requirements of Life-Nonlife Consolidated Regulations; and Guidance Necessary To Facilitate Business Electronic Filing and Burden Reduction; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to temporary regulations (TD 9258) that were published in the **Federal Register** on Tuesday, April 25, 2006 (71 FR 23856) relating to guidance regarding amendments to tacking rule requirements of Life-Nonlife consolidated regulations under section 1502; and final and temporary regulations (TD 9264), that were published in the **Federal Register** on Tuesday, May 30, 2006 (71 FR 30591) relating to guidance necessary to facilitate business electronic filing and burden reduction.

DATES: The amendment to § 1.1502–76T that published April 25, 2006, is effective April 25, 2006. The amendments to §§ 1.1563–1 and 602.101 and the removal of § 1.1502–76T that published May 30, 2006, is effective May 30, 2006.

FOR FURTHER INFORMATION CONTACT: Grid Glyer, (202) 622–7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (TD 9258) and final and temporary regulations (TD 9264) that are the subject of these corrections are under sections 332, 351, 355, 368, 1081, 1502, and 1563 of the Internal Revenue Code.

Need for Correction

As published, TD 9258 and TD 9264 contain errors that may prove to be misleading and are in need of clarification. TD 9264 added § 1.1502–76T in error, as § 1.1502–76T was previously codified by TD 9258. This correcting amendment amends § 1.1502–76T as codified by TD 9258, and removes § 1.1502–76T as codified by TD 9264.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR parts 1 and 602 are corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1502–76T published on April 25, 2006, as TD 9258 is amended by revising paragraphs (b) through (c)(3) and adding paragraph (d) to read as follows:

§ 1.1502–76T Taxable year of members of group (temporary).

* * * * *

(b) through (b)(2)(ii)(C) [Reserved]. For further guidance, see § 1.1502–76(b) through (b)(2)(ii)(C).

(D) *Election*—(1) *Statement.* The election to ratably allocate items under paragraph (b)(2)(ii) of § 1.1502–76 must be made in a separate statement entitled, "THIS IS AN ELECTION UNDER § 1.1502–76(b)(2)(ii) TO RATABLY ALLOCATE THE YEAR'S ITEMS OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF THE MEMBER]." The election must be filed by including a statement on or with the returns including the items for the years ending and beginning with S's change in status. If two or more members of the same consolidated group, as a consequence of

the same plan or arrangement, cease to be members of that group and remain affiliated as members of another consolidated group, an election under this paragraph (b)(2)(ii)(D)(*1*) may be made only if it is made by each such member. Each statement must also indicate that an agreement, as described in paragraph (b)(2)(ii)(D)(*2*) of this section, has been entered into. Each party signing the agreement must retain either the original or a copy of the agreement as part of its records. See § 1.6001–1(e).

(*2*) *Agreement.* For each election under § 1.1502–76(b)(2)(ii), the member and the common parent of each affected group must sign and date an agreement. The agreement must—

(*i*) Identify the extraordinary items, their amounts, and the separate or consolidated returns in which they are included;

(*ii*) Identify the aggregate amount to be ratably allocated, and the portion of the amount included in the separate and consolidated returns; and

(*iii*) Include the name and employer identification number of the common parent (if any) of each group that must take the items into account.

(b)(2)(iii) through (c) [Reserved]. For further guidance, see § 1.1502–76(b)(2)(iii) through (c).

(d) *Effective date*—(1) *Applicability date*—(i) Paragraph (a) of this section applies to any original consolidated Federal income tax return due (without extensions) on or after April 25, 2006.

(ii) Paragraph (b)(2)(ii)(D) of this section applies to any original consolidated Federal income tax return due (without extensions) after May 30, 2006. However, a consolidated group may apply this section to any original consolidated Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date*—(i) The applicability of paragraph (a) of this section will expire on April 25, 2009.

(ii) The applicability of paragraph (b)(2)(ii)(D) of this section will expire on May 26, 2009.

§ 1.1502–76T [Removed]

■ **Par. 3.** Section 1.1502–76T published on May 30, 2006, as TD 9264 is removed.

■ **Par. 4.** Section 1.1563–1 is amended by adding paragraph (c)(2)(iv) and revising paragraph (e) to read as follows:

§ 1.1563–1 Definition of controlled group of corporations and component members.

* * * * *

(c) * * *

(2) * * *

(iv) The provisions of this paragraph (c)(2) may be illustrated by the following examples (in which it is assumed that all the individuals are unrelated):

Example 1. On each day of 1970 all the outstanding stock of corporations M, N, and P is held in the following manner:

Individuals	Corporations		
	M (percent)	N (percent)	P (percent)
A	55	40	5
B	40	20	40
C	5	40	55

Since the more-than-50-percent stock ownership requirement of section 1563(a)(2)(B) is met with respect to corporations M and N and with respect to corporations N and P, but not with respect to corporations M, N, and P, corporation N would, without the application of this paragraph (c)(2), be a component member on December 31, 1970, of overlapping groups consisting of M and N and of N and P. If N does not file an election in accordance with § 1.1563–1T (c)(2)(i), the Internal Revenue Service will determine the group in which N is to be included.

Example 2. On each day of 1970, all the outstanding stock of corporations S, T, W, X, and Z is held in the following manner:

Individuals	Corporations				
	S (percent)	T (percent)	W (percent)	X (percent)	Z (percent)
D	52	52	52	52	52
E	40	2	2	2	2
F	2	40	2	2	2
G	2	2	40	2	2
H	2	2	2	40	2
I	2	2	2	2	40

On December 31, 1970, the more-than-50-percent stock ownership requirement of section 1563(a)(2)(B) may be met with regard to any combination of the corporations but all five corporations cannot be included as component members of a single controlled group because the inclusion of all the corporations in a single group would be dependent upon taking into account the stock ownership of more than five persons. Therefore, if the corporations do not file a statement in accordance with § 1.1563–1T (c)(2)(ii), the Internal Revenue Service will determine the group in which each corporation is to be included. The corporations or the Internal Revenue Service, as the case may be, may designate that three corporations be included in one group and two corporations in another, or that any four corporations be included in one group and that the remaining corporation not be included in any group.

* * * * *

(e) [Reserved]. For further guidance, see § 1.1563–1T(e)(1).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 5.** The authority citation for part 602 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

■ **Par. 6.** Section 602.101, paragraph (b) is amended by removing the entries for

1.332–6, 1.351–3, 1.355–5, 1.368–3, and 1.1081–11.

Cynthia E. Grigsby,

Senior Federal Register Liaison Officer, Publications and Regulations Branch, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 06–5349 Filed 6–8–06; 3:47 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2006–0473; FRL–8182–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Eight Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for eight major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). These sources are located in Pennsylvania. EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on July 28, 2006 without further notice, unless EPA receives adverse written comment by July 13, 2006. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2006–0473 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *morris.makeba@epa.gov.*

C. Mail: EPA–R03–OAR–2006–0473, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2006–0473. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

State implementation plan revisions imposing RACT for three classes of VOC sources are required under section 182(b)(2). The categories are:

(1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment;

(2) All sources covered by a CTG issued prior to November 15, 1990; and

(3) All major non-CTG sources.

The Pennsylvania SIP already has approved RACT regulations and requirements for all sources and source categories covered by the CTGs. The Pennsylvania SIP also has approved regulations to require major sources of NO_X and additional major sources of VOC emissions (not covered by a CTG) to implement RACT. These regulations are commonly termed the "generic RACT regulations". A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead establishes procedures for imposing case-by-case RACT determinations. The Commonwealth's SIP-approved generic RACT regulations consist of the procedures PADEP uses to establish and impose RACT for subject sources of VOC and NO_X. Pursuant to the SIP-approved generic RACT rules, PADEP imposes RACT on each subject source in an enforceable document, usually a Plan Approval (PA) or Operating Permit (OP). The Commonwealth then submits these PAs and OPs to EPA for approval as source-specific SIP revisions. EPA reviews these SIP revisions to ensure that the PADEP has determined and imposed RACT in accordance with the provisions of the SIP-approved generic RACT rules.

It must be noted that the Commonwealth has adopted and is implementing additional "post RACT requirements" to reduce seasonal NO_X

emissions in the form of a NO_X cap and trade regulation, 25 Pa Code Chapters 121 and 123, based upon a model rule developed by the States in the OTR. That regulation was approved as SIP revision on June 6, 2000 (65 FR 35842).. Pennsylvania has also adopted 25 Pa Code Chapter 145 to satisfy Phase I of the NO_X SIP call. That regulation was approved as a SIP revision on August 21, 2001 (66 FR 43795). Federal approval of a source-specific RACT determination for a major source of NO_X in no way relieves that source from any applicable requirements found in 25 PA Code Chapters 121, 123 and 145.

On May 8, 2006, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for eight sources of VOC and/or NO_X. The Commonwealth's submittals consist of PAs and OPs which impose VOC and/or NO_X RACT requirements for each source.

II. Summary of the SIP Revisions

Copies of Pennsylvania's entire SIP submittal, including the actual PAs and OPs imposing RACT, PADEP's evaluation memoranda and the sources' RACT proposal are included in the electronic and hard copy docket for this final rule. As previously stated, all documents in the electronic docket are listed in the *http://www.regulations.gov index*. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

The table below identifies the sources and the individual plan approvals (PAs) and operating permits (OPs) which are the subject of this rulemaking.

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	Plan approval (PA#) operating permit (OP#)	Source type	"Major source" pollutant
Big Bee Steel and Tank Company	Lancaster	36–2024	Surface coating operations	VOC.
Conoco Phillips Company	Delaware	OP–23–0003	Refinery	VOC & NO_X.
The Hershey Company, East Plant	Dauphin	22–02004B	Chocolate manufacturing operations.	VOC.
LORD Corporation, Cambridge Springs	Crawford	OP–20–123	Industrial products operations.	VOC.
Pittsburgh Corning Corporation	McKean	PA–42–009	Container glass production	VOC & NO_X.
Small Tube Manufacturing, LLC	Blair	07–12010	Copper and brass tubing production.	VOC.
Texas Eastern Transmission Corporation, Holbrook Compressor Station.	Greene	30–000–077	Internal combustion engines.	NO_X.
Willamette Industries, Johnsonburgh Mill	Elk	OP–24–009	Kraft pulp and paper	VOC & NO_X.

EPA is approving these RACT SIP submittals because PADEP established and imposed these RACT requirements in accordance with the criteria set forth in its SIP-approved generic RACT regulations applicable to these sources. In accordance with its SIP-approved generic RACT rule, the Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and NO_X RACT for eight major sources. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 28, 2006 without further notice unless EPA receives adverse comment by July 13, 2006. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This rule also does not have tribal implications because it will 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, as

specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for eight named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 2006. Filing a petition for reconsideration by the Administrator of this final rule approving source-specific RACT requirements for eight sources in the Commonwealth of Pennsylvania does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b) (2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 1, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (d)(1) is amended by adding the entries for Bigbee Steel and Tank Company; Conoco Phillips Company; The Hershey Company; LORD Corporation; Pittsburgh Corning Corporation; Small Tube Manufacturing, LLC; Texas Eastern Transmission Corporation; and Willamette Industries, at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(1) * * *

Name of source	Permit number	County	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*	*
Bigbee Steel and Tank Company.	36–2024	Lancaster	7/7/95	6/13/06 [Insert page number where the document begins].	52.2020(d)(1)(p)
Conoco Phillips Company	OP–23–0003	Delaware	4/29/04	6/13/06 [Insert page number where the document begins].	52.2020(d)(1)(p)
The Hershey Company	22–02004B	Dauphin	12/23/05	6/13/06 [Insert page number where the document begins].	52.2020(d)(1)(p)
LORD Corporation, Cambridge Springs.	OP–20–123	Crawford	7/27/95	6/13/06 [Insert page number where the document begins].	52.2020(d)(1)(p)
Pittsburgh Corning Corporation.	PA–42–009	McKean	5/31/95	6/13/06 [Insert page number where the document begins].	52.2020(d)(1)(p)
Small Tube Manufacturing, LLC.	07–02010	Blair	2/27/06	6/13/06 [Insert page number where the document begins].	52.2020(d)(1)(p)
Texas Eastern Transmission Corporation, Holbrook Compressor Station.	30–000–077	Greene	1/3/97	6/13/06 [Insert page number where the document begins].	52.2020(d)(1)(p)

Name of source	Permit number	County	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Willamette Industries, Johnsonburg Mill.	OP–24–009 ...	Elk	5/23/95	6/13/06 [Insert page number where the document begins].	52.2020(d)(1)(p)

* * * * *

[FR Doc. 06–5295 Filed 6–12–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2005–MD–0015; FRL–8183–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revised Definition of Interruptible Gas Service

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision amends the regulation pertaining to the control of fuel-burning equipment, stationary internal combustion engines, and certain fuel burning installations. The revision clarifies the definition of "interruptible gas service". EPA is approving the revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on July 13, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2005–MD–0015. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Helene Drago, (215) 814–5796, or by e-mail at *drago.helene@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On January 12, 2006 (71 FR 1996), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of revisions to Maryland's SIP that consists of amendments to Regulation .01 under COMAR 26.11.09 Control of Fuel Burning Equipment, Stationary Internal Combustion Engines and Certain Fuel-Burning Installations. The revision clarifies the definition of "interruptible gas service". The formal SIP revision (#05–07) was submitted by the Maryland Department of the Environment on October 31, 2005. Other specific requirements of the SIP revision and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving the revisions to the Maryland SIP that clarifies the definition of "interruptible gas service".

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks " (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this final rule to approve revisions that clarify the definition of "interruptible gas service" must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 1, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising the entry for COMAR 26.11.09.01 to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
*	*	*	*	*
COMAR 26.11.09 Control of Fuel Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations				
COMAR 26.11.09.01	Definitions	9/12/05	6/13/06 [Insert page number where the document begins].	Revised definition of "interruptible gas service" in 26.11.09.01(4)
*	*	*	*	*

* * * * *

[FR Doc. 06–5297 Filed 6–12–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2004–0085; FRL–7743–2]

RIN 2070–AJ02

Certain Polybrominated Diphenylethers; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for tetrabromodiphenyl ether (CAS No. 40088–47–9; Benzene, 1,1′-oxybis-, tetrabromo deriv.), pentabromodiphenyl ether (CAS No. 32534–81–9; Benzene, 1,1′-oxybis-, pentabromo deriv.), hexabromodiphenyl ether (CAS No. 36483–60–0; Benzene, 1,1′-oxybis-, hexabromo deriv.), heptabromodiphenyl ether (CAS No. 68928–80–3; Benzene, 1,1′-oxybis-, heptabromo deriv.), octabromodiphenyl ether (CAS No. 32536–52–0; Benzene, 1,1′-oxybis-, octabromo deriv.), and nonabromodiphenyl ether (CAS No. 63936–56–1; Benzene, pentabromo(tetrabromophenoxy)-), or any combination of these substances resulting from a chemical reaction. This rule requires manufacturers and importers to notify EPA at least 90 days before commencing the manufacture or import of any one or more of these chemical substances on or after January 1, 2005 for any use. EPA believes that this action is necessary because these chemical substances may be hazardous to human health and the environment. The required notice will provide EPA with the opportunity to evaluate an intended new use and associated activities and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This final rule is effective on August 14, 2006.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2004–0085. All documents in the docket are listed on the regulations.gov Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Rm. B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744

and the telephone number for the OPPT Docket is (202) 566–0280.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; e-mail address: *moss.kenneth@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA proposed this SNUR on certain polybrominated diphenylethers on December 6, 2004 (69 FR 70404) (FRL–7688–1). The Agency's responses to public comments received on the proposed rule are in Unit VI. Please consult the December 6, 2004 **Federal Register** document for further background information for this final rule.

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or import one or more of the following polybrominated diphenyl ethers (PBDEs): tetrabromodiphenyl ether ("tetraBDE") (CAS No. 40088–47–9; Benzene, 1,1′-oxybis-, tetrabromo deriv.), pentabromodiphenyl ether ("pentaBDE") (CAS No. 32534–81–9; Benzene, 1,1′-oxybis-, pentabromo deriv.), hexabromodiphenyl ether ("hexaBDE") (CAS No. 36483–60–0; Benzene, 1,1′-oxybis-, hexabromo deriv.), heptabromodiphenyl ether ("heptaBDE") (CAS No. 68928–80–3; Benzene, 1,1′-oxybis-, heptabromo deriv.), octabromodiphenyl ether ("octaBDE") (CAS No. 32536–52–0; Benzene, 1,1′-oxybis-, octabromo deriv.), and nonabromodiphenyl ether ("nonaBDE") (CAS No. 63936–56–1; Benzene, pentabromo(tetrabromophenoxy)-), or any combination of these substances resulting from a chemical reaction. Persons who intend to import any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements, and to the regulations codified at 19 CFR 12.118 through 12.127, and 127.28. Those persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this final rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR part 707, subpart D (see 40 CFR 721.20). Potentially affected entities may include, but are not limited to:

- Manufacturers (defined by statute to include importers) of PBDEs (NAICS 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions at 40 CFR 721.5 for SNUR-related obligations. Note that for this action, 40 CFR 721.5(a)(2) does not apply. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.* You may also access a frequently updated electronic version of 40 CFR part 721 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr.*

II. Background

A. What Action is the Agency Taking?

This rule requires persons to notify EPA at least 90 days before commencing the manufacture (including importation) of tetrabromodiphenyl ether ("tetraBDE") (CAS No. 40088–47–9; Benzene, 1,1′-oxybis-, tetrabromo deriv.), pentabromodiphenyl ether ("pentaBDE") (CAS No. 32534–81–9; Benzene, 1,1′-oxybis-, pentabromo deriv.), hexabromodiphenyl ether ("hexaBDE") (CAS No. 36483–60–0; Benzene, 1,1′-oxybis-, hexabromo deriv.), heptabromodiphenyl ether ("heptaBDE") (CAS No. 68928–80–3; Benzene, 1,1′-oxybis-, heptabromo deriv.), octabromodiphenyl ether ("octaBDE") (CAS No. 32536–52–0; Benzene, 1,1′-oxybis-, octabromo deriv.), and nonabromodiphenyl ether ("nonaBDE") (CAS No. 63936–56–1; Benzene, pentabromo(tetrabromophenoxy)-), or any combination of these substances resulting from a chemical reaction, for any use on or after January 1, 2005.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)).

C. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, and exemptions to reporting requirements. Note that for this action, 40 CFR 721.5(a)(2) does not apply. Provisions relating to user fees appear at 40 CFR part 700. Persons that are subject to this SNUR will need to comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a significant new use notice (SNUN), EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of

TSCA section 12(b). The regulations that implement TSCA section 12(b) appear at 40 CFR part 707, subpart D. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707, subpart B.

III. Objectives and Rationale of the Rule

As summarized in Unit IV. of the proposed rule, EPA has concerns regarding the environmental fate and the exposure pathways that lead to PBDE presence in wildlife and people, and the persistence, bioaccumulation, and toxicity (PBT) potential of pentaBDE and octaBDE, and the other PBDE congeners that comprise these products and are also subject to this rule. Great Lakes Chemical Corporation, formerly the sole manufacturer of the commercial pentaBDE and octaBDE products in the United States, voluntarily discontinued their manufacture for all uses by December 31, 2004. With Great Lakes Chemical Corporation's exit from the market, EPA believes that all production in and import into the United States of these chemicals has ceased. However, EPA is concerned that manufacture or import could be reinitiated in the future, and wants the opportunity to evaluate and control, if appropriate, exposures associated with those activities. Based on the situation prior to January 1, 2005, including substantial production volume, number of uses, potential for widespread release and exposure, as well as the PBT nature of the chemical substances, any new manufacture or import after that date is expected to significantly increase exposures now that manufacture and import have been discontinued, over that which could otherwise exist. The notice required by this SNUR will provide EPA with the opportunity to evaluate activities associated with a significant new use and an opportunity to protect against unreasonable risks, if any, from exposure to the substances.

Based on these considerations, EPA wants to achieve the following objectives with regard to the significant new uses that are designated in this rule. The Agency wants to ensure that:

- It will receive notice of any person's intent to manufacture or import the chemical substances subject to this rule for a designated significant new use before that activity begins.
- It will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or importing these chemical substances for a significant new use.
- It will be able to regulate prospective manufacturers and importers of these chemical substances before a significant new use occurs, provided such regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6 or 7.

The mechanisms or pathways by which the PBDEs move into and through the environment and humans are not fully understood, but are likely to include releases from manufacturing of the chemicals, manufacturing of products like plastics or textiles, aging and wear of products like sofas and electronics, and releases at the end of product life (disposal, recycling). EPA believes that information provided in SNUNs will help the Agency review any new uses and take action, as needed, to regulate releases of PBDEs into the environment.

IV. Significant New Use Determination

In making a determination that a use of a chemical substance is a significant new use, the Agency must consider all relevant factors, including those listed in section 5(a)(2) of TSCA. Those factors are:

- The projected volume of manufacturing and processing of the chemical substance.
- The extent to which the use changes the type or form of exposure to human beings or the environment to a chemical substance.
- The extent to which the use changes the magnitude and duration of exposure to human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

Given that no companies are currently manufacturing or importing commercial pentaBDE or octaBDE in the United States, the negative commercial and regulatory environment associated with these chemicals (including the EU ban on marketing and use of pentaBDE and octaBDE (see Ref. 27 of the proposed rule) and similar restrictions enacted by certain states in the United States (see Ref. 28 of the proposed rule), and the expectation that viable substitutes will be available including those being considered in the Design for Environment Furniture Flame Retardancy Partnership (see Ref. 29 of the proposed rule), EPA believes it is unlikely that companies would incur the costs associated with establishing new manufacturing capacity for these chemicals in order to enter this market. With Great Lakes Chemical Corporation's exit from the market, EPA believes that all United States manufacture and import of these chemicals have ceased and that any new manufacture or import, for any use, subsequent to Great Lakes Chemical Corporation's December 31, 2004 phase-out date would result in a significant increase in the magnitude and duration of exposures to humans and the environment over that which would otherwise exist. Based on these considerations, EPA has determined that any manufacture or import of the chemical substances listed in Unit II.A. for any use on or after January 1, 2005 is a significant new use.

V. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA believes that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the proposal date of the SNUR, rather than as of the effective date of the final rule. If uses begun after publication of the proposed SNUR were considered to be ongoing, rather than new, it would be difficult for EPA to establish notification requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the proposed rule became final, and then argue that the use was ongoing as of the effective date of the final rule.

Any person who, after publication of the proposed SNUR, begins commercial manufacture or import of the chemical substances listed in Unit II.A. must stop such activity before the effective date of the final rule. Those persons will have to meet all SNUR notice requirements and wait until the end of the notice review period, including all extensions, before engaging in any activities designated as significant new uses. If, however, persons who begin commercial manufacture or import of the chemical substances listed in Unit II.A. between the proposal and the effective date of the final SNUR meet the conditions of advance compliance as codified at 40 CFR 721.45(h), those persons would be considered to have met the requirements of the final SNUR for those activities.

VI. Discussion of the Final Significant New Use Rule and Response to Comments

This action finalizes the SNUR proposed in the **Federal Register** of December 6, 2004 (69 FR 70404). This final rule requires persons who intend to manufacture or import the chemical substances listed in Unit II.A. to submit a SNUN at least 90 days before commencing the manufacture or importation of any of these chemicals, for any use, on or after January 1, 2005. The Agency reviewed and considered all comments received during the comment period (December 6, 2004 through February 4, 2005) for the proposed rule. Copies of all comments received are available in the public docket for this action. A discussion of the comments germane to the rulemaking and the Agency's response follows.

A. TSCA Section 12(b) Applicability

Comment 1—Clarify the TSCA section 12(b) consequences of the proposed rule. One commenter requested clarification of TSCA section 12(b) export notification requirements, especially as they relate to decaBDE under the proposed rule, or that EPA issue a technical correction notice that explicitly excludes those requirements for exported decaBDE.

Response. DecaBDE itself is not subject to TSCA section 12(b) export notification requirements as a result of this action as it is not covered by this rulemaking. However, anyone who exports one of the PBDEs subject to this rule, on or after 30 days after the December 6, 2004 date of publication of the proposed rule in the **Federal Register** (January 5, 2005), was and is subject to the export notification provisions of TSCA section 12(b). TSCA section 12(b) export notification requirements apply to chemical substances for which a proposed or final rule has been issued under TSCA section 5 (in this case, a TSCA section 5(a)(2) SNUR). Chemical substances exported as impurities are not exempt from this requirement, and in addition there is no *de minimis* level below which TSCA section 12(b) notification is not required (See 45 FR 82844, 82845; December 16, 1980). Therefore, any amount of the PBDEs subject to this SNUR that are contained in exported decaBDE, other than when exported as part of an article, will trigger TSCA section 12(b) reporting for those subject PBDEs. A notice of export is required for the first export or intended export to a particular country in a calendar year. See 40 CFR part 707, subpart D (45 FR 82850; December 16, 1980).

B. Importation of PBDEs

Comment 2—Import of a formulation containing subject PBDEs. One commenter asked if a company were to import a formulated liquid resin (such as an epoxy for use in engineering adhesives or molding compounds) containing one or more of the subject PBDEs, would that company be required to submit a notice under the SNUR?

Response. Yes, a chemical substance that is manufactured or imported as part of a mixture is subject to SNUR notification requirements. See footnote for 40 CFR 720.30(b), which would be relevant per 40 CFR 721.1(c).

Comment 3—Import of articles. Commenters questioned the Agency's rationale for not having the SNUR apply to the import of articles containing the PBDEs subject to this rule, especially since they are both inexpensive and effective to use, and because the Agency acknowledged in the proposal that the quantity of imported articles containing these PBDEs is unknown. They suggested that with the cessation of octaBDE and pentaBDE production in the United States, suppliers outside of the United States, specifically in China or India, will seize the opportunity to continue supplying these chemicals to companies who will use them in articles that will then be shipped into the United States. This potential practice, the commenters continue, could have a negative impact on EPA's ability to prevent these chemicals from being introduced in the United States without its knowledge or oversight. Furthermore, commenters argue, overseas manufacturers may increase export of such articles to the United States, either to unload existing stock of products no longer acceptable to the European Union as of August 15, 2004, or to avoid the need for conversion of existing production capacity away from these substances. That is, by failing to adopt a SNUR that captures the subject PBDEs when imported as part of articles, EPA could inadvertently make the United States the market of choice for producers of these articles.

Response. In the proposed SNUR, EPA specifically asked for comment on whether the subject substances when imported as part of articles should be included in the SNUR. While the Agency acknowledged in the proposal that the quantity of imported articles containing these PBDEs is unknown, there were factors weighing in favor of continuing to exempt these articles. First, the only known manufacturer or importer of those chemical substances in the United States had announced its intention to discontinue production and/or import of the chemical substances themselves. Second, there is a clear negative commercial and regulatory environment associated with these chemicals, worldwide. Third, there is an expectation that viable substitutes will be available. Based on these reasons, EPA proposed exempting from the reporting requirements of the SNUR the subject substances when imported as a part of articles.

In consideration of the public comments received, however, EPA has re-evaluated this exemption. EPA agrees with commenters that if the subject substances when imported as a part of articles are not subject to the SNUR, EPA could miss the opportunity to obtain notifications that would provide information of potential regulatory and assessment value. In particular, the Agency recognizes that the low cost and effectiveness of the subject PBDEs, combined with the negative commercial and regulatory environment in certain parts of the world, could actually lead to continued or increasing use of the subject PBDEs in those countries where these chemicals are not controlled, and subsequent export of articles containing those chemicals to the United States. However, EPA has decided to promulgate the PBDE SNUR as initially proposed, with an exemption for imported articles that may contain the subject PBDEs. EPA may not issue a SNUR covering as a significant new use import of the subject PBDEs as a part of articles for any use if that activity is ongoing. EPA received no comments on the proposed rule suggesting import of the subject PBDEs as a part of articles was ongoing. However, comments received from the Polyurethane Foam Association (PFA) after the close of the comment period for the proposed rule indicate the potential for presence of the subject PBDEs in imported articles. In particular, PFA referred to Department of Commerce trend data that "the U.S. imports a significant amount of products that contain flexible polyurethane foam, some of which are likely to contain pentaBDE." (see the PFA comment in the public docket for this rule at EPA–HQ–OPPT–2004–0085). While the Agency is not obligated to respond to a late comment, EPA intends to investigate this issue further and seeks further information on the presence of the subject PBDEs in imported articles. Such information can be submitted to the docket to this rule.

C. DecaBDE

Comment 4—Rulemaking or other action is needed on decaBDE.

Comments dealt with the need for regulatory controls on decaBDE and concern about Federal inaction on decaBDE.

Response. This SNUR follows up Great Lakes Chemical Corporation's voluntary phase out of production of pentaBDE and octaBDE, which are comprised of the other PBDE congeners subject to this rule. DecaBDE remains in commerce and it is not subject to this rule. However, EPA recognizes that there is extensive, ongoing research on decaBDE. Under the Agency's Voluntary Children's Chemical Evaluation Program (VCCEP), industry sponsored an assessment and data needs analysis for decaBDE. Sponsorship includes an assessment of the potential hazards, exposures, and risks to children and prospective parents and a data needs analysis to evaluate the need for additional toxicity and exposure information. Further, EPA is developing a proposed SNUR for 16 chemical substances/categories, including decaBDE, which have been identified by the Consumer Product Safety Commission (CPSC) and evaluated by the National Academy of Sciences as candidates for use to meet the residential upholstered furniture (RUF) flammability standards under consideration by the state of California and the CPSC.

Other comments were also submitted that related to research or potential environmental concerns associated with decaBDE. These comments were not considered germane to this rulemaking.

D. Ensuring All Potential Manufacturers are Accounted For

Comment 5—Sources to determine potential manufacturers. One commenter asked that EPA confirm the accuracy of the assumption that Great Lakes is the sole domestic manufacturer and importer of pentaBDE and octaBDE.

Response. EPA's conclusion that Great Lakes was the sole domestic manufacturer of both these chemical substances was based on the best available information. In order to identify current domestic manufacturers and importers of pentaBDE and octaBDE, EPA consulted several market buyers guides and proprietary reports, including Specialty Chemicals (SRI International, Specialty Chemicals: Flame Retardants, November 2002) and the Chemical Economics Handbook (SRI International: Bromine, 2003). The Agency reviewed each company's online product list (where available) or directly contacted the companies to determine if they currently sold pentaBDE or octaBDE and if so where the chemicals were produced. EPA also consulted information submitted under the Agency's TSCA section 8(a) Inventory Update Rule (IUR), which requires manufacturers and importers of certain chemical substances included on the TSCA Chemical Substances Inventory to report current data on the production volume, plant site, and site-limited status of these substances. Reporting under the IUR began in 1986 and takes place at four-year intervals. The most recent reporting year ended December 31, 2002. EPA reviewed IUR submissions for pentaBDE or octaBDE that were made up to the date of the proposed SNUR in order to help support the conclusion that there are no manufacturers or importers of the chemicals. Finally, the Agency received no public comments that suggested ongoing import or manufacture of the PBDEs subject to this rule.

E. True Cost of Compliance with this Rule

Comment 6—Taking all costs into account. One commenter suggested that certain costs were not taken into account when estimating the burden to industry of complying with the rule, including identifying alternatives, finding a supplier, developing new shipping procedures, and making potential equipment changes.

Response. EPA did not include the additional cost items noted by the commenter in estimating the burden to industry of complying with the rule. The economic analysis for a SNUR estimates the cost of complying with the SNUR only. The SNUR requires that those companies intending to manufacture or import any of the subject chemicals for the specified new use submit a SNUN. A SNUR does not prevent persons from manufacturing or importing a substance, nor stipulate a switch to an alternative.

VII. Economic Considerations

EPA has evaluated the potential costs of establishing a SNUR for the chemical substances listed in Unit II.A. These potential costs are related to the submission of SNUNs and the export notification requirements of TSCA section 12(b). EPA notes that, with the possible exception of export notification requirements, the costs of submission of SNUNs will not be incurred by any company unless that company decides to pursue a significant new use as defined in this SNUR. The Agency's economic analysis is available in the public docket for this rule.

A. SNUNs

The Agency has analyzed the potential costs of compliance with this rule. EPA's complete economic analysis is available in the public docket. The Agency has estimated the average cost of compliance with the SNUR per chemical (e.g., cost of submitting a SNUN) to be $6,956 based on 105 burden hours or a total cost of $13,912 or 210 hours for both chemicals. These estimates do not include the costs of testing or submission of other information to permit a reasoned evaluation of potential risks.

B. Export Notification

As noted in Unit II.C. of this final rule, persons who intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)). These provisions require that, for chemicals subject to a proposed or final SNUR, a company notify EPA of the first shipment to a particular country in a calendar year of an affected chemical substance. EPA estimated that the one-time cost of preparing and submitting an export notification to be $89.29. The total costs of export notification will vary per chemical, depending on the number of required notifications (i.e., number of countries to which the chemical is exported).

EPA is unable to estimate the total number of TSCA section 12(b) notifications that will be received as a result of this SNUR, or the total number of companies that will file these notices. However, EPA expects that the total cost of complying with the export notification provisions of TSCA section 12(b) will be limited based on historical experience with TSCA section 12(b) notifications and the fact that no companies have currently been identified that currently market any of the chemical substances that are the subject of this rule commercially. If companies were to manufacture for export only any of the chemical substances covered by this SNUR, such companies would incur the minimal costs associated with export notification despite the fact they would not be subject to the SNUR notification requirements. See TSCA section 12(a) and 40 CFR 721.45(g). EPA is not aware of any companies in this situation.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this final

SNUR is are not a "significant regulatory action" subject to review by OMB, because it does not meet the criteria in section 3(f) of the Executive Order.

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0038 (EPA ICR No. 1188). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a "significant new use." By definition of the word "new," and based on all information currently available to EPA, it appears that no small or large entities were engaged in such activity as of January 1, 2005. Since a SNUR only requires that any person who intends to engage in a significant new use must first notify EPA by submitting a SNUN, no economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 1,000 SNURs, the Agency receives on average only about 10 notices per year. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of a SNUN (see Unit X. of the proposed rule), are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Executive Order 13132: Federalism

This action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This rule does not significantly or uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), do not apply to this rule.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children. Although the chemicals that are addressed in this SNUR might present such risks to children, SNURs are administrative actions that require chemical manufacturers to submit a SNUN to EPA before a chemical may be made available for sale. Therefore, this action does not in and of itself affect children's health.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer Advancement Act

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice

related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

K. Executive Order 12988: Civil Justice Reform

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 5, 2006.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. By adding new § 721.10000 to subpart E to read as follows:

§ 721.10000 Certain polybrominated diphenylethers.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified as tetrabromodiphenyl ether (CAS No. 40088–47–9; Benzene, 1,1′-oxybis-, tetrabromo deriv.), pentabromodiphenyl ether (CAS No. 32534–81–9; Benzene, 1,1′-oxybis-, pentabromo deriv.), hexabromodiphenyl ether (CAS No. 36483–60–0; Benzene, 1,1′-oxybis-, hexabromo deriv.), heptabromodiphenyl ether (CAS No. 68928–80–3; Benzene, 1,1′-oxybis-, heptabromo deriv.), octabromodiphenyl ether (CAS No. 32536–52–0; Benzene, 1,1′-oxybis-, octabromo deriv.), and nonabromodiphenyl ether (CAS No. 63936–56–1; Benzene, pentabromo(tetrabromophenoxy)-), or any combination of these substances resulting from a chemical reaction are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new use is manufacture or import for any use on or after January 1, 2005.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture or import for commercial purposes a substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

[FR Doc. E6–9207 Filed 6–12–06; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D 060806A]

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second seasonal apportionment of the 2006 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 10, 2006, through 1200 hrs, A.l.t., July 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of the 2006 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA is 100 metric tons as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006), for the period 1200 hrs, A.l.t., April 1, 2006, through 1200 hrs, A.l.t., July 1, 2006.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the 2006 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA.

The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates and "other species."

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the shallow-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to

publish a notice providing time for public comment because the most recent, relevant data only became available as of June 7, 2006.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated:June 8, 2006.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–5346 Filed 6–8–06; 1:41 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045-6045-01; I.D. 060706C]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the third seasonal allowance of the 2006 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 8, 2006, through 1200 hrs, A.l.t., July 1, 2006.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The third seasonal allowance of the 2006 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI is 49 metric tons as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the third seasonal allowance of the 2006 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI has been caught. Consequently, NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for yellowfin sole by vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 7, 2006.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 7, 2006.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–5348 Filed 6–8–06; 1:41 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045-6045-01; I.D. 060706B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing directed fishing for Pacific cod by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 halibut bycatch allowance specified for the trawl Pacific cod fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 8, 2006, through 2400 hrs, A.l.t., December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2006 halibut bycatch allowance specified for the trawl Pacific cod fishery category in the BSAI is 1,434 metric tons as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the 2006 halibut bycatch allowance specified for the trawl Pacific cod fishery category in the BSAI has been caught. Consequently, NMFS is closing directed fishing for Pacific cod by vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific cod by vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 7, 2006.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 7, 2006.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–5347 Filed 6–8–06; 1:41 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 113
Tuesday, June 13, 2006

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 Parts 20 and 32

RIN 3150–AH48

National Source Tracking of Sealed Sources

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to establish a National Source Tracking System for certain sealed sources. The NRC is proposing to change the basis for the rule from the NRC's authority to promote the common defense and security to protection of the public health and safety and is seeking public comment on this issue.

DATES: Submit comments on the basis change by July 3, 2006. Comments received after the above date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after these dates.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH48) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; email *cag@nrc.gov*. Comments can also be submitted via the Federal Rulemaking Portal *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8126, e-mail, *mlh1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The proposed rule on national source tracking was published in the **Federal Register** on July 28, 2005 (70 FR 43646) for public comment. The comment period closed October 11, 2005. The proposed rule was issued under the NRC's statutory authority to promote common defense and security. After publication of the proposed rule, the NRC issued Orders requiring increased controls for the remainder of the licensees possessing risk-significant quantities of radioactive material under the NRC's statutory authority to protect the public health and safety. Agreement States issued legally binding requirements for the increased controls for their licensees. The NRC has reevaluated the underlying basis for the National Source Tracking rule and is now proposing that the rule be issued under its statutory authority to protect the public health and safety. The change in basis is consistent with the framework established for the increased controls that were issued by December 2005. The basis change will allow the Agreement States to issue legally binding requirements for their licensees and to conduct the national source tracking inspections of their licensees. The proposed changes to 10 CFR part 150 would not be included in the final rule as these were to cover the Agreement State licensees.

The database for the National Source Tracking System would still be maintained by the NRC. Both NRC and Agreement State licensees would report their transactions to the National Source Tracking System.

The NRC is specifically inviting comment on the issue of the change in the basis for issuing the rule to protection of the public health and safety. Because the issue on which comment is sought is limited to a change in the basis under which the rule is to be issued, NRC is providing a limited comment period. With the change in basis, the final rule would be an immediate mandatory matter of compatibility and be classified as Compatibility Category "B." The Agreement State Compatibility section of the Statement of Considerations would be revised and is provided below.

II. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), § 20.2207, the final rule would be classified as Compatibility Category "B." The NRC program elements in this category are those that apply to

activities that have direct and significant transboundary implications. An Agreement State should adopt program elements essentially identical to those of NRC. Agreement State and NRC licensees would report their transactions to the National Source Tracking System. The database would be maintained by NRC.

Dated at Rockville, Maryland, this 7th day of June, 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E6–9179 Filed 6–12–06; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25001; Directorate Identifier 2006–NM–079–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800 and –900 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes. This proposed AD would require replacing the aero/fire seals of the blocker doors on the thrust reverser torque boxes on the engines with new, improved aero/fire seals. This proposed AD results from a report that the top three inches of the aero/fire seals of the blocker doors on the thrust reverser torque boxes are not fireproof. We are proposing this AD to prevent a fire in the fan compartment (a fire zone) from migrating through the seal to a flammable fluid in the thrust reverser actuator compartment (a flammable leakage zone), which could result in an uncontrolled fire.

DATES: We must receive comments on this proposed AD by July 28, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Doug Pegors, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6504; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2006–25001; Directorate Identifier 2006–NM–079–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://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received a report indicating that Boeing found that on a Model 737 airplane, the upper three inches of the aero/fire seal of the blocker doors on the thrust reverser torque box extended past the metal v-blade/groove designed to serve as a firewall for the seal. The seal itself serves as a firewall between a fire zone and a flammable leakage zone in the upper region of the thrust reverser torque box. The seal is not fireproof (unable to withstand 2,000 degrees Fahrenheit for 15 minutes) and could allow a fire in the fan compartment, which is a fire zone, to migrate to a flammable fluid in the thrust reverser actuator compartment, which is a flammable leakage zone. This condition, if not corrected, could result in an uncontrolled fire.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737–78–1074, Revision 1, dated September 15, 2005. The service bulletin describes procedures for replacing the aero/fire seals of the blocker doors on the thrust reverser torque boxes on the engines with new, improved aero/fire seals. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 1,595 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 616 airplanes of U.S. registry. The proposed actions would take about 4 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost about $3,910 per airplane. Based on these figures, the estimated cost of the proposed AD for

U.S. operators is $2,605,680, or $4,230 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2006–25001; Directorate Identifier 2006–NM–079–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 28, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–78–1074, Revision 1, dated September 15, 2005.

Unsafe Condition

(d) This AD results from a report that the top three inches of the aero/fire seals of the blocker doors on the thrust reverser torque boxes are not fireproof. We are issuing this AD to prevent a fire in the fan compartment (a fire zone) from migrating through the seal to a flammable fluid in the thrust reverser actuator compartment (a flammable leakage zone), which could result in an uncontrolled fire.

Compliance

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

Replace the Aero/Fire Seal

(f) Within 60 months or 8,200 flight cycles after the effective date of this AD, whichever occurs first, replace the aero/fire seals of the blocker doors on the thrust reverser torque boxes on the engines with new, improved aero/fire seals in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–78–1074, Revision 1, dated September 15, 2005.

Previously Accomplished Actions

(g) Replacements done before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–78–1074, dated April 7, 2005, are acceptable for compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on June 5, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–9163 Filed 6–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25000; Directorate Identifier 2006–NM–096–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, and –800 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to revise an existing airworthiness directive (AD) that applies to certain Boeing Model 737–600, –700, –700C, and –800 series airplanes. The existing AD currently requires inspecting/measuring the length of the attachment fasteners between the nacelle support fittings and the lower wing skin panels, and related investigative/corrective actions if necessary. This proposed AD would correct errors found in the existing AD. This proposed AD results from detection of those inadvertent errors. We are proposing this AD to prevent inadequate fastener clamp-up, which could result in cracking of the fastener holes, cracking along the lower wing skin panels, fuel leaking from the wing fuel tanks onto the engines, and possible fire.

DATES: We must receive comments on this proposed AD by July 28, 2006.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include docket number "Docket No. FAA–2006–25000; Directorate Identifier 2006–NM–096–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://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in a docket, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

On November 10, 2005, we issued AD 2005–24–03, amendment 39–14383 (70 FR 70713, November 23, 2005), for certain Boeing Model 737–600, –700, –700C, and –800 series airplanes. That AD requires inspecting/measuring the length of the attachment fasteners between the nacelle support fittings and the lower wing skin panels, and related investigative/corrective actions if necessary. That AD resulted from a report from the manufacturer that in production, during the installation of certain attachment fasteners for the nacelle support fittings, only one washer was installed instead of two. We issued that AD to prevent inadequate fastener clamp-up, which could result in cracking of the fastener holes, cracking along the lower wing skin panels, fuel leaking from the wing fuel tanks onto the engines, and possible fire.

Actions Since Existing AD Was Issued

Since we issued AD 2005–24–03, inadvertent errors were found in the existing AD. Those errors include no grace period provided in paragraphs (f)(1) and (f)(2) of the existing AD; and incorrect airplanes referred to for accomplishing the requirements specified in paragraphs (f)(1) and (f)(2).

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would revise AD 2005–24–03 and would retain the requirements of the existing AD. In addition, we have included a grace period of 12 months in paragraphs (f)(1) and (f)(2) of this proposed AD. We also have limited the airplanes referred to in paragraph (f)(1) to Model 737–700 series airplanes only (no other airplanes modified by the supplemental type certificate (STC) are affected by those requirements). We have changed the airplanes referred to in paragraph (f)(2) of the existing AD to "all other airplanes," and removed the STC reference in that paragraph.

Costs of Compliance

There are about 751 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The requirements that were previously required by AD 2005–24–03 are retained in this proposed AD and add no additional economic burden. The current costs are repeated for the convenience of affected operators, as follows:

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection/Measurement	12	$65	Nominal ...	$780	302	$235,560

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 place it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14383 (70 FR 70713, November 23, 2005), and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2006–25000; Directorate Identifier 2006–NM–096–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 28, 2006.

Affected ADs

(b) This AD revises AD 2005–24–03.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, and –800 series airplanes; line numbers 1 through 761 inclusive, except for line numbers 596, 683, 742, 749, 750, 751, 754, 755, 759, and 760; certificated in any category.

Unsafe Condition

(d) This AD results from a determination that errors were inadvertently included in the existing AD. We are issuing this AD to prevent inadequate fastener clamp-up, which could result in cracking of the fastener holes, cracking along the lower wing skin panels, fuel leaking from the wing fuel tanks onto the engines, and possible fire.

Compliance

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

Restatement of Requirements In AD 2005–24–03

Inspection/Measurement and Related Investigative and Corrective Actions

(f) At the applicable time specified in paragraph (f)(1) or (f)(2) of this AD: Inspect/measure the length of certain attachment fasteners between the lower wing skin panels and the nacelle support fittings. Do the inspection/measurement, and all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–57–1275, Revision 1, dated August 18, 2005, except as provided by paragraph (g) of this AD.

(1) For Model 737–700 series airplanes modified by Supplemental Type Certificate (STC) ST00830SE as of December 28, 2005 (the effective date of AD 2005–24–03): Accomplish the actions at the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(i) Prior to the accumulation of 25,000 total flight hours or 25,000 total flight cycles, whichever is first.

(ii) Within 12 months after December 28, 2005.

(2) For all other airplanes: Accomplish the actions at the later of the times specified in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD.

(i) Prior to the accumulation of 30,000 total flight hours or 30,000 total flight cycles, whichever is first.

(ii) Within 12 months after December 28, 2005.

(g) If accomplishing a corrective action as required by paragraph (f) of this AD, and the service bulletin specifies to contact Boeing for repair information: Before further flight, do the repair using a method approved in accordance with paragraph (i) of this AD.

Actions Accomplished According to Previous Issue of Service Bulletin

(h) Actions accomplished before December 28, 2005, in accordance with Boeing Service Bulletin 737–57–1275, dated September 4, 2003, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) AMOCs approved previously in accordance with AD 2005–24–03, amendment 39–14383, are approved as AMOCs for the corresponding provisions of this AD.

(3) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

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

Issued in Renton, Washington, on June 5, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–9174 Filed 6–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No. FAA–2006–25002; Notice No. 06–06]

RIN 2120–AH31

Safe, Efficient Use and Preservation of the Navigable Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the regulations governing objects that may affect the navigable airspace. Specifically, the FAA is proposing to add notification requirements and obstruction standards for electromagnetic interference and amend the obstruction standards for civil airport imaginary surfaces to more closely align these standards with FAA airport design and instrument approach procedure criteria. The FAA proposes to require proponents to file with the agency a notice of proposed construction or alteration of structures near private use airports that have an FAA approved instrument approach procedure. This proposal, if adopted, would also increase the number of days in which a notice must be filed with the FAA before beginning construction or alteration; add and amend definitions

for terms commonly used during the aeronautical evaluation process; and remove the provisions for public hearings and antenna farms. Lastly, the FAA proposes to retitle the rule and reformat it into sections that closely reflect the aeronautical study process. These proposals incorporate case law and legislative action, and simplify the rule language. The intended effect of these proposed changes is to improve safety and promote the efficient use of the National Airspace System.

DATES: Send your comments on or before September 11, 2006.

ADDRESSES: You may send comments identified by Docket Number FAA–2006–25002 using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time. You can also go to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical issues: Ellen Crum, Office of Airspace and Rules, ATO–R, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

For legal issues: Lorelei Peter, Office of Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3073.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to participate in this rulemaking by submitting written comments, data, or views. We also invite comments about the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets. This includes the name of the individual sending the comment (or signing the comment 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 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a preaddressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/fr/index.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

History

National Airspace Review

On June 17, 1978, the FAA published a notice in the **Federal Register** (43 FR 26322) announcing a regulatory review of part 77. The FAA issued this notice in response to comments received to a June 16, 1977, advance notice of proposed rulemaking (ANPRM) (42 FR 30643). In the ANPRM, the FAA had asked the public to review FAA obstruction evaluation issues and to recommend changes to part 77. The FAA addressed comments received in response to the ANPRM in a program review conference, referred to as the National Airspace Review (NAR). The NAR was held December 4 through 8, 1978, and included participants from the FAA, the aviation industry, the Department of Defense, and State government aviation agencies. These

participants are identified in this document and NAR reports as "the Committee." In part, the Committee objective was to conduct a comprehensive review of airspace use and the procedural aspects of the air traffic control (ATC) system. On December 4, 1984, the committee gave 27 recommendations to the FAA to simplify and clarify existing part 77 regulations.

The Airport and Airway Safety and Capacity Expansion Act of 1987

On December 30, 1987, the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223) (the "Act"), was signed into law. The Act amended former section 1101 of the Federal Aviation Act of 1958, now recodified at 49 U.S.C. 44718, with three major provisions. The major provisions concerned notice of construction, aeronautical studies, and coordination.

First, before the Act, former section 1101 required notice of proposed construction or alteration where notice would "promote safety in air commerce." Under the Act, notice is now required to "promote (1) safety in air commerce; and (2) the efficient use and preservation of the navigational airspace and airport traffic capacity at public-use airports" (49 U.S.C. 44718(a)). Since this enactment, agency policy has been revised to include these considerations into FAA aeronautical studies to facilitate determination of the potential adverse effects of a structure.

Second, the Act also requires an aeronautical study if a proposed structure may constitute "* * * an obstruction of navigable airspace or an interference with air navigation facilities and equipment or navigable airport * * *." (49 U.S.C. 41718(b)) The term "interference" was not defined in the Act. However, the Conference Report (House of Representative Report 100–484, December 15, 1987) states that "interference" includes both physical and electromagnetic effects. While the effects of Electromagnetic Interference (EMI) are currently studied under the FAA's authority under section 40103 for the safe operation of the National Airspace System, the Act now requires consideration of EMI effects on the safe and efficient use of the airspace. In order to carry out this statutory responsibility and determine whether EMI would be present, the FAA must expand the current notice requirements in part 77 to include proposed construction/alteration that may produce EMI and the corresponding obstruction standards.

The Act also requires that the FAA issue a full report on the adverse impact to the safe and efficient use of the airspace. This includes impacts on arrival and departure procedures for aircraft operating under visual or instrument flight rules, impacts on public-use airports and aeronautical facilities, and cumulative impacts of a structure when combined with the impact of other existing or proposed structures (49 U.S.C. 41718(b)). In accordance with the Act, the FAA is proposing to include the assessment of cumulative impact, as part of aeronautical study, in the revised part 77. FAA policy has already incorporated procedures to assess for cumulative impact during the aeronautical study.

Third, and with respect to broadcast applications and tower studies, the Act requires the FAA and the Federal Communications Commission (FCC) to "* * * efficiently coordinate the receipt, considerations of, and action upon, such applications and the completion of associated aeronautical studies * * *" Considerable coordination currently exists between the FAA and FCC since this enactment. If further coordination procedures are necessary, the agencies will develop them jointly. We do not believe, however, that any change to part 77 is appropriate or necessary because of this statutory provision.

Related Regulatory Actions

Notice of Proposed Rulemaking (NPRM)

On August 3, 1990, the FAA published an NPRM in the **Federal Register** proposing to amend part 77 (55 FR 31722). This notice was later corrected in the following documents: 55 FR 32999, August 13, 1990; 55 FR 35152, August 28, 1990; and 55 FR 37287, September 10, 1990 (1990 NPRM). The 1990 NPRM proposed amendments to the scope, notice requirements, and standards applicable to aeronautical studies detailed under part 77. The proposed amendments were triggered by the new requirements set forth in Public Law 100–223 and the NAR recommendations previously mentioned. This proposal retains some of the NAR recommendations that were originally proposed in the 1990 NPRM, and proposes modifications to or variations of other NAR recommendations. Certain other NAR recommendations are not being proposed now because of changed circumstances.

Supplemental Notice of Proposed Rulemaking (SNPRM)

On October 16, 1995, the FAA issued an SNPRM proposing to amend the application of obstruction standards used in an aeronautical study of the construction or alteration of objects affecting the navigable airspace (55 FR 53680). The FAA issued the SNPRM as a result of the decision in *Greater Orlando Aviation Authority* v. *the FAA*, 939 F.2d 954 (11th Cir. 1991) ("GOAA").

The decision in this case affects long-standing FAA policy and practice regarding the consideration given to airport plans "on file" with the FAA, or "on file" with an appropriate military service. In the SNPRM issued as a result of the GOAA decision, the agency proposed to amend the application of obstruction standards to include consideration of any airport proposal received before the end of the comment period for an aeronautical study. This case and its effect on the aeronautical study process is discussed later in this Notice.

NPRM/SNPRM Withdrawal

As previously stated, proposed amendments and revisions to part 77 have been under discussion and proposed in the **Federal Register** several times over the last two decades. However, each time the agency was close to issuing a final rule, a significant change, either legislative or industry-wide, occurred that required rethinking and restructuring the proposal. The telecommunications industry, with the advent of personal communications systems, has evolved such that many of the previous recommendations, proposals and comments are no longer valid. In addition, Public Law 100–223 and the GOAA decision changed the way the FAA conducts aeronautical evaluations. Rather than proceed with previously proposed regulations that no longer completely reflect the needs of the FAA's obstruction evaluation program or the needs of the general public, the FAA withdrew the previously issued NPRM and SNPRM (68 FR 43885; July 24, 2003). We believe the best interests of all parties were served by this course of action.

FAA Authority

The Administrator has broad authority to regulate the safe and efficient use of the navigable airspace (49 U.S.C. 40103(a)). The Administrator is also authorized to issue air traffic rules and regulations to govern the flight, the navigation, protection, and identification of aircraft for the

protection of person and property on the ground, and for the efficient use of the navigable airspace (49 U.S.C. 40103 (b)). The Administrator may also conduct investigations and prescribe regulations, standards, and procedures in carrying out the authority under this part (49 U.S.C. 40113). Moreover, the Administrator is authorized to protect civil aircraft in air commerce (49 U.S.C. 44070(a)(5)).

Specifically, section 44718 provides that under regulations issued by the Administrator, notice is required for any construction, alteration, establishment, or expansion of a structure or sanitary landfill, when the notice will promote safety in air commerce, and the efficient use and preservation of the navigable airspace and airport traffic capacity at public use airports. This statutory provision also provides that, under regulations issued by the Administrator, the agency determines whether such construction or alteration is an obstruction of the navigable airspace or an interference with air navigation facilities and equipment or the navigable airspace. If a determination is made that the construction or alteration creates an obstruction or otherwise interferes, the agency then conducts an aeronautical study to determine adverse impacts on the safe and efficient use of the airspace, facilities, or equipment.

One Engine Inoperative (OEI) Procedures

Two-engine aircraft certificated under part 25 and operated under Parts 121 and 135 of the Federal Aviation Regulations must be able to takeoff and climb at a gradient roughly equivalent to 1.6% (62.5:10) with one engine inoperative (OEI), and clear obstacles by at least 35 feet vertically and at least 300 feet horizontally. These procedures vary widely among airlines, aircraft type, and aircraft configuration. Because building construction surrounding the nation's airports has steadily been increasing, the airlines have requested that the affect to their OEI procedures of proposed structures be considered when the FAA conducts an aeronautical study.

The agency is researching the matter, and at this time, has not determined whether or not rulemaking is the appropriate vehicle to resolve this issue. Consequently, this issue is outside the scope of this NPRM.

The Airport Obstruction Standards Committee (AOSC) has been tasked with examining the issue. In September, 2005, the AOSC hosted a meeting with the users to gather information and discuss this matter. In March, 2006, in response to user requests, the FAA began posting notices of proposed construction on its OEAAA public Web site (oeaaa.faa.gov). At the time of publication of this NPRM, many courses of action are under review. As the Agency continues its analysis, we will make every effort to seek input, and inform the public of any policy changes.

Discussion of the Proposal

The following is a discussion of the major proposals contained in this notice. Since one of the changes proposed is the formatting of the subparts and sections of regulatory text, this discussion will be by topic, and in most cases does not refer to specific paragraph sections.

Rule Title and Format

The FAA proposes to retitle part 77 from "Objects Affecting Navigable Airspace" to "Safe, Efficient Use, and Preservation of the Navigable Airspace." Title 49 of the United States Code (U.S.C.), section 44718, provides for the Secretary of Transportation to promulgate regulations which require a person to provide public notice of certain construction or alterations when that notice will promote safety in air commerce and the efficient use and preservation of the navigable airspace and of airport traffic capacity at public use airports. The proposed title would accurately reflect the purpose and intent of this rule and closely reflects the legislative language.

The FAA also proposes to reformat the rule into subparts entitled, "General," "Notice Requirements," "Standards for Determining Obstructions to Air Navigation," "Aeronautical Studies and Determinations," and "Petitions for Discretionary Review." This proposed format aligns with the process sequence used by the FAA for the current obstruction evaluation process and would make finding information easier.

Definitions

The FAA proposes to amend current definitions that are frequently used in the obstruction evaluation process and to add new terms in § 77.3. These new definitions are not currently defined in FAA documents, and some of the existing definitions currently in this subpart are no longer up-to-date with industry practices. A summary of these proposed definitions or amendments follows:

Public use airport. This term amends the previously defined term "airport available for public use." The proposed definition describing the airport would be identical to the defined term "Public use" in 14 CFR part 157.

Electromagnetic effect. This term would define electromagnetic effect for determining its effect on navigation, communication, or surveillance signals to or from aircraft.

Nonprecision/precision instrument approach runway. These proposed definitions include approaches that use other than ground based navigational aids, such as flight management systems (FMS) and global navigation satellite systems (GNSS). These approaches provide azimuth and descent information, but because of equipment limitations, the visibility approach minimums are higher than approaches using a glide slope. Historically, nonprecision approaches were defined as approaches without descent information. Therefore, the FAA is proposing new definitions that use visibility minimums instead of descent capability. Because of technological advancements, the former definitions for nonprecision/precision instrument approach runways are no longer accurate.

Planned or proposed airport. This proposed term would explain which airports or planned airports the FAA takes into consideration during the aeronautical study process.

Utility runway. This term would be removed because it is no longer used and would be replaced with the phrase "runway used by small aircraft." Small aircraft are defined in title 14 Code of Federal Regulations part 1 as aircraft with a maximum certificated takeoff weight of 12,500 pounds or less.

Visual runway. This proposed term would define a runway that is used by aircraft using visual maneuvers for landing or approach procedures that bring the pilot to a point where the pilot must complete the approach visually. Before these technological advances, pilots made approaches using visual means or by relying on ground based equipment. Pilots are now able to conduct approaches to airports that have no ground-based approach equipment by using a combination of visual references and flight management systems.

Requirement To File Notice With the FAA

Under current regulations, you must file notice with the FAA, via FAA Form 7460–1, at least 30 days before construction begins or the date you submit an application for any type of State or local government construction permit. The FAA is proposing to extend the period from 30 days to 60 days before either construction begins or the date that an application is submitted to state or local authorities for a permit,

whichever is earliest. The FAA's experience in processing notices and conducting aeronautical studies indicates that the 30-day period is too brief, and most notices require more than 30 days for study and processing.

To assess the impact of a proposed structure on the navigable airspace, the FAA must first determine whether the proposed structure is an obstruction under the regulations. If the structure is an obstruction, the FAA then identifies any adverse effects the proposed structure may have on the navigable airspace. This process often requires distribution of the proposal to the aviation community and State/local governments for additional information. If the FAA finds it necessary to solicit additional information, the agency provides 30 days for notified parties to submit comment. A problem arises for all concerned parties when the FAA cannot complete the aeronautical study until after the comment period closes. The 30-day period to provide the agency with notice of proposed construction or alteration does not allow the FAA adequate time to consider all comments received during the circularization process in a timely manner. Therefore, the FAA is proposing that notice must be filed 60 days before either the date that construction begins or the date you submit an application for any State or local government permit, whichever is earliest. This would facilitate the completion of aeronautical studies in a timely manner.

GOAA Decision

Under current regulations, obstruction standards are applied to an existing airport facility or a planned or proposed airport facility. These standards are also applied if a proposal for such an airport is "on file" with the FAA or with the appropriate military service on the date that FAA Form 7460 (for proposed construction/alteration) is filed with the FAA. If the FAA determines the proposed structure is an obstruction, we conduct an additional study to determine the proposed structure's effect on the safe and efficient use of the navigable airspace. Among other factors, the study includes consideration of the proposal's aeronautical effect on any existing or planned public use or military airports, air navigation facilities, procedures, or other proposal on file with the FAA or on file with an appropriate military service.

The decision in GOAA affects this long-standing FAA policy and practice as to the consideration given to plans on file with the FAA or with the appropriate military service. In the GOAA case, the court held the FAA must also consider the proposed structure's effect on other proposals received by the FAA before the end of the comment period of an aeronautical study of the proposed structure.

In considering this decision, the FAA notes that this case specifically addressed an aeronautical study that was circulated for comment. Most aeronautical studies are not circulated for comment because they do not exceed FAA obstruction standards. In GOAA, the court stated that "the only way to determine what is the safest, most efficient use of airspace is to consider all proposals and comments received during the comment period." (939 F.2d, 954, at 962) The FAA believes the principle of the court's holding in GOAA should be applied not only to cases that are circulated for comment, but also to cases that are not circulated for comment. The FAA proposes to consider the aeronautical effect of proposed structures on planned or proposed airports for which the FAA has received actual notice prior to the issuance of an agency determination for that study.

Currently, in those cases where the agency receives actual notice of a planned or proposed airport but the comment period has closed, the agency does not consider the proposed structure in view of the planned or proposed airport. The FAA's proposed language goes beyond the decision in GOAA. The FAA believes the statutory mandate to determine the safest and most efficient use of the airspace should warrant consideration of any proposal for a planned or proposed airport that is filed with the FAA up to the date that determination is issued for that particular case. This latitude provides the FAA with the most up-to-date information in considering aeronautical effect, which results in the most accurate determination.

No Notice Required

The FAA proposes to remove § 77.15, Construction or Alteration Not Requiring Notice, and § 77.19, Acknowledgement of Notice. Currently § 77.15 notes certain proposed construction or alteration activities for which notice to the FAA is not required. These same exceptions to the notice requirement have been incorporated into proposed § 77.9, which explains those types of construction or alteration that require notice to be filed with the FAA. This change would place all information relevant to the filing of notices in one section of the rule and create easier access to information with less confusion.

The FAA also proposes removing § 77.19, Acknowledgement of Notice, from the rule. The information previously contained in this section would be contained in the new § 77.31.

Evaluating Aeronautical Effects

Subpart D of the current rule contains general provisions about aeronautical studies, and the relevant factors used in considering the impact of proposed construction or alteration in the navigable airspace. The FAA proposes to add a section entitled, Evaluating Aeronautical Effect, § 77.29, which incorporates the specific factors listed in Public Law 100–223 for consideration during an aeronautical study. While this specific language does not appear in the current regulations, the proposed inclusion of this language does not add or delete any factors currently considered in an aeronautical study. This proposal merely incorporates the statutory provisions into part 77 and provides the public with more specific information about the factors the FAA considers in determining the effect of a proposed construction or alteration on the navigable airspace.

EMI Notice Requirements

As previously stated, section 206 of Public Law 100–223 requires that aeronautical studies under part 77 consider whether proposed construction or alteration of structures could cause interference to air navigation, radio communication, and/or surveillance facilities or equipment, such as radar or an instrument landing system (ILS). It is evident by the legislative history of this statutory provision that Congress intended for the FAA to include EMI as a factor during aeronautical studies. H.R. 2310, which subsequently became Public Law 100–223, was amended in conference. Specifically, the conference substitute on Issue 54, Tall Towers, stated the following: "Senate provisions, modified to clarify that requirements cover structures which create electromagnetic interference." Therefore, the FAA is proposing to require notice of new construction or alteration that may result in EMI to air navigation, radio communication, surveillance services, and facilities.

The FAA proposes to require that notice be filed for the following:

(1) Any construction of a new, or modification of an existing facility, *i.e.*—building, antenna structure, or any other man-made structure, which supports a radiating element(s) for the purpose of radio frequency transmission operating on the following frequencies:

(i) 54–108 MHz

(ii) 150–216 MHz

(iii) 406–420 MHz
(iv) 932–935/941 MHz
(v) 952–960 MHz
(vi) 1390–1400 MHz
(vii) 2500–2700 MHz
(viii) 3700–4200 MHz
(ix) 5000–5650 MHz
(x) 5925–6525 MHz
(xi) 7450–8550 MHz
(xii) 14.2–14.4 GHz
(xiii) 21.2–23.6 GHz

(2) Any changes or modifications to a system operating on one of the previously-mentioned frequencies, when specified in the original FAA determination, including:

(i) Change in the authorized frequency;

(ii) Addition of new frequencies;

(iii) Increase in effective radiated power (ERP) equal or greater than 3 decibels (db);

(iv) Modification of radiating elements such as:

(A) Antenna mounting location(s) if increased 100 feet or more, irrespective of whether the overall height is increased;

(B) Changes in antenna specifications (including gain, beam-width, polarization, pattern);

(C) Change in antenna azimuth/bearing (*e.g.*—point-to-point microwave systems).

Antenna towers that are used for radio broadcast services present a unique concern. FM band broadcast facilities use frequencies in the 88–108 MHz band. The FM band is immediately adjacent to the FAA's navigation/communications band (108–137 MHz) and uses a much greater transmitting power than the FAA Very High Frequency Omni-directional Range Station (VOR), ILS, or communications system. When EMI affects a VOR or ILS, inaccurate navigational guidance may result that is not apparent to the pilot. The navigational guidance may erroneously show that an aircraft is on course when in fact, it may be off course. In air-to-ground communications, EMI can cause pilots or air traffic controllers to miss vital flight communications transmissions.

Similarly, the VHF–TV bands (54–72 MHz, 76–88 MHz, and 174–216 MHz) are adjacent to or very close to frequencies used by FAA radio navigation bands for marker beacons (75 MHz), government land mobile facilities (162–174 MHz), and bands used for communication with the military air traffic (225–328.6 MHz). When EMI affects these bands, critical landing information may be lost, datalink communications of ground systems may become unreliable, and as stated before, pilots or air traffic controllers can miss vital flight communications.

Also, private land mobile radio services that use frequencies, 72–76 MHz, 150–174 MHz, and 406–420 MHz can create EMI. These frequencies either overlap or are adjacent to current frequencies that the FAA uses for radio navigation marker beacons (75 MHz), government land mobile facilities (162–174 MHz), and remote maintenance monitoring facilities (406.1–420 MHz). Also, public mobile services (*e.g.*—paging services) using frequencies in the 152–159 MHz band can affect government land mobile radio systems operating in 162–174 MHz. Although these services are not directly adjacent to the FAA's frequency allocations, harmful EMI can be caused by various spurious emissions and harmonics from the equipment. If EMI is introduced to these FAA facilities, a pilot may lose critical landing information, and datalink communications of ground systems may become unreliable. This could ultimately cause a facility to stop operating.

Moreover, public fixed radio services using frequencies 2500–2700 MHz operate in a frequency band adjacent to the FAA's authorized frequency band for terminal and weather radars (2700–3000 MHz). EMI could reduce the range of the radar to reliably detect targets or weather. EMI could also produce false targets or weather indications.

Likewise, fixed microwave services operating in frequency bands; 941–944 MHz, 952–960 MHz, 14.2–14.4 GHz, 21.2–23.6 GHz, require notification to the FAA. Wireless services in these bands operate frequencies that are either adjacent to or co-channel with the FAA's facilities operating on 941–944 MHz, 960–1215 MHz, 14.4–15.35 GHz, 21.2–23.6 GHz. EMI could cause degradation in voice or data signals used by other FAA facilities to communicate or provide navigational aid to pilots.

Wireless services operating in 1390–1400 MHz are adjacent to the FAA's radar band. EMI to these FAA facilities could reduce the range of the radar to reliably detect targets or weather. EMI could also produce false targets or weather indications.

Because some frequency changes could result in interference, the FAA proposes to require that notice must be filed for any changes of the authorized frequency by a proponent whose system operates a frequency in accordance with the frequencies previously listed in this section. Any increase in effective radiated power that exceeds 3 db is measurable and the additional interference generated may be significant. Thus, the FAA believes it is necessary to require that notice be filed for this type of change so it may be studied.

The FAA is also proposing to require sponsors of construction or alteration to notify the FAA when making modifications of radiating elements that operate a frequency in accordance with § 77.9 (e)(1)(i) through (xiii). Modifications of radiating elements include a height increase of 100 feet or more and modifications to the antenna specifications (including gain, beam-width, polarization, and pattern). Since an increase in the height of an antenna, gain, and beam-width of an antenna may expand the area of coverage, such a modification may impact FAA navigation and communication facilities that were not previously studied. However, it must be noted that under current regulations, an increase of antenna height, which also increases the overall height of antenna structure by more than 20 feet, irrespective of the antenna height increase, requires notice to be filed with the FAA. These proposed amendments do not change that requirement.

For example, FM antennas are made up of one to 14 sections that are placed on the tower in various configurations. The FAA has found that sometimes, when specifying the antenna configuration, EMI is reduced or eliminated. However, if there is a change to the antenna configuration, EMI may be created and may compromise critical components of the National Airspace System. Therefore, the FAA is proposing to require notice prior to making any change in the type of antenna when the antenna type has been specified in the original FAA determination.

The FAA requires notice of construction or modification to the antenna bearings/azimuths, especially those for microwave systems. The change in bearing/azimuth could potentially impact FAA facilities that were not considered during the initial study based on the initial parameters for the particular microwave system.

Although not required, for many years many private industry entities have been filing notices voluntarily with the FAA when constructing a new antenna tower. In addition, many companies have been voluntarily filing notices with the FAA when changing frequencies or frequency power which had already been studied by the FAA. This practice has allowed the FAA to study potential EMI effects and avoid potentially hazardous situations. The FAA does not believe these proposals would present a significant increase in the number of

notices filed since most private industry wireless providers already submit notices to the FAA. These proposals reflect a practice currently in place and used by most companies. We are proposing to require such notification for those few companies who have not already adopted this practice.

EMI—Obstruction Standards

Subpart C of part 77 contains the standards used in an aeronautical study to determine whether a structure is an obstruction to air navigation. If a structure exceeds any one of these standards, the FAA then conducts a further study to determine whether the structure is a hazard to air navigation. FAA Order 7400.2, Procedures for Handling Airspace Matters, articulates the primary methods for conducting aeronautical studies to ensure the safety of air navigation and the efficient use of the navigable airspace by aircraft. There are many varied demands placed on the use of navigable airspace. The FAA's objective is to provide for the efficient use of the national airspace system and protect air navigation facilities from either electromagnetic or physical encroachments that would preclude normal operations.

Currently, the FAA assumes a structure that exceeds one or more of the standards in part 77 is a hazard to air navigation unless the aeronautical study determines otherwise. An aeronautical study identifies the effect of the proposal on: (1) Existing and proposed public-use and military airports or aeronautical facilities; (2) existing and proposed VFR and IFR departure, arrivals and en route operations, procedures, and minimum flight altitudes; (3) any physical, electromagnetic or line-of-sight interference on existing or proposed air navigation communications, radar and control systems facilities; (4) airport capacity, as well as the cumulative impact resulting from the structure when combined with the impact of other existing or proposed structures; and (5) whether marking or lighting is necessary on the structure.

The FAA currently studies radiating elements and their effect on FAA navigational and communication facilities under the agency's authority in 49 U.S.C. 40103 and 40113. The standards used for classifying antenna structures as obstructions, as well as the specific policy on determining EMI, are found in Orders 7400.2, Procedures for Handling Airspace Matters, and Order 6050.32, Spectrum Management Regulations and Procedures Manual. The FAA is proposing to codify new EMI obstruction standards in part 77 along with the obstruction standards for physical obstructions.

For the same reasons stated in the section describing the frequencies for which the FAA proposes that notice be filed, the FAA proposes that any radiating element seeking to transmit in those exact same frequencies must be studied in order to determine whether potential interference exists to FAA navaids or communications systems. Transmitting in these frequencies, as discussed previously, may interfere with FAA navaids and communication systems that are adjacent to or very near these frequencies. Thus, the frequencies that would warrant notification to the FAA under this proposal are the same frequencies for which the FAA would categorize the transmitting facility as an obstruction and result in further aeronautical study.

During the aeronautical evaluation, the FAA will apply the policies and procedures in FAA Orders 7400.2 and 6050.32 to determine adverse effect. This proposal does not alter or affect any of these policies. The FAA has applied these policies since the late 1970s and will continue to do so with this proposal.

FAA-Approved Instrument Approach Procedures

Section 44718 of title 49 of the U.S.C., in part, provides that "a person must give adequate public notice * * * when the notice will promote—(1) safety in air commerce; and (2) the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports." (49 U.S.C. 44718) Paragraph (b) requires that the FAA consider numerous "factors relevant to the efficient and effective use of the navigable airspace, including * * * the impact on arrival, departure, and enroute procedures for aircraft operating under instrument flight rules."

Certain instrument approach procedures (IAPs) have been developed and approved by the FAA for limited use by specific users. Often, specific equipment and training are required to conduct these approaches, so IAPs are available only to designated users. There has been an increase in the number of IAPs developed and approved by the FAA for use at private use airports and at heliports serving medical facilities. Notice of construction or alteration near a private use airport is not currently required under part 77. Consequently, the FAA may not be aware of proposed construction or alteration that may impact aircraft executing the IAP at that private use airport and could affect the safety of that operation.

In order for the FAA to properly assess the impact of proposed construction or alterations on any aircraft conducting an approach while operating under instrument flight rules (IFR), the FAA must consider proposed structures that would affect all FAA-approved IAPs, regardless of whether the procedure is at a public or private use airport. Therefore, the FAA is proposing to require that notice of construction or alteration on or near a private use airport or heliport must be filed with the FAA if that private use airport or heliport has at least one FAA-approved IAP. It is important to note the FAA is not requiring notice of proposed construction on or near all private airports; the FAA is only proposing that notice be filed for construction or alteration at or near a private use airport that has at least one FAA-approved IAP.

IAPs at private use airports or heliports are not currently listed in any aeronautical publication. The FAA proposes to post the private use airports and heliports with IAPs on the FAA's Obstruction Evaluation Web site. The FAA solicits comments about whether using the Web site for distribution of this information would be effective, and requests information about any other way the agency could distribute this information. If this proposal is adopted, sponsors of construction or alteration at or near a private use airport or heliport must consult the Web site to determine whether an FAA-approved IAP is listed for that airport. If the airport is listed on the Web site, the sponsor would be required to file a notice with the FAA.

The regulatory obstruction standards and agency policy for determining substantial adverse effect on aircraft instrument operations would apply similarly to proposed structures at or near private use airports and heliports that have at least one FAA approved IAP. The FAA notes that usually the number of aircraft operations at private use airports and heliports is minimal, and most proposed construction or alteration would not meet the criteria for a hazard determination. However, knowledge of proposed construction or alteration that exceeds the obstruction standards in § 77.17, which has an FAA-approved IAP, would give the FAA adequate time and opportunity to adjust the IAP, if warranted, and to distribute the information to those who use the IAP.

Obstruction Standards—Objects

Currently, part 77 states that a proposed or existing structure is an obstruction to air navigation if it is higher than 500 feet above ground level (AGL) at the site of the object. Therefore,

a structure that is proposed at a height of exactly 500 feet is not included and is not an obstruction.

The FAA is proposing to amend this obstruction standard to identify a proposed structure as an obstruction if it exceeds 499 feet. Navigable airspace is defined as the airspace above the minimum altitudes of flight prescribed by regulation, including airspace needed to ensure safety in the takeoff and landing of aircraft (49 U.S.C. 40102). FAA regulation governing minimum safe altitudes generally provides that aircraft may not be operated below 500 feet above the surface over non-congested areas. The minimum altitude is higher over congested areas. (*See* 14 CFR 91.119.) Under this proposed amendment, all structures that are 500 feet tall or more would be obstructions under part 77, and would be studied by the FAA to determine their effect on the navigable airspace. This proposal would ensure that all usable airspace at and above 500 feet AGL is addressed during the aeronautical study.

Civil Airport Imaginary Surfaces

The current § 77.25 describes civil airport runway imaginary surfaces, which are used to determine whether a proposed structure would be an obstruction to air navigation at civil airports. Presently, part 77 regulations describe five imaginary surfaces: (1) Horizontal surfaces; (2) conical surfaces; (3) primary surfaces; (4) approach surfaces; and (5) transitional surfaces. If a proposed structure penetrates any one of these imaginary surfaces, then the structure is an obstruction. The FAA then conducts an aeronautical study to determine whether the obstruction adversely affects a significant number of operations and therefore would be a hazard to navigation. The FAA proposes to amend certain imaginary surfaces, which would broaden their applicability. Changing these surfaces may result in more proposed structures being classified as obstructions, if the structure penetrates the surfaces. At the present time, the lateral dimensions of the imaginary surfaces do not encompass the same lateral airspace the FAA uses to establish instrument procedures. Because of this inconsistency in the dimensions of surface airspace, the FAA finds that certain structures do not fall within the surface area for an obstruction. Consequently, the FAA does not study them, but they may ultimately affect an instrument procedure. Amending the imaginary surfaces, as proposed here, would more closely align the imaginary surfaces under part 77 with the obstacle identification surfaces as defined in FAA Order 8260.3, United States Standard for Terminal Instrument Procedures (TERPS). While this may result in more structures classified as obstructions, it does not necessarily mean that more structures would, in fact, be hazards. These proposed amendments would provide the FAA with the ability to identify and study more structures to ensure the integrity of instrument procedures and to maintain traffic capacity.

Presently, the "primary surface" is longitudinally centered on the runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. Moreover, if a runway has a specially prepared hard surface (such as asphalt or concrete), the primary surface extends 200 feet beyond each end of that runway; if a runway has no specially prepared or planned hard surface, the primary surface ends at each end of that runway. Also, the width of the primary surface depends on the type of runway and the IAP serving the runway.

This action proposes to amend the description of the "primary surface" when there is an instrument approach procedure for that runway, irrespective of the type of runway surface. The basis for this proposal is that IAPs for runways that do not have a specially prepared hard surface are becoming more prevalent in remote areas of the country, such as parts of the western United States. For these runways, the FAA believes that it is necessary to amend the description of the primary surface to include the 200 feet extension beyond the end of the runway to accommodate the IAP. The FAA believes this amendment would help to keep the necessary clearance from obstacles at airports that have IAPs, but do not have specially prepared hard surfaces.

As previously stated, the term "utility runway" is no longer being used by the FAA. Therefore, the FAA is proposing to remove the term in current § 77.25 and replace it with the phrase, "runways used by small aircraft." (Small aircraft, as defined in 14 CFR part 1, are aircraft with a maximum certificated takeoff weight of 12,500 pounds or less.)

In determining the width of the primary surface, the current regulation specifies different widths for "utility runways" and for "other than utility runways." These two runway types are further categorized as visual approach, instrument approach with distinguishing flight visibility minimums, and day or night criteria. The FAA is proposing to remove the term "utility runway" and replace it with the phrase "runways used by small aircraft." In addition, the FAA is proposing to use the following three categories of runway types in determining the primary surface width: (1) If the runway is visual, used by small aircraft, or restricted to day-only instrument operations, then the width of the primary surface would be 250 feet; (2) if the runway is visual or used by other than small aircraft during VFR-only operations or day/night instrument operations, then the primary surface width would be 500 feet; and (3) if the runway is a nonprecision or precision instrument runway, then the primary surface width would be 1,000 feet. By adopting these terms and categories, which are similar to the terms and categories used by the FAA in airport design documents, the rule setting forth the primary surface would be amended from five runway types to three runway types.

Also, the FAA proposes to reformat this section from text to a chart format. This would help readers find the requirements quickly and aid understanding. We solicit comments on whether this format clarifies the imaginary surface obstruction standards.

The FAA also proposes to amend the imaginary approach surface. Currently, the approach surface is defined as a surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. The width of the approach surface currently ranges from 1,250 feet for utility runways with only visual approaches, to 16,000 feet for precision instrument runways. Also, the approach surface extends for a horizontal distance of 5,000 feet at a slope of 20 to 1 for visual runways, to more than 40,000 feet at a slope of 40 to 1 for all precision instrument runways. This action proposes to amend the approach surface description by adopting the same runway type descriptions previously discussed for the primary surfaces. Therefore, if the runway is a visual runway, or used by small aircraft during VFR operations, or restricted to day only instrument operations, the surface width would expand uniformly to 1,250 feet. If the runway is a visual runway, or used by other than small aircraft during VFR operations, or for day/night operations the surface width would expand uniformly to 3,500 feet. If the runway is a nonprecision instrument or precision instrument runway, the surface width would expand uniformly to 4,000 feet and 16,000 feet respectively.

The proposed amendments to runway type descriptions support instrument approach circle to land maneuvers. Generally, a circling approach maneuver is conducted when a straight-in landing to a runway is not possible due to winds, or in those cases when the approach is designed too steep for straight-in landing. The circling approach maneuver requires the pilot to visually acquire the airport environment and continue to the airport using visual references for landing. Pilots must see and avoid obstacles as they make the transition from relying on instrument navigation to visually flying the aircraft. This maneuver may be conducted with minimum flight visibility, which requires the area where the circling maneuver is conducted to be free from obstructions.

Other specific changes include removing approach surface widths of 1,500 feet (ft.) and 2,000 ft, and increasing the approach surface width for nonprecision runways from 2,000 ft. to 4,000 ft. These proposed widths are consistent with the slopes set forth in TERPS and provide for consistent application for instrument approach procedure development and obstacle clearance.

The FAA is proposing to amend the primary surface and the approach surface for several reasons. TERPS has expanded the requirements for obstruction clearance in the visual area of instrument approach procedures. This includes a new visual area assessment for runways where a pilot can circle to land from an instrument approach. The proposed changes to the airport imaginary surfaces support the more stringent TERPS requirements for visual area protection. Without these changes, an obstruction may be built without the benefit of an aeronautical study being conducted by the FAA to determine the impact on instrument operations and the navigable airspace.

These proposed changes would more closely align regulatory provisions in part 77 with TERPS criteria and airport design standards. The inconsistency between instrument approach procedure criteria, airport design standards, and part 77 is a source of confusion and frustration among both airport managers and the FAA. Currently, airport managers clear obstructions from the existing part 77 imaginary surfaces to support a flight operation only to find the instrument procedure criteria is more stringent than the current obstruction standards. Thus, the proposed IAP may be denied, which can result in unnecessary cost and delays, and the possible reduction in airport efficiency and capacity.

The FAA has been working for many years to bring about uniformity and consistency among criteria for airports, instrument approach procedures and obstructions. This proposal would amend the applicable sections of part 77 obstruction standards to more closely align with the standards that are currently used by the FAA in the airport design and TERPs for instrument procedures.

These specific proposals about surfaces do not change the notice requirements for proposed construction or alteration of existing structures. However, amending the runway imaginary surfaces (primary and approach surfaces), as discussed previously, may expand the number of structures that exceed the obstruction standards and require further study by the FAA to determine whether the structure is a hazard to air navigation. By studying more proposed obstructions that are in areas critical to aircraft takeoffs and landings, the FAA will increase its ability to maintain the integrity and safety of instrument approaches, as well as airport capacity and efficiency. It is important to note that exceeding part 77 obstruction standards alone does not necessarily identify a structure as a hazard until further study is conducted.

Antenna Farms

The current subpart F describes the scope, policy, and general provisions for the establishment of antenna farms. An antenna farm is an area in which antenna structures may be grouped to localize their effect on the use of the navigable airspace. The current regulatory provision for the establishment of antenna farm areas has never been used, nor has the need to designate antenna farms been demonstrated. During this rulemaking action, the FAA consulted with the FCC about this specific proposal. The FCC, who also has authority to propose an antenna farm under this part, has no objection to removing this section. Therefore, the FAA is proposing to delete subpart F.

Extension to a Determination of No Hazard

The current rule provides that the effective period of a "Determination of No Hazard" (unless subject to an appropriate construction permit from the Federal Communications Commission) expires 18 months after its effective date unless it is otherwise extended, revised, or terminated. The current rule also allows the sponsor of construction to request an extension of the expiration date from the FAA official who issued the Determination of No Hazard. The current rule contains no provision for the period for which an extension may be granted, and generally it is extended for however long the FAA official deems appropriate.

The FAA considers the proposed structure when creating or amending flight procedures or air traffic operations in the area. In effect, the airspace is reserved for the structure until the FAA is advised otherwise. Currently, when the FCC grants an extension to a construction permit, the FAA determination is automatically extended. However, there have been cases in the past where air traffic operations or flight procedures have been delayed or adjusted for years to accommodate a proposed structure that was never actually built. For this reason, the FAA is proposing to allow, upon request, a one-time extension of a no-hazard determination for up to 18 months for a structure that is not subject to FCC review. If a proponent requires a longer time period, a new Form 7460 (Notice of Proposed Construction or Alteration) must be submitted to the FAA to restudy the proposed structure.

The FAA believes that for structures not subject to FCC review, the extension of a Determination of No Hazard should be limited to a maximum of 18 months. If more than 18 months would be necessary, then a new aeronautical study would be initiated. We believe that this proposal would result in more efficient use of airspace and provide the FAA with more flexibility when adopting new flight procedures or air traffic operations.

The current rule also provides that if the proposed construction cannot be started before the FCC issues an appropriate construction permit, the effective period of a Determination of No Hazard includes: (1) The time required to apply for a construction permit from the FCC, but not more than 6 months after the effective date of the Determination of No Hazard; and (2) the time needed for the FCC to process the application, except in cases where the FAA determines that a shorter period is warranted by the circumstances. When the FCC issues an appropriate construction permit, the Determination of No Hazard is effective until the date prescribed in the FCC permit for completion of the construction. If the FCC refuses to issue a permit, the final determination expires on the date of the FCC's refusal.

The FAA proposes that for structures subject to an appropriate FCC construction permit, a Determination of No Hazard may be extended for 12 months, provided the sponsor has

submitted evidence that an application for a construction permit was filed and that additional time is needed because of FCC requirements. If the FCC extends the original FCC construction completion date, an extension of the FAA Determination of No Hazard must be requested by the sponsor from the issuing FAA regional office.

Effective Period of Determinations

The current rule contains a section that addresses the effective period of a determination. Information about a determination's effective date is contained in the actual determination issued to the sponsor, but this information is not included in the regulations. The FAA proposes to include a regulatory provision that provides for a determination to become effective 40 days after the date of issuance, unless a petition for discretionary review is filed and received by the FAA within 30 days of the date of issuance. This would provide information about proposed structures to the general public who may have an interest in proposed construction or alteration projects.

Petitions for Discretionary Review

Currently, sponsors or persons who have a substantial aeronautical objection to an issued determination, or persons who were not given an opportunity to comment during the aeronautical study process, may petition the FAA for discretionary review. The FAA is proposing to include information about processing petitions for discretionary review to simplify and clarify the process. This proposal codifies current policies and practices but does not alter the petition process. In addition, the FAA is proposing to clarify that, if the last day of the 30-day filing period falls on a weekend or a day the Federal Government is closed, the last day of the filing period would be the next business day that the Federal Government is open.

The current rule excludes from the discretionary review process an FAA determination that a structure does not exceed obstruction standards. The FAA proposes to also exclude from the discretionary review process "No Hazard determinations" issued for temporary structures and recommendations for marking and lighting. Because of the nature of temporary structures, it is not feasible to apply the discretionary review process to these structures. Additionally, since marking and lighting recommendations are simply recommendations, there is a separate process in Advisory Circular (AC) 70/7460–1J, Obstruction Marking and Lighting, which provides procedures for a waiver of, or deviation from, the recommendations. The FAA does not find it necessary to extend the discretionary review process to these determinations.

Public Hearings

The current subpart E lists the rules of practice for a public hearing about a proposed construction or alteration of a structure. The purpose of the public hearing as cited in this section is fact finding and non-adversarial in nature.

The hearing procedures cited in subpart E have not been used in recent years since petitioners are given ample opportunity to submit all the material they believe is necessary to support their positions. Further, the courts have upheld a review process exclusively based on the submission of written materials by the petitioner. Therefore, the FAA is proposing to delete current subpart E in its entirety.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Safe, Efficient Use and Preservation of the Navigable Airspace.

Summary: The FAA proposes to amend the regulations governing objects that may affect the navigable airspace. Specifically, the FAA is proposing to add notification requirements and obstruction standards for electromagnetic interference and amend the obstruction standards for civil airport imaginary surfaces to more closely align these standards with FAA airport design and instrument approach procedure criteria. The FAA proposes to require proponents to file with the agency a notice of proposed construction or alteration of structures near private-use airports that have an FAA approved instrument approach procedure. This proposal, if adopted, would also increase the number of days in which a notice must be filed with the FAA before beginning construction or alteration; add and amend definitions for terms commonly used during the aeronautical evaluation process; and remove the provisions for public hearings and antenna farms. Lastly, the FAA proposes to retitle the rule and reformat it into sections that closely reflect the aeronautical study process. These proposals incorporate case law and legislative action, and simplify the rule language. The intended effect of these proposed changes is to improve safety and promote the efficient use of the National Airspace System.

Use of: The FAA uses the information collected to determine the effect the proposed construction or alteration would have on air navigation by analyzing the physical and/or electromagnetic effect that the structure would have on air navigation procedures, air navigation and/or communication facilities. The following factors are considered:

- The impact on arrival, departure, and en route procedures for aircraft visual and instrument flight rules.
- The impact on existing and planned public-use airports and aeronautical facilities.
- The cumulative impact resulting from the proposed construction or alteration of a structure when combined with the impact of other existing or proposed structures.

Without collection of this information, safety of air navigation cannot be ensured.

Respondents (including number of): The FAA estimates that there will be 26,794 respondents to this proposed information requirement. Respondents include individuals, small businesses, and large corporations.

Frequency: The FAA estimates respondents will file notices on occasion.

Annual Burden Estimate: This proposal would result in an annual recordkeeping and reporting burden as follows:

Requirement	Forms to be filled out	Time (hours)	Cost
FAA Form 7460–1	3,824	1,223.68	$1,368,905
P.L. 100–23	22,970	7,350.40	6,224,870
Total	26,794	8,574.08	7,593,775

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by August 11, 2006, and should direct them to the address listed in the **ADDRESSES** section of this document. Comments also should be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053, Attention: Desk Officer for FAA.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no new differences with these proposed regulations.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) Would generate benefits that justify its additional costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would not constitute a barrier to international trade; and (5) would not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

Total Costs and Benefits of This Rulemaking

The FAA estimates the cost to private industry would be approximately $13.7 million ($8.8 million, discounted) over the next 10 years. The estimated cost of the proposed rule to the FAA would be approximately $19.9 million ($12.8 million, discounted) over the next 10 years. Therefore, over the next 10 years, the total cost associated with the proposed rule would be approximately $33.6 million ($21.5 million, discounted).

There are two main qualitative safety benefits of the proposed rule. First, this proposal would enhance the protection of air navigation aids in the vicinity of private use airports with FAA-approved instrument approach procedures. Second, the proposed rule would protect the flying public from signal interference from broadcast sources that could disrupt vital communication or alter the performance of vital avionics.

Who Is Potentially Affected by This Rulemaking?

This proposed rulemaking affects anyone who is proposing to construct a transmitting structure, who would construct a transmitting structure, or who would alter an existing transmitting structure (*i.e.* television operators, radio stations, cellular phone providers). This rulemaking may also affect individuals or corporations proposing construction because obstruction standards modified by this rule could result in more structures determined to be obstructions.

Our Cost Assumptions and Sources of Information

Discount rate—7%
Period of Analysis 2006—2015
Monetary values expressed in 2004 dollars
Cost for an individual to file an OE notice or an EMI notice—$10
Cost for a consulting firm to file an OE notice or an EMI notice—$445
Cost for the FAA to review and process an OE notice or an EMI notice—$520

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

With regards to the impact of the proposed EMI requirements on small entities, as stated earlier, the FAA is proposing these requirements in compliance with Public Law 100–223, Section 206. Accordingly, the cost associated with filing EMI notices would be attributed to the Act, and not to the proposed rule.

While the FAA does not maintain data on the size of businesses that file notices, the FAA estimates that approximated forty percent [1] of the OE notices would be filed by small business (comprised of business owners and private-use airport owners) as defined by the Small Business Administration. Consequently, in 2006 when the rule is expected to take effect, the FAA expects approximately 3,140 OE notices would

[1] This estimate is based on FAA expert opinion.

be filed. Of those applications filed, approximately 1,260 OE notices are estimated to be filed by small businesses (using 40 percent assumption).

For those small businesses that are inexperienced in submitting the necessary paperwork, the FAA believes they would either hire a consultant or spend as much as the consultant fee ($445) in staff time to understand, research, complete, and submit the form(s). For the purpose of this regulatory flexibility assessment, the FAA assumes that it would cost all small entities approximately $445 per case to meet the proposed requirements of part 77.

The FAA believes that any individual small business is unlikely to submit enough OE notices in a calendar year that would cost them more than $1,500 (three notices including consultant fees would cost approximately $1,335). The FAA does not consider $1,500 a year a significant cost. Therefore, the Administrator of the Federal Aviation Administration certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination and requests that all comments be accompanied by clear documentation.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore create no obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $ 128.1 million in lieu of $100 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and therefore would not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 77

Administrative practice and procedure, Airports, Airspace, Aviation safety, Navigation (air), Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations, by revising part 77 to read as follows:

PART 77—SAFE, EFFICIENT USE, AND PRESERVATION OF THE NAVIGABLE AIRSPACE

Subpart A—General

Subpart B—Notice Requirements

Subpart C—Standards for Determining Obstructions to Air Navigation or Navigational Aids or Facilities

Subpart D—Aeronautical Studies and Determinations

Subpart E—Petitions for Discretionary Review

Authority: 49 U.S.C. 106(g), 40103, 40113–40114, 44502, 44701, 44718, 46101–46102, 46104.

Subpart A—General

§ 77.1 Purpose.

This part establishes:

(a) The requirements to provide notice to the FAA of certain proposed construction, or the alteration of existing structures;

(b) The standards used to determine obstructions to air navigation and navigational and communication facilities;

(c) The process for aeronautical studies of obstructions to air navigation or navigational facilities to determine the effect on the safe and efficient use of navigable airspace, air navigation facilities or equipment; and

(d) The process to petition the FAA for discretionary review of determinations, revisions, and extensions of determinations.

§ 77.3 Definitions.

For the purpose of this part:

(a) *Electromagnetic effect* is any interference or impediment to the transmission or quality of navigation or communication signals to or from aircraft, meteorological equipment, navigation equipment, communications equipment, or air traffic control facilities caused by a power source, radio frequency transmitter, or an object or surface that emits, reflects, or re-radiates an electromagnetic signal or electrical pulse.

(b) *Nonprecision instrument runway* is:

(1) Any runway that has an instrument approach procedure that meets straight-in alignment criteria with visibility minimums of ¾ mile, up to and including one mile; or

(2) Any runway for which an instrument approach procedure is designated or planned that meets straight-in alignment criteria with visibility minimums of ¾ mile, up to and including one mile. This runway must be included in an FAA or DoD approved airport layout plan, or an airport planning document.

(c) *Planned or proposed airport* is an airport that is the subject of at least one of the following documents received by the FAA:

(1) Airport proposals submitted under 14 CFR part 157.

(2) Airport Improvement Program requests for aid.

(3) Notices of existing airports where prior notice of the airport construction or alteration was not provided as required by 14 CFR part 157.

(4) Airport layout plans.

(5) DoD proposals for airports used only by the U.S. Armed Forces.

(6) DoD proposals on joint-use (civil-military) airports.

(7) Completed airport site selection feasibility study.

(d) *Precision instrument runway* is:

(1) Any runway that has an instrument approach procedure with visibility minimums of less than ¾ mile; or

(2) Any runway for which an instrument approach procedure has been designated or planned that has visibility minimums of less than ¾ mile. This runway must be included in an FAA or DoD approved airport layout plan, or airport planning document.

(e) *Public use airport* is an airport available for use by the general public without a requirement for prior approval of the airport owner or operator.

(f) *Seaplane base* is considered to be an airport only if its sea lanes are outlined by visual markers.

(g) *Visual runway* is a runway for the operation of aircraft using visual maneuvers for landing, or with instrument approach procedure visibility minimums more than one mile (including circling procedures and those annotated "proceed visually)." This does not including procedures annotated "proceed VFR", or with no instrument designation indicated on an FAA approved airport layout plan, a DoD approved military airport layout plan, or by any official planning document submitted to the FAA.

Subpart B—Notice Requirements

§ 77.5 Applicability.

(a) If you propose any construction or alteration described in § 77.9, you must provide adequate notice to the FAA of that construction or alteration.

(b) If requested by the FAA, you must also file supplemental notice before the start date and upon completion of certain construction or alterations that are described in § 77.9.

(c) Notice received by the FAA under this subpart is used to:

(1) Evaluate the effect of the proposed construction or alteration on safety in air commerce and the efficient use and preservation of the navigable airspace and of airport traffic capacity at public use airports;

(2) Determine whether the effect of proposed construction or alteration is a hazard to air navigation;

(3) Determine appropriate marking and lighting recommendations using FAA Advisory Circular 70/7460–1, Obstruction Marking and Lighting;

(4) Determine other appropriate measures to be applied for continued safety of air navigation;

(5) Notify the aviation community of the construction or alteration of objects that affect the navigable airspace, including the revision of charts, when necessary.

§ 77.7 Form and time of notice.

(a) If you are required to file notice under § 77.9, you must submit to the FAA a completed FAA Form 7460–1, Notice of Proposed Construction or Alteration. FAA Form 7460–1 is available at FAA regional offices and on the FAA Web site.

(b) You must submit this form at least 60 days before the start date of the proposed construction or alteration or the date an application for a construction permit is filed, whichever is earliest.

(c) If you propose construction or alteration that is also subject to the licensing requirements of the Federal Communications Commission (FCC), you must submit notice to the FAA on or before the date that the application is filed with the FCC.

(d) If you propose construction or alteration to an existing structure and it exceeds 2,000 ft. in height above the ground (AGL), the FAA presumes it to be a hazard to air navigation that results in an inefficient use of airspace. You must include details explaining both why the proposal would not constitute a hazard to air navigation and why it would not cause an inefficient use of airspace.

(e) The 60-day advance notice requirement is waived if immediate construction or alteration is required because of an emergency involving essential public services, public health, or public safety. You may provide notice to the FAA by any available expeditious means. You must file a completed FAA Form 7460–1 within 5 days of the initial notice to the FAA. Outside normal business hours, the nearest FAA flight service station will accept emergency notices.

§ 77.9 Construction or alteration requiring notice.

If requested by the FAA, or if you propose any of the following types of construction or alteration, you must file notice with the FAA of:

(a) Any construction or alteration that is more than 200 ft. AGL at its site.

(b) Any construction or alteration that exceeds an imaginary surface extending outward and upward at any of the following slopes:

(1) 100 to 1 for a horizontal distance of 20,000 ft. from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway more than 3,200 ft. in actual length, excluding heliports.

(2) 50 to 1 for a horizontal distance of 10,000 ft. from the nearest point of the nearest runway of each airport described in paragraph (d) of this

section with its longest runway no more than 3,200 ft. in actual length, excluding heliports.

(3) 25 to 1 for a horizontal distance of 5,000 ft. from the nearest point of the nearest landing and takeoff area of each heliport described in paragraph (d) of this section.

(c) Any construction or alteration of a highway, railroad, or other traverse way for mobile objects, of a height that would exceed a standard of paragraph (a) or (b) of this section provided the following:

If the traverse way is a(n) . . .	Then increase the surface height by . . .
(1) Interstate Highway	(i) 17 feet.
(2) Other Public Roadway	(i) 15 feet.
(3) Private Road	(i) 10 feet, or height of highest object which uses the road.
(4) Waterway, or other traverse way	(i) The height equal to an object that uses it.
(5) Railroad	(i) 23 feet.

(d) Any construction or alteration on any of the following airports and heliports:

(1) A public use airport listed in the Airport/Facility Directory, Alaska Supplement, or Pacific Chart Supplement of the U.S. Government Flight Information Publications;

(2) A military airport under construction, or an airport under construction that will be available for public use;

(3) An airport operated by a Federal agency or the DoD.

(4) An airport or heliport with at least one FAA-approved instrument approach procedure.

(e) Frequencies.

(1) Any construction of a new facility, or modification of an existing acility, which supports a radiating element(s) for the purpose of radio frequency transmission operating on the following frequencies:

(i) 54–108 MHz
(ii) 150–216 MHz
(iii) 406–420 MHz
(iv) 932—935/941 MHz
(v) 952–960 MHz
(vi) 1390–1400 MHz
(vii) 2500–2700 MHz
(viii) 3700–4200 MHz
(ix) 5000–5650 MHz
(x) 5925–6525 MHz
(xi) 7450–8550 MHz
(xii) 14.2–14.4 GHz
(xiii) 21.2–23.6 GHz

(2) Any changes or modifications to a system operating on a frequency specified in paragraphs (e)(1)(i) through (xiii) of this section, when specified in the original FAA determination, including:

(i) Change in the authorized frequency;

(ii) Addition of new frequencies;

(iii) Increase in effective radiated power (ERP) equal or greater than 3 decibels (db);

(iv) Modification of radiating elements, including:

(A) Antenna mounting location(s) if increased 100 feet or more, irrespective of whether the overall height is increased;

(B) Changes in antenna specifications (including gain, beam-width, polarization, pattern);

(C) Change in antenna azimuth/bearing (e.g. point-to-point microwave systems).

(f) You do not need to file notice for construction or alteration of:

(1) Any object, not having potential electromagnetic effect, that will be shielded by existing structures of a permanent and substantial nature or by natural terrain or topographic features of equal or greater height, and will be located in the congested area of a city, town, or settlement where the shielded structure will not adversely affect safety in air navigation;

(2) Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device meeting FAA-approved siting criteria or an appropriate military service siting criteria on military airports, the location and height of which are fixed by its functional purpose;

(3) Any construction or alteration for which notice is required by any other FAA regulation.

(4) Any antenna structure of 20 feet or less in height, except one that would increase the height of another antenna structure.

§ 77.11 Supplemental notice requirements.

(a) You must file supplemental notice with the FAA when:

(1) The construction or alteration is more than 200 feet in height AGL at its site; or

(2) Requested by the FAA.

(b) You must file supplemental notice on a prescribed FAA form to be received within the time limits specified in the FAA determination. If no time limit has been specified, you must submit supplemental notice of construction to the FAA within 5 days after the structure reaches its greatest height.

(c) If you abandon a construction or alteration proposal that requires supplemental notice, you must submit notice to the FAA within 5 days after the project is abandoned.

(d) If the construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

Subpart C—Standards for Determining Obstructions to Air Navigation or Navigational Aids or Facilities

§ 77.13 Applicability.

This subpart describes the standards used for determining obstructions to air navigation, navigational aids, or navigational facilities. These standards apply to the following:

(a) Any object of natural growth, terrain, or permanent or temporary construction or alteration, including equipment or materials used and any permanent or temporary apparatus.

(b) The alteration of any permanent or temporary existing structure by a change in its height, including appurtenances, or lateral dimensions, including equipment or material used therein.

§ 77.15 Scope.

(a) This subpart describes standards used to determine obstructions to air navigation that may affect the safe and efficient use of navigable airspace and the operation of planned or existing air navigation and communication facilities. Such facilities include air navigation aids, communication equipment, airports, Federal airways, instrument approach or departure procedures, and approved off-airway routes.

(b) Objects that are considered obstructions under the standards described in this subpart are presumed hazards to air navigation unless further aeronautical study concludes that the object is not a hazard. Once further aeronautical study has been initiated, the FAA will use the standards in this subpart, along with FAA policy and guidance material, to determine if the object is a hazard to air navigation.

(c) The FAA will apply these standards with reference to an existing airport facility, and airport proposals received by the FAA, or the appropriate

military service, before it issues a final determination.

(d) For airports having defined runways with specially prepared hard surfaces, or runways supporting an approach with visibility less than one mile, or night instrument operations, the primary surface for each runway extends 200 feet beyond each end of the runway. For airports having defined strips or pathways used regularly for aircraft takeoffs and landings, and designated runways, without specially prepared hard surfaces, each end of the primary surface for each such runway shall coincide with the corresponding end of the runway. At airports, excluding seaplane bases, having a defined landing and takeoff area with no defined pathways for aircraft takeoffs and landings, a determination must be made as to which portions of the landing and takeoff area are regularly used as landing and takeoff pathways. Those determined pathways must be considered runways, and an appropriate primary surface as defined in § 77.19 will be considered as longitudinally centered on each such runway. Each end of that primary surface must coincide with the corresponding end of that runway.

(e) The standards in this subpart apply to construction or alteration proposals on an airport (including heliports and seaplane bases with marked lanes) if that airport is one of the following before the issuance of the final determination:

(1) Available for public use and is listed in the Airport/Facility Directory, Supplement Alaska, or Supplement Pacific of the U.S. Government Flight Information Publications; or

(2) A planned or proposed airport or an airport under construction of which the FAA has received actual notice, except DoD airports, where there is a clear indication the airport will be available for public use; or,

(3) An airport operated by a Federal agency or the DoD; or,

(4) An airport that has at least one FAA approved instrument approach.

§ 77.17 Obstruction standards.

(a) Proposed and Existing Structures

(1) An object, including a mobile object, is an obstruction to air navigation if it is higher than any of the following heights or surfaces:

(i) 499 feet AGL at the site of the object.

(ii) 200 feet AGL, or above the established airport elevation (AE), whichever is higher, within 3 nautical miles of the established airport reference point, excluding heliports, with its longest runway more than 3,200 feet in actual length, and that height increases in the proportion of 100 feet for each additional nautical mile from the airport up to a maximum of 499 feet above AE.

(iii) A height within a terminal obstacle clearance area, including an initial approach segment, a departure area, and a circling approach area, which would result in the vertical distance between any point on the object and an established minimum instrument flight altitude within that area or segment to be less than the required obstacle clearance.

(iv) A height within an en route obstacle clearance area of a Federal Airway or approved off-airway route that would require an increase of an existing or planned minimum obstacle clearance altitude; or a height that would impact National Airspace System efficiency, such as raising the minimum instrument altitude;

(v) The surface of a takeoff and landing area of an airport or any imaginary surface established under § 77.17, 77.19, 77.21, or 77.23. However, no part of the takeoff or landing area itself will be considered an obstruction.

(2) Except for traverse ways on or near an airport with an operative ground traffic control service furnished by an airport traffic control tower or by the airport management and coordinated with the ATC service, a traverse way used or to be used for the passage of mobile objects will be considered, for purposes of paragraph (a) of this section, to be an object of a height equal to the elevation of the traverse way increased by the following:

If the traverse way is a(n) . . .	Then increase the surface height by . . .
(i) Interstate Highway	(A) 17 feet.
(ii) Other Public Roadway	(A) 15 feet.
(iii) Private Road	(A) 10 feet, or height of highest mobile object which uses the road.
(iv) Waterway, or other traverse way	(A) The height equal to an object that uses it.
(v) Railroad	(A) 23 feet.

(b) Electromagnetic Interference (EMI)—A proposed radiating facility is considered an obstruction if it is within the frequency bands identified in § 77.9(e).

§ 77.19 Civil airport imaginary surfaces.

(a) *General.* The civil airport imaginary surfaces in this section are established in relation to the airport and to each runway, and used to identify objects that may affect airport plans and arrival or departure procedures. In many cases, the imaginary surfaces are lower than required aircraft operational surfaces to identify obstructions that are potential hazards to air navigation. The dimension of each imaginary surface is based on the category of each runway and the type of approach procedure available or planned for that runway. The slope and dimensions of the surface are applied to both ends of a runway and are determined by the most precise approach procedure (existing or planned) for that runway.

(b) *Horizontal surface.* A horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of a specified radii from the center of each end of the primary surface for each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:

(1) 5,000 feet for all runways designated as visual or serving only small aircraft.

(2) 10,000 feet for all other runways. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000-foot arc is encompassed by tangents connecting two adjacent 10,000-foot arcs, the 5,000-foot arc must be disregarded on the construction of the perimeter of the horizontal surface.

(c) *Conical surface.* A surface extending outward and upward from the perimeter of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

(d) *Primary surface.* A surface longitudinally centered on a runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. When the runway has a specially prepared hard surface, or supports an approach with visibility less than one mile, or night instrument operations, the primary surface extends 200 feet beyond each end of that runway. When the runway has no

specially prepared hard surface or planned hard surface, or has no FAA-approved Instrument Approach Procedure, or the sea lanes of a seaplane base are outlined by visual markers, the primary surface ends at each end of the runway. The width of the primary surface is included in the following table:

If the runway is . . .	Then the width must be . . .
(1) Visual, or used only by small aircraft during VFR operations, or restricted to day-only instrument operations.	(i) 250 feet.
(2) Visual, or used by other than small aircraft during VFR-only operations, or day/night instrument operations.	(i) 500 feet.
(3) Nonprecision instrument runway, or precision instrument (i) runway	(i) 1,000 feet.

(e) *Approach surface.* A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end.

(1) The inner edge of the approach surface is the same width as the primary surface and:

If the runway is . . .	The surface width expands uniformly to . . .
(i) Visual, or used only by small aircraft during VFR operations, or restricted to day-only instrument operations.	(A) 1,250 feet.
(ii) Visual, or used by other than small aircraft during VFRfeet. operations, or day/night instrument operations.	(A) 3,500.
(iii) Nonprecision Instrument	(A) 4,000 feet.
(iv) Precision Instrument	(A) 16,000 feet.

(2) Approach surface horizontal distance:

If the runway is . . .	Extend the surface distance to . . .	At a slope of . . .
(i) Visual, or used by small aircraft during VFR operations, or during day-only instrument operations.	(A) 5,000 feet	(*1*) 20:1.
(ii) Visual, or used by other than small aircraft during VFR operations, or day/night instrument operations, or Nonprecision Instrument.	(A) 10,000 feet	(*1*) 34:1.
(iii) Precision Instrument	(A) 10,000 feet, then an additional 40,000 feet.	(*1*) 50:1; at 40:1.

(3) The outer width of the approach surface to an end of a runway will be the width prescribed in this section for the most precise procedure existing or planned for that runway end.

(d) *Transitional surface.* These surfaces extend outward and upward at right angles to the runway centerline and the extended runway centerline at a slope of 7 to 1 from the sides of the primary surface and from the sides of the approach surfaces. Transitional surfaces for those portions of a precision approach surface that project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at right angles to the runway centerline.

§ 77.21 Department of Defense (DoD) airport imaginary surfaces.

(a) *Related to airport reference points.* These surfaces apply to all military airports. For the purposes of this section, a military airport is any airport operated by the DoD.

(1) *Inner horizontal surface.* A plane that is oval in shape at a height of 150 feet above the established airfield elevation. The plane is constructed by scribing an arc with a radius of 7,500 feet about the centerline at the end of each runway and interconnecting these arcs with tangents.

(2) *Conical surface.* A surface extending from the periphery of the inner horizontal surface outward and upward at a slope of 20 to 1 for a horizontal distance of 7,000 feet to a height of 500 feet above the established airfield elevation.

(3) *Outer horizontal surface.* A plane, located 500 feet above the established airfield elevation, extending outward from the outer periphery of the conical surface for a horizontal distance of 30,000 feet.

(b) *Related to runways.* These surfaces apply to all military airports.

(1) *Primary surface.* A surface located on the ground or water longitudinally centered on each runway with the same length as the runway. The width of the primary surface for runways is 2,000 feet. However, at established bases where substantial construction has taken place in accordance with a previous lateral clearance criteria, the 2,000-foot width may be reduced to the former criteria.

(2) *Clear zone surface.* A surface located on the ground or water at each end of the primary surface, with a length of 1,000 feet and the same width as the primary surface.

(3) *Approach clearance surface.* An inclined plane, symmetrical about the runway centerline extended, beginning 200 feet beyond each end of the primary surface at the centerline elevation of the runway end and extending for 50,000 feet. The slope of the approach clearance surface is 50 to 1 along the runway centerline extended until it reaches an elevation of 500 feet above the established airport elevation. It then continues horizontally at this elevation to a point 50,000 feet from the point of beginning. The width of this surface at the runway end is the same as the

primary surface, it flares uniformly, and the width at 50,000 is 16,000 feet.

(4) *Transitional surfaces.* These surfaces connect the primary surfaces, the first 200 feet of the clear zone surfaces, and the approach clearance surfaces to the inner horizontal surface, conical surface, outer horizontal surface or other transitional surfaces. The slope of the transitional surface is 7 to 1 outward and upward at right angles to the runway centerline.

§ 77.23 Heliport imaginary surfaces.

(a) *Primary surface.* The area of the primary surface coincides in size and shape with the designated take-off and landing area. This surface is a horizontal plane at the elevation of the established heliport elevation.

(b) *Approach surface.* The approach surface begins at each end of the heliport primary surface with the same width as the primary surface, and extends outward and upward for a horizontal distance of 4,000 feet where its width is 500 feet. The slope of the approach surface is 8 to 1 for civil heliports and 10 to 1 for military heliports.

(c) *Transitional surfaces.* These surfaces extend outward and upward from the lateral boundaries of the primary surface and from the approach surfaces at a slope of 2 to 1 for a distance of 250 feet measured horizontally from the centerline of the primary and approach surfaces.

Subpart D—Aeronautical Studies and Determinations

§ 77.25 Applicability.

(a) This subpart applies to any aeronautical study of a proposed construction or alteration for which notice to the FAA is required under § 77.9.

(b) The purpose of an aeronautical study is to determine whether the aeronautical effects of the specific proposal and, where appropriate, the cumulative impact resulting from the proposed construction or alteration when combined with the effects of other existing or proposed structures, would constitute a hazard to air navigation.

(c) The obstruction standards in subpart C of this part are supplemented by other manuals and directives used in determining the effect on the navigable airspace of a proposed construction or alteration. When the FAA needs additional information, it may circulate a study to interested parties for comment.

§ 77.27 Initiation of studies.

The FAA will conduct an aeronautical study when:

(a) Requested by the sponsor of any proposed construction or alteration for which a notice is submitted; or

(b) The FAA determines a study is necessary.

§ 77.29 Evaluating aeronautical effect.

(a) The FAA conducts an aeronautical study to determine the impact of a proposed or existing structure or alteration on aeronautical operations, procedures, and the safety of flight. These include an evaluation of:

(1) The impact on arrival, departure, and en route procedures for aircraft operating under visual flight rules;

(2) The impact on arrival, departure, and en route procedures for aircraft operating under instrument flight rules;

(3) The impact on existing and planned public use airports;

(4) Airport capacity of existing public use airports and public use airport development plans received before the issuance of the final determination;

(5) Minimum obstacle clearance altitudes, minimum instrument flight rules altitudes, approved or planned instrument approach procedures, and departure procedures;

(6) The potential effect on ATC radar, direction finders, ATC tower line-of-sight visibility, and physical or EMI effects on air navigation and communication facilities;

(7) The aeronautical effects resulting from the cumulative impact of a proposed construction or alteration of a structure when combined with the effects of other existing or proposed structures.

(b) If you withdraw the proposed construction or alteration or revise it so that it is no longer identified as an obstruction, or if no further aeronautical study is necessary, the FAA may terminate the study.

§ 77.31 Determinations.

(a) The FAA will issue a determination stating whether the proposed construction or alteration would be a hazard to air navigation, and will advise all known interested persons.

(b) The FAA will make determinations based on the aeronautical study findings and will identify the following:

(1) The effects of the proposed or existing structure on VFR/IFR aeronautical departure/arrival operations, air traffic procedures, minimum flight altitudes, and existing planned or proposed airports listed in § 77.15(e) of which the FAA has received actual notice prior to issuance of a final determination.

(2) The extent of the physical and/or EMI effect on the operation of existing or proposed air navigation facilities or communication aids.

(c) The FAA will issue a Determination of Hazard to Air Navigation when the aeronautical study concludes that the proposed construction or alteration will exceed an obstruction standard and would have a substantial aeronautical impact.

(d) A Determination of No Hazard to Air Navigation will be issued when the aeronautical study concludes that the proposed construction or alteration will exceed an obstruction standard but would not have a substantial aeronautical impact to air navigation. A Determination of No Hazard to Air Navigation may include the following:

(1) Conditional provisions of a determination.

(2) Limitations necessary to minimize potential problems, such as the use of temporary construction equipment.

(3) Supplemental notice requirements, when required.

(4) Marking and lighting recommendations, as appropriate.

(e) The FAA will issue a Determination of No Hazard to Air Navigation when a proposed structure does not exceed any of the obstruction standards and would not be a hazard to air navigation.

§ 77.33 Effective period of determinations.

(a) A determination issued under this subpart is effective 40 days after the date of issuance, unless a petition for discretionary review is received by the FAA within 30 days after issuance. The determination will not become final pending disposition of a petition for discretionary review.

(b) Unless extended, revised, or terminated, each Determination of No Hazard to Air Navigation issued under this subpart expires 18 months after the effective date of the determination, or on the date the proposed construction or alteration is abandoned, whichever is earlier.

(c) A Determination of Hazard to Air Navigation has no expiration date.

§ 77.35 Extensions, terminations, revisions and corrections.

(a) You may petition the FAA official who issued the Determination of No Hazard to Air Navigation to revise or reconsider the determination based on new facts or to extend the effective period of the determination, provided that:

(1) Actual structural work of the proposed construction or alteration, such as the laying of a foundation, but not including excavation, has not been started; and

(2) The petition is submitted at least 15 days before the expiration date of the

Determination of No Hazard to Air Navigation.

(b) A Determination of No Hazard to Air Navigation issued for those construction or alteration proposals not requiring an FCC construction permit may be extended by the FAA one time for a period not to exceed 18 months.

(c) A Determination of No Hazard to Air Navigation issued for a proposal requiring an FCC construction permit may be granted extensions for up to 12 months, provided that:

(1) You submit evidence that an application for a construction permit/license was filed with the FCC for the associated site within 6 months of issuance of the determination; and

(2) You submit evidence that additional time is warranted because of FCC requirements; and

(3) Where the FCC issues a construction permit, a final Determination of No Hazard to Air Navigation is effective until the date prescribed by the FCC for completion of the construction. If an extension of the original FCC completion date is needed, an extension of the FAA determination must be requested from the FAA.

Subpart E—Petitions for Discretionary Review

§ 77.37 General.

(a) If you are the sponsor, provided a substantive aeronautical comment on a proposal in an aeronautical study, or have a substantive aeronautical comment on the proposal but were not given an opportunity to state it, you may petition the FAA for a discretionary review of a determination, revision, or extension of a determination issued by the FAA.

(b) You may not file a petition for discretionary review for a Determination of No Hazard that is issued for a temporary structure, marking and lighting recommendation, or when a proposed structure or alteration does not exceed obstruction standards contained in subpart C.

§ 77.39 Contents of a petition.

(a) You must file a petition for discretionary review in writing and it must be received by the FAA within 30 days after the issuance of a determination under § 77.31, or a revision or extension of the determination under § 77.35.

(b) The petition must contain a full statement of the aeronautical basis on which the petition is made, and must include new information or facts not previously considered or presented during the aeronautical study, including valid aeronautical reasons why the determination, revisions, or extension made by the FAA should be reviewed.

(c) In the event that the last day of the 30-day filing period falls on a weekend or a day the Federal government is closed, the last day of the filing period is the next day that is not one of the above-mentioned days.

(d) The FAA will inform the petitioner or sponsor (if other than the petitioner) and the FCC (whenever an FCC-related proposal is involved) shall be informed of the filing of the petition and that the determination is not final pending disposition of the petition.

§ 77.41 Discretionary review results.

(a) If discretionary review is granted, the FAA will inform the petitioner and the sponsor (if other than the petitioner) of the issues to be studied and reviewed.

(b) If discretionary review is denied, the FAA will notify the petitioner and the sponsor (if other than the petitioner), and the FCC, whenever a FCC-related proposal is involved, of the basis for the denial along with a statement that the determination is final.

(c) After concluding the discretionary review process, the FAA will revise, affirm, or reverse the determination.

Issued in Washington, DC, on June 1, 2006.

Nancy B. Kalinowski,

Director of System Operations Airspace and Aeronautical Information Management.

[FR Doc. 06–5319 Filed 6–12–06; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 18

Guides for the Nursery Industry

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") requests public comments on its Guides for the Nursery Industry ("Nursery Guides" or "Guides"). The Commission is soliciting the comments as part of the Commission's systematic review of all current Commission regulations and guides.

DATES: Written comments must be received by August 14, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Nursery Guides Regulatory Review, Matter No. P994248" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex B), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material, however, must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be submitted by accessing the following site: *https://secure.commentworks.com/ftc-nursery* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at *https://secure.commenttworks.com/ftc-nursery.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Janice Podoll Frankle, (202) 326–3022, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 601 New Jersey Avenue, NW., Washington, DC 20001.

SUPPLEMENTARY INFORMATION:

I. Background

The Guides for the Nursery Industry were adopted by the Commission in

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

1979.[2] These Guides address numerous sales practices for outdoor plants, including deceptive claims as to quantity, size, grade, kind, species, age, maturity, condition, vigor, hardiness, growth ability, price, and origin or place where grown.

In 1994, as part of its periodic review, the Commission amended the Nursery Guides.[3] Specifically, the Commission amended Guide 6 and the definitions section to advise sellers of plants that it is an unfair or deceptive act or practice to offer for sale or to sell plants collected from the wild state without disclosing that fact, with the proviso that plants propagated from plants lawfully collected from the wild state may be designated as "nursery-propagated." Additionally, the Commission amended Guides 1–8 to update their legal terminology. Specifically, the Commission deleted the expressions "it is an unfair trade practice" and "has the capacity and tendency or effect of deceiving purchasers," neither of which the Commission uses in its orders, rules, or guides. The Commission substituted the language "it is an unfair or deceptive act or practice" and "misrepresents directly or by implication."[4]

II. Regulatory Review Program

The Commission reviews all Commission rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission solicits comment on, among other things, the economic impact of and the continuing need for its Nursery Guides; possible conflict between the Guides and state, local, federal, or international laws; and the effect of any technological, economic, environmental, or other industry changes on the Guides.

III. Request for Comment

The Commission is particularly interested in receiving comments and supporting data on the following questions. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted:

(1) Is there a continuing need for the Nursery Guides as currently promulgated?

(2) Has the nursery industry adopted the Nursery Guides as part of its routine business practice? If so, how, and what effect, if any, does this have on the continuing need for the Guides?

(3) What benefits have the Nursery Guides provided to purchasers of the products affected by the Guides?

(4) Have the Guides imposed costs on purchasers? If so, explain.

(5) How have the 1994 amendments to Guide 6 affected the nursery industry? How have the 1994 amendments to Guide 6 affected purchasers?

(6) What changes, if any, should be made to the Nursery Guides to increase their benefits to purchasers? How would these changes affect the costs the Guides impose on businesses? How would these changes benefit purchasers?

(7) What burdens or costs, including costs of compliance, have the Guides imposed on businesses subject to their requirements? What burdens or costs have the Guides imposed on small businesses in particular? Have the Guides provided benefits to businesses? If so, what benefits?

(8) What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on businesses? How would these changes affect the benefits provided by the Guides?

(9) Do the Guides overlap or conflict with other federal, state, or local laws or regulations? Do the Guides overlap or conflict with any international laws or regulations?

(10) Have consumer perceptions or preferences changed since these Guides were issued, and, if so, do these changes warrant revising the Guides?

(11) Since the Guides were issued, what effects, if any, have changes in relevant technology, economic conditions, or environmental conditions had on the Guides?

List of Subjects in 16 CFR Part 18

Advertising, Nursery, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–9185 Filed 6–12–06; 8:45 am]

BILLING CODE 6750–01–P

[2] Industry guides are administrative interpretations of laws administered by the Commission. 16 CFR 1.5.

[3] 59 FR 64546.

[4] See the Commission's 1983 Statement on Deception found in the appendix to Cliffdale Associates, 103 F.T.C. 110, 174 (1984).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–134317–05]

RIN 1545–BF16

Guidance Necessary To Facilitate Business Electronic Filing and Burden Reduction; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains corrections to a notice of proposed rulemaking by cross-reference to temporary regulations that was published in the **Federal Register** on Tuesday, May 30, 2006 (71 FR 30640) relating to guidance necessary to facilitate business electronic filing and burden reduction.

FOR FURTHER INFORMATION CONTACT: Grid Glyer, (202) 622–7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations (REG–134317–05) that are the subject of these corrections is under sections 1502 and 1563 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking by cross-reference to temporary regulations (REG–134317–05) contains errors that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking by cross-reference to temporary regulations (REG–134317–05), that was the subject of FR Doc. 06–4872, is corrected as follows:

1. On page 30640, column 3, under the heading "Background and Explanation of Provisions", the fourth through sixth lines from the bottom of the Paragraph, the language "1.1502–76T, 1.1502–95T, 1.1563–1T, 1.1563–3T, and amend part 602 to add § 1.6012–2T." is corrected to read "1.1502–95T, 1.1563–1T, 1.1563–3T, and revise § 1.1502–76T; and amend part 602 to add § 1.6012–2T."

2. On page 30642, column 1, under Par. 22., the language "paragraph (c)(2)"

is corrected to read "paragraph (c)(2)(i) through (iii)".

Cynthia E. Grigsby,

Senior Federal Register Liaison Officer, Publications and Regulations Branch, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 06–5350 Filed 6–8–06; 3:47 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–118775–06]

RIN 1545–BF64

Revisions to Regulations Relating To Repeal of Tax on Interest of Nonresident Alien Individuals and Foreign Corporations Received From Certain Portfolio Debt Investments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under sections 871 and 881 of the Internal Revenue Code (Code) relating to the exclusion from gross income of portfolio interest paid to a nonresident alien individual or foreign corporation. These regulations clarify how the portfolio interest rules apply with respect to interest paid to a partnership (or simple or grantor trust) that has foreign partners (or beneficiaries or owners). This document also provides notice of a public hearing.

DATES: Written or electronic comments must be received by August 14, 2006. Outlines of topics to be discussed at the public hearing scheduled for Thursday, September 7, 2006, at 10 a.m., must be received by August 24, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–118775–06), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions also may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–118775–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–118775–06). The public hearing will be held in IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jason Kleinman, (202) 622–3840; concerning the submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard Hurst, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 871(a) of the Code imposes a tax of 30 percent on United States (U.S.) source fixed or determinable annual or periodic (FDAP) income received by a nonresident alien individual to the extent the amount so received is not effectively connected with the conduct of a trade or business within the U.S. Section 881(a) imposes a similar tax with respect to FDAP income received by a foreign corporation. Pursuant to these sections, U.S. source interest generally is considered FDAP income and is subject to tax. See sections 871(a)(1)(A) and 881(a)(1)(A). This tax generally is collected by means of withholding under sections 1441 and 1442, which require a payor of FDAP income to withhold 30 percent of the gross amount of such payment, unless the beneficial owner claims a reduced rate of tax on such interest under an applicable Code or treaty provision. See §§ 1.1441–1(b)(4) and 1.1441–6.

Notwithstanding the general imposition of tax on U.S. source interest under sections 871(a) and 881(a), sections 871(h) and 881(c), respectively, provide that no tax is imposed in the case of portfolio interest received by a nonresident individual or foreign corporation. Under section 871(h)(2) and section 881(c)(2), respectively, portfolio interest includes any interest (including original issue discount) that would be subject to tax under section 871(a) or section 881(a) but for section 871(h) or section 881(c).

However, both sections 871(h)(3)(A) and 881(c)(3)(B) provide, among other limitations, that portfolio interest does not include interest received by a 10-percent shareholder, as defined in section 871(h)(3)(B). Section 871(h)(3)(B) provides that the term 10-percent shareholder means, in the case of an obligation issued by a corporation, any person who owns 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote, or, in the case of an obligation issued by a partnership, any person who owns 10 percent or more of the capital or profits interest in such partnership.

Section 871(h)(3)(C) provides that the attribution rules of section 318 apply, with three modifications, for purposes of determining whether a person is a 10-percent shareholder (the 10-percent shareholder test) of the obligor. The first modification provides that the attribution of stock from a corporation is made without regard to the 50 percent threshold set forth in section 318(a)(2)(C). The second modification provides that the attribution of stock to a corporation is made without regard to the 50 percent threshold set forth in section 318(a)(3)(C), but if a corporation would not be attributed a shareholder's stock in another corporation but for the removal of the 50 percent threshold, then the corporation is only attributed that portion of the shareholder's stock in such other corporation as the value of the shareholder's stock in the corporation bears to the value of all stock in the corporation. The third modification provides that if a person is treated as owning stock after the application of section 318(a)(4) (relating to options to acquire stock being treated as stock actually owned), then such stock shall not be treated as actually owned by such person for purposes of attributing ownership to other persons under section 318(a)(2) or (3). The flush language of section 871(h)(3) also provides that, under regulations, rules similar to the rules described above shall apply when determining the ownership of the capital or profits interest in a partnership obligor for purposes of applying the 10-percent shareholder test.

Notwithstanding the general definition of a 10-percent shareholder and the application of section 318 described in section 871(h)(3), neither the Code nor the legislative history applicable to section 871(h)(3) specifically addresses how the 10-percent shareholder test is to apply when interest is paid to a partnership that has foreign partners. That is, neither the Code nor the legislative history explicitly provides whether the 10-percent shareholder test should be applied at the foreign partner level, the partnership level, or both levels.

Explanation of Provisions

1. In General

These proposed regulations address the application of the 10-percent shareholder test in section 871(h)(3) when a nonresident alien individual or foreign corporation is a partner in a partnership that is paid interest. In doing so, the proposed regulations address the two key points needed to apply the test. First, the regulations address the issue of which person "receives" interest for purposes of the 10-percent shareholder test. Second, the

proposed regulations address the time at which a withholding agent must determine if the person who receives the interest is a 10-percent shareholder. Because similar issues arise with respect to interest paid to a simple trust or grantor trust, the proposed regulations also provide rules for that context.

2. Person Who "Receives" Interest for Purposes of the 10-Percent Shareholder Test

Section 871(h)(3) generally provides that interest received by a 10-percent shareholder is not considered portfolio interest exempt from taxation. When a partnership with foreign partners holds a debt instrument, the issue arises as to whether the withholding agent should apply the 10-percent shareholder test at the partner level (because such partner is the beneficial owner of the interest within the meaning of § 1.1441–1(c)(6)), at the partnership level (because the partnership holds the debt instrument), or at both levels. The conclusion as to the level or levels at which the 10-percent shareholder test is applied is necessarily a conclusion as to the person or persons considered to "receive" the interest for purposes of the test. As mentioned, neither section 871(h) nor the legislative history explicitly addresses this issue. However, the IRS and the Treasury Department have previously stated that, based upon the authority of subchapter K and the policies underlying a particular provision of the Code, a partnership may be treated as an aggregate of its partners or as an entity separate from its partners, depending on which characterization is more appropriate to carry out the purpose of the Code or regulatory provision. See TD 9008, 2002–2 CB 335 [67 FR 48020]; Rev. Rul. 89–85, 1989–2 CB 218; H.R. Conf. Rep. No. 2543, 83rd Cong., 2d Sess. 59 (1954); See also TD 9240, 2006–7 IRB 454 [71 FR 2462].

After considering the alternatives, the IRS and the Treasury Department conclude that the 10-percent shareholder test should apply at the foreign partner level to the nonresident alien individual or foreign corporation that is the beneficial owner of the income. Accordingly, the proposed regulations provide that when interest is paid to a partnership, the persons who receive the interest for purposes of applying the 10-percent shareholder test are the nonresident alien individual partners and the foreign corporations that are partners in the partnership. The 10-percent shareholder test is then applied by determining each such person's ownership interest in the obligor. No inference is intended as to whether other limitations set forth in the definition of portfolio interest should be considered at the partner level, partnership level, or at both levels (section 881(c)(3)(A)).

The approach taken in the proposed regulation is supported by the statute and legislative history which convey Congress' desire to facilitate the efficient and effective flow of foreign capital to U.S. borrowers while distinguishing true portfolio investors in the obligor from foreign persons making direct (ten percent) equity investments in U.S. operations. See S. Rep. No. 98–169, 98 Cong., 2d Sess. 416 (1984); H.R. Rep. No. 98–861, 98 Cong., 2d Sess. 936 (1984); See also, Staff of the Joint Comm. on Tax'n, 98th Cong., General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984, at 391–394. With regard to the statute, it is clear from subchapter K, section 871, and section 881 that, in the absence of the portfolio interest exception, the tax on interest paid to a partnership is substantively imposed on the nonresident alien individual or foreign corporation that is a partner in the partnership. That is, the beneficial owner with respect to interest paid to a partnership is the foreign partner (other than a partner that is itself a passthrough entity) and not the partnership. Based upon this fact, the IRS and the Treasury Department believe that applying the 10-percent shareholder test in section 871(h)(3) at the partner level is consistent with the statutory framework of sections 871(h)(1) and 881(c)(1) which provide that portfolio interest "received by a nonresident individual" or "received by a foreign corporation", respectively, from sources within the U.S. is exempt from taxation under sections 871(a) and 881(a).

Further, notwithstanding the general regime for imposing tax under sections 871 and 881, the IRS and the Treasury Department do not believe that in enacting the 10-percent shareholder test, Congress intended for the test to be applied at the partnership level. Such an interpretation would condition a foreign beneficial owner's entitlement to the portfolio interest exception on the ownership in the obligor held by either a person that is not a taxpayer (the partnership) or a person who is wholly unrelated to the beneficial owner (another partner in the partnership). The practical effect of this interpretation would be to characterize interest payments made to a partnership as being received by a 10-percent shareholder in many cases where there is no apparent abuse, thereby disallowing a tax benefit to foreign persons, and impairing the free-flow of foreign capital to U.S. business, solely because a foreign person acted indirectly rather than directly with its U.S. borrower. For example, if 100 unrelated nonresident alien individuals and foreign corporations invest in a partnership that holds 10 percent of a domestic corporation, and such domestic corporation pays U.S. source interest to the partnership, each of the foreign partners in the partnership would be denied the benefit of the portfolio interest exception if the 10-percent shareholder test is applied at the partnership level. The same result occurs if unrelated U.S. persons that are partners in the partnership hold, in combination with the partnership, 10-percent of the domestic corporate obligor. The IRS and the Treasury Department believe that such a result is inapposite to the statutory framework and underlying purpose of the statute, especially considering that section 871(h) invokes the attribution rules of section 318 for the purpose of policing the 10-percent shareholder prohibition, and generally liberalizes the application of such rules to reach more subtle ownership arrangements.

3. Time When 10-Percent Shareholder Test Is Applied

Section 871(h)(3) does not explicitly provide the time at which the 10-percent shareholder test is applied. Thus, an issue arises as to whether the test is applied at the beginning of the year, on each interest payment date, at the end of the year, at all times during the year, or at some other time. Consistent with the withholding regime under sections 1441 and 1442, the proposed regulations provide that the 10-percent shareholder test is applied with respect to a nonresident alien individual or foreign corporation that is a partner in the partnership at the time that a withholding agent, absent any exceptions, would otherwise be required to withhold under sections 1441 and 1442 with respect to such interest. See § 1.1441–3(b). For example, in the case of U.S. source interest paid by a domestic corporation to a domestic partnership or withholding foreign partnership (as defined in § 1.1441–5(c)(2)), the 10-percent shareholder test is applied on the earliest of when the interest is distributed by the partnership to the foreign partner, the date that the statement under section 6031(c) is mailed or otherwise provided to such partner, or the due date for furnishing such statement. See §§ 1.1441–5(b)(2) and 1.1441–5(c)(2)(iii).

4. Application of the 10-Percent Shareholder Test to Interest Paid to a Simple or Grantor Trust

Under subchapter J of the Code, a trust generally computes it taxable income in the same manner as an individual. See section 641(b). However, subchapter J contains rules that generally permit a trust required to distribute all of its income currently (simple trust) a deduction for the amounts it is required to distribute. See section 651. To the extent a simple trust claims a deduction for amounts it is required to distribute to its beneficiaries, the trust acts as a passthrough entity because such amounts are generally subject to taxation in the hands of the beneficiaries of the trust under section 652.

Further, subchapter J contains so called grantor trust rules pertaining to trust arrangements where a grantor or other person has retained rights or powers with respect to trust property or trust income. See sections 671–679. Pursuant to the grantor trust rules, the grantor or other person may be considered the owner of all or a portion of the trust. To the extent that the grantor or other person is considered the owner of any portion of a trust, the grantor or other person (and not the trust) is required to take into account those items of income, deduction, and credit attributable to the portion owned when computing the grantor or other owner's taxable income. See section 671.

When interest is paid to a simple trust or a grantor trust, an issue arises as to whether the 10-percent shareholder test should be applied at the trust or beneficiary or owner level. Accordingly, the proposed regulations provide rules for that context. Under the proposed regulations, when interest is paid to a simple trust or grantor trust and such interest is distributed to or included in the gross income of a nonresident alien individual or foreign corporation that is a beneficiary or owner of such trust, as the case may be, the withholding agent is to apply the rules of the proposed regulations with respect to determining whether a 10-percent shareholder has received interest, at the beneficiary or owner level. Further, the 10-percent shareholder test is applied with respect to a nonresident alien individual or foreign corporation that is a beneficiary of a simple trust or an owner of a grantor trust at the time that a withholding agent, absent any exceptions, would otherwise be required to withhold under sections 1441 and 1442 with respect to such interest.

Effective Date

These proposed regulations apply to interest paid on obligations issued on or after the date that the regulations are issued as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a new collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 7, 2006, beginning at 10 a.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by July 13, 2006. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the proposed regulations is Jason Kleinman, Office of Associate Chief Counsel (International).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.871–14 is amended as follows:

1. Paragraphs (g) and (h) are redesignated as paragraphs (h) and (i), respectively.

2. New paragraph (g) is added.

The addition reads as follows:

§ 1.871–14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

* * * * *

(g) *Portfolio interest not to include interest received by 10-percent shareholders*—(1) *In general.* For purposes of section 871(h), the term *portfolio interest* shall not include any interest received by a 10-percent shareholder.

(2) *Ten-percent shareholder*—(i) *In general.* The term *10-percent shareholder* means—

(A) In the case of an obligation issued by a corporation, any person who owns 10-percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote; or

(B) In the case of an obligation issued by a partnership, any person who owns 10-percent or more of the capital or profits interest in such partnership.

(ii) *Ownership*—(A) *Stock ownership.* For purposes of paragraph (g)(2)(i)(A) of this section, *stock owned* means stock directly or indirectly owned and stock owned by reason of the attribution rules of section 318(a), as modified by section 871(h)(3)(C).

(B) *Ownership of partnership interest*—(*1*) For purposes of paragraph

(g)(2)(i)(B) of this section, rules similar to the rules in paragraph (g)(2)(ii)(A) of this section shall be applied in determining the ownership of a capital or profits interest in a partnership.

(2) *Special rules.* [Reserved].

(3) *Application of 10-percent shareholder test to partners receiving interest through a partnership*—(i) *Partner level test.* Whether interest paid to a partnership and included in the distributive share of a partner that is a nonresident alien individual or foreign corporation, is received by a 10-percent shareholder, shall be determined by applying the rules of this paragraph (g) only at the partner level.

(ii) *Time at which 10-percent shareholder test is applied.* The determination of whether a nonresident alien individual or foreign corporation that is a partner in a partnership is a 10-percent shareholder under the rules of section 871(h)(3), section 881(c)(3), and this paragraph (g) with respect to interest paid to such partnership shall be made at the time that the withholding agent, absent the provisions of section 871(h), 881(c) and the rules of this paragraph, would otherwise be required to withhold under sections 1441 and 1442 with respect to such interest. For example, in the case of U.S. source interest paid by a domestic corporation to a domestic partnership or withholding foreign partnership (as defined in § 1.1441–5(c)(2)), the 10-percent shareholder test is applied on the earliest of when the interest is distributed by the partnership to the foreign partner, the date that the statement under section 6031(c) is mailed or otherwise provided to such partner, or the due date for furnishing such statement. See § 1.1441–5(b)(2) and (c)(2)(iii).

(4) *Application of 10-percent shareholder test to interest paid to a simple trust or grantor trust.* Whether interest paid to a simple trust or grantor trust and distributed to or included in the gross income of a nonresident alien individual or foreign corporation that is a beneficiary or owner of such trust, as the case may be, is received by a 10-percent shareholder, shall be determined by applying the rules of this paragraph (g) only at the beneficiary or owner level. The 10-percent shareholder test is applied with respect to a nonresident alien individual or foreign corporation that is a beneficiary of a simple trust or an owner of a grantor trust at the time that a withholding agent, absent any exceptions, would otherwise be required to withhold under sections 1441 and 1442 with respect to such interest.

(5) *Effective date.* The rules of this paragraph (g) apply to interest paid on obligations issued on or after the date these regulations are issued as final regulations.

* * * * *

Par. 3. Section 1.881–2(a)(6) is added to read as follows:

§ 1.881–2 Taxation of foreign corporations not engaged in U.S. business.

(a) * * *

(6) Interest received by foreign corporations pursuant to certain portfolio debt instruments is not subject to the flat tax of 30 percent described in paragraph (a)(1) of this section. For rules applicable to a foreign corporation's receipt of interest on certain portfolio debt instruments, see sections 871(h), 881(c), and § 1.871–14.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E6–9151 Filed 6–12–06; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2006–0473; FRL–8182–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania, VOC and NO_X RACT Determinations for Eight Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania to establish and require reasonably available control technology (RACT) for eight major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 13, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2006–0473 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *morris.makeba@epa.gov.*

C. Mail: EPA–R03–OAR–2006–0473, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2006–0473. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the

www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Approval of Pennsylvania's VOC and NO_X RACT Determinations for Eight Individual Sources, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: June 1, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 06–5296 Filed 6–12–06; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 71, No. 113
Tuesday, June 13, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: U.S. Department of Agriculture, National Appeals Division.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the U.S. Department of Agriculture, National Appeals Division's to request an extension for and revision to a currently approved information collection for Customer Service Survey.

DATES: Comments on this notice must be received by August 14, 2006 to be assured of consideration.

Additional Information or Comments: Contact Jerry Jobe, U.S. Department of Agriculture, National Appeals Division, 3101 Park Center Drive, Suite 1100, Alexandria, VA 22302, 703.305.2514, 703.305.1496 (fax).

SUPPLEMENTARY INFORMATION:

Title: National Appeals Division Customer Service Survey.

OMB Number: 0503–0007.

Expiration Date of Approval: October 31, 2006.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: NAD proposes to extend and revise its currently approved information collection survey. This revision will include collecting information pertaining to its Public Awareness Program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .33 hours per response.

Respondents: Appellants, farm show attendees, producers, and other USDA Agencies.

Estimated Number of Respondents: 1176.

Estimated Number of Responses per Respondent: One (1).

Estimated Total Annual Burden on Respondents: 388.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jerry L. Jobe, U.S. Department of Agriculture, National Appeals Division, 3101 Park Center Drive, Suite 1100, Alexandria, VA 22302, 703.305.2514, 703.305.1496 (fax). All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Roger Klurfeld,

Director, National Appeals Division.

[FR Doc. E6–9219 Filed 6–12–06; 8:45 am]

BILLING CODE 3410–WY–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Highland Lake Fish Passage, Highland Lake Watershed, Westbrook, ME

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability of Finding of No Significant Impact.

SUMMARY: The Natural Resources Conservation Service (NRCS) has prepared an Environmental Assessment (EA) for the Highland Lake Fish Passage Project, Westbrook, Maine. NRCS has found that the restoration of the Highland Lake Stream channel and alteration to the fishway would not result in a significant impact on the quality of the human environment, particularly when focusing on the significant adverse effects that NEPA is intended to help decision makers avoid and mitigate against. Therefore, NRCS has prepared a Finding of No Significant Impact (FONSI) in compliance with the National Environmental Policy Act (NEPA), as amended, and gives notice that an environmental impact statement is not being prepared.

FOR FURTHER INFORMATION CONTACT: Single copies of the EA and FONSI documents, may be obtained by contacting Mr. Wayne Munroe, District Conservationist, USDA–NRCS, 306 U.S. Route One, Suite A1, Scarborough, ME 04074, (207) 883–0159 ext. 101. For additional information related to this notice, contact Joyce Swartzendruber, State Conservationist, Natural Resources Conservation Service, 967 Illinois Avenue, Suite 3, Bangor, ME 04401–2700; telephone (207) 990–9100 ext. 3. Comments on the EA and FONSI must be received no later than 30 days after this notice is published.

DATES: *Effective Date:* Comments on the EA and FONSI must be postmarked on or before the effective date of June 19, 2006.

SUPPLEMENTARY INFORMATION: The sponsoring local organization, Maine Department of Marine Resources (MDMR), concurs with this determination and agrees with carrying forward the proposed project. The objective of the sponsoring local organization is to create a stable unbraided stream channel and improve a fish ladder in the Highland Lake Dam in order to provide passage for migrating anadromous fish.

The FONSI has been forwarded to the Federal Energy Regulatory Agency and to various Federal, State and local agencies and interested parties.

No administrative action on implementation of the proposed action will be taken until 30 days after the date of this publication in the Federal Register.

Dated: June 5, 2006.

Joyce A. Swartzendruber,

State Conservationist.

[FR Doc. E6–9196 Filed 6–12–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Announcement of the Small, Minority Producer Grant Program Application Deadlines

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: The Rural Business-Cooperative Service announces the availability of approximately $1.473 million in competitive grant funds for fiscal year (FY) 2006 for cooperatives and associations of cooperatives to assist small minority producers. USDA Rural Development Cooperative Programs hereby requests proposals from eligible cooperatives and associations of cooperatives interested in a competitively awarded grant. The cooperatives and associations of cooperatives will be use the grants to fund technical assistance to rural businesses. The maximum award per grant is $200,000.

DATES: Applicants may submit completed applications for grants on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than July 28, 2006, to be eligible for FY 2006 grant funding. Late applications are not eligible for FY 2006 grant funding.

Electronic copies must be received by July 28, 2006, to be eligible for FY 2006 grant funding. Late applications are not eligible for FY 2006 grant funding.

The comment period for information collection under the Paperwork Reduction Act of 1995 continues through August 14, 2006. Comments on the paperwork burden must be received by this date to be assured of consideration.

ADDRESSES: Applicants may obtain application guides and materials for the Small Minority Producer Grant Program (SMPG) at *http://www.rurdev.usda.gov/rbs/SMPG/SMPG.htm* or by contacting your USDA Rural Development State Office. You can reach your State Office by calling (202) 720–4323 and pressing "1".

Submit completed paper applications for a grant to Cooperative Programs, Attn: SMPG Program, Mail Stop 3250, Room 4016-South, 1400 Independence Ave., SW., Washington, DC 20250–3250. The telephone number that should be used for FedEx packages is (202) 720–7558. You may also submit electronic grant applications at *http://www.grants.gov*, following the instructions found on this Website.

FOR FURTHER INFORMATION CONTACT: Visit the program Web site at *http://www.rurdev.usda.gov/rbs/coops/SMPG/SMPG.htm*, which contains application guidance or contact USDA Rural Development Cooperative Programs at 202–720–7558 or *cpgrants@wdc.usda.gov*. Applicants are encouraged to contact Cooperative Programs well in advance of the deadline to discuss their projects and ask any questions about the application process.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirements contained in this notice have received temporary emergency clearance by the Office of Management and Budget (OMB) under Control Number 0570–0052. However, in accordance with the paperwork Reduction Act of 1995, USDA Rural Development will seek standard OMB approval of the reporting requirements contained in this Notice and hereby opens a 60-day public comment period.

Title: Small Minority Producer Grant Program.

Type of Request: New collection.

Abstract: USDA Rural Development needs to receive the information contained in this collection of information to select the projects it believes will provide the most long-term economic benefit to rural areas. The selection process is competitive. USDA Rural Development will ensure that the funds are used for the intended purpose. The primary focus is to provide assistance to small minority producers and whose governing board and/or membership is comprised of at least 75 percent minority. These funds are to be used for cooperatives and association of cooperatives to provide technical assistance to small minority producers and minority cooperatives in rural areas.

Estimate of Burden: Public reporting burden contained in this collection of information is estimated to average 1 hour per response.

Respondents: Minority Cooperatives and Minority Associations of Cooperatives

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 14.

Estimated Number of Responses: 347.

Estimated Total Annual Burden on respondents: 418.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Development, including whether the information will have practical utility; (b) the accuracy of Rural Development's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Overview

Federal Agency: Rural Business-Cooperative Service (RBS).

Funding Opportunity Title: Small, Minority Producer Grants.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number: 10–771

Dates: Application Deadline: Applicants may submit completed applications for grants on paper or electronically according to the following deadlines:

Paper copies must be postmarked and mailed, shipped, or sent overnight no later than July 28, 2006, to be eligible for FY 2006 grant funding. Late applications are not eligible for FY 2006 grant funding.

Electronic copies must be received by July 28, 2006, to be eligible for FY 2006 grant funding. Late applications are not eligible for FY 2006 grant funding.

Programs Affected

This will not affect other programs in USDA Rural Development.

I. Funding Opportunity Description

This solicitation is issued pursuant to the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2006, Public Law 109–97 (November 10, 2005) which authorizes not to exceed $1,473,120 for cooperatives or associations of cooperatives whose primary focus is to provide assistance to small minority producers and whose governing board and/or membership is comprised of at least 75 percent minority members. The Secretary of Agriculture has delegated the program's administration to USDA Rural Development Cooperative Programs.

The primary objective of this grant program is to assist small, minority producers through cooperatives and associations of cooperatives. USDA Rural Development Cooperative Programs will competitively award grants to fund cooperatives and/or associations of cooperatives to provide technical assistance to small minority producers in rural areas. The maximum award amount per grant is $200,000.

Definitions

Agency—Rural Business-Cooperative Service, an agency of the United States Department of Agriculture (USDA) or a successor agency.

Agricultural Commodity—An unprocessed product of farms, ranches, nurseries, and forests. Agricultural commodities include: Livestock, poultry, and fish; fruits and vegetables; grains, such as wheat, barley, oats, rye, triticale, rice, corn, and sorghum; legumes, such as field beans and peas; animal feed and forage crops; seed crops; fiber crops, such as cotton; oil crops, such as safflower, sunflower, corn, and cottonseed; trees grown for lumber and wood products; nursery stock grown commercially; Christmas trees; ornamentals and cut flowers; and turf grown commercially for sod. Agricultural commodities do not include horses or animals raised as pets, such as cats, dogs, and ferrets.

Cooperative Programs—The office within USDA Rural Development, and its successor organization, that administers programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451 *et seq.*) and such other programs identified in USDA regulations.

Economic Development—The economic growth of an area as evidenced by increase in total income, employment opportunities, decreased out-migration of population, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, or gains in other measurements of economic activity, such as land values.

Feasibility Study—An analysis of the economic, market, technical, financial, and management feasibility of a proposed Project.

Minority—Individuals who have been subjected to racial, ethnic, gender prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Minority groups are Women, African Americans not of Hispanic Origin, American Indians, Alaskan Natives, Hispanics, Asian and Pacific Islanders.

Minority Association of Cooperatives—An association of cooperatives whose primary focus is to provide assistance to small, minority producers and where the governing board and/or membership is comprised of at least 75 percent minority.

Minority Cooperative—A farmer-or rancher-owned and -controlled business, incorporated as a cooperative, from which benefits are derived and distributed equitably on the basis of use by each of the farmer or rancher owners whose primary focus is to provide assistance to small, minority producers and where the governing board and/or membership is comprised of at least 75 percent minority.

Operating Cost—The day-to-day expenses of running a business; for example: utilities, rent, salaries, depreciation, product production costs, marketing and advertising, and other basic overhead items.

Project—Includes all activities to be funded by the Small Minority Producer Grant.

Small Minority Producers—Minority persons or 100 percent minority-owned entities, including farmers, ranchers, loggers, agricultural harvesters, and fishermen, with gross annual sales of not more than $250,000 that engage in the production or harvesting of an agricultural commodity.

Rural and Rural Area—Includes all the territory of a State that is not within the outer boundary of any city or town having a population of 50,000 or more and the urbanized area contiguous and adjacent to such city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

Rural Development—A mission area within USDA consisting of the Office of Under Secretary for Rural Development, Office of Community Development, Rural Development Business and Cooperative Programs, Rural Development Housing Programs, and Rural Development Utilities Programs and their successors.

State—Includes each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau.

Technical Assistance—An advisory service performed for the benefit of a small, minority producer such as market research; product and/or service improvement; legal advice and assistance; feasibility study, business plan, and marketing plan development; and training. Technical assistance does not include the operating costs of a cooperative being assisted.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2006.

Approximate Total Funding: $1.473 million.

Approximate Number of Awards: 7.

Approximate Average Award: $200,000.

Floor of Award Range: None.

Ceiling of Award Range: $200,000.

Anticipated Award Date: August 30, 2006.

Budget Period Length: 12 months.

Project Period Length: 12 months.

III. Eligibility Information

A. Eligible Applicants

Applicants must be a minority cooperative or a minority association of cooperatives.

B. Cost Sharing or Matching

No matching funds are required.

C. Other Eligibility Requirements

Use of Funds: The funds may only be used for technical assistance projects.

Project Area Eligibility: The Project proposed must take place in a rural area.

Grant Period Eligibility: If awarded, funds must be expended in 1 year. Applications that have a time frame of more than 365 days will be considered ineligible. Applications that request funds for a time period ending after September 30, 2007, will not be considered for funding.

Completeness Eligibility: The applicant must provide sufficient documentation to determine eligibility. Applications without sufficient information to determine eligibility will not be considered for funding. Applications that are missing any

required elements (in whole or in part) will be ineligible for funding, except as set forth in Section V.B.

Multiple Grant Eligibility: An applicant may not submit more than one grant application in any one funding cycle.

IV. Application and Submission Information

A. Address to Request Application Package

If you plan to apply using a paper application, you can obtain the application package for this funding opportunity: *http://www.rurdev.usda.gov/rbs/coops/SMPG/SMPG.htm.* If you do not have access to the Internet, or if you have difficulty accessing the forms online, you may contact Cooperative Programs at 202–720–7558 or *cpgrants@wdc.usda.gov.* If you plan to apply electronically, you must visit *http://www.grants.gov* and follow the instructions.

B. Content and Form of Submission

You may submit your application in paper or electronic format. If you submit your application in paper form, you must submit one signed original of your complete application. The application should be in the following format:

Font size: 12 point unreduced.

Paper size: 8.5 by 11 inches. Printed on only one side of each page. Held together only by rubber bands or metal or plastic clips; not bound in any other way.

The submission must include all pages of the application. It is recommended that the application be in black and white, and not color. Those evaluating the application will only receive black and white images.

If you submit your application electronically, you must follow the instructions given at the Internet address: *http://www.grants.gov.* Applicants are advised to visit the site well in advance of the application deadline if they plan to apply electronically to ensure that they have obtained the proper authentication and have sufficient computer resources to complete the application.

An application must contain all of the following elements. Any application that is missing any element or contains an incomplete element will not be considered for funding except as set forth in Section V.B.

1. Form SF–424, "Application for Federal Assistance." In order for this form to be considered complete, it must contain the legal name of the applicant; the applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number; the applicant's complete mailing address; the name and telephone number of a contact person; the employer identification number; the start and end dates of the project; the Federal funds requested; other funds that will be used as matching funds; an answer to the question, "Is applicant delinquent on any Federal debt?;" the name and signature of an authorized representative; the telephone number of the authorized representative; and the date the form was signed. Other information requested on the form may be applicable, but the above-listed information is required for the form to be considered complete.

You are required to have a DUNS number to apply for a grant from USDA Rural Development Cooperative Programs unless you are an individual. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *http://www.dnb.com/us/* or call (866) 705–5711. For more information, see the SMPG Web site at: *http://www.rurdev.usda.gov/rbs/coops/SMPG/SMPG.htm* or contact Cooperative Programs at 202–720–7558 or *cpgrants@wdc.usda.gov.*

2. Form SF–424A, "Budget Information-Non-Construction Programs." In order for this form to be considered complete, the applicant must fill out sections A, B, C, and D. The application must include both Federal and matching funds (if matching funds are included in the project) as requested on the form.

3. Form SF–424B, "Assurances—Non-Construction Programs." In order for this form to be considered complete, the form must be signed by an authorized official and include the title, name of applicant, and date submitted.

4. Table of Contents. For ease of locating information, each application must contain a detailed Table of Contents (TOC) immediately following the SF–424B. The TOC must include page numbers for each component of the application. Pagination should begin immediately following the TOC. In order for this element to be considered complete, the TOC must include page numbers for the executive summary, an eligibility discussion, work plan, and proposal evaluation criteria.

5. Executive Summary: A summary of the proposal, not to exceed one page, must briefly describe the project, tasks to be completed and other relevant information that provides a general overview of the project.

6. Eligibility Discussion: A detailed discussion, not to exceed four pages, must describe how the applicant meets the following requirements.

(i) Applicant Eligibility: If the applicant is a cooperative, the application must reference the business' good standing as a cooperative in its state of incorporation. If the applicant is an association of cooperatives, the application must reference the association's good standing as a legal business structure in its state of incorporation. The applicant must describe how it meets the definition of a "minority cooperative" or "minority association of cooperatives" as defined in the Definitions section of this Notice. The applicant must apply as only one type of applicant.

(ii) Use of Funds: The applicant must provide a detailed discussion on how the proposed project activities meet the definition of technical assistance.

(iii) Project Area: The applicant must provide information on where the projects are planned to be located and that the areas meet the "rural area" definition.

(iv) Grant Period: The applicant must provide a time frame for the proposed project and discuss how the project will be completed within that time frame.

7. Budget/Work plan: The applicant must describe, in detail not to exceed four pages, the purpose of the grant, specific sub-recipients including racial and ethnicity information, what type of assistance will be provided to the sub-recipients, and the amount of funds needed to assist each sub-recipient. The budget must present a breakdown of estimated costs associated with each project. The costs should be broken down in the same categories as the SF–424A. The amount of grant funds requested will be adjusted if the applicant does not have justification for all costs.

8. Evaluation Criteria: Each of the evaluation criteria referenced in this notice must be addressed, specifically and individually, in narrative form, not to exceed a total of one page for each evaluation criteria. Failure to address the evaluation criteria by the application deadline will result in the application being determined ineligible, except as described in Section V.B.

C. Submission Dates and Times

Application Deadline Date: July 28, 2006.

Explanation of Deadlines: Paper applications must be postmarked and mailed, shipped, or sent overnight by the deadline date (see Section IV.F. for the address). Electronic applications must be received by www.grants.gov by the deadline date. Courier applications must be delivered by the deadline date.

If your application does not meet the deadline, it will not be considered for funding. You will be notified that your application did not meet the submission deadline. You will also be notified by mail or by e-mail if your application is received on time.

D. Intergovernmental Review of Applications

Executive Order 12372 (EO), Intergovernmental review of Federal programs, applies to this program. This EO requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. A list of States that maintain an SPOC may be obtained at *http://www.whitehouse.gov/omb/grants/spoc.html*. If your State has an SPOC, you may submit your application directly for review. Any comments obtained through the SPOC must be provided to Rural Development for consideration as part of your application. If your State has not established an SPOC or you do not want to submit your application, Rural Development will submit your application to the SPOC or other appropriate agency or agencies.

You are also encouraged to contact Cooperative Programs at 202–720–7558 or *cpgrants@wdc.usda.gov* if you have questions about this process.

E. Funding Restrictions

Grant funds must be used for technical assistance. No funds made available under this solicitation shall be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility;
2. Purchase, rent, or install fixed equipment, including processing equipment;
3. Purchase vehicles, including boats;
4. Pay for the preparation of the grant application;
5. Pay expenses not directly related to the funded project;
6. Fund political or lobbying activities;
7. Fund any activities prohibited by 7 CFR parts 3015 and 3019;
8. Fund architectural or engineering design work for a specific physical facility;
9. Fund any expenses related to the production of any commodity or product to which value will be added, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility;
10. Fund research and development;
11. Purchase land;
12. Duplicate current services or replace or substitute support previously provided;
13. Pay costs of the project incurred prior to the date of grant approval;
14. Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;
15. Pay any judgment or debt owed to the United States;
16. Pay the operating costs of cooperative and/or association of cooperatives; or
17. Pay expenses for applicant employee training.

F. Other Submission Requirements

You may submit your paper application for a grant to Cooperative Programs, Attn: SMPG Program, Mail STOP 3250, Room 4016-South, 1400 Independence Ave., SW., Washington, DC 20250–3250. The telephone number that should be used for FedEx packages is 202–720–7558. You may also choose to submit your application electronically at *http://www.grants.gov*. Applications may not be submitted by electronic mail, facsimile, or hand-delivery. Each application submission must contain all required documents in one envelope, if sent by mail or express delivery service.

V. Application Scoring Criteria Review Information

A. Criteria

All eligible and complete applications will be evaluated based upon the following criteria. Failure to address any one of the following criteria by the application deadline will result in the application being determined ineligible and the application will not be considered for funding, except as described in Section V.B. The total points possible for the criteria are 60 and the maximum number of points for each of the following sections is 15.

1. Rural Area: Projects must be in rural areas. Points will be awarded based upon the rural area where the proposed project is located. The Agency will determine if the area meets the rural area definition by using the following Website: *http://maps.ers.usda.gov/loanlookup/viewer.htm*.

(i) If the proposed project is located in a city or town with a population of at least 15,000 and no more than 25,000 people, 5 points will be awarded;

(ii) If the proposed project is located in a city or town with a population of at least 5,000 and less than 15,000 people, 10 points will be awarded; or

(iii) If the proposed project is located a city or town with a population of less than 5,000 people, 15 points will be awarded.

(iv) If the proposed project is located in an unincorporated area, 15 points will be awarded.

If the applicant proposes to provide assistance in multiple areas or cities, the applicant must list the areas or cities where the assistance will be provided, the population for each and the amount of assistance of each area. Points will be calculated by using the above point scale for each, with the points awarded using a weighted average of the points for the areas served. The information needed for this criterion may be obtained using the population finder tool at *http://www.census.gov/*.

2. Per capita personal income: Points will be awarded porportionally based upon a comparison of the per capita personal income of the county in which a proposed project is located to the state per capital personal income:

(i) If the per capita personal income level in the county where the proposed project will be located is less than 80 percent of the state per capita personal income level, 15 points will be awarded;

(ii) If the per capita personal income level in the county where the proposed project will be located is at least 80 percent and less than 90 percent of the state per capita personal income level, 10 points will be awarded;

(iii) If the per capita personal income level in the county where the proposed project will be located is at least 90 percent and less than 100 percent of the state per capita personal income level, 5 points will be awarded; or

(iv) If the per capita personal income level in the county where the proposed project will be located is equal to or exceeds the state per capita personal income, no points will be awarded.

If the applicant proposes to provide assistance in multiple counties, the applicant must list the counties where the assistance will be provided, the percentage of assistance intended to be spent in each county, and the per capita personal income level for each county. Points will be calculated by using the above point score for each county's per capital personal income level, with the total points awarded in proportion to where the assistance is directed. (For example, if 50% of the grant money will be spent in a county where the per capita income is below 80 percent, and 50% will be spent in a county where the per capita income is between 90 and 100 percent, points will be calculated as follows: [(.5)*(15) + (.5)*(5) = 10 points].

The information needed for this criterion may be obtained at *http://www.bea.gov*.

3. Experience. Points will be awarded based upon the relevant experience of the staff or the consultants hired to provide the proposed technical assistance.

(i) If the staff or consultants have no experience in providing technical assistance, 0 points will be awarded;

(ii) If the staff or consultants have experience in providing technical assistance, 5 points will be awarded;

(iii) If the staff or consultants have experience in providing the same type of technical assistance as proposed in the project, 10 points will be awarded; or

(iv) If the staff or consultants have experience in providing the same type of technical assistance as proposed in the project to small, minority producers, 15 points will be awarded.

Applicants must describe the specific type of technical assistance that each staff member or consultant has experience in providing. The Agency will compare the described assistance to the work plan to determine point totals.

4. Number of small minority producers assisted. Points will be awarded based upon the number of small, minority producers being assisted.

(i) If the proposed project will benefit 1–10 producers, 5 points will be awarded;

(ii) If the proposed project will benefit 11–50 producers, 10 points will be awarded; or

(iii) If the proposed project will benefit more than 50 producers, 15 points will be awarded.

Applicants must list the number of small, minority producers that will directly benefit from the assistance provided.

B. Review and Selection Process

The Agency will conduct an initial screening of all proposals to determine whether the applicant is eligible and whether all required elements are complete. A list of required elements follows:

- SF–424.
- SF–424A.
- SF–424B.
- Table of Contents.
- Executive Summary.
- Eligibility Discussion.
- Budget/Work Plan.
- Rural Area Evaluation Criterion.
- Per Capita Personal Income Evaluation Criterion.
- Experience Evaluation Criterion.
- Number of Producers Assisted Evaluation Criterion.

Incomplete applications that have four or fewer incomplete required elements and appear to be otherwise eligible will receive a letter requesting the incomplete items be provided within 12 business days of the date the letter was sent. If the requested items are not received when requested or are not complete, the application will not be evaluated further and will not be considered for funding. Applicants that propose budgets that include more than 10 percent of total project costs that are ineligible for the program will be ineligible and the application will not be considered for funding. If an application has ineligible costs of 10 percent or less of total project costs, and otherwise appears eligible, the applicant will receive a letter requesting that all ineligible costs be removed from the budget and work plan and either replaced with eligible activities or eliminated within 12 business days of the date the letter was sent. Any other incomplete or ineligible applications will not be further evaluated and will be considered ineligible for funding. Reviewers appointed by the Agency will evaluate applications.

C. Anticipated Announcement and Award Dates

Award Date: The announcement of award selections is expected to occur on or about August 30, 2006.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive a notification of tentative selection for funding from Rural Development. Applicants must comply with all applicable statutes, regulations, and this notice before the grant award will receive final approval.

Unsuccessful applicants will receive notification, including mediation procedures and appeal rights, by mail.

B. Administrative and National Policy Requirements

7 CFR parts 3015, 3019, and subparts A and F of part 4284 are applicable to grants made under this notice. These regulations may be obtained at *http://www.access.gpo.gov/nara/cfr/page1*.

The following additional requirements apply to grantees selected for this program:

- Agency approved Grant Agreement.
- Letter of Conditions.
- Form RD 1940–1, "Request for Obligation of Funds."
- Form RD 1942–46, "Letter of Intent to Meet Conditions."
- Form AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions."
- Form AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions."
- Form AD–1049, "Certification Regarding a Drug-Free Workplace Requirements (Grants)."
- Form RD 400–4, "Assurance Agreement."

Additional information on these requirements can be found at *http://www.rurdev.usda.gov/rbs/coops/SMPG/SMPG.htm*.

Fund Disbursement: The Agency will determine, based on 7 CFR 3015, 3016 and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement. As needed, but not more frequently than once every 30 days, an original of SF–270, "Request for Advance or Reimbursement," may be submitted to Rural Development. Recipient's request for advance shall not be made in excess of reasonable outlays for the month covered.

Reporting Requirements: You must provide Rural Development with an original or an electronic copy that includes all required signatures of the following reports. The reports should be submitted to the Agency contact listed on your Grant Agreement and Letter of Conditions. Failure to submit satisfactory reports on time may result in suspension or termination of your grant. Grantees will need to submit

1. Form SF–269 or SF–269A. A "Financial Status Report," listing expenditures according to agreed upon budget categories, on a semiannual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

2. Semiannual performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the Project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds must be discussed. Reports are due as provided in paragraph (1) of this section. Supporting documentation must also be submitted for completed tasks. The supporting documentation for completed tasks include, but are not limited to, feasibility studies, marketing plans, business plans, articles of incorporation, and bylaws as they relate to the assistance provided.

3. Final project performance reports that compare accomplishments to the objectives stated in the proposal. Identify all tasks completed and provide documentation supporting the reported results. If the original schedule provided in the work plan was not met, the report must discuss the problems or delays that affected completion of the project. Compliance with any special condition on the use of award funds must be discussed. Supporting documentation for completed tasks must also be submitted. The supporting documentation for completed tasks includes, but is not limited to, feasibility studies, marketing plans, business plans, articles of incorporation, and bylaws as they relate to the assistance provided. The final performance report is due within 90 days of the completion of the project.

VII. Agency Contacts

For general questions about this announcement and for program technical assistance, please contact Cooperative Programs at 202–720–7558 or *cpgrants@wdc.usda.gov*. You may contact Cooperative Programs by mail at Mail Stop 3250, Room 4016–South, 1400 Independence Avenue, SW., Washington, DC 20250–3250.

VIII. Non-Discrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, martial status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider and employer.

Dated: June 5, 2006.

Jackie J. Gleason,

Acting Administrator, Rural Business-Cooperative Service.

Small Minority Producer Grant Agreement

This Grant Agreement (Agreement) dated __, between (Grantee), and the United States of America, acting through the Rural Business-Cooperative Service of the Department of Agriculture (Grantor), for $ in grant funds under the Small Minority Producer Grant (SMPG) program, delineates the agreement of the parties.

Now, therefore, in consideration of the grant;

The parties agree that all the terms and provisions of the SMPG Notice of Solicitation of Applications (NOSA) published in the **Federal Register** on June 13, 2006 and application submitted by the Grantee for this SMPG grant, including any attachments or amendments, are incorporated and included as part of this Agreement. Any changes to these documents or this Agreement must be approved in writing by the Grantor.

The Grantor agrees to make available to the Grantee for the purpose of this Agreement funds in an amount not to exceed the Grant funds, subject to the terms and conditions of this Agreement.

As a condition of the Agreement, the Grantee certifies that at least 51 percent of the outstanding interest in the project has membership or is owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

As a condition of the Agreement, the Grantee certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those contained in 7 CFR parts 3015, Uniform Federal Assistance Regulations, 3019 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations, and the SMPG NOSA published in the **Federal Register** on June 13, 2006. which are incorporated into this agreement by reference, and such other statutory provisions as are specifically contained herein. The Grantee will comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and Executive Order 12250.

As a condition of the Agreement, the Grantee certifies that its management has read and understands the requirements of 7 CFR parts 3015, 3017, "Government wide Debarment and Suspension Nonprocurement," 3018, "Restrictions on Lobbying," and 3019.

Now, therefore, the parties do hereby agree as follows:

A. Grant

1. The total amount of grant funds payable to the Grantee by the Grantor shall not exceed $ (Grant). Any unexpended Grant funds remaining at the time of project completion or termination of the Agreement shall be returned to the Grantor within 30 calendar days from the date of project completion or termination of the Agreement.

2. The funding period of this grant will begin on the date the Agreement has been signed by both parties, but no later than October 1, 2006, and will conclude within 365 days of the starting date. The Grantee may charge to the grant only allowable costs resulting from obligations incurred during the funding period.

3. The Grantee shall use Grant funds only for the purposes and activities specified in detail in Attachment A, entitled "GRANT WORK PLAN AND BUDGET" which is attached hereto and incorporated herein. Any uses not provided for in Attachment A must be approved in writing by the Grantor in advance of expenditure by the Grantee.

B. Financial Management

1. The Grantee shall relate financial data to performance data and develop unit cost information whenever practical.

2. The Grantee shall maintain a financial management system in accordance with 7 CFR 3019.21.

3. Payment shall be made in accordance with 7 CFR 3019.22. If the Grantee cannot maintain a financial management system in accordance with 7 CFR 3019.21 or if Grantee fails to satisfactorily meet any other conditions set forth in this Agreement, the Grantee may be paid on a reimbursement basis, at the discretion of the Grantor.

(i) If payment is to be made by the advancement method, the Grantee shall request advance payment, but not more frequently than once every 30 days, of grant funds by using Standard Form 270, "Request for Advance or Reimbursement." Receipts, hourly wage rate, personnel payroll records, or other documentation must be provided upon request from the Agency.

(ii) If payment is to be made by reimbursement, the Grantee shall request reimbursement of grant funds, but not more frequently than once every 30 days, by using Standard Form 270. Receipts, hourly wage rate, personnel payroll records, or other documentation, as determined by the Agency, must be provided with the request to justify the amount.

4. If program income is earned during the time period of the grant, must first

be added to the total project costs and used to further eligible project or program objectives. Program income earned in excess of funds that can be used for eligible expenses must be deducted from the total project or program allowable cost and will result in a reduction of the Federal share. Costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

5. The Grantee shall provide satisfactory evidence to the Grantor that the Grantee has complied with the bonding or insurance requirements specified by ATTACHMENT B, "BONDING COVERAGE," which is attached hereto and incorporated herein.

6. The Grantee is subject to the audit requirements specified in ATTACHMENT C, "AUDIT REQUIREMENTS," which is attached hereto and incorporated herein.

C. Procurement Standards

The Grantee must adhere to the procurement standards outlined in 7 CFR 3019.41 through 3019.48.

D. Reports

The Grantee shall submit financial and project performance reports satisfactory to the Grantor in accordance with ATTACHMENT D, "REPORTING REQUIREMENTS," which is attached hereto and incorporated herein.

E. Site Visits

The Grantee will allow the Grantor to conduct site visits as needed for monitoring the Grantee's progress and auditing the Grantee's financial records related to the performance under this Agreement. Failure to allow the Grantor to conduct site visits shall be grounds for terminating the grant.

F. Compliance Review

The Grantee must collect and provide data on race, gender, national origin and any such records, accounts, and other sources of information and facilities as may be pertinent to ascertaining by the Agency the Grantee's compliance with Civil Rights laws. In general, the Grantee should have available racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs. The Agency will conduct a Civil Rights compliance review of the Grantee as required.

G. Records

The Grantee shall retain and provide access to records as required by 7 CFR 3019.53.

H. Termination

The award that is the subject of this Agreement shall only be terminated in accordance with 7 CFR 3019.61.

I. Enforcement

The terms and conditions of this award will be enforced using the provisions of 7 CFR 3019.62.

In witness whereof, Grantee has this day authorized and caused this Agreement to be signed, its name and its corporate seal to be hereunto affixed and attested by its duly authorized officers thereunto, and the Grantor has caused this Agreement to be duly executed on its behalf by:

Grantor
United States of America
Rural Business-Cooperative Service
Signature Date
Name
Title
Grantee
Signature Date
Name
Title

Attachment A Grant Work Plan and Budget

The approved grant work plan and budget will be marked as attachment A.

Attachment B Bond Coverage

The Grantee shall provide satisfactory evidence to the Grantor that the Grantee holds fidelity bond coverage in the amount of $ that covers all officers and employees of the Grantee's organization authorized to receive or disburse Federal funds. The bond coverage shall be obtained from a company or companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business With the United States."

Attachment C Audit Requirements

If the Grantee is a non-profit corporation or an institution of higher education and the Grantee expends $500,000 or more in Federal funds in one year, the Grantee shall be audited by a Certified Public Accountant. The audit, for the years the Grantee receives this financial assistance, will be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) and OMB Circular A–133. These audits are due within 9 months after the end of the Grantee's fiscal year. The Grantor is to receive a copy of this audit.

If the Grantee is a non-profit corporation or an institution of higher education and the Grantee expends less than $500,000 in Federal funds in one year, the project shall be audited by a Certified Public Accountant in accordance with GAGAS. This audit will be a limited-scope audit focused only on the expenditure of grant and matching funds. The Grantor is to receive a copy of this audit.

Attachment D Reporting Requirements

You must provide Rural Development with a paper copy original or an electronic copy that includes all required signatures of the following reports. The reports should be submitted to the State Office Agency contact. Failure to submit satisfactory reports on time may result in suspension or termination of your grant. Both performance reports and financial reports must be in compliance with 7 CFR 3019.51 and 3019.52.

A. Form SF–269 or 269A. A "Financial Status Report," listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends. A final "Financial Status Report" is due within 90 calendar days of the completion of the project. Reports will be on a cash basis.

B. Semi-annual performance reports. These reports shall include the following:

1. A comparison of actual accomplishments to the objectives for that period. Objectives should be reported by specific task breakdown as described in the approved work plan and budget. Each group, cooperative or business assisted under a specific task must be discussed. Discussion must include the Cooperative's or Association of Cooperative's (or contractor's) role in assisting the group, cooperative or business and if any jobs were created or saved as a result of the assistance provided.

2. Reasons why established objectives were not met, if applicable.

3. Reasons for any problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a statement of the action taken or planned to resolve the situation.

4. Objectives and timetables established for the next reporting period.

5. A summary at the end of the report with the following elements to assist in documenting the annual performance goals of the SMPG program for Congress.

- Number of cooperatives assisted.
- Number of members assisted.
- Number of direct jobs created as a result of assistance.
- Number of direct jobs saved as a result of assistance.

6. Compliance with any special condition on the use of award funds should be discussed.

Reports are due as provided in paragraph (A) of this Attachment.

C. Final project performance reports. These reports shall include all of the requirements of paragraph (B) and the following:

1. Responses to the following.

(i) What have been the most challenging or unexpected aspects of this program?

(ii) What advice would you give to other organizations planning a similar program.

These should include strengths and limitations of the program. If you had the opportunity, what would you have done differently?

(iii) If an innovative approach was used successfully, the Grantee should describe their program in detail so that other organizations might consider replication in their areas.

2. Copies of supporting documentation for completed tasks. The supporting documentation for completed tasks includes, but is not limited to, feasibility studies, marketing plans, business plans, copies of surveys conducted and survey results, and research reports.

The final performance report is due within 90 days of the completion of the project.

D. Form SF–272, "Report of Federal Cash Transactions." If the Grantee receives advance payments, the Grantee shall submit a listing expenditures according to agreed upon budget categories, on a quarterly basis. Reporting periods end each March 31, June 30, September 30, and December 31. Reports are due 15 calendar days after the reporting period ends.

[FR Doc. E6–9175 Filed 6–12–06; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on June 29, 2006, 10:30 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Public Session

1. Opening remarks and introductions.
2. Discussion of the status of the composites working group.
3. Discussion of outcome of Australia Group Plenary session.
4. New Business.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 section 10(a)(1) and 10(a)(3).

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov*.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on June 6, 2006, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with matters the premature disclosure of which would likely frustrate the implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 section 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–4814.

Dated: June 8, 2006.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 06–5338 Filed 6–12–06; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

2006 Record of Decision (ROD) on the Canaan Valley Institute (CVI) Office Complex Final Environmental Impact Statement (FEIS)

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice; Record of Decision.

SUMMARY: NOAA is issuing this notice to advise the public that an ROD has been approved and issued for the CVI Office Complex FEIS. NOAA signed the ROD on June 1, 2006.

ADDRESSES: Requests for copies of the ROD may be directed to Mr. Jim Rawson of the CVI at 800.922.3601. The ROD is available for public review (upon request) at the CVI, Buxton and Landstreet Building, Douglas Road, Thomas, WV 26292. Arrangements to review this information during, as well as outside of standard business hours, may be made by contacting Mr. Jim Rawson of the CVI at the number listed above.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the FEIS or the ROD may be directed to Mr. Jim Rawson of the CVI at 800.922.3601. Copies of the 2006 ROD were mailed directly to those persons who requested they be on the project mailing list and who provided comments on the FEIS.

SUPPLEMENTARY INFORMATION: The Selected Alternative for the CVI Office Complex is Alternative G and the Yellow Creek Site. This alternative was identified as the Recommended Preferred Alternative in the Draft Environmental Impact Statement (DEIS) and as the Selected Alternative in the FEIS. The proposed project is the construction of a new facility that would consist of offices, classrooms, laboratories, a 250-seat auditorium, parking facilities, outdoor classrooms, and interpretive areas. As part of the project, a roadway will be constructed to access the facility from a major highway. The physical footprint of the facility complex will require approximately 4 acres of earth disturbance. The access roadway construction would disturb approximately 5 acres. The facility will be "zero discharge", incorporating Clivus Multrum, Inc. composting (*http://www.clivusmultrum.com/compostingtoilet.html*) and living machine/drip irrigation systems to treat waste and waste water. Natural gas turbines will be the primary electricity source. Natural gas will be purchased from local producers. Rainwater will be collected through a series of cisterns and used for non-potable uses such as irrigation. Locally obtained building materials will be used when possible. Energy efficient materials and designs will be incorporated throughout the entire facility. Storm water discharge features will include vegetated swales, rain gardens, and "green" or vegetated roofs.

Based upon its ability to meet the identified project needs; upon engineering parameters, environmental effects, public input, and environmental resource agency input, Alternative G and the Yellow Creek Site is the environmentally preferable alternative and has been identified as the Selected Alternative in the FEIS.

Dated: June 7, 2006.

Sharon Schroeder,

Program Policy Division, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E6–9140 Filed 6–12–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030602141–6145–39; I.D. 060506A]

John H. Prescott Marine Mammal Rescue Assistance Grant Program; Main Hawaiian Islands

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

ACTION: Notice of availability of financial assistance.

SUMMARY: The John H. Prescott Marine Mammal Rescue Assistance Grant Program (Prescott Grant Program) provides funding to eligible marine mammal stranding network participants to fund the recovery or treatment (i.e., rescue and rehabilitation) of stranded marine mammals, data collection from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operations directly related to the recovery or treatment of stranded marine mammals and collection of data from living or dead stranded marine mammals. The Prescott Grant Program is administered through the NMFS Marine Mammal Health and Stranding Response Program (MMHSRP). As stranding services have become unavailable in the crucial geographic area of the main Hawaiian Islands, the Prescott Grant Program is making this special announcement to inform the public of the availability of funding up to $200,000 for marine mammal stranding response and rehabilitation activities in this area. The annual competitive cycle of the Prescott Grant Program will be announced separately.

DATES: Applications must be submitted no later than 11:59 p.m. EST on June 27, 2006. Applications received after that time will not be considered for funding.

ADDRESSES: Applications should be submitted via *www.grants.gov*. If www.grants.gov cannot reasonably be used, applications must be postmarked, or provided to a delivery service and documented with a receipt, by June 27, 2006, and mailed to: NOAA Fisheries, Office of Protected Resources, Prescott Grant Program (F/PR2), 1315 East West Highway, Silver Spring, MD 20910–3282. ATTN: Prescott Hawaii. No facsimile or electronic mail applications will be accepted. Electronic Access to the full funding announcement for this program is available via the Grants.gov Web site: *http://www.grants.gov*. The announcement will also be available at the Program Web site: *http://www.nmfs.noaa.gov/pr/health/prescott/* or by contacting the program official identified below. All application requirements contained in the full funding announcement must be adhered to in submitted proposals.

FOR FURTHER INFORMATION CONTACT: Sarah Wilkin, (301) 713–2322, or by e-mail at *sarah.wilkin@noaa.gov*

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Rescue Assistance Act of 2000 amended the Marine Mammal Protection Act (MMPA) to establish the John H. Prescott Marine Mammal Rescue Assistance Grant Program (16 U.S.C. 1421f–1). An annual competition is conducted for stranding network organizations nationwide. Stranding response services have become unavailable in the crucial geographic area of the main Hawaiian Islands. For this reason, the Prescott Grant Program is making this special announcement of the availability of funds for stranding response in the main Hawaiian Islands outside of the annual competitive cycle, which will be announced separately. This document describes how to submit proposals for funding under this special announcement of the Prescott Grant Program and how we will determine which proposals will be funded.

The Prescott Grant Program is conducted by the Secretary of Commerce to provide Federal assistance to eligible stranding network participants (see section I.E. of this document) for (A) basic needs of organizations for response, treatment, and data collection from living and dead stranded marine mammals, (B) scientific research objectives designed to answer questions about marine mammal strandings, health, or rehabilitation techniques utilizing data from living and dead stranded marine mammals, and (C) facility operations directly related to the recovery, treatment, and data collection from living and dead stranded marine mammals and investigation of scientific research objectives designed to answer questions about marine mammal strandings, health, or rehabilitation techniques utilizing data from living and dead stranded marine mammals. For purposes of this document, a stranded marine mammal is a marine mammal in the wild that is (1) dead and on a beach, shore, or in waters under the jurisdiction of the United States or (2) is live and on a beach or shore of the United States and unable to return to the water, is in apparent need of medical attention, or is in waters under the jurisdiction of the United States but is unable to return to its natural habitat under its own power or without assistance. The Prescott Grant Program is administered through the Marine Mammal Health and Stranding Response Program (MMHSRP) of the National Marine Fisheries Service (NMFS).

Electronic Access

Information on marine mammal stranding response and rehabilitation projects funded to date under the Prescott Grant Program can be found on the World Wide Web at: *http://www.nmfs.noaa.gov/pr/health/prescott*. As has been the case since October 1, 2004, applicants can access the full funding announcement and download and submit electronic grant applications for NOAA Financial Assistance at the Grants.gov Web site: *http://www.grants.gov*. Applicants responding to this soliciation are strongly encouraged to submit applications through the Grants.gov web site (see **ADDRESSESS**).

Initiative Priorities

For this solicitation, all applications must fall within one of the following two priorities. The priorities are not listed in any particular order and each is of equal importance. Note that the purpose of the priority list is to guide applicants in application development by identifying those applications that will best compete during this grant cycle for these limited funds, and to provide technical reviewers with guidance for their evaluations. Details of the priorities are as follows:

1. Enhance network operations to respond to, transport, sample, necropsy, analyze, and dispose of dead stranded marine mammals, including the collection, reporting and sharing of quality Level A, B, and C data, while protecting human health. This may include purchase of supplies and equipment or salary support for veterinary and staffing needs. Specific concerns are: (1) To conduct thorough necropsies to enhance the ability to detect human-interaction and human-induced injuries and mortalities (e.g. entanglements, hookings and gear interaction, and boat strikes); (2) to diagnose and investigate marine mammal disease; and (3) training for network members and members of the general public.

2. Enhance network operations to respond to, rescue, transport, treat, rehabilitate, and humanely euthanize, when necessary, live stranded marine

mammals that are sick or injured, while protecting human health.

These Program priorities pertain only to species that are under the authority of the Department of Commerce (cetaceans and pinnipeds, except walrus) as stated in the MMPA. Additionally, proposals for stranding response and rehabilitation of Hawaiian monk seals will not be accepted under this competition. No Prescott funds under this competition will go towards basic scientific research on non-stranded marine mammals (i.e., wild population studies). In addition, no projects involving construction of new facilities for the rescue and rehabilitation of stranded marine mammals will be considered; however, construction projects in established facilities (i.e., those that involve build-outs, alterations, upgrades and renovations) would be appropriate for Category C projects.

NOAA will consider funding more than one project under a single award; however, all projects should be sufficiently developed as per the guidelines and information requirements listed in this document for an application to be competitive, and all projects should be able to be completed within the award period specified below.

Applicants are advised to review the *Interim Policies and Best Practices for Marine Mammal Stranding Response, Rehabilitation and Release* (available on our Web site at: *http://www.nmfs.noaa.gov/pr/health/eis.htm*) before submitting their proposed projects.

Funding Availability

Funding of up to $200,000 is expected to be available for stranding response in the main Hawaiian Islands. The maximum Federal award for each grant cannot exceed $100,000, as stated in the legislative language (16 U.S.C. 1421f–1). NOAA does not guarantee that sufficient funds will be available to make awards for all proposals. Publication of this document does not obligate NOAA to award any specific project or obligate all or any parts of any available funds.

There is no limit on the number of proposals that may be submitted by the same stranding network participant during this competition, nor is there any limit on the number of proposals that may be funded to a single institution; however, only $200,000 is expected to be available at this time. Applicants with current or previous Prescott funding may apply and receive funds under this competition in addition to any active or future awards, including the FY 2007 Prescott competition (announced separately).

Authority

The Marine Mammal Rescue Assistance Act of 2000 amended the MMPA to establish the John H. Prescott Marine Mammal Rescue Assistance Grant Program (16 U.S.C. 1421f–1).

Catalog of Federal Domestic Assistance

11.439, Marine Mammal Data Program.

Eligibility

There are 3 categories of eligible stranding network participants that may apply for funds under this Program: (1) Stranding Agreement or Letter of Agreement (SA/LOA) holders; (2) researchers; and, (3) state, local, or tribal government employees.

In this competition, applicants without an organizational history within the stranding network may be considered, provided that the Principal Investigator and Co-Investigators demonstrate the appropriate experience to carry out the proposed activities. Award recipients should be participants in the Hawaiian Islands Marine Mammal Response Network as SA/LOA holders, researchers, or 109(h) responders (government employees) at the time the award is made, unless extenuating circumstances exist. Guidance regarding eligibility status is available from the Full Funding Opportunity posted on Grants.gov or from Program staff (see **FOR FURTHER INFORMATION CONTACT**).

The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic-serving institutions, tribal colleges and universities, and institutions that work in under served areas. The Prescott Grant Program encourages proposals from or involving any of the above institutions.

Cost Sharing Requirements

All proposals submitted must provide a minimum non-Federal cost share of 25 percent of the total budget (i.e., .25 x total project costs > total non-Federal share), as stated in the legislative language (16 U.S.C. 1421f–1). For assistance in calculating the required match, please use the cost-share calculator on our Web site at: *http://www.nmfs.noaa.gov/pr/health/prescott/proposals/costshare.htm*.

Match to NOAA funds can come from a variety of public and private sources and can include in-kind goods and services and volunteer labor. Federal funds are not considered matching funds. Applicants are permitted to combine contributions from multiple non-Federal partners in order to meet the 25–percent match expected, as long as such contributions are not being used to match any other funds.

Applicants whose proposals are selected for funding will be bound by the percentage of cost-sharing reflected in the award document signed by the NOAA Grants Officer. Successful applicants should be prepared to carefully document matching contributions, including the overall number of volunteers and in-kind participation hours devoted to stranding response. Match must be applied to the project during the award period.

Intergovernmental Review

Applications under this initiative are subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs. Applicants are required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of the Executive Order. To find out about and comply with a State's process under Executive Order 12372, the names, addresses and phone numbers of participating SPOC's are available on the Internet at: *http://www.whitehouse.gov/omb/grants/spoc.html*.

Evaluation and Selection Criteria and Procedures

Peer reviewers will assign scores to proposals ranging from 0 to 100 points in each of the five standard NOAA evaluation criteria. Scores will be weighted as specified:

1. *Importance and Applicability of Proposal (weight 40 percent)*

This criterion ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, state or local activities.

2. *Technical/Scientific Merit (weight 30 percent)*

This criterion assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.

3. *Overall Qualifications of Applicants (weight 10 percent)*

This criterion ascertains whether the applicant possesses the necessary education, experience, demonstrated commitment, training, facilities, and administrative resources to accomplish the project.

4. *Project Costs (weight 10 percent)*

This criterion evaluates the project's budget to determine if it is realistic and commensurate with the project needs and time-frame.

5. *Outreach and Education (weight 10 percent)*

NOAA assesses whether the project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

Further explanation of the evaluation criteria and their specific application to this competition can be found in the Full Funding Opportunity available at grants.gov.

Applications will be initially screened by NOAA staff to determine if they are eligible, complete and in accordance with instructions detailed in the standard NOAA Grants Application Package. Proposals that pass the initial screening will undergo a technical and merit review, ranking, and selection process.

Applications will be evaluated by at least three individual peer reviewers from outside of the state of Hawaii, according to the criteria and weights described in this solicitation. No consensus advice will be provided by the peer reviewers. The proposals will be rated, and reviewer comments and composite project scores and a rank order will be presented to the merit review panel, which will consist of the NMFS Pacific Islands Regional Marine Mammal Response Coordinator, the National Stranding Coordinator, the Prescott Grant Manager, and other MMHSRP staff as appropriate. The merit review will use the peer review comments and application materials in making recommendations regarding equitable distribution of funds among regions, in ranking all proposals recommended for funding, and in justifying any discrepancies between the peer reviewers' comments and the merit reviewers' recommendations.

The merit review will prepare a recommendation to the Selecting Official, the Director of the Office of Protected Resources. The Selecting Official will select the proposals to be recommended to the Grants Management Division (GMD) for funding and will determine the amount of funds available for each approved proposal. The proposals shall be recommended in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. The availability of funding;

2. The balance/distribution of funds: (a) Geographically, (b) by type of institutions, (c) by type of partners, (d) by research areas, and (e) by project types;

3. Duplication of other projects funded or considered for funding by NOAA and/or other Federal agencies;

4. Initiative priorities and policy factors as set out in the Full Funding Opportunity available on grants.gov;

5. The applicant's prior award performance;

6. Partnerships and/or participation of targeted groups; and

7. Adequacy of information necessary for NOAA staff to make a NEPA determination and draft necessary documentation before funding recommendations are acted upon by GMD.

Hence, awards may not necessarily be made to the highest scoring proposals. Unsuccessful applicants will be notified that their proposal was not among those recommended for funding. Unsuccessful applications submitted in hard copy will be kept on file for at least one year and then destroyed.

Every effort will be made to award these grants as quickly as possible, in order to minimize the lapse in stranding network coverage in the state of Hawai'i. NOAA suggests reasonable start dates of summer or fall 2006.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA Federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*).

Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems).

In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application.

Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this initiative fails to receive funding or is cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. Recipients and sub-recipients are subject to all Federal laws, agency policies, regulations and procedures applicable to Federal financial assistance awards.

Paperwork Reduction Act

This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF-LLL and CD–346 has been approved by the Office of Management and Budget (OMB) under OMB control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046 and 0605–0001 respectively. 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 requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

It has been determined that this notice is not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: June 7, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E6–9205 Filed 6–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 051806G]

Marine Mammals and Endangered Species; National Marine Fisheries Service File No. 31–1741; U.S. Fish and Wildlife Service File No. MA081663

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA); U.S. Fish and Wildlife Service (FWS), Interior.

ACTION: Notice; receipt of application for amendment.

SUMMARY: Notice is hereby given that the Wildlife Conservation Society (WCS), 2300 Southern Blvd., Bronx, NY 10460 (Dr. Howard C. Rosenbaum, Principal Investigator) has requested an amendment to scientific research Permit No. 31–1741/MA081663.

DATES: Written or telefaxed comments must be received on or before July 13, 2006.

ADDRESSES: The application request and related documents are available for review upon written request or by appointment in the following office(s):

U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203; phone (800) 358–2104; fax (703) 358–2281; and

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (703) 358–2281, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *managementauthority@fws.gov*; include in the subject line of the e-mail comment the following document identifier: File No. 31–1741/MA081663.

FOR FURTHER INFORMATION CONTACT: Monica Farris, Division of Management Authority, US Fish and Wildlife Service, (703) 358–2104.

SUPPLEMENTARY INFORMATION: The subject permit amendment is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR parts 18).

The WCS Conservation Genetics Program, a collaboration between WCS and the American Museum of Natural History, maintains one of the largest collections of marine mammal tissues and specimens in the world. WCS wishes to amend their current permit to obtain, import and export/re-export specimens and materials from polar bears (*Ursus maritimus*), including shed hair, feces, and DNA and tissue samples from the wild, tissue banks, and collaborators. Such tissues would be obtained by co-investigators or other named individuals and institutions working under their own permits. Export of specimens or tissues, irrespective of their source, would be made on temporary loan basis only to bona fide institutions for the sole purpose of exhibit or scientific research. The permit would be amended for the remainder of the 5–year period of the currently authorized permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, FWS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 7, 2006.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service.

Dated: June 7, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–9208 Filed 6–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050406A]

Small Takes of Marine Mammals Incidental to Specified Activities; Movement of Barges through the Beaufort Sea between West Dock and Cape Simpson or Point Lonely, Alaska

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

ACTION: Notice of receipt of application and proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request to authorize FEX L.P. (FEX), a subsidiary of Talisman Energy, Inc. to take small numbers of marine mammals by harassment incidental to conducting a barging operation within the U.S. Beaufort Sea. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize FEX to incidentally take, by harassment, small numbers of bowhead whales, beluga whales, ringed seals, bearded seals, and spotted seals in the above mentioned area between approximately July 1 and November 30, 2006.

DATES: Comments and information must be received no later than July 13, 2006.

ADDRESSES: Comments on the application should be addressed 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 20910–3225, or by telephoning the

contact listed here. The mailbox address for providing e-mail comments is *PR1.050406A@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available 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 this address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137, or Brad Smith, Alaska Region, NMFS, (907) 271–3023.

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 small numbers of marine mammals by 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.

An authorization 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, and that 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 United States 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].

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 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 April 5, 2006, NMFS received an application from ASRC Energy Services, Lynx Enterprises, Inc. (AES Lynx) on behalf of FEX for the taking of several species of marine mammals incidental to the movement of two tugs towing barges in the U.S. Beaufort Sea. Marine barges would be transporting drilling rig(s), consumables, fuel, essential construction equipment and supplies from the West Dock Causeway to Cape Simpson or Point Lonely. Equipment would be staged and stored in preparation for the upcoming winter on-shore oil and gas drilling and testing season. Barges proposed for the marine lift from the West Dock Causeway include but are not limited to: Crowley Marine *Kavik River* and the *Sag River* (1,100 horsepower each) tugs, and *Bowhead Stryker* or *Garrett* (two engines x 220 horsepower each) barges or comparable class vessels. Additional barges and support vessels may be utilized as available and needed. Barges would be moving at a speed at about 5 - 6 knots. From West Dock Causeway, it would take approximately 17.5 hours one way for a barge to reach Point Lonely and 22 hours to Cape Simpson. FEX plans to start barging activities in the early summer of 2006, would make every effort to avoid periods of bowhead whale fall westward migration and subsistence activities, and would complete the barging by September 1, 2006. Ice, weather conditions, and other possible operational considerations may affect the timing of the barge activity, resulting in some activities taking place beyond the scheduled target dates. If necessary, a late season barging effort may be required after September 1, 2006. FEX has entered a Conflict Avoidance Agreement (CAA) with the Alaska Eskimo Whaling Commission (AEWC) to obtain approvals from AEWC if barging activities occur during the September 1 - October 15 subsistence whaling period. Operations to support winter on-shore drilling operations may include a winter trail on landfast sea ice. FEX has determined that this operation will not result in incidental takes of marine mammals.

Description of Marine Mammals Affected by the Activity

The Beaufort Sea supports many marine mammals under NMFS jurisdiction, including Western Arctic bowhead whales (Balaena mysticetus), Beaufort Sea stock of beluga whales (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), bearded seals (*Erignathus barbatus*) and spotted seals (*Phoca largha*). Only the bowhead whale is listed as endangered under the Endangered Species Act (ESA) and designated as "depleted" under the MMPA. The Western Arctic stock of bowhead whales has the largest population size among all 5 stocks of this species (Angliss and Lodge, 2004). A brief description of the distribution, movement patterns, and current status of these species can be found in the FEX application. More detailed descriptions can be found in NMFS Stock Assessment Reports (SARs). Please refer to those documents for more information on these species. The SARs can be downloaded electronically from: *http://www.nmfs.noaa.gov/pr/sars/species.htm*. The FEX application is also available on-line (see **ADDRESSES**).

Potential Effects of Tug/Barge Operations and Associated Activities on Marine Mammals

Level B harassment of marine mammals may result from the noise generated by the operation of towing vessels during barge movement. The physical presence of the tugs and barges could also lead to disturbance of marine mammals by visual or other cues. The potential for collisions between vessels and whales will be essentially zero due to the slow tow speed (5 - 6 knots) and visual monitoring by on-board marine mammal observers.

Marine mammal species with the highest likelihood of being harassed during the tug and barge movements are: beluga whales, ringed seals, and bearded seals.

Bowhead whales are not expected to be encountered in more than very small numbers during the planned period of time for the tug/barge movement because the most of them will be on their summer feeding grounds in the eastern Beaufort Sea and Amundsen Gulf of the Canadian waters (Fraker and Bockstoce, 1980; Shelden and Rugh, 1995). A few transitory whales may be encountered during the transits. Beluga whales occur in the Beaufort Sea during the summer, but are expected to be

found near the pack ice edge north of the proposed movement route. Depending on seasonal ice conditions, it is possible that belugas may be encountered during the transits.

Based on past surveys, ringed seals should represent the vast majority of marine mammals encountered during the transits. Ringed seals are expected to be present all along the tug/barge transit routes. There is the possibility that bearded and spotted seals would also be taken by Level B harassment during transit. Spotted seals may be present in the West Dock/Prudhoe Bay area, but it is likely that they may be closer to shore and, therefore, are not expected to be harassed during transit phase.

Numbers of Marine Mammals Expected to Be Taken

The number of marine mammals that may be taken as a result of the tug/barging operation is unpredictable. Operations are scheduled to occur prior to the westward migration and associated subsistence bowhead whale hunts to purposely avoid any take of this species. Noise disturbance from vessels might qualify as harassment to marine mammals, but previous surveys have indicated little behavioral reaction from these animals to slow-moving vessels.

Effects on Subsistence Needs

Residents of the village of Barrow are the primary subsistence users in the activity area. The subsistence harvest during winter and spring is primarily ringed seals, but during the open-water period both ringed and bearded seals are taken. Barrow hunters may hunt year round; however in more recent years most of the harvest has been in the summer during open water instead of the more difficult hunting of seals at holes and lairs (McLaren 1958, Nelson 1969). The Barrow fall bowhead whaling grounds, in some years, includes the Cape Simpson and Point Lonely areas (e.g. the 1990 season, when a large aggregation of feeding bowheads were pursued by Barrow hunters).

The most important area for Nuiqsut hunters is off the Colville River Delta in Harrison Bay, between Fish Creek and Pingok Island (149° 40′ W). Seal hunting occurs in this area by snow machine before spring break-up and by boat during summer. Subsistence patterns are reflected in harvest data collected in 1992 where Nuiqsut hunters harvested 22 of 24 ringed seals and all 16 bearded seals during the open water season from July to October (Fuller and George, 1997). Harvest data for 1994 and 1995 show 17 of 23 ringed seals were taken from June to August, while there was no record of bearded seals being harvested during these years (Brower and Opie, 1997).

Due to the transient and temporary nature of the barge operation, impacts upon these seals are not expected to have an unmitigable adverse impact on subsistence uses of ringed and bearded seals because: (1) Transient operations would temporarily displace relatively few seals; (2) displaced seals would likely move only a short distance and remain in the area for potential harvest by native hunters; (3) studies at the Northstar development found no evidence of the development activities affecting the availability of seals for subsistence hunters; however, the Northstar vicinity is outside the areas used by subsistence hunters (Williams and Moulton, 2001); (4) the area where barge operations would be conducted is small compared to the large Beaufort Sea subsistence hunting area associated with the extremely wide distribution of ringed seals; and (5) the barging, as scheduled, will be completed prior to beginning of the fall westward migration of bowhead whales and the associated subsistence activities by the local whalers.

In order to further minimize any effect of barge operations on the availability of seals for subsistence, the tug boat owners/operators will follow U.S. Coast Guard rules and regulations near coastal water, therefore avoiding hunters and the locations of any seals being hunted in the activity area, whenever possible.

While no impact is anticipated on the availability of marine mammal species and stocks for subsistence uses, FEX has entered a CAA with the AEWC for any of the barging activities that may occur during the subsistence whaling period from September 1 - October 15. The FEX's activities will comply with the CAA prior to the autumn bowhead hunt by the residents of Kaktovik (Barter Island), Nuiqsut (Cross Island) and Barrow Native villages. Ice, bad weather conditions, and other possible operational considerations may affect the timing of the barge activity and may require that some activities take place beyond the scheduled target dates.

Mitigation and Monitoring

FEX proposes to mitigate any potential negative impacts from its barging operation by conforming with the CAA with native whalers and operations as per the Plan of Operations. Other mitigation measures include use of native subsistence advisor/marine mammal observers trained by qualified marine biologists and communications with subsistence whaling activities so as to avoid deflection or other disturbances to migrating mammals and subsistence hunting activities.

During all tug/barging operations, FEX will have on-board marine mammal monitors throughout the transit. As part of its application, FEX proposes to conduct a visual monitoring program for assessing impacts to marine mammals during the barge transits. FEX proposes to initiate a comprehensive training program for all potential marine mammal observers that includes learning the identification and behavior of all local species known to use the areas where FEX will be operating. This training would be conducted by professional marine biologists and experienced Native observers participating in the monitoring program. The observer protocol would be to scan the area around vessels with binoculars of sufficient power. Range finding equipment will be supplied to observers in order to better estimate distances. Observers would collect data on the presence, distribution, and behavior of marine mammals relative to FEX activities as well as climatic conditions at the time of marine mammal sightings. Observations would be made on a nearly 24–hour basis.

Reporting

All monitoring data collected would be reported to NMFS on a weekly basis. FEX must provide a final report on 2006 activities to NMFS within 90 days of the completion of the activity. This report will provide dates and locations of all barge movements and other operational activities, weather conditions, dates and locations of any activities related to monitoring the effects on marine mammals, and the methods, results, and interpretation of all monitoring activities, including numbers of each species observed, location (distance) of animals relative to the barges, direction of movement of all individuals, and description of any observed changes or modifications in behavior.

ESA Consultation

The effects of oil and gas exploration activities in the U.S. Beaufort Sea on listed species, which includes barging transportation activity, were analyzed as part of a consultation on oil and gas leasing and exploration activities in the Beaufort Sea, Alaska, and authorization of incidental takes under the MMPA. A biological opinion on these activities was issued on May 25, 2001. The only species listed under the ESA that might be affected during these activities are bowhead whales. The effects of this proposed IHA on bowhead whales will be compared with the analysis contained in the 2001 biological

opinion. NMFS will determine whether the effects of the proposed activity are consistent with the findings of that biological opinion, and, accordingly, NMFS will decide whether an Incidental Take Statement under section 7 of the ESA will be issued prior to making a final determination of issuing the IHA.

National Environmental Policy Act (NEPA)

On February 5, 1999 (64 FR 5789), the Environmental Protection Agency (EPA) noted the availability of a Final Environmental Impact Statement (Final EIS) prepared by the U.S. Army Corps of Engineers under NEPA on Beaufort Sea oil and gas development at Northstar. NMFS was a cooperating agency on the preparation of the Draft and Final EISs, and subsequently, on May 18, 2000, adopted the Corps' Final EIS as its own document. That Final EIS described impacts to marine mammals from Northstar construction activities, which included vessel traffic similar to the currently proposed action by FEX. Because the barging activity discussed in the Final EIS is not substantially different from the proposed action by FEX, and because no significant new scientific information or analyses have been developed in the past several years significant enough to warrant new NEPA documentation, no additional NEPA analysis is required.

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of conducting a barging operation between West Dock, Prudhoe Bay and either Cape Simpson or Point Lonely, in the U.S. Beaufort and associated activities will result, at worst, in a temporary modification in behavior by certain species of whales and pinnipeds. While behavioral modifications may be made by these species to avoid the resultant noise or visual cues from the barging operation, this behavioral change is expected to have a negligible impact on the survival and recruitment of marine mammal stocks.

While the number of potential incidental harassment takes will depend on the year-to-year distribution and abundance of marine mammals in the area of operations, due to the distribution and abundance of marine mammals during the projected period of activity and the location of the proposed activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and there is no potential for temporary or permanent hearing impairment as a result of the activities. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the barge transit route.

The principal measures undertaken to ensure that the barging operation will not have an adverse impact on subsistence activities are a CAA between FEX, the AEWC and the Whaling Captains Association; a Plan of Cooperation; and an operation schedule that avoids barging operations during the traditional bowhead whaling season as much as possible.

Proposed Authorization

NMFS proposes to issue an IHA for the harassment of marine mammals incidental to FEX conducting a barging operation from West Dock Causeway, Prudhoe Bay Alaska, through the U.S. Beaufort Sea to either Cape Simpson or Point Lonely. This proposed IHA is contingent upon incorporation of the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of bowhead whales, beluga whales, ringed seals, bearded seals and spotted seals; would have no more than a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed IHA and the application for regulations request (see **ADDRESSES**).

Dated: June 8, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–9215 Filed 6–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060706E]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene one public meeting of the Ad Hoc Shrimp Effort Working Group (SEWG).

DATES: The SEWG meeting will convene at 9 a.m. on Wednesday June 28, 2006 and conclude no later than 3 p.m. on Thursday, June 29, 2006.

ADDRESSES: The meeting will be held at the National Marine Fisheries Service Galveston Laboratory, Building 216, 4700 Avenue U, Galveston, TX; telephone: (409) 766–3500.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Assane Diagne, Economist, telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene meetings of the Ad Hoc Shrimp Effort Working Group (SEWG) to begin evaluating shrimp effort in the Exclusive Economic Zone (EEZ) of the Gulf of Mexico. The working group, appointed by the Council during its March 2006, regular meeting, is charged with providing the Council with alternatives for determining the appropriate level of effort in the shrimp fishery in the EEZ. The group also will discuss the level of effort necessary to achieve optimum yield in the shrimp fishery and what level of effort would derive the maximum benefits of that fishery. The SEWG includes fishery biologists, economists and others knowledgeable about shrimp effort in the Gulf of Mexico.

Although other non-emergency issues not on the agenda may come before the SEWG for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the SEWG will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at

least 5 working days prior to the meeting.

Dated: June 8, 2006.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–9182 Filed 6–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081604C]

Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT); Summer Meeting

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

ACTION: Notice of meeting; correction.

SUMMARY: In preparation for the 2006 ICCAT meeting, the AdvisoryCommittee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) will have a summer meeting. There will be an open session the morning of Monday June 26, 2006, beginning at 9 am. The remainder of the meeting will be closed to the public.

DATES: The meeting will be held June 26–27, 2006.

ADDRESSES: The meeting will be held at the Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kelly Denit, Office of International Affairs, 301–713–2276.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in an open session to consider information on stock status of highly migratory species. In a previous Federal Register Notice (71 FR 32526, June 6, 2006), NMFS indicated that the entire meeting would be in closed session. This notice announces that there will be an open session. After the open session the Advisory Committee to the U.S. Section to ICCAT will meet in a closed session to discuss sensitive information relating to upcoming international negotiations.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kelly Denit at (301) 713-2276 at least 5 days prior to the meeting date.

Dated: June 8, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E6–9212 Filed 6–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Invention Promoters/Promotion Firms Complaints

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 14, 2006.

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

E-mail: *Susan.Brown@uspto.gov.* Include "0651–0044 comment" in the subject line of the message.

Fax: 571–273–0112, marked to the attention of Susan Brown.

Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Federal e-Rulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Cathie Kirik, Mail Stop 24, Commissioner for Patents, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–8800; or by e-mail at *Cathie.Kirik@uspto.gov.*

SUPPLEMENTARY INFORMATION

I. Abstract

Under the Inventors' Rights Act of 1999, as found in 35 U.S.C. 297 and implemented by 37 CFR part 4, the United States Patent and Trademark Office (USPTO) is required to provide a forum for the publication of complaints concerning invention promoters and responses from the invention promoters to these complaints. An individual may submit a complaint concerning an invention promoter to the USPTO, which will forward the complaint to the invention promoter for response. The complaints and responses will be published and made available to the public on the USPTO Web site. The USPTO does not investigate these complaints or participate in any legal proceedings against invention promoters or promotion firms.

Complaints submitted to the USPTO must identify the name and address of the complainant and the invention promoter or promotion firm, explain the basis for the complaint, and include the signature of the complainant. The identifying information is necessary so that the USPTO can forward the complaint to the invention promoter or promotion firm and also notify the complainant that the complaint has been forwarded. Complainants should understand that the complaints will be forwarded to the invention promoter for response and that the complaint and response will be made available to the public as required by the Inventors' Rights Act. If the USPTO does not receive a response from the invention promoter, the complaint will still be published without the response. The USPTO does not accept complaints under this program if the complainant requests confidentiality.

This information collection includes one form, Complaint Regarding Invention Promoter (PTO/SB/2048), which is used by the public to submit a complaint under this program. This form is available for download from the USPTO Web site. Use of this form is not mandatory as long as the complaint includes the necessary information and is clearly marked as a complaint filed under the Inventors' Rights Act. There is no associated form for submitting responses to the complaints.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO.

III. Data

OMB Number: 0651–0044.

Form Number(s): PTO/SB/2048.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 100 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 15 minutes (0.25 hours) to gather the necessary information, prepare the form, and submit the complaint to the USPTO and

approximately 30 minutes (0.5 hours) for an invention promoter or promotion firm to prepare and submit a response to a complaint.

Estimated Total Annual Respondent Burden Hours: 38 hours per year.

Estimated Total Annual Respondent Cost Burden: $5,830 per year. The USPTO expects that complaints will be prepared by paraprofessionals or independent inventors. Using the average of the paraprofessional rate of $90 per hour and the estimated rate of $30 per hour for independent inventors, the USPTO estimates that the average rate for preparing the complaints will be approximately $60 per hour. The USPTO expects that the responses to the complaints will be prepared by attorneys or invention promoters. Using the average of the professional rate of $304 per hour for associate attorneys in private firms and the estimated rate of $100 per hour for invention promoters, the USPTO estimates that the average rate for preparing the responses to the complaints will be $202 per hour. Therefore, the respondent cost burden for this collection will be $5,830 per year.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Complaint Regarding Invention Promoter	15	50	13
Responses to the Complaints	30	50	25
Total		100	38

Estimated Total Annual Non-hour Respondent Cost Burden: $740. There are no capital start-up or maintenance costs or filing fees associated with this information collection. However, the public may incur postage costs when submitting a complaint or a response to a complaint by mail to the USPTO. The USPTO estimates that the first-class postage cost for a mailed complaint will be 39 cents. Promotion firms may choose to send responses to complaints using overnight mail service at an estimated cost of $14.40 per response. Therefore, the total annual (non-hour) respondent cost burden for this collection in the form of postage costs is estimated to be $740 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 6, 2006.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division.

[FR Doc. E6–9173 Filed 6–12–06; 8:45 am]

BILLING CODE 3510–16–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)

June 8, 2006.

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.

DATES: *Effective Date:* June 13, 2006.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain 100% cotton flannel fabrics, as specified below, are not available in commercial quantities in a timely manner in the CAFTA–DR region. The product will be added to the list in Annex 3.25 of the CAFTA–DR in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2582.

For Further Information On-Line: http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf. Reference number: 6.2006.05.02.Fabric.ST&RforBWA.

SUPPLEMENTARY INFORMATION: *Authority:* Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA–DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA–DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

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. Articles that otherwise meet the rule of origin to qualify for preferential treatment are not disqualified because they contain one of the products on the Annex 3.25 list.

The CAFTA–DR Agreement provides that the list in Annex 3.25 may be modified pursuant to Article 3.25(4)–(6). The CAFTA–DR Act states that the President will make a determination on whether additional fabrics, yarns, and fibers are available in commercial quantities in a timely manner in the territory of any Party. The CAFTA–DR 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 making a determination. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of the CAFTA–DR Act for modifying the Annex 3.25 list. On February 23, 2006, CITA published interim procedures it would follow in considering requests to modify the Annex 3.25 list. (71 FR 9315)

On May 2, 2006, the Chairman of CITA received a request from Sandler, Travis, & Rosenberg, P.A. on behalf of B*W*A for certain 100% cotton napped flannel fabrics, of the specifications

detailed below. On May 4, 2006, CITA notified interested parties of, and posted on its Web site, the accepted petition and requested that interested entities provide, by May 16, 2006, a response advising of its objection to the request or its ability to supply the subject product, and rebuttals to responses by May 22, 2006.

No interested entity filed a response advising of its objection to the request or its ability to supply the subject product.

In accordance with Section 203(o)(4) of the CAFTA–DR Act, and its procedures, as no interested entity submitted a response objecting to the request or expressing an ability to supply the subject product, CITA has determined to add the specified fabrics to the list in Annex 3.25 of the CAFTA–DR Agreement.

The subject fabrics are added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities.

Specifications

HTS Subheading: 5208.43.00.

Fiber Content: 100% Cotton.

Average Yarn Number: 84 to 86 metric warp and filling (49 to 51 English).

Thread Count: 39 to 66 warp ends per centimeter × 27 to 39 filling picks per centimeter (99 to 168 warp ends per inch × 68 to 99 filling picks per inch).

Weave Type: 3 or 4 thread twill.

Weight: 98 to 150 grams per square meter (2.9 to 4.4 ounces per sq. yard).

Finish: Of yarns of different colors, yarns are dyed with fiber reactive dyes, plaids checks and stripes, napped on both sides, pre-shrunk.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 06–5353 Filed 6–8–06; 2:47 pm]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Boards of Trade Located Outside of the United States and the Requirement To Become a Designated Contract Market or Derivatives Transaction Execution Facility

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for comment.

SUMMARY: The Commodity Futures Trading Commission (Commission) is publishing this request for comment in advance of a public hearing scheduled for June 27, 2006.[1] The purpose of the hearing is to solicit the views of the public on how to identify and address certain issues with respect to boards of trade established in foreign countries and located outside the U.S. (foreign board of trade or FBOT). Specifically, the Commission wishes to address the point at which an FBOT that makes its products available for trading in the U.S. by permitting direct access to its electronic trading system from the U.S. (direct access) is no longer "located outside the U.S." for purposes of section 4(a) of the Commodity Exchange Act (Act). If it is determined that the FBOT is not "located outside the U.S.," it becomes subject to section 4(a) and may be required to become a designated contract market (DCM) or derivatives transaction execution facility (DTEF).

Currently, FBOTs that wish to permit direct access do so pursuant to Commission staff no-action letters (terminal placement no-action letter) in which Commission staff represents that it will not recommend that the Commission institute enforcement action against the FBOT or its members if the FBOT, subject to certain conditions, permits direct access without becoming a DCM or DTEF. Terminal placement no-action letters state that Commission staff will examine trade volume information submitted by the FBOT, including volume generated through U.S. terminals, and any change in the nature or extent of the FBOT's activities in the U.S., to ascertain whether such trade volume or FBOT activities might warrant reconsideration of the no-action relief because the FBOT may no longer be "located outside the U.S." for the purposes of section 4(a) of the Act.

Terminal placement no-action letters do not, however, identify the specific circumstances when no-action relief is no longer appropriate. In order to promote regulatory clarity in this area, the Commission is considering whether to set forth objective criteria for determining when an FBOT is no longer "located outside the U.S." for purposes of Section 4(a) of the Act. In order to foster useful discussion and provide transparency with respect to the Commission's determinations in this area, the Commission is issuing this request for comment to solicit public views regarding issues raised herein. The Commission also believes that this request for comment should help generate and guide discussion on this same topic at its June 27, 2006, public hearing.

DATES: Comments must be received by July 12, 2006.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to 202–418–5521 or, by e-mail to *secretary@cftc.gov*. Reference should be made to "What Constitutes a Board of Trade Located Outside of the United States." Comments may also be submitted to the Federal eRulemaking Portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Chief Counsel, (202) 418–5481, e-mail *dvanwagner@cftc.gov*; or Duane C. Andresen, Special Counsel, (202) 418–5492, e-mail *dandresen@cftc.gov*; Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Generally, under section 4(a) of the Act,[2] a futures contract may be executed lawfully in the U.S. only if it is traded on or subject to the rules of a board of trade that has been designated as a DCM or registered as a DTEF (for ease of reference, hereinafter referred to as DCM/DTEF registration) pursuant to section 5 or 5a of the Act,[3] respectively, unless the contract is either (i) traded on or subject to the rules of a board of trade, exchange or market located outside the U.S. or (ii) exempted from the Act pursuant to section 4(c).[4]

[1] *See* Sunshine Act Meeting Notice, 71 FR 30665 (May 30, 2006); corrected at 71 FR 32059 (June 2, 2006).

[2] 7 U.S.C. 6(a) (2002).

[3] 7 U.S.C. 7 and 7a (2002).

[4] Section 4(a) of the Act states in relevant part: [I]t shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions) unless—

(1) Such transaction is conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity;

(2) Such contract is executed or consummated by or through a contract market; and

(3) Such contract is evidenced by a record in writing.* * *

Section 4(c) of the Act provides the Commission with authority "by rule, regulation, or order" to

Accordingly, an FBOT that permits direct access that is not located outside the U.S. for purposes of section 4(a) may be required to obtain DCM/DTEF registration absent an exemption under section 4(c) of the Act. The Commission is considering adopting objective standards that would identify a threshold level of presence in the U.S. at which such an FBOT would no longer be considered to be located outside the U.S. for purposes of section 4(a) of the Act. When such an FBOT crosses that threshold, it would become subject to section 4(a) and could, accordingly, be required to seek DCM/DTEF registration.

The Commission has previously addressed this issue on several occasions. On July 24, 1998, the Commission published in the **Federal Register** a Concept Release seeking public comment on issues related to permitting the use in the U.S. of automated trading systems providing access to electronic boards of trade otherwise primarily operating outside the U.S.[5] On September 24, 1998, the Commission's Global Markets Advisory Committee (GMAC) met to consider the issues raised in the Concept Release.[6] On March 24, 1999, the Commission published in the **Federal Register** proposed rules that would have, among other things, established a procedure for an electronic exchange operating primarily outside the U.S. to petition the Commission for an order that would permit use of automated trading systems that provide access to the board of trade from within the U.S. without requiring the board of trade to be designated as a U.S. contract market.[7] During the comment period on the proposed rules, the Commission held a Public Roundtable to discuss the issues raised.[8]

On June 2, 1999, the Commission issued an order that withdrew the proposed rules and committed the Commission to "proceed expeditiously toward adoption of rules and/or guidelines" with respect to foreign boards of trade seeking to place trading terminals in the U.S. and "to simultaneously initiate processes to address the comparative regulatory levels between U.S. and foreign electronic trading systems so as not to provide one with a competitive advantage."[9] The order instructed Commission staff to begin immediately processing no-action requests from foreign boards of trade seeking to place trading terminals in the U.S., and to issue responses where appropriate, pursuant to the general guidelines that had been followed in the process that resulted in the issuance of the 1996 Eurex (DTB) no-action letter.[10] Since the withdrawal of the proposed rulemaking, Commission staff has processed no-action requests from FBOTs seeking to permit direct access and issued terminal placement no-action letters pursuant to the general guidelines included in the Eurex (DTB) no-action process.

On June 30, 2000, noting that one year had passed since the first terminal placement no-action letter was issued and that seven such letters had been issued,[11] and in light of the staff's experience with the relief thus provided, the Commission issued a policy statement permitting FBOTs that had received terminal placement no-action letters to make additional futures and option contracts available for trading through their electronic trading systems in the U.S. without obtaining written, supplemental no-action relief from Commission staff.[12] Under that policy statement, subject to minor exceptions, FBOTs seeking to list additional contracts for direct access would, on the business day prior to listing, submit to Commission staff: (1) A copy of the initial terms and conditions of the additional contracts, and (2) a certification that the FBOT was in compliance with the terms and conditions of the no-action letter and that the additional contracts would be traded in accordance with those same terms and conditions. Since the issuance of the policy statement, nine terminal placement no-action letters have been issued.[13]

In January 2006, Commission staff issued a letter stating that the Commission would be evaluating the use of the terminal placement no-action process.[14] Currently, Commission staff generally examines the following when reviewing an FBOT's request for

exempt "any agreement, contract, or transaction" from the requirements of section 4(a) of the Act if the Commission determines that the exemption would be consistent with the public interest, that the contracts would be entered into solely between appropriate persons, and that the exemption would not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under the Act. 7 U.S.C. 6(a) and 6(c) (2002).

[5] 63 FR 39779 (July 24, 1998).

[6] The Report of the GMAC Working Group on Electronic Terminals can be found on the Commission's Web site at *http://www.cftc.gov/files/foia/comment98/foicf9830b004.pdf.*

[7] 64 FR 14159 (March 24, 1999).

[8] A transcript of the Public Roundtable can be found on the Commission's Web site at *http://www.cftc.gov/files/foia/comment99/foicf9911b001a.pdf.*

[9] The order is published in the **Federal Register** at 64 FR 32829, 32830 (June 18, 1999). In the **Federal Register** release, the Commission stated that it was apparent from the comments received on the proposed rules, and from the wide-ranging positions on the issues as outlined at the Roundtable Discussion and in the meeting of the Commission's GMAC, that further consensus needed to be sought before rules or guidelines could be finalized. Accordingly, the Commission determined to withdraw the proposed rules and defer adoption of final rules or guidelines pending further consideration of those issues.

[10] In February 1996, Commission staff issued a no-action letter to the Deutsche Terminborse (DTB), an all-electronic futures and option exchange headquartered in Frankfurt, Germany, in which Commission staff agreed, subject to certain conditions, not to recommend enforcement action to the Commission if DTB placed computer terminals in the U.S. offices of its members. CFTC Staff Letter No. 96–28 (February 29, 1996). DTB changed its name to Eurex on June 8, 1998, in anticipation of the business combination between DTB's administrative and operating institution, Deutsche Boerse AG, and the Swiss Exchange, the parent company of the Swiss Options and Financial Futures Exchange (SOFFEX).

[11] Commission staff had issued no-action letters to LIFFE (CFTC Staff Letter No. 99–31, July 23, 1999); Parisbourse SA (CFTC Staff Letter No. 99–33, August 10, 1999); Sydney Futures Exchange Ltd. (SFE) (CFTC Staff Letter No. 99–37, August 10, 1999); Eurex Deutschland (CFTC Staff Letter No. 99–48, August 10, 1999); International Petroleum Exchange (IPE) (now ICE Futures) (CFTC Staff Letter No. 99–69, November 12, 1999); Singapore Exchange Ltd. (now SGX–DT) (CFTC Staff Letter No. 99–63, December 17, 1999); and Hong Kong Futures Exchange Ltd. (HKFE) (CFTC Staff Letter No. 00–75, June 9, 2000).

[12] Notice of Statement of Commission Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade that Have Received Staff No-Action Relief to Place Electronic Trading Devices in the United States, 65 FR 41641 (July 6, 2000). The policy statement did not apply to futures and option contracts covered by Section 2(a)(1)(B) of the Act. The policy statement was rescinded and the advance notification requirement was revised on April 14, 2006. 71 FR 19877 (April 18, 2006); corrected at 71 FR 21003 (April 24, 2006).

[13] No-action letters have ben issued to: OM London Exchange Ltd. (CFTC Staff Letter No. 00–93, September 21, 2000); Eurex Zurich Ltd. (CFTC Staff Letter No.00–104, November 16, 2000); London Metal Exchange Limited (LME) (CFTC Staff Letter No. 01–11, March 12, 2001); Bourse de Montreal Inc. (CFTC Staff Letter No. 02–24, February 27, 2002); MEFF (CFTC Staff Letter No. 02–29, March 8, 2002); European Energy Exchange (EEX) (CFTC Staff Letter No. 04–33, October 25, 2004); Winnipeg Commodity Exchange (WCE) (CFTC Staff Letter No. 04–35, December 15, 2004); Euronext Amsterdam (CFTC Staff Letter No. 05–16, August 26, 2005); and NYMEX Europe Limited (NEL) (CFTC Staff Letter No. 05–24, December 16, 2005). No such letters have been issued since the policy statement was revised.

[14] Letter from Richard Shilts, Director, Division of Market Oversight, to Mark Woodward, Regulation and Compliance Policy Manager, ICE Futures, dated January 31, 2006, in response to ICE Futures January 17, 2006, letter notifying Commission staff of its intent to launch a West Texas Intermediate Light Sweet Crude Oil Futures Contract (WTI Contract) on February 3, 2006. Notably, the WTI Contract was the first futures contract listed for trading by an FBOT permitting direct access pursuant to a terminal placement no-action letter for which the product ultimately underlying the futures contract was produced, traded and stored principally in the U.S., and the commercial participants trading the underlying product were mostly located in the U.S. (The ICE Futures WTI Contract is itself not a physically-settled contract. Rather, it cash settles off of the settlement price set by the New York Mercantile Exchange's physically-settled WTI contract.)

terminal placement no-action relief: General information about the FBOT, as well as detailed information about: (i) Membership criteria (including financial requirements); (ii) various aspects of the automated trading system (including the order-matching system, the audit trail, response time, reliability, security, and, of particular importance, adherence to the IOSCO principles for screen-based trading); (iii) settlement and clearing (including financial requirements and default procedures); (iv) the regulatory regime governing the FBOT in its home jurisdiction; (v) the FBOT's status in its home jurisdiction and its rules and enforcement thereof (including market surveillance and trade practice surveillance); and (vi) extant information-sharing agreements among the Commission, the FBOT, and the FBOT's regulatory authority. When issued, the terminal placement no-action letters conclude with a standard set of terms and conditions for the granting of the relief which include, among other things, a quarterly volume reporting requirement.

In the context of its evaluation of the use of the terminal placement no-action process, the Commission may either continue to have its staff issue foreign terminal no-action letters or propose and adopt rules that would codify the current no-action process as a rule-based regime that would entail the Commission's issuance of terminal placement orders. Irrespective of the approach taken, any FBOT seeking to permit direct access would have to be a bona fide board of trade subject to a regulator that provides for effective oversight.[15]

In addition, and also as part of the Commission's evaluation of the use of the no-action process, on May 3, 2006 the Commission instructed staff to initiate a formal process, including a public hearing conducted by the Commission, to define what constitutes "a board of trade, exchange, or market located outside the United States, its territories or possessions" as that phrase is used in section 4(a) of the Act.

II. Request for Comment

The Commission solicits comment from the public on the issues related to an objective standard establishing a threshold that, if crossed by an FBOT that permits direct access, would indicate that the board of trade is no longer outside of the U.S. and, accordingly, may be required to become registered as a DCM/DTEF. The Commission notes that any action taken in this area would be taken to ensure that the Commission is able to carry out its obligations under the Act to maintain the integrity of the U.S. futures markets, to protect the public interest with respect to transactions entered into in interstate and international commerce, and to provide protection to U.S. customers. At the same time, the Commission recognizes that cross-border trading is a growing segment of the trading volume for all futures exchanges, both foreign and domestic. Accordingly, in formulating its regulatory approach the Commission will strive to ensure that it neither inhibits cross-border trading nor imposes unnecessary regulatory burdens.

1. The Level of U.S. Presence and the Requirement for DCM/DTEF Registration

In the March 24, 1999, proposed rules, the Commission stated that any FBOT that wishes to permit direct access can be required to register if the FBOT is not subject to a generally comparable regulatory structure or if the FBOT has been established and structured purposefully to evade U.S. regulation.[16] In the Concept Release and the proposed rules, the Commission indicated that at some level of U.S. activity, an FBOT that provides direct access can no longer claim to be outside the U.S. and should be required to be designated.[17] The Commission specifically mentioned the presence of FBOT activities and personnel in the U.S., as well as trading volume on the FBOT originating in the U.S.[18] The Commission also indicated that an FBOT's main business activities must take place outside of the U.S. (*i.e.*, its management, back office operations, order matching/execution facilities, clearing facilities, and the vast majority of its personnel must be located outside the U.S.).[19] As discussed above, however, the proposed rules were subsequently withdrawn.

The Commission is seeking comments with respect to whether the extent of the FBOT's presence in the U.S. is an appropriate threshold, particularly in light of the capability to contract out various exchange activities to entities in different jurisdictions. If the extent of the FBOT's presence in the U.S. is an appropriate threshold, what level of presence would be a reasonable threshold for determining whether to require DCM/DTEF registration? What factors should be considered in making such a determination, and what level of activities should trigger a U.S. registration requirement? Could a comprehensive list of exchange activities be established and used for the purposes of determining when these activities warrant registration? Would a more focused U.S. presence criteria be more helpful, such as the location of the governing board or executive level management, i.e., where the critical business decisions are made?[20] If the FBOT organizes its business as a U.S. entity, should registration be required even if most of its activities take place outside the U.S.?

The Commission previously has indicated that trade volume from within the U.S. is relevant in assessing whether a board of trade's contacts in the U.S. are so extensive that the FBOT should be required to be registered as a DCM.[21] In the proposed rules, subsequently withdrawn, the Commission proposed that FBOTs report quarterly for each contract available to be traded through direct execution systems and automated order routing systems (AORS) located in the U.S. the total trade volume originating from such systems located in the U.S and total trade volume worldwide from any source.[22]

---

[15] In the Concept Release, the Commission described the foreign board of trade that it assumed would petition the Commission for an order to place its terminals in the U.S. as a bona fide board of trade that is subject to an established rulemaking structure. The Commission stated that this view was consistent with Congressional intent with respect to what is meant by the term "foreign board of trade" under the Act. It noted that the legislative history suggested that when Congress amended the Act in 1982, it intended that the exclusion of futures contracts traded on "a board of trade, exchange or market located outside the United States" from the off-exchange ban in Section 4(a) of the Act to apply only to "bona fide foreign futures contracts" traded in a regulated exchange environment. See S. Rep. 384, 97th Cong., 2d Sess. 45–47, 84–85 (1982); H.R. Rep. No. 565, Part I, 97th Cong., 2d Sess. 84–85 (1982). The Commission further stated that, consistent with Congressional intent, the Part 30 rules do not permit the offer and sale in the U.S. of foreign futures or options that are not executed on or subject to the rules of a foreign board of trade. 63 FR 39779, 39788.

[16] 64 FR 14159, 14160.

[17] 63 FR 39779, 39787; 64 FR 14159, 14167.

[18] 63 FR 39779 at 39787–8; 64 FR 14159 at 14167 and 14170.

[19] *Id.* at 14167.

[20] The Commission understands that at least one foreign regulator, the U.K. Financial Services Authority, views this factor as critical in determining whether an exchange is foreign or domestic.

[21] 64 FR 14159, 14170.

[22] *Id.* at 14177. Direct execution system was defined as any system of computers, software or other devices that allows entry of orders for products traded on a board of trade's computer or other automated device where, without substantial human intervention, trade matching or execution takes place. AORS was defined as any system of computers, software or other devices that allows entry of orders through another party for transmission to a board of trade's computer or other automated device where, without substantial human intervention, trade matching or execution takes place.

FBOT trading volume that is attributable to direct access from the U.S. may trigger a unique regulatory interest. Direct access to an FBOT's trading platform enables U.S. market participants to directly interact with a market, including observing prices, bids, offers and the depth of market in real-time, making trading decisions and executing orders in a non-intermediated, non-filtered manner. Notably, in the proposed rules that were subsequently withdrawn, the Commission stated that boards of trade that were accessible from within the U.S. via trading screens, the internet, or other automated trading systems were not "located outside the U.S." for purposes of section 4(a) of the Act.[23]

Currently, FBOTs with terminal placement no-action letters report to Commission staff quarterly the volume originating from the U.S. and the worldwide volume for those contracts available for direct access from the U.S.[24] The Commission is seeking comments with respect to whether the volume originating from the U.S. is an appropriate criterion. If so, should the Commission consider overall volume, such that if some percentage of the overall volume for those contracts available for direct access from the U.S. originated in the U.S., the FBOT would be required to register? What, if any, U.S. volume percentage figure could serve as a reasonable threshold level?

What does providing direct access to its electronic trading system from the U.S. mean in terms of the volume that should be counted? Should orders transmitted via AORS from the U.S. to firms located outside the U.S. for entry into the trading system be counted as U.S. volume for purposes of determining whether any volume threshold has been crossed?[25] Should orders transmitted via telephone from the U.S. to firms located outside the U.S. for entry into the trading system be counted as U.S. volume for purposes of determining whether any volume threshold has been crossed?[26]

If volume emanating from the U.S. is deemed to be a relevant criterion, should the Commission measure volume on a contract-by-contract basis, and require that the FBOT seek registration only with respect to those individual contracts that exceed a percentage threshold? Does percentage of volume in contracts from the U.S. alone create a meaningful threshold?[27]

Notwithstanding a contract's level of volume from the U.S., the nature of certain contracts made available by FBOTs for direct access also might independently implicate the Commission's regulatory interests. Specifically, the Commission's regulatory interests may extend to FBOT contracts with an underlying product whose cash market impacts interstate commerce in the U.S., such as where prices of the underlying product are discovered principally in the U.S., the underlying product is produced, created and held principally in the U.S., and commercial participants trading the underlying product are mostly located in the U.S.

One of the primary purposes of regulating futures contracts is to ensure fair and orderly markets for U.S. producers and other commercial participants who use such contracts for price basing or hedging. Accordingly, would it be appropriate for the Commission to exercise jurisdiction over FBOTs that permit direct access when they list contracts with underlying products that are integral to the U.S. economy? If the Commission were to take special cognizance of such contracts, should it do so independently of, or in conjunction with, the type of U.S. volume threshold mentioned above? If such contracts were analyzed in conjunction with a volume test, would it be appropriate for the Commission to set the U.S. volume threshold at a lower level than it would for contracts whose underlying products do not have a significant U.S. cash market? What are the implications generally for the business activities and organization of an FBOT of requiring designation on a contract-by-contract basis?

2. DCM Designation Criteria, DTEF Registration Criteria and Core Principles

As indicated above, section 4(a) of the Act requires that a futures contract may only be executed lawfully in the U.S. only if it is traded on or subject to the rules of a board of trade that has been designated as a DCM or registered as a DTEF, unless the contract is traded on a board of trade located outside the U.S. or is exempted from section 4(a) pursuant to section 4(c). Accordingly, if an FBOT that permits direct access engaged in a level of U.S. activity such that it was no longer considered to be located outside the U.S. under a Commission-prescribed standard, the FBOT would have to either obtain DCM/DTEF registration or be granted section 4(c) exemptive relief (as discussed above, at least with respect to those contracts that meet the applicable threshold).

In determining its policy regarding FBOTs that become subject to section 4(a) in these circumstances, the Commission notes that, consistent with its obligations with respect to any market that implicates section 4(a), its paramount obligations would be to maintain the integrity of the FBOT's futures markets and to provide protection to U.S. customers using those markets. Along with those responsibilities, however, the Commission would seek to avoid any measures that would stifle cross-border trading or create unnecessary regulatory burdens.

The Commission anticipates that FBOTs that become subject to section 4(a) under any Commission-prescribed standard would be required to apply for DCM designation (or DTEF registration) and to demonstrate compliance with the DCM designation criteria and core principles in Section 5 of the Act in accordance with the procedures described in Parts 38 and 40 of the Commission's regulations (or with the DTEF registration criteria and core principles in Section 5a of the Act in accordance with Parts 37 and 40 of the Commission's regulations). Furthermore, once the FBOT became registered as a DCM/DTEF, the Commission would expect the DCM/DTEF to continue to meet the requirements of the designation/registration criteria and core principles with respect to any contracts for which it was required to designate/register.

Notably, the Act's designation/registration criteria and core principles

[23] *Id.* at 14160. In the release accompanying its subsequently withdrawn proposed rules, the Commission distinguished direct access trading and order placement via AORS from an order placed by telephone with a firm that is registered with the Commission as a futures commission merchant or that is exempt from such registration pursuant to Commission Rule 30.10 Firm in that a customer placing an order by telephone would not be entering an order on a board of trade's computer or other automated device where trade matching or execution takes place. Id. at 14171.

[24] When computing the percentage of volume originating from the U.S., Commission staff does not include the volume of any FBOT contracts which are not available for direct access.

[25] The Commission in this process is not considering whether to regulate AORS generally, and seeks comments only as to whether and how to measure volume generated through AORS in determining whether a board of trade is located outside the U.S.. Staff believes that the volume data currently reported by FBOTs quarterly does not include as volume originating from the U.S. an order transmitted from the U.S. via AORS and entered into the trading system by a firm located outside the U.S.

[26] Staff believes that the volume data currently reported by FBOTs quarterly does not include as volume originating from the U.S. an order transmitted from the U.S. via telephone and entered into the trading system by a firm located outside the U.S.

[27] If more than 50 percent of the volume of an FBOT's contract originates in the U.S., then it is unlikely that any other country can demonstrate a greater interest in that contract.

are non-prescriptive and can be satisfied in different ways, including by rules and procedures that may have originally been adopted to satisfy the requirements of a foreign regulatory regime. In fact, in conducting an analysis of foreign regulatory programs, the Commission may determine that core principles are already being met. Accordingly, in situations such as this, requiring DCM/DTEF registration of FBOTs that are no longer considered to be located outside of the U.S. should not pose an undue burden on the board of trade or a material impediment to cross-border business. Similarly, the Commission could recognize a board of trade's prior experiences with particular rules and procedures in evaluating whether the board of trade would likewise satisfy the Commission's requirements for DCMs/DTEFs.

In the interest of reducing any burden that may arise at either the exchange or regulator level due to the dual regulation, the Commission also notes that it would always have the discretion to work out appropriate arrangements to rely on the foreign regulator for assistance in ensuring that a DCM/DTEF continues to meet the designation/registration requirements. The Commission particularly solicits comments on which, if any, areas of its regulatory oversight responsibilities may be appropriate for such reliance. Should the Commission establish a standardized approach to such reliance on foreign regulatory authorities, or should coordination of these oversight responsibilities be done on a case-by-case basis. Alternatively, should the Commission consider using its section 4(c) authority to create a special exchange registration category for boards of trade that become subject to section 4(a) in these limited circumstances? If so, what substantive requirements should apply to such a category?

Issued in Washington, DC, on June 8, 2006 by the Commission.

Eileen Donovan,

Acting Secretary of the Commission.

[FR Doc. E6–9191 Filed 6–12–06; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–27]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–27 with attached transmittal, policy justification, and Sensitivity of Technology.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 5, 2006.

In reply refer to: I–06/003979

The Honorable J. Dennis Hastert, Speaker of the House of Representatives, Washington, DC 20515–6501.

Dear Mr. Speaker: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06–27, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Japan for defense articles and services estimated to cost $70 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed rule.

Sincerely,

Richard J. Millies,

Deputy Director.

Enclosures:
1. Transmittal.
2. Policy Justification.
3. Sensitivity of Technology.

Same ltr to:

House

Committee on International Relations.
Committee on Armed Services.
Committee on Appropriations.

Senate

Committee on Foreign Relations.
Committee on Armed Services.
Committee on Appropriations.

BILLING CODE 5001–06–M

Transmittal No. 06-27

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Japan

(ii) Total Estimated Value:

Major Defense Equipment*	$65 million
Other	$ 5 million
TOTAL	$70 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 20 SM-2 Block IIIB Tactical STANDARD missiles with MK 13 MOD 0 canisters; 24 SM-2 Block IIIB Telemetry STANDARD missiles with MK 13 MOD 0 canisters and AN/DKT-71A telemeters; conversion kits; containers; spare and repair parts; supply support; U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) Military Department: Navy (AQE and AQF)

(v) Prior Related Cases, if any: numerous FMS cases pertaining to the STANDARD missiles

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 5 JUN 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan - SM-2 Block IIIB STANDARD Missiles

The Government of Japan has requested a possible sale for 20 SM-2 Block IIIB Tactical STANDARD missiles with MK 13 MOD 0 canisters; 24 SM-2 Block IIIB Telemetry STANDARD missiles with MK 13 MOD 0 canisters and AN/DKT-71A telemeters; conversion kits; containers; spare and repair parts; supply support; U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $70 million.

Japan is one of the major political and economic powers in East Asia and the Western Pacific and a key ally of the United States in ensuring the peace and stability of this region. The U.S. Government shares bases and facilities in Japan. It is vital to the U.S. national interest to assist Japan to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with these U.S. objectives and with the 1960 Treaty of Mutual Cooperation and Security.

The SM-2 missiles will be used on ships of the Japan Maritime Self Defense Force fleet and will provide enhanced capabilities in providing defense of critical sea-lanes of communication. Japan has already integrated the SM-2 Block IIB into ship combat systems. It maintains two Intermediate-Level Maintenance Depots capable of maintaining and supporting the SM-2 and is upgrading these facilities to maintain and support the newest SM variants. Japan will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be: Raytheon Missile Systems Company in Tucson, Arizona; Raytheon Company of Camden, Arkansas; BAE of Minneapolis, Minnesota; and United Defense, Limited Partnership of Aberdeen, South Dakota. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-27

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The possible sale of SM-2 Block IIIB STANDARD missiles will result in the transfer of sensitive technology and information as well as classified and unclassified defense equipment and technical data. The STANDARD missile hardware guidance section and target detection device are classified Secret. The warhead, rocket motor, steering control section, safe and arming device, auto-pilot battery unit, and telemeter are classified Confidential. Certain operating frequencies and performance characteristics are classified Secret. Confidential documentation to be provided includes: parametric documents, general performance data, firing guidance, kinematics information, Intermediate Maintenance Activity (IMA)-level maintenance, and flight analysis procedures.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 06–5331 Filed 6–12–06; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Reserve Officers' Training Corps (ROTC) Program Subcommittee

AGENCY: Department of the Army, DoD.
ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., App. 2), announcement is made of the following Committee meeting:

Name of Committee: Reserve Officers' Training Corps (ROTC) Program Subcommittee.

Dates of Meeting: July 10–12, 2006.

Location: Sheraton Tacoma Hotel, 1320 Broadway Plaza, Tacoma, WA 98402.

Time: 0730–1730 hours, July 11, 2006; 0800–1030 hours July 12, 2006.

Proposed Agenda: Review and discuss the ROTC Leadership Development Program and observe ROTC Cadet training at the leadership Development and Assessment Course (LDAC), Fort Lewis, WA.

For Further Information Contact: Mr. Pierre Blackwell, U.S. Army Cadet Command (ATTCC–TR), Fort Monroe, VA 23651 at (757) 788–4326.

Supplementary Information: This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee.

Brenda S. Bowen,
Army Federal Register Liaison Officer.
[FR Doc. 06–5340 Filed 6–12–06; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of Draft Environmental Impact Statement for the Floyd County, KY (Levisa Fork Basin), Section 202 Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.
ACTION: Notice; extension of comment period.

SUMMARY: The comment period for the Draft Environmental Impact Statement for the Floyd County, KY (Levisa Fork Basin), Section 202 Project published in the **Federal Register** on Friday, May 5, 2006 (71 FR 26478), required comments be submitted 45 days (June 19, 2006) following publication in the **Federal Register.** The comment period has been extended to 60 days (July 5, 2006).

FOR FURTHER INFORMATION CONTACT: Stephen O'Leary, Telephone (304) 399–5841.

Brenda S. Bowen,
Army Federal Register Liaison Officer.
[FR Doc. 06–5339 Filed 6–12–06; 8:45 am]
BILLING CODE 3710–GM–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Millington and Vicinity, Tennessee

AGENCY: Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Millington, Tennessee and Vicinity Feasibility Study will be conducted to analyze problems being experienced in the Big Creek drainage basin and evaluate alternatives to provide plans for ecosystem restoration, flood damage reduction, and recreation. National Ecosystem Restoration (NER) benefits will be evaluated with respect to the net change in habitat quantity and/or quality and expressed quantitatively in physical units and indices, but not monetary units. If justified, the feasibility study and EIS will recommend a plan.

FOR FURTHER INFORMATION OR COMMENT CONTACT: Mr. Danny Ward, telephone (901) 544–0709, CEMVM–PM–E, 167 N. Main, Room B–202, Memphis, TN 38103, email—*daniel.d.ward@mvm02.usace.army.mil.*

SUPPLEMENTARY INFORMATION: The United States House of Representatives Committee on Transportation and Infrastructure adopted a resolution on March 7, 1996, authorizing that* * *

"The Secretary of the Army review the report of the Chief of Engineers on the Wolf River and Tributaries, Tennessee and Mississippi, published as House Document Numbered 76, Eighty-fifth Congress, and other pertinent reports, to determine whether any modifications of the recommendations contained therein are advisable at this time, with particular reference to the need for improvements for flood control, environmental restoration, water quality, and related purposes associated with storm water runoff and management in the metropolitan Memphis, Tennessee area and tributary basins including Shelby, Tipton, and Fayette Counties, Tennessee, and DeSoto and Marshall Counties, Mississippi. This area includes the Hatchie River, Loosahatchie River, Wolf River, Nonconnah Creek, Horn Lake Creek, and Coldwater River Basins. The review shall evaluate the effectiveness of existing Federal and non-Federal improvements, and determine the need for additional improvements to prevent flooding from storm water, to restore environmental resources, and to improve the quality of water entering the Mississippi River and its tributaries."

Big Creek, a tributary of the Loosahatchie River, is located north of the City of Memphis in Shelby and Tipton Counties, Tennessee. Metropolitan areas within the watershed include the cities of Millington, Munford, and Atoka. The entire reach of Big Creek within Shelby County has been channelized and is referred to as the Big Creek Drainage Canal. Habitat in Big Creek is limited due to channel alteration, incision of the channel bottom, bank erosion, high urbanization rates, and an altered hydraulic regime. Most of the historical habitat in the watershed has been cleared for agricultural or development purposes. Additionally, water quality is a major problem in the study area. Big Creek, from its mouth to Crooked Creek, is listed on the Clean Water Act 303(d) list of impaired waterways by the Tennessee Department of Environment and Conservation (TDEC). TDEC determined that this waterway is a high priority for development of the Total Maximum Daily Load (TMDL). The identified water pollutants are organic enrichment/DO, siltation, nutrients, and pathogens. The sources of these water quality problems were identified as landfills, channelization, and agricultural and urban runoff.

Heavy rainfalls, totaling over 10 inches in November 2001, caused temporary road closures in the Big Creek drainage basin and a 21-foot rise and fall of the creek's water surface elevation within 48 hours. Estimates indicate that the rainfall event approximated a 50-year storm. This flash flood type scenario is not uncommon to the drainage basin, yet its impact eventually affects the overall stability of the drainage system and adjoining infrastructure.

Reasonable Alternatives

There is a limited amount of flood damages that occur in the basin based upon recent economic and hydraulic data. Therefore, the feasibility study will focus on ecosystem restoration alternatives. Likely restoration features include but are not limited to constructing main channel stabilization weirs in Big Creek that will prevent further channel bed incision and lateral bank erosion and restore the bottom grade of the creek that will provide aquatic habitat, constructing stabilization weirs on tributaries, constructing bioengineered channel improvements that will likely involve lateral stone toe protection with live plantings, restoring historical meanders of Big Creek, and restoring riparian buffer strips and wildlife corridors. Additional items to be analyzed include the development of recreational features on project lands. Incidental flood damage reduction benefits will also be quantified.

The Corps Scoping Process

A NEPA Scoping Notice was disseminated on 26 January 2004 and a public scoping meeting was held on 12 February 2004. Significant issues raised from the Corps' scoping process that will be analyzed in the EIS are lack of aquatic habitat, loss of riparian zones, excessive erosion, poor water quality, increased development, wetland losses, greenways, flash flooding, cultural resources, and a lack of recreational opportunities. Comments are being used in the development of project features. However, additional comments concerning the feasibility study will be accepted.

Comments to this Notice of Intent are requested by 9 July 2007 at the above address. It is anticipated that the DEIS will be available for public review in January 2007.

Vincent D. Navarre,

Major, Corps of Engineers, Deputy District Commander.

[FR Doc. 06–5317 Filed 6–12–06; 8:45 am]

BILLING CODE 3710–KS–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Supplement to the Final Environmental Statement for the Area VI (Elm Fork of the North Fork of the Red River) Portion of the Red River Chloride Control Project, Texas and Oklahoma

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The purpose of the Supplement to the Final Environmental Statement (SFES) is to address alternatives and modifications to the authorized plan for chloride control at Area VI on the Elm Fork of the North Fork of the Red River, OK.

ADDRESSES: Questions or comments concerning the proposed action should be addressed to Mr. Stephen L. Nolen, Chief, Environmental Analysis and Compliance Branch, Tulsa District, U.S. Army Corps of Engineers, CESWT–PE–E, 1645 S. 101st E. Ave, Tulsa, OK 74128–4629.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Nolen, (918) 669–7660, fax: (918) 669–7546, e-mail: *Stephen.L.Nolen@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Area VI portion was authorized as part of a

larger chloride control project by the Flood Control Act of 1966, approved November 7, 1966, (Pub. L. 89–789), SD 110; as modified by the Flood Control Act approved December 31, 1970, (Pub. L. 91–611); as amended by the Water Resources Development Acts of 1974 (Pub. L. 93–251) and 1976 (Pub. L. 94–587). Section 1107 of the Water Resources Development Act of 1986 amended the above authorization to separate the overall project into the Arkansas River Basin and the Red River Basin and authorized the Red River Basin for construction subject to a favorable report by a review panel on the performance of Area VIII. The review panel submitted a favorable report to the Public Works Committee of the House and Senate in August 1988 indicating that Area VIII was performing as designed. The portion of the authorized project on the Elm Fork of the North Fork of the Red River in southwestern Oklahoma consists of Area VI. The authorized plan consisted of collection of brines emitted from three box canyons flowing to the Elm Fork of the North Fork of the Red River and transport of these brines via pipeline to a brine storage surface impoundment.

Reasonable alternatives to be considered include various combinations of plans for deep well injection, collection facilities, size and locations of brine storage surface impoundment(s), pipeline sizes and routes, and no action.

Significant issues to be addressed in the SFES include: (1) Hydrological, biological, and water quality issues concerning fish, aquatic invertebrates, algae, aquatic macrophytes, wetland/riparian ecosystem of the Elm Fork of the North Fork and North Fork of the Red River, and Red River above Lake Texoma to the confluence of the North Fork of the Red River; (2) a Lake Texoma component including chloride/turbidity relationships, chloride/fish reproduction issues, chloride/plankton community issues, chloride/nutrient dynamic issues, and associated impacts on lake sport fishes and recreation; (3) a selenium (Se) component addressing Se concentrations and impacts on biota; (4) cumulative effects related to portions of the Red River Chloride Control Project (RRCCP) already constructed and those approved for construction in the Wichita River Basin of Texas; (5) habitat mitigation issues; (6) Section 401 water quality issues; (7) impacts on the commercial bait fishery of the upper Red River; (8) Federally-listed threatened and endangered species; (9) cultural resources; and (10) unquantifiable/undefined impacts.

Scoping meetings for the project are anticipated to be conducted in late summer, 2006. News releases informing the public and local, state, and Federal agencies of the proposed action will be published in local newspapers. Comments received as a result of this notice and the news releases will be used to assist the Tulsa District in identifying potential impacts to the quality of the human or natural environment. Affected Federal, State, or local agencies, affected Indian tribes, and other interested private organizations and parties may participate in the scoping process by forwarding written comments to (see **ADDRESSES**) or attending the scoping meetings.

The draft SFES is expected to be available for public review and comment sometime in 2009. In order to be considered, any comments and suggestions should be forwarded to (see **ADDRESSES**) in accordance with dates specified upon release of the draft SFES.

Dated: May 30, 2006.

Miroslav P. Kurka,

Colonel, U.S. Army, District Engineer.

[FR Doc. 06–5336 Filed 6–12–06; 8:45 am]

BILLING CODE 3710–39–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Inland Waterways Users Board

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting.

Name of Committee: Inland Waterways Users Board (Board).

Date: July 13, 2006.

Location: JR's Executive Inn, One Executive Blvd., Paducah, Kentucky 42001, (270–443–8000).

Time: Registration will begin at 8:30 a.m. and the meeting is scheduled to adjourn at 1 p.m.

Agenda: The Board will hear briefings on the status of both the funding for inland navigation projects and studies, and the Inland Waterways Trust Fund, and be provided updates of various inland waterways projects.

For Further Information Contact: Mr. Mark R. Pointon, Headquarters, U.S. Army Corps of Engineers, CECW–MVD, 441 G Street, NW., Washington, DC 20314–1000; Ph: 202–761–4258.

Supplementary Information: The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–5337 Filed 6–12–06; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 14, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this

collection on the respondents, including through the use of information technology.

Dated: June 7, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: Lender's Request for Payment of Interest and Special Allowance—LaRS.

Frequency: Quarterly; Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 12,800.
Burden Hours: 31,200.

Abstract: The Lender's Request for Payment of Interest and Special Allowance—LaRS (ED Form 799) is used by approximately 3,200 lenders participating in the Title IV, PART B loan programs. The ED Form 799 is used to pay interest and special allowance to holders of the Part B loans; and to capture quarterly data from lender's loan portfolio for financial and budgetary projections.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 3138. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–9194 Filed 6–12–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 14, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 7, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Reading First Annual Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 55.
Burden Hours: 990.

Abstract: This Annual Performance Report will allow the Department of Education to collect information required by the Reading First statute.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 3132. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–9195 Filed 6–12–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of International Regimes and Agreements; Proposed Subsequent Arrangement

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed subsequent arrangement.

SUMMARY: This notice is being issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed "subsequent arrangement" under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the United States and Norway.

This subsequent arrangement involves the provision of programmatic consent to the Euratom Supply Agency and the Government of Norway for the retransfer

of irradiated fuel rods containing a maximum of 30,000 grams of U.S.-origin uranium, containing a maximum of 400 grams U–235, and a up to 400 grams of U.S.-origin plutonium, from the Euratom Supply Agency to the Government of Norway for neutron radiography examination. The specified material, which is now located at Studsvik Nuclear AB, Nykoping, Sweden, will, upon approval, be transferred to the Institut for Energiteknikk (IFE), Halden, Norway between March 2006 and March 2007. IFE Halden is a research institute within the fields of nuclear technology, man-machine communication, and energy technology. The material will be transferred in several shipments, with the plutonium weight per transport remaining below 100 grams. After neutron radiography examination in Norway, the Government of Norway will rely on this programmatic consent to have IFE Halden will return the material to Studsvik Nuclear for final disposal, subject to the same shipping limit of not more than 100 grams of plutonium per transport when the material is returned from Norway to Sweden.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Richard Goorevich,

Director, Office of International Regimes and Agreements.

[FR Doc. E6–9217 Filed 6–12–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy (DOE).

ACTION: Notice of meeting.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on June 20, 2006, at the headquarters of the IEA in Paris, France, in connection with a meeting of the IEA's Standing Group on Emergency Questions.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on June 20, 2006, beginning at 8:30 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the IEA on June 20 beginning at 9:30 a.m., including a preparatory encounter among company representatives from approximately 8:30 a.m. to 9 a.m. The agenda for the preparatory encounter is a review of the agenda for the SEQ meeting.

The agenda for the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the 116th Meeting
3. Status of Compliance with IEP Stockholding Commitments
   —Reports by Non-Complying Member Countries
4. Program of Work
   —The SEQ Program of Work for 2007–2008
5. The Current Oil Market Situation, including Geopolitical Risks in the Oil Market
   —Near-Term Risks to the Oil Market
6. Emergency Response Review Program
   —Emergency Response Review (ERR) of Spain
   —ERR of the United States
   —ERR of Canada
   —Preliminary Results of ERR of Turkey
   —Preliminary Results of ERR of the Czech Republic
7. Report on Current Activities of the IAB
8. The IEA Collective Action Agreed on September 2, 2005, in Response to Disrupted Oil Supplies
   —Roundtable on Follow-Up Measures in Administrations
9. Demand Restraint Measures
   —Review of Policies and Analytical Requirements to Assess Oil Demand Restraint for Heavy Goods Vehicles
10. Policy and Other Developments in Member Countries
    —Belgium
    —Japan
    —United States
11. Other Emergency Response Activities
    —Report on SEQ Working Group on IEA Emergency Reserve Calculation Methodology
    —Reports on IEA Workshops on Gas Security and Gas Statistics
12. Activities with Non-Member Countries and International Organizations
    —Voluntary Contribution of the United Kingdom
    —Update on Situation of Applicant Countries
    —NMC Activities Related to Emergency Preparedness
    —International Energy Forum
    —G8
    —Workshops on Oil Security in China, Thailand, and India
13. Documents for Information
    —Emergency Reserve Situation of IEA Member Countries on April 1, 2006
    —Emergency Reserve Situation of IEA Candidate Countries on April 1, 2006
    —Base Period Final Consumption: 2Q2005–1Q2006
    —Monthly Oil Statistics: March 2006
    —Update of Emergency Contacts List
14. Other Business
    —Dates of Next SEQ Meetings (tentative)
    —November 16–17, 2006
    —March 20–22, 2007
    —June 18–19, 2007
    —November 13–15, 2007

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, June 2, 2006.

Samuel M. Bradley,

Assistant General Counsel for International and National Security Programs.

[FR Doc. E6–9216 Filed 6–12–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board—Executive Working Group

AGENCY: Department of Energy (DOE).

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference of the State Energy Advisory Board (STEAB)—Executive Working Group. The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770), requires that public notice of these teleconferences be announced in the **Federal Register**. No official business will be conducted—this is for information sharing only.

DATES: June 22, 2006, from 2 p.m. to 3 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Director, Central Regional Office, Energy Efficiency and Renewable Energy (EERE), U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303/275–4801.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Update members on routine business matters. No official actions will be taken.

Public Participation: The teleconference is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the conference call; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the call in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to programmatic issues.

Notes: The notes of the teleconference will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 7, 2006.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–9218 Filed 6–12–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

June 8, 2006.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 15, 2006, 10 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda. *Note—Items listed on the agenda may be deleted without further notice

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400. For a recorded listing item stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

906TH—MEETING

Item No.	Docket No.	Company
	Administrative Agenda	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Energy Market Update.
	Electric	
E–1	ER03–563–055, ER03–563–030	Devon Power LLC, et al.
E–2	ER06–847–000, ER05–1235–001	MidAmerican Energy Company.
E–3	OMITTED.	
E–4	OMITTED.	
E–5	ER06–557–000, ER06–557–001; ER06–557–002	El Paso Electric Company.
E–6	ER06–889–000	PSEG Fossil LLC, PSEG Nuclear LLC, PSEG Energy Resources & Trade LLC.
E–7	ER03–407–007	California Independent System Operator Corporation.
E–8	OMITTED.	
E–9	ER97–2801–006, ER97–2801–008	PacifiCorp.
	ER03–478–005, ER03–478–006, ER03–478–011	PPM Energy, Inc.
	EL05–95–000	PacifiCorp and PPM Energy, Inc.
E–10	EC03–131–003, EC03–131–004	Oklahoma Gas and Electric Company and NRG McClain LLC.
E–11	OMITTED.	
E–12	OMITTED.	
E–13	OMITTED.	
E–14	EL06–53–000, ER06–268–000, ER06–268–001, ER06–261–000, ER03–510–006.	Pacific Gas and Electric Company v. Delta Energy Center, LLC and Los Esteros Critical Energy Facility, LLC.
E–15	EL06–65–000	Roger and Emma Wahl v. Allamakee-Clayton Electric Cooperative.
E–16	OMITTED.	
E–17	OMITTED.	
E–18	TX05–1–006	East Kentucky Power Cooperative, Inc.
E–19	ER06–506–002, ER06–506–003	New York Independent System Operator, Inc.
E–20	EL06–6–000	Western Farmers Electric Cooperative.

906TH—MEETING—Continued

Item No.	Docket No.	Company
	Gas	
G–1	PL04–3–000	Natural Gas Interchangeability.
G–2	RM06–17–000	Natural Gas Supply Association.
G–3	RP05–618–002	Colorado Interstate Gas Company.
G–4	OMITTED.	
G–5	TS04–280–002	Jupiter Energy Corporation.
	TS05–10–000	Cotton Valley Compression, L.L.C.
	TS05–3–000	Texas Eastern Transmission, LP.
	TS05–19–000	Chandeleur Pipe Line Company.
	TS05–21–000	Sabine Pipe Line Company.
	TS05–17–000, OA05–1–000	Thumb Electric Cooperative.
	TS05–15–000	Discovery Gas Transmission Inc.
	Hydro	
H–1	P–12641–000	Mt. Hope Waterpower Project LLP.
H–2	P–4244–021	Northumberland Hydro Partners, L.P.
	P–10648–009	Adirondack Hydro Development Corporation.
H–3	P–12451–003	SAF Hydroelectric, LLC.
H–4	P–12462–003	Indian River Power Supply, LLC.
	P–12430–002	Alternative Light and Hydro Associates.
H–5	P–2118–011	Pacific Gas and Electric Company.
H–6	P–1962–136	Pacific Gas and Electric Company.
	Certificates	
C–1	RM06–12–000	Regulations for Filing Applications for Permits to Site Transmission Facilities.
C–2	RM05–23–000, AD04–11–000	Rate Regulation of Certain Natural Gas Storage Facilities.
C–3	RM06–7–000	Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates.
C–4	CP05–130–000, CP05–130–001, CP05–130–002	Dominion Cove Point LNG, LP.
	CP05–132–000, CP05–132–001	Dominion Cove Point LNG, LP.
	CP05–131–000, CP05–131–001	Dominion Transmission, Inc.
C–5	CP05–360–000	Creole Trail LNG, L.P.
	CP05–357–000, CP05–357–001, CP05–357–002, CP05–358–000, CP05–359–000.	Cheniere Creole Trail Pipeline, L.P.
C–6	CP05–396–000	Sabine Pass LNG, L.P.
C–7	CP04–411–000	Crown Landing LLC.
	CP04–416–000	Texas Eastern Transmission, LP.
C–8	CP05–83–000	Port Arthur LNG, L.P.
	CP05–84–000, CP05–84–001, CP05–85–000, CP05–86–000.	Port Arthur Pipeline, L.P.
C–9	CP05–395–000	Dominion Cove Point LNG, LP.
C–10	CP06–26–000	Dominion Cove Point LNG, LP.
C–11	OMITTED.	

Magalie R. Salas,

Secretary.

A free webcast of this event is available through *www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in Hearing Room 2. Members of the public may view this briefing in the Commission Meeting overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 06–5415 Filed 6–9–06; 3:54 pm]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD05–17–000]

Electric Energy Market Competition Task Force; Notice Requesting Comments on Draft Report to Congress on Competition in the Wholesale and Retail Markets for Electric Energy

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: Section 1815 of the Energy Policy Act of 2005 requires the Electric Energy Market Competition Task Force

to conduct a study and analysis of competition within the wholesale and retail market for electric energy in the United States and to submit a report to Congress within one year. Section 1815 further requires that the Task Force publish its draft report in the **Federal Register** for public comment 60 days prior to submitting its final report to the Congress. The Federal Energy Regulatory Commission, as an agency with a representative on the Task Force, is publishing this notice providing the draft report and seeking public comment on behalf of the Task Force.

DATES: Comments are due on or before 5 p.m. Eastern Time June 26, 2006.

ADDRESSES: Comments may be electronically filed by any interested person via the e-Filing link on the Federal Energy Regulatory Commission's Web site at *http://www.ferc.gov* for Docket No. AD05–17–000. Persons filing electronically do not need to make a paper filing. Persons that are not able to file electronically must send an original of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Moon Paul, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 202–502–6136.

SUPPLEMENTARY INFORMATION: Section 1815 of the Energy Policy Act of 2005 established an interagency task force to conduct a study and analysis of competition within the wholesale markets and retail markets for electric energy in the United States. The task force has 5 members: (1) An employee of the Department of Justice, appointed by the Attorney General of the United States; (2) an employee of the Federal Energy Regulatory Commission, appointed by the Chairperson of that Commission; (3) an employee of the Federal Trade Commission, appointed by the Chairperson of that Commission; (4) an employee of the Department of Energy, appointed by the Secretary of Energy; and (5) an employee of the Rural Utilities Service, appointed by the Secretary of Agriculture.

The Electric Energy Market Competition Task Force consulted with and solicited comments from the States, representatives of the electric power industry and the public, in accordance with a notice requesting public comment published in the **Federal Register** on October 19, 2005 at 70 FR 60819. A full listing of the persons or entities that have met with the task force or submitted comments in response to the notice will be listed as an attachment to the final report.

The draft report of the Electric Energy Market Competition Task Force is attached to this notice as Appendix A. The appendices to the draft report will not be published in the **Federal Register**, but will be available online, as follows. The draft report is also available at each of the following Web sites of the Task Force members' agencies:

Department of Justice: *http://www.usdoj.gov/atr*
Federal Energy Regulatory Commission: *http://www.ferc.gov/legal/staff-reports/epact-competition.pdf*
Federal Trade Commission: *http://www.ftc.gov*
Department of Energy: *http://www.oe.energy.gov*
Department of Agriculture: *http://www.usda.gov/rus/electric/competition/index.htm*

Members of the public are invited to comment on the draft report and encouraged to file comments as soon as is practicable in order to maximize the time available to the task force to consider these comments. Comments will be received by the Federal Energy Regulatory Commission and available for public review. A final report will be delivered to Congress on or before August 8, 2006 in accordance with the statutory deadline.

How To File Comments

Any interested person may submit a written comment and it will be made part of the public record of the Task Force maintained with the Federal Energy Regulatory Commission. Comments may be filed electronically via the e-Filing link on the Federal Energy Regulatory Commission's Web site at *http://www.ferc.gov* for Docket No. AD05–17–000.

Most standard word processing formats are accepted, and the e-Filing link provides instructions for how to Login and complete an electronic filing. First-time users will have to establish a user name and password. User assistance for electronic filing is available at 202–208–0258 or by e-mail to efiling at ferc.gov. Comments should not be submitted to the e-mail address. Persons filing comments electronically do not need to make a paper filing. Persons that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 5, 2006.

Magalie R. Salas,

Secretary, Federal Energy Regulatory Commission.

Appendix A—Draft Report of the Electric Energy Market Competition Task Force

Report to Congress on Competition in the Wholesale and Retail Markets for ELectric Energy

Draft

June 5, 2006.

By The Electric Energy Market Competition Task Force.

Table of Contents

Executive Summary

Congressional Request

Section 1815 of the Energy Policy Act of 2005 (the Act) requires the Electric Energy Market Competition Task Force (Task Force) to conduct a study of competition in wholesale and retail markets for electric energy in the United States.[1] Section 1815(b)(2)(B) of the Act requires the Task Force to publish a draft final report for public comment 60 days prior to submitting the final version to Congress. This **Federal Register** notice fulfills this statutory obligation. The Task Force seeks comment on the preliminary observations contained in this draft report.

Task Force Activities

In preparing this report, the Task Force undertook several activities, as follows:

- Section 1815(c) of the Energy Policy Act of 2005 required the Task Force to "consult with and solicit comments from any advisory entity of the task force, the States, representatives of the electric power industry, and the public." Accordingly, the Task Force published a **Federal Register** notice seeking comment on a variety of issues related to competition in wholesale and retail electric power markets to comply with this statutory obligation. The Task Force received over 80 comments that expressed a variety of opinions and analyses. The list of parties who submitted comments is attached as Appendix A.
- The Task Force met and discussed competition-related issues with a variety of representatives of the electric power industry in October/November 2005. These groups are listed in Appendix B.
- The Task Force prepared an annotated bibliography of the public cost/benefit studies that have attempted to analyze the status of wholesale and retail competition. Appendix C contains this bibliography.
- The Task Force researched and analyzed the relevant features of seven states that have implemented retail competition. The states include: Illinois, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Texas. These seven states represent the various approaches that states have used to introduce retail competition where retail competition programs are active. Appendix D contains these individual state profiles.
- The Task Force reviewed the information gleaned from comments, interviews, and further research. They then produced draft documentation of the resulting observations and findings. These drafts were circulated among task force members for comments and revised. No outside contractors were hired to conduct this work.

Federal and several state policymakers generally introduced competition in the electric power industry to overcome the perceived shortcomings of traditional cost-based regulation. In competitive markets, prices are expected to guide consumption and investment decisions to bring about an efficient allocation of resources.

Observations on Competition in Wholesale Electric Power Markets

For almost 30 years, Congress has taken steps to encourage competition in wholesale electric power markets. The Public Utility Regulatory Policies Act of 1978, the Energy Policy Act of 1992, and the Energy Policy Act of 2005 all sought to promote competition by lowering entry barriers, increasing transmission access, or both. Federal electricity policies seek to strengthen competition but continue to rely on a combination of competition and regulation.

In responding to its statutory charge, the Task Force has sought to answer the following question:

> Has competition in wholesale markets for electricity resulted in sufficient generation supply and transmission to provide wholesale customers with the kind of choice that is generally associated with competitive markets?

To answer this question, the Task Force examined whether competition has elicited consumption and investment decisions that were expected to occur with wholesale market competition.

The Task Force found this question challenging to address. Regional wholesale electric power markets have developed differently since the beginning of widespread wholesale competition. Each region was at a different regulatory and structural starting point upon Congress' enactment of the Energy Policy Act of 1992. Some regions already had tight power pools, others were more disparate in their operation of generation and transmission. Some regions had higher population densities and thus more tightly configured transmission networks than did others. Some regions had access to fuel sources that were unavailable or less available in other regions (e.g., natural gas supply in the Southeast, hydro-power in the Northwest). Some regions operate under a transmission open-access regime that has not changed since the early days of open access in 1996, while other regions have independent provision of transmission services and organized day-ahead exchange markets for electric power and ancillary services. These differences make it difficult to single out the determinants of consumption and investment decisions and thus make it difficult to evaluate the degree to which more competitive markets have influenced such decisions. Even the organized exchange markets have different features and characteristics.

Despite the difficulty of directly answering the question at hand, the Task Force's examination of wholesale competition has yielded some useful observations, as presented below. The Task Force seeks comment on these observations.

Observations on Competitive Market Structures

1. One approach to competition in wholesale markets is to base trades exclusively on bilateral sales directly negotiated between suppliers, rather than on a centralized trading and market clearing mechanisms. This approach predominates in the Northwest and Southeast. This bilateral format allows for somewhat independent operation of transmission control areas and, in the view of some market participants, better accommodates traditional bilateral contracts. However, the fact that prices and terms can be unique to each transaction and are not always publicly available can lead to less than efficient (not least cost) generation dispatch

[1] The Task Force consists of 5 members: (1) One employee of the Department of Justice, appointed by the Attorney General of the United States; (2) one employee of the Federal Energy Regulatory Commission, appointed by the Chairperson of that Commission; (3) one employee of the Federal Trade Commission, appointed by the Chairperson of that Commission; (4) one employee of the Department of Energy, appointed by the Secretary of Energy; (5) one employee of the Rural Utilities Service (RUS), appointed by the Secretary of Agriculture.

scenarios. Also, it can be difficult to efficiently coordinate transmission when using this trading mechanism. The lack of centralized information about trades leaves the transmission owner with system security risks that necessitate constrained transmission capacity. In some of these markets, wholesale customers have difficulty gaining unqualified access to the transmission they would need to access competitively priced generation—thus limiting their ability to shop for least cost supply options.

2. Another approach to wholesale competition relies on entities which are independent of market participants to operate centralized regional transmission facilities and trading markets (Regional Transmission Organizations or Independent System Operators). Various forms of this approach have come to predominate in the Northeast, Midwest, Texas, and California. The market designs in these regions provide participants with guaranteed physical access to the transmission system (subject to transmission security constraints). These customers are responsible for the cost of that access (if they choose to participate), and thus are exposed to congestion price risks. This more open access to transmission can increase competitive options for wholesale customers and suppliers as compared to most bilateral markets. The transparency of prices in these markets can increase the efficiency of the trading process for sellers and buyers and can give clear price signals indicating the best place and time to build new generation. However, concerns have been raised about the inability to obtain long-term transmission access at predictable prices in these markets and the impact that this lack of long-term transmission can have on incentives to construct new generation. Some customers have raised concerns about high commodity price levels in these markets.

Observations on Generation Supply in Markets for Electricity

Several options may be used to elicit adequate supply in wholesale markets:

1. One possible, but controversial, way to spur entry is to allow wholesale price spikes to occur when supply is short. The profits realized during these price spikes can provide incentives for generators to invest in new capacity. However, if wholesale customers have not hedged (or cannot hedge) against price spikes, then these spikes can lead to adverse customer reactions. Unfortunately, it can be difficult to distinguish high prices due to the exercise of market power from those due to genuine scarcity. Customers exposed to a price spike often assume that the spike is evidence of market abuse. Past price spikes have caused regulators and various wholesale market operators to adopt price caps in certain markets. Although price caps may limit price spikes and some forms of market manipulation, they can also limit legitimate scarcity pricing and impede incentives to build generation in the face of scarcity. Not all the caps in place may be necessary or set at appropriate levels.

2. "Capacity payments" also can help elicit new supply. Wholesale customers make these payments to suppliers to assure the availability of generation when needed. However, where there are capacity payments in organized wholesale markets, it is difficult for regulators to determine the appropriate level of capacity payments to spur entry without over-taxing market participants and customers. Also, capacity payments may elicit new generation when transmission or other responses to price changes might be more affordable and equally effective. Depending on their format, capacity payments also may discourage entry by paying uneconomical generation to continue running when market conditions otherwise would have led to the closure of that generation.

3. Building appropriate transmission facilities may encourage entry of new generation or more efficient use of existing generation. But, transmission owners may resist building transmission facilities if they also own generation and if the proposed upgrades would increase competition in their sheltered markets. Another challenge with transmission construction is that it is often difficult to assess the beneficiaries of transmission upgrades and, thus, it is difficult to identify who should pay for the upgrades. This challenge may cause uncertainty both for new generators and for transmission owners. There can also be difficulties associated with uncertain revenue recovery due to unpredictable regulatory allowances for rate recovery.

4. Another option for ensuring adequate generation supply is through traditional regulatory mechanisms—regulatory control over electricity generators/suppliers. In this situation, Monopoly utility providers operate under an obligation to plan and secure adequate generation to meet the needs of their customers. Regulators allow the utilities to earn a fair rate of return on their investment, thereby encouraging utility investment. However, this approach is not without risk to the utility as regulators have authority to disallow excessive costs. Furthermore, these traditional methods are imperfect and can in some cases lead to overinvestment, underinvestment, excessive spending and unnecessarily high costs. These methods can distort both investment and consumption decisions. Furthermore, under traditional regulation, ratepayers (rather than investors) may bear the risk of potential investment mistakes.

Observations on Competition in Retail Electric Power Markets

The Task Force examined the implementation of retail competition in seven states in detail: Illinois, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Texas. The implementation of retail competition raises the question whether retail prices are higher or lower than they otherwise would be absent the introduction of this competition.

In most profiled states, retail competition began in the late 1990s. States implemented retail rate caps and distribution utility obligations to serve, which are now just ending, that make it difficult to judge the success or failure of retail competition. Few alternative suppliers currently serve residential customers, although industrial customers have additional choices. To the extent that multiple suppliers serve retail customers, prices have not decreased as expected, and the range of new options and services is limited. Since retail competition began, most distribution utilities in the profiled states have either sold most of their generation assets or transferred them to unregulated affiliates.

One of the main impediments to retail competition has been the lack of entry by alternative suppliers and marketers to serve retail customers. Most states required the distribution utility to offer customers electricity at a regulated price as a backstop or default if the customer did not choose an alternative electricity supplier or the chosen supplier went out of business—this is called "provider of last resort (POLR) service." Many of these states capped the POLR service price for "transitional" multi-year periods that are now just ending. These caps have had the unintended effect of discouraging entry by competitive suppliers. Thus, it has been difficult for the Task Force to determine whether retail prices in the profiled states are higher or lower than they otherwise would be absent the introduction of retail competition. At the same time, there is some evidence that alternative suppliers have offered new retail products including "green" products that are more environmentally friendly

for residential and non-residential customers and customized energy management products for large commercial and industrial customers.

When the rate caps expire, states must decide whether to continue POLR for all customer classes and how to price POLR service for each class. Several states have rate caps that will expire in 2006 and 2007. The Task Force seeks comment on the observations about how POLR prices affect competition in retail electric power markets.

1. If regulators intend for the POLR service to be a proxy for efficient price signals, it must closely approximate a competitive price. The competitive price is based on supply and demand at any given time. If the POLR service price does not closely match the competitive price, it is likely to distort consumption and investment decisions.[2]

2. If POLR prices remain fixed while prices for fuel and wholesale power are rising, customers may experience rate shock when the transition period ends. This rate shock can create public pressure to continue the fixed POLR rates at below-market levels. One regulatory response may be to phase in the price increase gradually, by deferring recovery of part of the supplier's costs. Although this approach reduces rate shock for customers, it is likely to distort retail electricity markets both in the short-term (when costs are deferred) and in the long-term (when the deferred costs are recovered).

3. Some states have different POLR service designs for different customer classes. POLR prices for large commercial and industrial customers have reflected wholesale spot market prices more than have POLR prices for residential customers. This approach generally has led the large customers to switch suppliers more than the small customers have. Also, more suppliers have made efforts to solicit these large customers. Retail pricing that closely tracks wholesale prices provides efficient price signals to consumers. It creates incentives for customers to cut consumption during peak demand periods which, in turn, can reduce the risk that suppliers will exercise market power and can improve system reliability.

4. Some states have used auctions to procure POLR supply. Auctions may allow retail customers to get the benefit of competition in wholesale markets as suppliers compete to supply the necessary load.

5. One reason why retail competition for small customers may be slow to develop is that it is difficult for the consumer to find competitive supplier offers in the first place and to understand the terms and conditions of those offers. It also is unclear whether the effort to find this information is justified by the potential cost savings that can be realized. As and when there are more alternative suppliers, it may result in greater potential savings. But the need for clear and readily available information relating to competitive offers will remain.

Chapter 1—Industry Structure, Legal and Regulatory Background, Industry Trends and Developments

For the majority of the twentieth century, the electric power industry was dominated by regulated monopoly utilities. Beginning in the late 1960s, however, a number of factors contributed to a change in structure of the industry. In the 1970s, vertically-integrated utility companies (investor-owned, municipal, or cooperative) controlled over 95 percent of the electric generation. Typically, a single local utility sold and delivered electricity to retail customers under an exclusive franchise. Now, the electric power industry includes both utility and nonutility entities, including many new companies that produce and market electric energy in the wholesale and retail markets. This section will briefly describe the structural changes in the wholesale and retail electric power industry from the late 1960s until today. It provides a historical overview of the important legislative and regulatory changes that have occurred in the past several decades, as well as the trends seen over this time period that have led to increased competition in the electric power industry.

A. Industry Structure and Regulation

Participants in the electric power sector in the United States include investor-owned, cooperative utilities; Federal, State, and municipal utilities, public utility districts, and irrigation districts; cogenerators; nonutility independent power producers, affiliated power producers, and power marketers that generate, distribute, transmit, or sell electricity at wholesale or retail.

In 2004, there were 3276 regulated retail electric providers supplying electricity to over 136 million customers. Retail electricity sales totaled almost $270 billion in 2004. Retail customers purchased more than 3.5 billion megawatt hours of electricity. Active retail electric providers include electric utilities, Federal agencies, and power marketers selling directly to retail customers. These entities differ greatly in size, ownership, regulation, customer load characteristics, and regional conditions. These differences are reflected in policy and regulation. Tables 1–1 to 1–5 provide selected statistics for the electric power sector by type of ownership in 2004 based on information reported to the United States Department of Energy (DOE), Energy Information Administration (EIA).

1. Investor-Owned Utilities

Investor-owned utility operating companies (IOU) are private, shareholder-owned companies ranging in size from small local operations serving a customer base of a few thousand to giant multi-state holding companies serving millions of customers. Most IOUs are or are part of a vertically-integrated system that owns or controls generation, transmission, and distribution facilities/resources required to meet the needs of the retail customers in their assigned service areas. Over the past decade, under State retail competition plans many IOUs have undergone significant restructuring and reorganization. As a result, many IOUs in these states no longer own generation, but must procure the electricity they need for their retail customers from the wholesale markets.

IOUs continue to be a major presence in the electric power industry. In 2004 there were 220 IOUs serving approximately 94 million retail distribution customers, accounting for 68.9 percent of all retail customers and 60.8 percent of retail electricity sales. IOUs directly own about 39.6 percent of total electric generating capacity and generated 44.8 percent of total generation in 2004 to meet their retail and wholesale sales.

IOUs provide service to retail customers under state regulation of territories, finances, operations, services, and rates. States generally regulate bundled retail electric rates of IOUs under traditional cost of service rate methods. In states that have restructured their IOUs and IOU regulation, distribution services continue to be provided under monopoly cost-of-service rates, but retail customers are free to shop for their electricity supplier. IOUs operate retail electric systems in every state but Nebraska.

Under the Federal Power Act, the Federal Energy Regulatory Commission (FERC) regulates the wholesale

[2] Theoretically, competitive prices provide efficient incentives for all resource allocation (supply and consumption) decisions, and thus encourage efficient allocation of resources, including use of existing capacity, new investment by incumbent suppliers, entry by new suppliers, consumption, new investments by consumers.

electricity transactions (sales for resale) and unbundled transmission activities of IOUs (except in Alaska, Hawaii, and the ERCOT region of Texas).

2. Public Power Systems

The more than 2,000 public power systems include local, municipal, State, and regional public power systems, ranging in size from tiny municipal distribution companies to large systems like the Power Authority of the State of New York. Publicly owned systems operate in every State but Hawaii. About 1,840 of these public power systems are cities and municipal governments that own and control the day to day operation of their electric utilities.[3] Public power systems served over 19.6 million retail customers in 2004, or about 14.4 percent of all customers. Together, public power systems generated 10.3 percent of the Nation's power in 2004, but accounted for 16.7 percent of total electricity sales, reflecting the fact that many public systems are distribution-only utilities and must purchase their power supplies from others. Public power systems own about 9.6 percent of total generating capacity. Public power systems are overwhelmingly transmission- and wholesale-market-dependent entities. According to the American Public Power Association, about 70 percent of public power retail sales were met from wholesale power purchases, including purchases from municipal joint action agencies by the agencies' member systems. Only about 30 percent of the electricity for public power retail sales came from power generated by a utility to serve its own native load.

Regulation of public power systems varies among States. In some States, the public utility commission exercises jurisdiction in whole or part over operations and rates of publicly owned systems. In most States, public power systems are regulated by local governments or are self-regulated. Municipal systems are usually governed by the local city council or an independent board elected by voters or appointed by city officials. Other public power systems are operated by public utility districts, irrigation districts, or special State authorities.

On the whole, state retail deregulation/restructuring initiatives left untouched retail services in public power systems. However, some states allow public systems to adopt retail choice alternatives voluntarily.

[3] American Public Power Association.

3. Electric Cooperatives

Electric cooperatives are privately-owned non-profit electric systems owned and controlled by the members they serve. Members vote directly for the board of directors. In 2004, about 884 electric distribution cooperatives provided retail electric service to almost 16.6 million customers. In addition to these 884 distribution cooperatives, about 65 generation and transmission cooperatives (G&Ts) own and operate generation and transmission and secure wholesale power and transmission services from others to meet the needs of their distribution cooperative members and other rural native load customers. G&T systems and their members engage in joint planning and power supply operations to achieve some of the savings available under a vertically integrated utility structure for the benefit of their customers. Electric cooperatives operate in 47 States. Most electric cooperatives were originally organized and financed under the Federal rural electrification program and generally operate in primarily rural areas. Electric cooperatives provide electric service in all or parts of 83 percent of the counties in the United States.[4]

In 2004, electric cooperatives sold more than 345 million megawatt hours of electricity, served 12.2 percent of retail customers and accounted for 9.7 percent of electricity sold at retail. Nationwide electric cooperatives generated about 4.7 percent of total electric generation. Electric cooperatives own approximately 4.2 percent of generating capacity.

While some cooperative systems generate their own power and make sales of power in excess of their own members needs, most electric cooperatives are net buyers of power. Cooperatives nationwide generate only about half of the power needed to meet the needs of retail customers. Cooperatives secured approximately half of their power needs from other wholesale suppliers in 2004. Although cooperatives own and operate transmission facilities, almost all cooperatives are dependent on transmission service by others to deliver power to their wholesale and/or retail customers.

Regulatory jurisdiction over cooperatives varies among the States, with some States exercising considerable authority over rates and operations, while other States exempt cooperatives from State regulation. In addition to State regulation, cooperatives with outstanding loans under the Rural Electrification Act of 1936 also are subject to financial and operating requirements of the U.S. Department of Agriculture, which must approve borrower long-term wholesale power contracts, operating agreements, and transfer of assets.

Cooperatives that have repaid their RUS loans and that engage in wholesale sales or provide transmission services to others have been regulated by FERC as public utilities. EPACT 05 provided FERC additional discretionary jurisdiction over the transmission services provided by larger electric cooperatives.

[4] National Rural Electric Cooperative Association.

4. Federal Power Systems

Federally owned or chartered power systems include the Federal power marketing administrations, the Tennessee Valley Authority (TVA), and facilities operated by the U.S. Army Corps of Engineers, the Bureau of Reclamation, the Bureau of Indian Affairs, and the International Water and Boundary Commission. Wholesale power from federal facilities (primarily hydroelectric dams) is marketed through four Federal power marketing agencies: Bonneville Power Administration, Western Area Power Administration, Southeastern Power Administration, and Southwestern Power Administration. The PMAs own and control transmission to deliver power to wholesale and direct service customers. PMAs may also purchase power from others to meet contractual needs and sell surplus power as available to wholesale markets. Existing legislation requires that the PMAs and TVA give preference in the sale of their generation output to public power systems and to rural electric cooperatives.

Together, Federal systems have an installed generating capacity of approximately 71.4 gigawatts (GW) or about 6.9 percent of total capacity. Federal systems provided 7.2 percent of the Nation's power generation in 2004. Although most Federal power sales are at the wholesale level, they do engage in some end-use sales of generation. Federal systems nationwide directly served 39,845 retail customers in 2004, mostly industrial customers and about 1.2 percent of retail load.

5. Nonutilities

Nonutilities are entities that generate or sell electric power, but that do not operate retail distribution franchises. They include wholesale non-utility affiliates of regulated utilities, merchant generators, and PURPA qualifying facilities (industrial and commercial combined heat and power producers).

Power marketers that buy and sell power at wholesale or retail, but that do not own generation, transmission, or distribution facilities are also included in this category.

Non-QF (qualifying facilities) wholesale generators engaged in wholesale power sales in interstate commerce are subject to FERC regulation under the FPA. Power marketers that sell at wholesale are also subject to FERC oversight. Power marketers that sell only at retail are subject to State jurisdiction and oversight in the States in which they operate.

As retail electric providers, 152 power marketers reporting to EIA served about 6 million retail customers or about 4.4 percent of all retail customers and reported revenues of over $28 billion, on about 11.6 percent of retail electricity sold.

Nonutilities are a growing presence in the industry. In 2004 nonutilities owned or controlled approximately 408,699 megawatts or 39.6 percent of all electric generation capacity. In 1993 they owned only about 8 percent of generation. It is estimated that about half of nonutility generation capacity is owned by non-utility affiliates or subsidiaries of holding companies that also own a regulated electric utility.[5] Nonutilities accounted for about 33 percent of generation in 2004. Tables 1–1 through 1–5 summarize this information.

TABLE 1–1.—U.S. RETAIL ELECTRIC PROVIDERS 2004

Ownership	Number of electricity providers	Percent of total	Number of customers			Percent of total
			Full service	Delivery only	Total	
Publicly-owned utilities	2,011	61.4	19,628,710	6,125	19,634,835	14.4
Investor-owned utilities	220	6.7	90,970,557	2,879,114	93,849,671	68.9
Cooperatives	884	27	16,564,780	12,170	16,576,950	12.2
Federal Power Agencies	9	0.3	39,843	2	39,845	0.03
Power Marketers	152	4.6	6,017,611	0	6,017,611	4.4
Total	3,276	100	133,221,501	2,897,411	136,118,912	100.0

Source: American Public Power Association, 2006–07 Annual Directory & Statistical Report, from Energy Information Administration Form EIA–861, 2004 data.

Notes: Delivery-only customers represent the number of customers in a utility's service territory that purchase energy from an alternative supplier.

Ninety-eight percent of all power marketers' full-service customers are in Texas. Investor-owned utilities in the ERCOT region of Texas no longer report ultimate customers. Their customers are counted as full-service customers of retail electric providers (REPs), which are classified by the Energy Information Administration as power marketers. The REPs bill customers for full service and then pay the IOU for the delivery portion. REPs include the regulated distribution utility's successor affiliated retail electric provider that assumed service for all retail customers that did not select an alternative provider. Does not include U.S. territories.

TABLE 1–2.—U.S. RETAIL ELECTRIC SALES 2004

[Sales to ultimate consumers in thousands of MWhs]

	Full service	Energy only	Total	Percent
Publicly-owned utilities	525,596	65,466	591,062	16.7
Investor-owned utilities	2,148,351	3,359	2,151,720	60.8
Cooperatives	344,267	890	345,157	9.7
Federal Power Agencies	41,169	352	41,521	1.2
Power Marketers	207,696	203,202	410,898	11.6
Total	3,267,089	273,269	3,540,358	100.0

Source: American Public Power Association, 2006–07 Annual Directory & Statistical Report, from Energy Information Administration Form EIA–861, 2004 data.

Notes: Energy-only revenue represents revenue from a utility's sales of energy outside of its own service territory. Total revenue shows the amount of revenue each sector receives from both bundled (full service) and unbundled (retail choice) sales to ultimate customers. Eighty-five percent of the energy-only revenue attributed to publicly owned utilities represents revenue from energy procured for California's investor-owned utilities by the California Department of Water Resources Electric Fund. Ninety-eight percent of power marketers' full-service sales and revenues occur in Texas. Investor-owned utilities in the ERCOT region of Texas no longer report sales or revenue to ultimate consumers on EIA 861.

TABLE 1–3.—U.S. RETAIL ELECTRIC PROVIDERS 2004, REVENUES FROM SALES TO ULTIMATE CONSUMERS

	Sales in $ millions			Total
	Full service	Energy only	Delivery	
Publicly-owned utilities	$37,734	$5,787	$27	$43,548
Investor-owned utilities	162,691	128	8,746	171,565
Cooperatives	25,448	37	7	25,492
Federal Power Agencies	1,211	13	1	1,224
Power Marketers	17,163	11,000	0	28,162
Total	244,247	16,965	8,761	269,992

Source: American Public Power Association, 2006–07 Annual Directory & Statistical Report, from Energy Information Administration Form EIA–861, 2004 data.

[5] Edison Electic Institute.

TABLE 1–4.—U.S. ELECTRICITY GENERATION 2004

Electricity Generation 2004	Generation (thousands of MWhs)	% of Total
Publicly-owned utilities	397,110	10.3
Investor-owned utilities	1,734,733	44.8
Cooperatives	181,899	4.7
Federal Power Agencies	278,130	7.2
Power Marketers	42,599	1.1
Non-utilities	1,235,298	31.9
Total	3,869,769	100.0

Source: American Public Power Association, 2006–07 Annual Directory & Statistical Report, from Energy Information Administration Form EIA–861 and EIA–906/920 for generation. Data are for 2004, adjusted for joint ownership.

TABLE 1–5.—U.S. ELECTRIC GENERATION CAPACITY 2004

Ownership	Nameplate capacity (in MWs)	% of Total
Publicly-owned utilities	98,686	9.6
Investor-owned utilities	408,699	39.6
Cooperatives	43,225	4.2
Federal Power Agencies	71,394	6.9
Non-utilities	409,689	39.7
Total	1,031,692	100.0

Source: American Public Power Association, 2006–07 Annual Directory & Statistical Report, from Energy Information Administration Form EIA–860 for capacity, including adjustments for joint ownership. Data are for 2004.

B. Growth of the Electric Power Industry

1. Electric Power Characterized as a Natural Monopoly

The early electric power industry has been characterized as a natural monopoly.[6] This idea was, in part engendered by the work of Thomas Edison's protégé, Samuel Insull who acquired monopoly ownership over all central station electricity production in Chicago. Insull went on to publicly characterize electricity production as a "natural monopoly" and promote the idea of the public granting monopoly franchises to integrated generation/transmission utilities whose profits would be monitored and regulated.[7]

Over the years, experts have debated whether or not Samuel Insull was right. But he made a compelling argument, and the industry structure developed as if electricity was a natural monopoly. States granted monopoly franchises to vertically-integrated utilities. These franchises controlled the generation, transmission, and distribution of electricity. Public utility commissions were established to regulate the retail prices the electric utilities could charge.

Electric rates were set to cover the companies' reasonable costs plus a fair return on their shareholders' investment. Retail customers were charged a price based on the average system cost of production (including the investors' fair return on investment). In some circumstances, the public chose to establish publicly owned municipal utilities and cooperatives.

Most utilities began by building their own generation plants and transmission systems, primarily due to the cost and technological limitations on the distance over which electricity could be transmitted.[8] In the beginning, the federal role in the electric power industry was limited. Under the Federal Power Act of 1935 (FPA), the Federal Government regulated the price of IOUs' interstate sales of wholesale power (*e.g.*, sales of power between utility systems) and the price and terms of use of the interstate transmission system, which was used in these interstate sales of wholesale power. When this act was passed, interstate sales of electricity were limited. Over time utilities became more interconnected via high-voltage transmission networks that were constructed primarily for purposes of reliability but facilitated more robust interstate trade. However, this trade was slow to develop. Entry into these markets by nonutility generators was limited.

Until the late 1960s, this system appeared to work reasonably well. Utilities were able to meet increasing demand for electricity at decreasing prices, due to advances in generation technology that increased economies of scale and decreased costs.[9]

2. The Energy Crisis, Shift from Utility-Dominated Generation: Effects of PURPA on the Expansion of Nonutility Generation and Wholesale Power Markets

Several changes during the 1970s created a shift to a more competitive marketplace for wholesale power. Mainly, the large vertically integrated utility model became less profitable. Additional economies of scale were no

[6] Vernon Smith, *Regulatory Reform in the Electric Power Industry* (1995) (working paper, on file with the Department of Economics, University of Arizona).

[7] *See* Richard F. Hirsch, *Power Loss: The Origins of Deregulation and Restructuring in the American Electric Utility System*, MIT PRESS (1999); SHARON BEDER, POWER PLAY: THE FIGHT TO CONTROL THE WORLD'S ELECTRICITY, W.W. Norton (2003).

[8] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21,540, FERC Stats. & Regs. ¶ 31,036, 31,639 (1996), *order on reh'g*, Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 (1997); *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC*, 225 F..3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC*, 535 U.S. 1 (2002)[hereinafter Order No. 888].

[9] *See* U.S. Dep't of Energy, Energy Info. Admin., *The Changing Structure of the Electric Power Industry: 1970–1991*, at 57 (March 1993), *available at http://tonto.eia.doe.gov/FTPROOT/electricity/0562.pdf* [hereinafter EIA 1970–1991].

longer being achieved; large generating units needed greater maintenance and experienced longer downtimes. Thus a bigger generation facility was no longer considered the most cost-efficient format.[10] Periods of rapid inflation and higher interest rates increased the costs of operating large, baseload generation plants,[11] and a more elastic-than-expected demand or load led to decreasing profits for large utilities.[12] Significant improvements in technology allowed smaller generation units to be constructed at lower costs.[13] As a result, lower cost generation sources could reach systems where customers were captive to high cost generators.[14] In addition, these technological advances made it more feasible for generation plants hundreds of miles apart to compete with each other[15] and for nonutility generators to enter the market; physically isolated systems became a thing of the past. Criticism of the cost-based regime also increased during this period with suggestions for alternate approaches to regulation and changes in industry structure. Critics of cost-based regulation argued that the industry structure provided limited opportunities for more efficient suppliers to expand and placed insufficient pressure on less efficient suppliers to improve their performance.[16]

Other events also influenced these changes. First, a major power blackout in the Northeastern U.S. in 1965 raised concerns about the reliability of weakly coordinated transmission arrangements among utilities.[17] Second, from October of 1973 to March of 1974, the Arab oil-producing nations imposed a ban on oil exports to the United States. The Arab oil embargo resulted in significantly higher oil prices through the 1970s, adding to inflation.[18]

Congress enacted the Public Utility Regulatory Policy Act of 1978 (PURPA)[19] as a response to the energy crises of the 1970s. A major goal of PURPA was to promote energy conservation and alternative energy technologies and to reduce oil and gas consumption through use of technology improvements and regulatory reforms. PURPA further created an opportunity for nonutilities to emerge as important electric power producers.[20] PURPA required electric utilities to interconnect with and purchase power from certain cogeneration facilities and small power producers meeting the criteria for a qualifying facility (QF). PURPA provided that the QF be paid at the utility's incremental cost of production, which FERC, in a departure from cost-based regulation, defined as the utility's avoided cost of power.[21] Box 1–1 discusses how the implementation of PURPA encouraged nonutilities generation suppliers by guaranteeing a market for the electricity they produced.[22] PURPA changed prevailing views that vertically integrated public utilities were the only sources of reliable power[23] and showed that nonutilities could build and operate generation facilities effectively and without disrupting the reliability of transmission systems.[24]

Box 1–1: State Implementation of PURPA

PURPA required states to define the utility's own avoided cost of production. This cost was used to set the price for purchasing a QF's output. Several states, including California, New York, Massachusetts, Maine, and New Jersey, enacted regulations that required utilities in these states to sign long-term contracts with QFs at prices that ended up being much higher than the utilities' actual marginal savings of not producing the power itself (avoided costs). The result of these regulations was that many utilities entered into long-term purchase contracts that ultimately proved uneconomic, and thus distorted the development of competitive wholesale markets. The costs of such contracts were subsequently reflected in retail rates as cost pass-throughs. The experience added to the dissatisfaction with retail utility service and regulation. *See* Joskow, Deregulation at 18.

PURPA was largely responsible for creating an independent competitive generation sector.[25] The response to PURPA was dramatic.

Before passage of PURPA, nonutility generation was primarily confined to commercial and industrial facilities where the owners generated heat and power for their own use where it was advantageous to do so. Although nonutility generation facilities were located across the country, development was heavily concentrated geographically with about two thirds located in California and Texas. Nonutility generation development advanced in States where avoided costs were high enough to attract interest and where natural gas supplies were available. Federal law largely precluded electric utilities from constructing new natural gas plants during the decade following enactment of PURPA, but nonutility generators faced no such restriction.

Annual QF filings at FERC rose from 29 applications covering 704 megawatts in 1980 to 979 in 1986 totaling over 18,000 megawatts. From 1980 to 1990 FERC received a total of 4610 QF applications for a total of 86,612 megawatts of generating capacity.[26]

Following PURPA, there were economic and technological changes in the transmission and generation sectors that further contributed to an influx of new entrants in wholesale generation markets who could sell electric power profitably with smaller scale technology than many utilities.[27] In addition to QFs, other non-utility power producers that could not meet QF criteria also began to build new capacity to compete in bulk power markets to meet the needs of load serving entities.[28] These entities were known as merchant generators or

[10] *See* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,640–41.

[11] *Id.* at 31,639.

[12] Consumers reacted to electricity price increases, and growth in demand fell sharply below projections. See U.S. Congress, Office of Technology Assessment, *Electric Power Wheeling and Dealing: Technological Considerations for Increasing Competition* 39, OTA–E–409 (Washington, DC: U.S. Government Printing Office, May 1989) [hereinafter U.S. Congress, Office of Technology Assessment].

[13] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,641.

[14] *Id.*

[15] Severin Borenstein & James Bushnell, *Electricity Restructuring: Deregulation or Reregulation?*, 23 REGULATION 46, 47 (2000).

[16] Paul L. Joskow, *The Difficult Transition to Competitive Electricity Markets in the U.S.* 6–7 (AEI-Brookings Joint Ctr. for Regulatory Studies, Working Paper No. 03–13, 2003), available at *http://www.aei-brookings.org/admin/authorpdfs/page.php?id=271* [hereinafter Joskow, Difficult Transition].

[17] The response to the blackout included the formation of regional reliability councils and the North American Electric Reliability Council (NERC) to promote the reliability and adequacy of bulk power supply. U.S. Dept. of Energy, Energy Info. Admin., *The Changing Structure of the Electric Power Industry 2000: An Update*, at 109 (October 2000), *available at http://www.eia.doe.gov/cneaf/electricity/chg_stru_update/update2000.pdf* [hereinafter EIA 2000 Update].

[18] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,639, n.9.

[19] Pub. L. No. 95–617, 92 Stat. 3117 (codified in U.S.C. sections 15, 16, 26, 30, 42, and 43).

[20] *See* EIA 1979–1991 at 22.

[21] PURPA specifically set forth criteria on who and what could qualify as QFs (mainly technological and size criteria). Two types of QFs were recognized: cogenerators, which sequentially produce electric energy and another form of energy (such as heat or steam) using the same fuel source, and small power producers, which use waste, renewable energy, or geothermal energy as a primary energy source. These nonutility generators are "qualified" under PURPA, in that they meet certain ownership, operating, and efficiency criteria. *See* EIA 1970–1991 at 5.

[22] *Id.* at 24.

[23] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,642.

[24] Joskow, Deregulation at 19.

[25] *Id.* at 17.

[26] CONG. RESEARCH SERV., COMM. ON ENERGY AND COMMERCE, 102D CONG., ELECTRICITY A NEW REGULATORY ORDER? 92 (Comm. Print 1991).

[27] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,644.

[28] Joskow, Deregulation at 19.

Independent Power Producers (IPPs).[29] By 1991, nonutilities (QFs and IPPs) owned about six percent of the electric power generating capacity and produced about nine percent of the total electricity generated in the United States,[30] and nonutility generating facilities accounted for one-fifth of all additions to generating capacity in the 1980s.[31]

FERC allowed many new utility and non-utility generators to sell electric power supply at wholesale market, rather than regulated rates.[32]

In 1988 FERC solicited public comments on three notices of proposed rulemaking (NOPRs) concerning the pricing of electricity in wholesale transactions: (1) Competitive bidding for new power requirements; (2) treatment of independent power producers; and (3) determination of avoided costs under PURPA.[33] These proposals would have moved towards greater use of a "non-traditional" market-based pricing approach in ratemaking as opposed to the agency's "traditional" cost-based approach. These FERC NOPRs proved controversial, and efforts to establish formal rules or policies adopting them were abandoned as commission membership changed. However, with the support of several Commission members and key FERC staff, the overall policy goals were still pursued on a case-by-case basis.

FERC laid the foundation for greater reliance on market-based mechanisms for Federal oversight of wholesale electricity prices on a case-by-case basis. Between 1983 and 1991, FERC considered more than 31 cases concerning approval of non-traditional rates involving independent power producers, power brokers/marketers, utility-affiliated power producers, and traditional franchised utilities. FERC approved all but four of these applications.[34] FERC staff wrote: "The Commission has accepted non-traditional rates where the seller or its affiliate lacked or had mitigated market power over the buyer, and there was no potential abuse of affiliate relationships which might directly or indirectly influence the market price and no potential abuse of reciprocal dealing between the buyer and seller."[35]

In its process of determining whether the seller could exercise market power over the buyer, the FERC considered whether the seller or its affiliates owned or controlled transmission that might prevent the buyer from accessing other sources of power. A seller with transmission control might be able to force the buyer to purchase from the seller, thus limiting competition and significantly influencing the price the buyer would have to pay. The FPA does not allow rates to reflect an exercise of such market power.[36]

The potential for control of transmission to create market power, and the challenge that such control created in moving to greater reliance on market-based rates, was recognized. "Because the Commission's very premise of finding market-based rates just and reasonable under the FPA is the absence or mitigation of market power, or the existence of a workably competitive market, and because the FPA mandates that the Commission prevent undue preference and undue discrimination, we believe the Commission is legally required to prevent abuse of transmission control and affiliate or any other relationships which may influence the price charged a ratepayer."[37]

Despite these developments, two limitations at that time were perceived to discourage development of competitive wholesale generation markets. First, IPPs and other generators of cheaper electric power could not easily gain access to the transmission grid to reach potential customers.[38] Under the FPA as then written, FERC authority to order transmission access was limited. FERC would subsequently find that "intervening" transmitting utilities would deny or limit transmission service to competing suppliers of generation service in order to protect demand for wholesale power supplied by their own generation facilities.[39] Second, unlike QFs that enjoyed a statutory exemption under PURPA, IPPs were subject to the Public Utility Holding Company Act of 1935 (PUHCA), which discouraged non-utilities from entering the generation business.[40]

3. Energy Policy Act of 1992 and FERC Order Nos. 888 and 889

Congress enacted the Energy Policy Act of 1992 (EPACT 92)[41] and amended the FPA and PUHCA to address two major limitations on the development of a competitive generation sector. First, EPACT 92 created a new category of power producers, called exempt wholesale generators (EWGs).[42] A EWG was an entity that directly, or indirectly through one or more affiliates, owned or operated facilities dedicated exclusively to producing electric power for sale in wholesale markets.[43] EWGs were exempted from PUHCA regulations, thus eliminating a major barrier for utility-affiliated and nonaffiliated power producers that wanted to compete to build new non-rate-based power plants.[44] EPACT 92 also expanded

[29] Order No. No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,642.

[30] EIA 1970–1991 at vii.

[31] *Id.* at 27.

[32] *See* Order No. No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,643.

[33] *See Regulations Governing Bidding Programs*, Notice of Proposed Rulemaking, 53 FR 9,324 (March 22, 1988), FERC Stats. & Regs. ¶ 32,455 (1988) (modified by 53 FR 16,882 (May 12, 1988)). This proposal would have adopted competitive bidding into the process of acquiring and pricing power from QFs and would have largely abandoned the prior avoided cost purchase rates.

See Regulations Governing Independent Power Producers, Notice of Proposed Rulemaking, 53 FR 9,327 (March 22, 1988), FERC Stats. & Regs. ¶ 32,456 (1988) (modified by 53 FR 16882 (May 12, 1988)). This proposal would have relaxed rate review and regulation of wholesale sales by independent power producers, and other public utilities that did not operate retail distribution systems.

See Administrative Determination of Full Avoided Costs, Sales of Power to Qualifying Facilities, and Interconnection Facilities, Notice of Proposed Rulemaking, 53 FR 9,331 (March 22 1988), FERC Stats. & Regs. ¶ 32,457 (1988) (modified by 53 FR 16882 (May 12, 1988)). This proposal would have revised the elements used in making administrative determinations of avoided costs for rates for utilities' PURPA QF purchases.

[34] *Hearing on National Energy Security Act of 1991 (Title XV) Before the S. Comm. on Energy and Natural Resources*, 102d Cong. 97 (1991) (Statement of Cynthia A. Marlette, Associate General Counsel for Hydroelectric and Electric, Federal Energy Regulatory Commission).

[35] *Id.* at 100.

[36] *Id.*

[37] *Id.* at 102.

[38] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,642–43.

[39] Joskow, Deregulation at 21. *See* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,644.

[40] Joskow, Deregulation at 23. Under PUHCA, those public utility holding companies that did not qualify for an exemption were subject to extensive regulation of their financial activities and operations. These regulations limited the availability of exemptions and the growth and expansion of electric utility companies. PUHCA restricted utility operations to a single integrated public-utility system and prevented utility holding companies from owning other businesses that were not reasonably incidental or functionally related to the utility business. Further, registered holding companies had to obtain Securities and Exchange Commission (SEC) approval for the sale and issuance of securities, for transactions among their affiliates and subsidiaries and for services, sales, and construction contracts, and they were required to file extensive financial reports with the SEC.

Although PUHCA provided for limited exemptions, it was long criticized as discouraging new investment in the electric utility industry by non-utility entities. Mergers and acquisitions of utilities subject to PUHCA have largely been by other domestic and foreign utilities. Investment by entities outside the industry has been limited, as these entities avoid the extensive regulations imposed by PUHCA.

[41] Pub. L. No. 102–486, 106 Stat. 2776 (1992), codified at, among other places, 15 U.S.C. 79z–5a and 16 U.S.C. 796(22–25), 824j–l.

[42] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,645.

[43] Joskow, Deregulation at 24.

[44] *See EIA 1970–1991* at 30; Joskow, Deregulation at 23.

FERC's authority to order transmitting utilities to provide transmission service for wholesale power transmission to any electric utility, Federal power marketing agency, or any person generating electric energy in wholesale electricity markets.[45] The amendment provided for orders to be issued on a case by case basis following a hearing if certain protective conditions were met. Though FERC implemented this new authority, it ultimately concluded that procedural limitations limited its reach and a broader remedy was needed to effectively eliminate pervasive undue discrimination in the provision of transmission service.

Thus, in April 1996, FERC adopted Order No. 888 in exercise of its statutory obligation under the FPA to remedy undue transmission discrimination to ensure that transmission owners do not use their transmission facility monopoly to unduly discriminate against IPPs and other sellers of electric power in wholesale markets. In Order No. 888, the FERC found that undue discrimination and anticompetitive practices existed in the provision of electric transmission service by public utilities in interstate commerce, and determined that non-discriminatory open access transmission service was one of the most critical components of a successful transition to competitive wholesale electricity markets. Accordingly, FERC required all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to file open access transmission tariffs (OATTs) containing certain non-price terms and conditions and to "functionally unbundle" wholesale power services from transmission services.[46] To functionally unbundle, a public utility was required to: (1) Take wholesale transmission services under the same tariff of general applicability as it offered its customers; (2) state separate rates for wholesale generation, transmission and ancillary services; and (3) rely on the same electronic information network that its transmission customers rely on to obtain information about the utility's transmission system.[47]

Concurrent with the issuance of Order No. 888, FERC issued Order No. 889[48] that imposed standards of conduct governing communications between the utility's transmission and wholesale power functions, to prevent the utility from giving its power marketing arm preferential access to transmission information. Order No. 889 requires each public utility that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce to create or participate in an Open Access Sametime Information System, to provide information regarding available transmission capacity, prices, and other information that will enable transmission service customers to obtain open access non-discriminatory transmission service.[49]

FERC, through Order No. 888, also encouraged grid regionalization through the formation of Independent Systems Operator (ISOs). Participating utilities would voluntarily transfer operating control of their transmission facilities to the ISO to ensure independent operation of the transmission grid.[50] The ISO also could achieve coordination, reliability, and efficiency benefits by having regional control of the grid.[51] Participation in an ISO remained voluntary, however, and it only occurred in some areas of the country. It was not implemented in other areas.[52] Together, Order Nos. 888 and 889 serve as the primary federal foundation for providing transmission service and information about the availability of transmission service.[53]

4. Restructuring Initiatives in Retail Markets: State-Authorized Retail Electricity Competition

Beginning in the early 1990s, several states with high electricity prices began to explore opening retail electric service to competition. With retail competition, customers could choose their electric supplier, but the delivery of electricity would still be done by the local distribution utility.

Substantial rate disparity existed among and between utilities in different states. For example, customers in New York paid more than two and one-half times the rates paid by customers in Kentucky in 1998. Rates in California were well over twice the rates in Washington.[54] Some of this disparity in price from state to state can be attributed to different natural resource endowments across regions—most important the hydroelectric opportunities in the Northwest and some states such as Kentucky and Wyoming with abundant coal reserves—and the resulting diverse costs of fuel used for generation by utilities. Another reason for the price disparity may be that some states required utilities to enter into PURPA contracts that subsequently resulted in prices higher than the cost to acquire power in the wholesale market.[55] Utilities' QF contract costs were included as part of the bundled service provided to retail customers; ultimately the cost of these high-cost PURPA contracts was reflected in the regulated retail prices.[56] Additionally, utilities in some states invested heavily in large, new nuclear power plants, and coal plants, which turned out to be more expensive than anticipated, adding to the retail rate shock.

Not only were there large disparities in utility rates among states, but many industrial customers contended that they subsidized lower rates for residential customers. For example, a survey by the Electricity Consumers Resource Council in 1986 contended that industrial electricity consumers paid more than $2.5 billion annually in subsidies to other electricity customers (*e.g.*, commercial and residential customers). By allowing industrial customers to choose a new supplier, it was presumed that these subsidies could be avoided and industrial customer electricity prices would decrease.[57]

This rate disparity provided an impetus for states to initiate their restructuring efforts; thus it is not surprising that many of the states that led the restructuring movement were those with higher prices.[58] As of 2004 the disparity in retail prices among the states persisted, as illustrated in Figure 1–1, below.

[45] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,645.

[46] *Id.* at ¶ 31,654.

[47] *Id.* Order No. 888 also clarified FERC's interpretation of the Federal/state jurisdictional boundaries over transmission and local distribution. While it reaffirmed that FERC has exclusive jurisdiction over the rates, terms, and conditions of unbundled retail transmission in interstate commerce by public utilities, it nevertheless recognized the legitimate concerns of state regulatory authorities for the development of competition within their states. FERC therefore declined to extend its unbundling requirement to the transmission component of bundled retail sales and reserved judgment on whether its jurisdiction extends to such transactions. The United States Supreme Court affirmed this element of Order No. 888. *New York* v. *FERC*, 535 U.S. 1 (2002).

[48] *Open Access Same-Time Information System (Formerly Real-Time Information Networks) and Standards of Conduct*, Order No. 889, 61 FR 21,737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 at 31,583 (1996), *order on reh'g*, Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 (1997), *order on reh'g*, Order No. 889–B, 81 FERC ¶ 61,253 (1997).

[49] Joskow, Deregulation at 29.

[50] EIA 2000 Update at 66.

[51] *Id.* at 66, 68, 80.

[52] *Id.* at 67.

[53] Joskow, Deregulation at 27–28.

[54] EIA 2000 Update at ix.

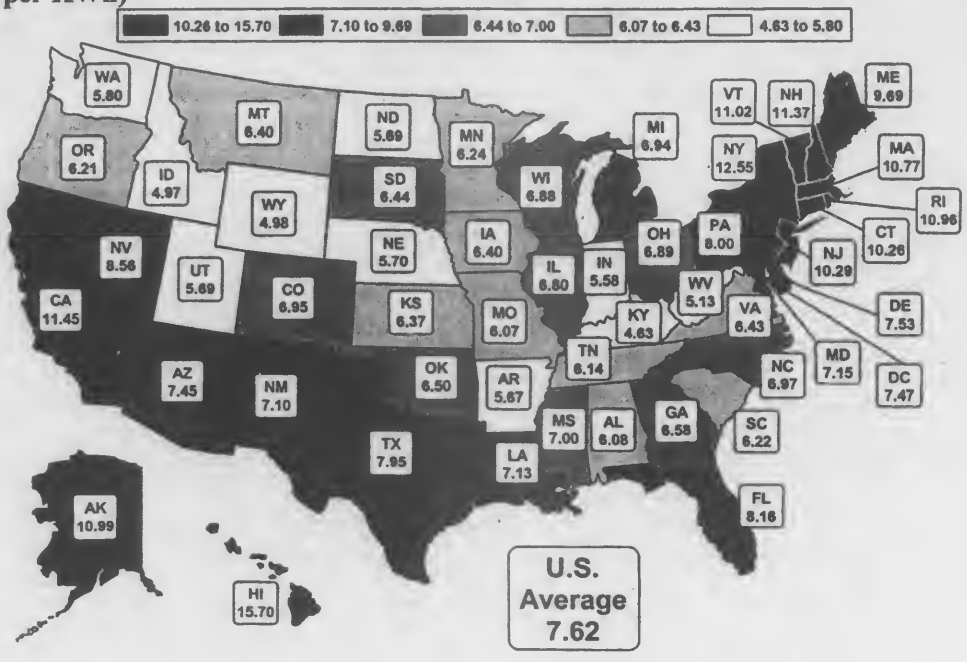
[55] *See* discussion *infra*, Box 1–1.

[56] Joskow, *Deregulation* at 19.

[57] Electricity Consumers Resource Council, Profiles in Electricity Issues: Cost-of-Service Survey (Mar. 1986).

[58] *EIA 2000 Update* at 43.

Figure 1-1: U.S. Electric Power Industry, Average Retail Price of Electricity by State, 2004 (cents per KWh)



Source: EIA, Electric Power Annual 2004, Figure 7.4

Not all state commissions adopted retail competition plans, although most of them considered the merits and implications of competition, deregulation, and industry restructuring. States such as California and those in New England and the mid-Atlantic region, with high electricity rates, were among the most aggressive in adopting retail competition in the hope of making lower rates available to their retail customers. As of July 2000, 24 states and the District of Columbia had enacted legislation or passed regulatory orders to restructure their electric power industries. Two states had legislation or regulatory orders pending, while 16 states had ongoing legislative or regulatory investigations. There were only eight states where no restructuring activities had taken place.[59] Since 2000, however, no additional states have announced plans to implement retail competition programs, and several states that had introduced such programs have delayed, scaled back, or cancelled their programs entirely (see Figure 1–2 below).[60] The California energy crisis is widely-perceived to have halted interest by states in restructuring retail markets. These issues are further discussed in Chapter IV, Retail Competition.

[59] *Id.* at 81–82.

[60] Paul L. Joskow, *Markets for Power in the United States: An Interim Assessment*, ENERGY J. 2 (2006) [hereinafter Joskow, Interim Assessment].

Figure 1-2: Status of State Electric Industry Restructuring Activity, 2003

Source: EIA, available at http://www.eia.doe.gov/cneaf/electricity/chg_str/restructure.pdf

5. Development of Regional Transmission Organizations and Regional Wholesale Markets

Even after issuance of Order Nos. 888 and 889, FERC continued to receive complaints about transmission owners discriminating against independent generating companies. Transmission customers remained concerned that electric utilities' implementation of functional unbundling did not produce complete separation between operating the transmission system and marketing and selling electric power in wholesale markets. Also, there were concerns that Order No. 888 changes made some discriminatory behavior in transmission access more subtle and difficult to identify and document.

The electric industry continued to transform since FERC issued Order Nos. 888 and 889, in response to competitive pressures and state retail restructuring initiatives. Utilities today purchase more wholesale power to meet their load than in the past and are expanding reliance on availability of other utility transmission facilities for delivery of power. Retail competition increased significantly in the years following adoption of Order No. 888. These state initiatives brought about the divestiture of generation plants by traditional electric utilities. In addition, this period saw a number of mergers among traditional electric utilities and among electric utilities and gas pipeline companies, large increases in the number of power marketers and independent generation facility developers entering the marketplace, and the establishment of ISOs as managers of large parts of the transmission system. Trade in wholesale power markets has increased significantly and the Nation's transmission grid is being used more heavily and in new ways.

In response to continuing complaints of discrimination and lack of transmission availability and in the wake of an expanding competitive power industry, in December 1999, FERC issued Order No. 2000.[61] This order recognized that Order No. 888 set the foundation upon which to attain competitive electric markets, but did not eliminate the potential to engage in undue discrimination and preference in the provision of transmission service.[62] Thus, FERC concluded that regional transmission organizations (RTOs) could eliminate transmission rate pancaking,[63] increase region-wide reliability, and eliminate any residual discrimination in transmission services that can occur when the operation of the transmission system remains in the control of a vertically integrated utility. Accordingly, FERC encouraged the voluntary formation of RTOs.

RTOs are entities set up in response to FERC Order Nos. 888 and 2000 encouraging utilities to voluntarily enter into arrangements to operate and plan regional transmission systems on a nondiscriminatory open access basis. RTOs are independent entities that control and operate regional electric transmission grids for the purpose of

[61] *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 16 (1999), *order on reh'g*, Order No. 2000–A, FERC Stats. & Regs. ¶ 30,092, 65 FR 12,088 (2000), *aff'd*, *Public Utility District No. 1* v. *FERC*, 272 F.3d 607 (DC Cir. 2001) [hereinafter Order No. 2000].

[62] In Order No. 2000, FERC found that "opportunities for undue discrimination continue to exist that may not be remedied adequately by [the] functional unbundling [remedy of Order No. 888]." Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,105.

[63] The term "rate pancaking" refers to circumstances in which a transmission customer must pay separate access charges for each utility service territory crossed by the customer's contract path.

promoting efficiency and reliability in the operation and planning of the transmission grid and for ensuring non-discrimination in the provision of electric transmission services.

FERC has approved RTOs or ISOs in several regions of the country including the Northeast (PJM, New York ISO, ISO-New England), California, the Midwest (MISO) and the South (SPP), as shown in Figure 1–3 below. By the end of 2004, regions accounting for 68 percent of all economic activity in the United States had chosen the RTO option.[64]

In 2004 and 2005, the PJM grid expanded substantially to include several additional service territories in the Midwest. In 2004, the territories serviced by Commonwealth Edison (ComEd), American Electric Power (AEP), and Virginia Electric and Power (VEPCO) joined PJM. The expansion continued in 2005 with the addition of Duquesne Light. The area now in PJM covers about 18 percent of total electricity consumption in the United States.[65] In most cases, RTOs have assumed responsibility to calculate the amount of available transfer capability (ATC) for wholesale trades across the footprint of the RTO. RTOs also are responsible for regional planning, at least for facilities necessary for reliability above a certain voltage.

As of 2004, all of the RTOs in operation coordinate dispatch of the generators in their systems and provide transmission services under a single RTO open access tariff. In addition, RTOs operate regional organized energy markets, including a short-term market which prices energy, congestion, and losses. RTOs in the East all offer day-ahead and real-time markets, while California and Texas offer real-time market alone. Further, all RTOs in current operation use or plan to use some form of locational pricing and have independent market monitors.[66]

Figure 1-3: RTO Configurations in 2004

Source: FERC State of the Market Report for 2004, Figure 2, Page 53

6. August 2003 Blackout

On August 14, 2003, an electrical outage in Ohio precipitated a cascading blackout across seven other states and as far north as Ontario, leaving more than 50 million people without power.[67] The August 2003 blackout was the largest blackout in the history of the United States, leaving some parts of the nation without power for up to four days and costing between $4 billion and $10 billion.[68] The 2003 blackout was the eighth major blackout experienced in North America since the 1965 Northeast Blackout.

A Joint U.S.-Canada Power System Outage Task Force issued a final Blackout Report in April 2004. The Blackout Report identified factors that were common to some of the eight major outage occurrences from the 1965 Northeast Blackout through the 2003 Blackout, as shown below:

(1) Conductor contact with trees; (2) overestimation of dynamic reactive output of system generators; (3) inability of system operators or coordinators to visualize events on the entire system; (4) failure to ensure that system operation was within safe limits; (5) lack of coordination on system protection; (6) ineffective communication; (7) lack of "safety nets;" and (8) inadequate training of operating personnel.[69]

7. Recent Developments: Enactment of the Energy Policy Act of 2005

In 2005, Congress passed the Energy Policy Act of 2005 (EPACT 2005),[70] which amended the core statutes (FPA, PURPA, PUHCA) governing the electric

[64] Fed. Energy Regulatory Comm'n, Office of Mkt. Oversight and Investigations, *State of the Markets Report: An Assessment of Energy Markets in the United States in 2004*, at 51 (2005) [hereinafter FERC State of the Markets Report 2005], *available at http://www.ferc.gov/legal/staff-reports.asp.*

[65] *Id.* at 53.

[66] *Id.* at 52.

[67] U.S. Canada Power System Outage Task Force, *Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and* Recommendations, April 2004, at 1.

[68] *Id.*

[69] *Id.* at 107.

[70] Pub. L. No. 109–58, 119 Stat. 594 (2005).

power industry. Several key provisions of EPACT 2005 are:

• Authorizes FERC to certify an Electric Reliability Organization to propose and enforce reliability standards for the bulk power system. EPACT 2005 authorized penalties for violation of these mandatory standards.

• Authorizes the Secretary of Energy to conduct a study of electricity congestion within one year of the enactment of the Energy Policy Act, and every three years thereafter. Authorizes the Secretary of Energy to designate "National Interest Electric Transmission Corridors" based on these congestion studies. EPACT 05 also authorizes FERC in limited circumstances to approve the siting of transmission facilities in these corridors, in states which lack such authority or do not exercise it in a timely manner. Proponents of this new federal authority have argued that it will facilitate the construction of new transmission lines and, thus, help alleviate transmission congestion that can impair competition in electric markets.

• Requires FERC to establish incentive-based rate treatments for public utilities' transmission infrastructure in order to promote capital investment in facilities for the transmission of electricity, attract new investment with an attractive return on equity, encourage improvement in transmission technology, and allow for the recovery of prudently incurred costs related to reliability and improved transmission infrastructure. Proponents of this authority contend it will encourage the expansion of transmission capacity and, thus, help foster greater competition in electric markets.

• Permits FERC to terminate, prospectively, the obligation of electric utilities to buy power from QFs, such as industrial cogenerators. FERC may do so when the QFs in the relevant area have adequate opportunities to make competitive sales, as defined by EPACT 2005. The premise is that growth in competitive opportunities in electric markets is negating the need for PURPA's "forced sale" requirements.

• Repeals PUHCA 1935 and replaces it with new PUHCA 2005, which provides FERC and state access to books and records of holding companies and their members and provides that certain holding companies or states may obtain FERC-authorized cost allocations for non-power goods or services provided by an associate company to public utility members in the holding company. PUHCA 2005 also contains a mandatory exemption from the Federal books and records access provisions for entities that are holding companies solely with respect to EWGs, QFs or foreign utility companies. The goal of these provisions is to reduce legal obstacles to investment in the electric utility industry and, thus, help facilitate the construction of adequate energy infrastructure.

C. Recent Trends Related to Competition in the Electric Energy Industry

Given the previous reviewed of electric industry legal and regulatory background, this section discusses several more recent electric industry policy developments and characteristics.

1. Technological Improvements in Generation and Transmission

Electric power industry restructuring has been largely sustained by technological improvements in gas turbines. No longer is it necessary to build a large generating plant to exploit economies of scale. Combined-cycle gas turbines reach maximum efficiency at 400 megawatts (MW), while aero-derivative gas turbines can be efficient at sizes as low as 10 MW. These new gas-fired combined cycle plants can be more energy efficient and less costly than the older coal-fired power plants.[71] Technological advances in transmission equipment have made transmission of electric power over long distances more economical. As a result, generating plants hundreds of miles apart can compete with each other and customers can be more selective in choosing an electricity supplier.[72]

Despite these increases in technology, the Edison Electric Institute reports that investment in transmission declined from 1975 through 1997. See Figure 1–4. Since 1998, transmission investment has increased annually, but remains below 1975 levels. Over that same period, electricity demand has more than doubled, resulting in a significant decrease in transmission capacity relative to demand. Box 1–2 discusses some suggested explanations for this trend of declining transmission investment.

Box 1–2: Decline in Transmission Investment

Transmission is the physical link between electricity supply and demand. Without adequate transmission capacity, wholesale competition cannot function effectively.

Some of the reasons suggested for the decline in transmission investment between 1975 and 1997 (see Figure 1–4) are: an overbuilt system prior to 1975, lack of available capital due to other investment activities by vertically-integrated utilities, the protection of vertically-integrated utility generation from competition and regulatory uncertainty.

Another explanation for the long decline in transmission investment is the difficulty of siting new transmission lines. Siting can bring long delays and negative publicity. NIMBY-based local opposition is usually strong. Also, many state processes require a showing of benefits to the state to site a transmission line. This can create barriers for transmission facilities that primarily benefit interstate commerce.

[71] EIA 2000 Update at ix. The size of the cost improvements depends on the underlying fuel prices.

[72] *Id.*

Figure 1.4: Transmission Expenditures of EEI Members, 1975-2003

Source: Edison Electric Institute

2. Increase in Nonutility Generation Suppliers

The market participation of utilities and other suppliers in the generation of electricity has changed over the past few decades. The change began with the passage of PURPA, when nonutilities were promoted as energy-efficient, environmentally-friendly, alternative sources of electric power. The change continued through the issuance of Order No. 888, which opened up the transmission grid to suppliers other than utilities.[73] Until the early 1980s, the electric utilities' share of electric power production increased steadily, reaching 97 percent in 1979.[74] By 1991, however, the trend had reversed itself, and the electric utilities' share declined to 91 percent.[75] By 2004, regulated electric utilities' share of total generation continued to decline (63.1 percent in 2004 versus 63.4 percent in 2003) as IPPs' share increased (28.2 percent versus 27.4 percent in 2003).[76]

This trend is illustrated by comparing the increases in capacity for utility and nonutility generation suppliers, as shown in Figure 1–5 below. While most of the existing capacity, and until the late 1980s, most of the additions to capacity, have been built by electric utilities, their share of capacity additions declined in the 1990s. Between 1996 and 2004, roughly 74 percent of electricity capacity additions have been made by independent power producers.

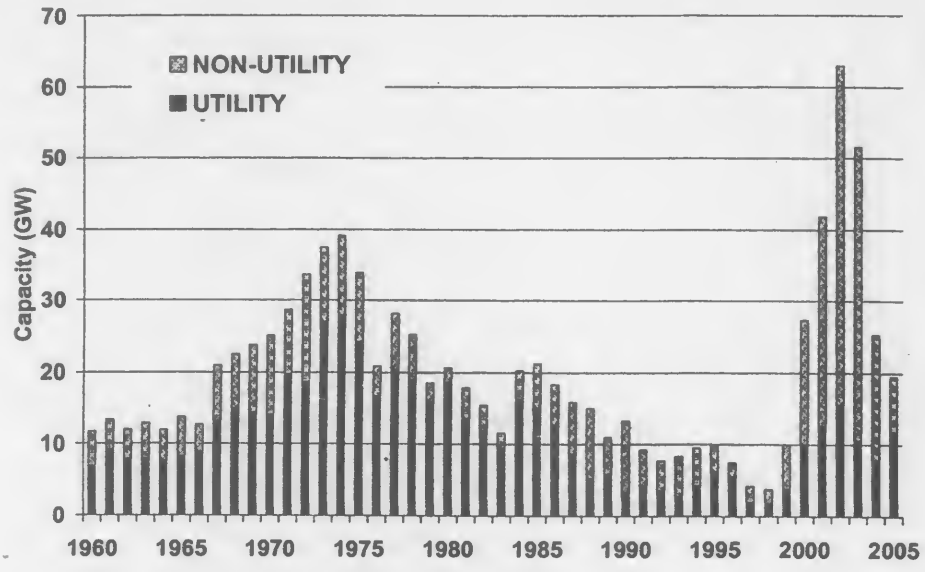
[73] *Id.* at 23.

[74] EIA 1970–1991 at vii.

[75] *Id.*

[76] U.S. Dept. of Energy, Energy Information Administration, *Electric Power Annual 2004*, at 2 (November 2005), *available at http://www.eia.doe.gov/cneaf/electricity/epa/epa.pdf [hereinafter EIA Electric Power Annual 2004].*

Figure 1-5: U.S. Electric Generating Capacity Additions: Non-Utility Growth Overtakes Utility in 2000-2004



Source: FERC Analysis of Platts PowerDat data

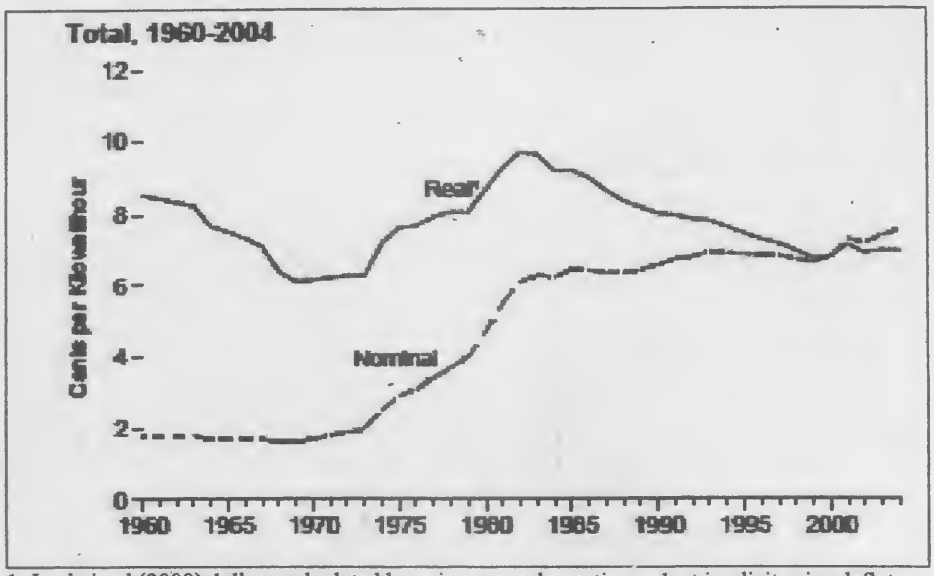
3. Retail Prices of Residential Electricity

As seen in Figure 1–6 below, between 1970 and 1985, national average residential electricity prices more than tripled in nominal terms, and increased by 25 percent (after adjusting for inflation) in real terms.[77] On a national level, real retail electricity prices began to fall after the mid-1980s until 2000–2001, as fossil fuel prices and interest rates declined and inflation moderated significantly.[78] Real retail prices have since stayed flat through 2004.

[77] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,640.

[78] Joskow, Difficult Transition at 7.

Figure 1-6: National Average Retail Prices of Electricity for Residential Customers



1- In chained (2000) dollars, calculated by using gross domestic product implicit price deflators.
Source: Energy Information Administration Annual Energy Review 2004

4. Changing Patterns of Fuel Use for Generation—Reaction to Increased Oil Prices and Clean-Air Environmental Regulations

For utilities, coal was the fuel most commonly used for many years, providing 46 percent of utilities' generation in 1970 and more than 50 percent since 1980. When world oil prices escalated in the 1970s, oil-fired and gasoline-fired generation's share of electricity supply began decreasing.

Hydroelectric power has also played a large role in the supply of electric power, but its use has declined relative to other major fuels mainly because there are a limited number of economical sites for hydroelectric projects. Nuclear power grew to be the second largest fuel source in 1991 but was not expected to continue to increase.[79]

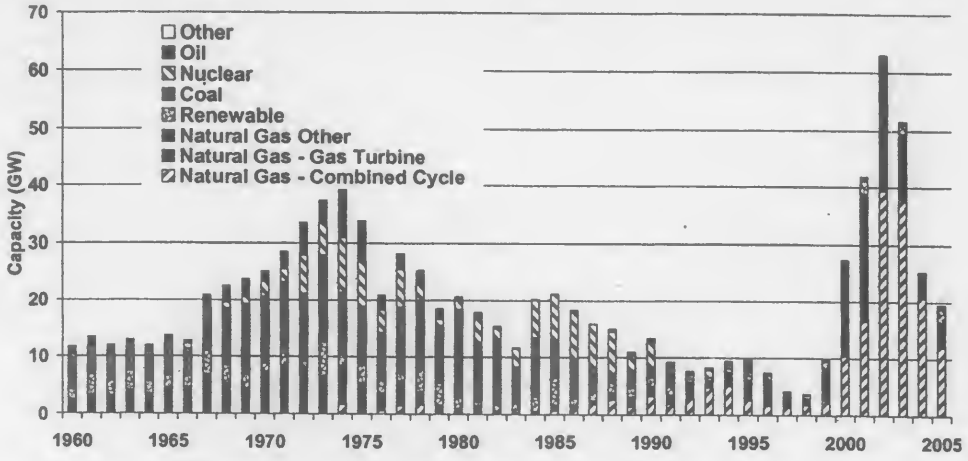
For nonutilities, natural gas has been the major fuel. Indeed, new capacity added in recent years shows the prevalence of natural gas to fuel new plants.[80] As shown in Figure 1–7, recent plant additions illustrate this change in fuel sources. This increased use of natural gas also is due, in part, to the Clean Air Act Amendments of 1990 (CAA) and state clean air requirements. The CAA sought to address the most widespread and persistent pollution problems caused by hydrocarbons and nitrogen oxides—both of which are prevalent with traditional coal and petroleum-based generating plants. The CAA fundamentally changed the generation business because it would no longer be costless to emit air pollutants. As a result of these requirements, many generation owners and new generation plant developers turned to cleaner-burning natural gas as the fuel source for new generation plants. California has been very dependent on gas-fired generation because of its specific air quality standards.[81]

[79] EIA 1970–1991 at 20.

[80] EIA Electric Power Annual 2004 at 2.

[81] Fed. Energy Regulatory Comm'n, *The Western Energy Crisis, The Enron Bankruptcy, & FERC's Response*, at 1, *available at http://www.ferc.gov/industries/electric/indus-act/wec/chron/chronology.pdf.*

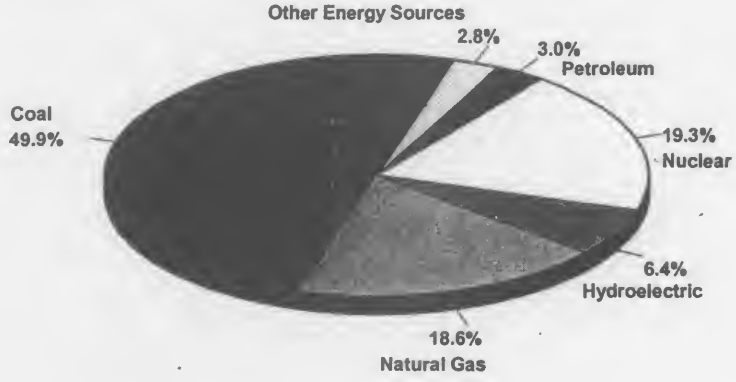
Figure 1-7: Gas Has Recently Been Dominant Fuel



Source: FERC Analysis of Platts PowerDat data

The result of these plant additions through December 2005 is that 49.9 percent of the nation's electric power was generated at coal-fired plants (Figure 1–8). Nuclear plants contributed 19.3 percent, 18.6 percent was generated by natural gas-fired plants, and 2.5 percent was generated at petroleum liquid-fired plants. Conventional hydroelectric power provided 6.6 percent of the total, while other renewables (primarily biomass, but also geothermal, solar, and wind) and other miscellaneous energy sources generated the remaining electric power.

Figure 1-8: Net Generation Shares by Energy Source: Total (All Sectors), January-December 2005



Source EIA, Electric Power Monthly with data for December 2005.

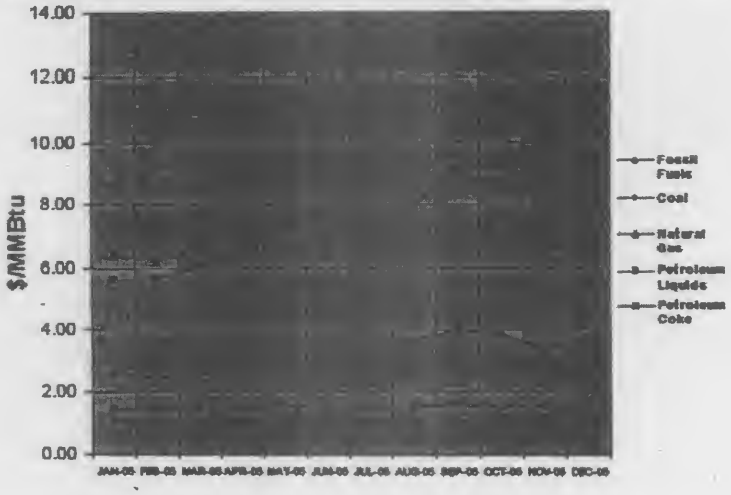
The trend toward gas-fueled capacity additions may be changing, however. In the coming years, more coal-fired generation capacity may be built. Two major reasons may explain coal's resurgence: (1) The relative price of natural gas compared to coal has increased substantially in recent years and (2) the cost of environmental equipment for coal plants, such as scrubbers, has decreased. To the extent that combined-cycle gas-fired units were built on the assumption that natural gas would be relatively inexpensive and that cleaning technology for coal plants would drive the price of coal significantly higher, both these assumptions have proved questionable with time. The Department of Energy's Energy Information Administration (EIA) estimated only 573 megawatts of new coal generation would be added nationally in 2005, which compares with an estimate of 15,216 megawatts of gas-fired additions for the same year. For the year 2009, however, predicted trends shift—the EIA projects that 8,122

MW of new coal generation will be added that year, whereas only 5,451 MW of gas-fired generation additions are predicted for that year.[82] The Department of Energy predicts a resurgence of coal-fired generation will continue as far into the future as 2025.[83]

5. Price Changes in Fuel Sources

Natural gas prices have been increasing in recent years, due in part to the historically high level of petroleum prices. Natural gas prices experienced a 51.5 percent increase between 2002 and 2003, a 10.5 percent increase between 2003 and 2004, and a 37.6 percent increase between 2004 and 2005. Strong demand for natural gas, as well as natural gas production disruptions in the Gulf of Mexico, contributed to these price increases. As shown in Figure 1–9, for December 2005 the overall price of fossil fuels was influenced by the increases in price of natural gas. In December 2005, the average price for fossil fuels was $3.71 per MMBtu, 10.1 percent higher than for November 2005, and 44.4 percent higher than in December 2004. As natural gas prices increase relative to coal prices, the change may make development of clean-burning coal plants more economical than they were when natural gas fuel prices were lower.

Figure 1-9: Electric Power Industry Fuel Costs, January 2005 through December 2005



Source: Source EIA, Electric Power Monthly with data for January 2006.

6. Mergers, Acquisitions, and Power Plant Divestitures of Investor-Owned Electric Utilities

Many IOUs have fundamentally reassessed their corporate strategies to function more as competitive, market-driven businesses in response to an increasingly competitive business environment.[84] One result is that there was a wave of mergers and acquisitions in the late 1980s through the late 1990s between traditional electric utilities and between electric utilities and gas pipeline companies.

IOUs also have divested a substantial number of generation assets to IPPs or transferred them to an unregulated subsidiary within the company.[85] Even though FERC-regulated IOUs have functionally unbundled generation from transmission, and some have formed RTOs and ISOs, many utilities have divested their power plants because of state requirements. Some states that opened the electric market to retail competition view the separation of power generation ownership from power transmission and distribution ownership as a prerequisite for retail competition. For example, California, Connecticut, Maine, New Hampshire, and Rhode Island enacted laws requiring utilities to divest their power plants. In other states, the state public utility commission may encourage divestiture to arrive at a quantifiable level of stranded costs for purposes of recovery during the transition to competition.[86]

Since 1997, IOUs have divested power generation assets at unprecedented levels,[87] and these power plant divestitures have also reduced the total number of IOUs that own generation capacity.[88] A few utilities have decided to sell their power plants, as a business strategy, deciding that they cannot compete in a competitive power market. In a few instances, an IOU has divested power generation capacity to mitigate potential market power resulting from a merger.[89] As described in Table 1–6 below, between 1998 and 2001, over 300 plants, representing nearly 20% of U.S. installed generating capacity, changed ownership.

There was no significant electric power company merger activity from 2001 to 2004, but this changed in 2004, when utilities and financial institutions exhibited growing interest in mergers and acquisitions, prompting many

[82] *See* EIA Electric Power Annual 2004 at 17, table 2.4, *available at http://www.eia.doe.gov/cneaf/electricity/epa/epat2p4.html.*

[83] *See* U.S. Dept. of Energy, Nat'l Energy Tech. Lab, *Tracking New Coal-Fired Power Plants*, at 3–4, *available at http://www.netl.doe.gov/coal/refshelf/ncp.pdf* (predicting 85 GW of new coal capacity created by 2025).

[84] *See* U.S. Congress, Office of Technology Assessment at 47.

[85] EIA 2000 Update at 91.

[86] *Id.* at 105–06.

[87] *Id.* at 105.

[88] *Id.* at 91.

[89] *Id.* at 106.

analysts to herald 2004 as the inauguration of a new round of consolidation in the power sector.[90] One utility-to-utility acquisition was closed [91] and three were announced.[92] Most electric acquisitions in 2004 took place with the purchase of specific generation assets; many companies strove to stabilize financial profiles through asset sales. In aggregate, almost 36 GW of generation, or nearly 6 percent of installed capacity, changed hands in 2004.[93]

TABLE 1–6.—POWER GENERATION ASSET DIVESTITURES BY INVESTOR-OWNED ELECTRIC UTILITIES, AS OF APRIL 2000

Status category	Capacity (GW)	Percent of total	Percent of total U.S. Generation Capacity
Sold	58.0	37	8
Pending Sale (Buyer Announced)	28.2	18	4
For Sale (No Buyer Announced)	31.9	20	4
Transferred to Unregulated Subsidiary	4.1	3	1
Pending Transfer to Unregulated Subsidiary	34.2	22	5
Total	156.5	100	22

Source: EIA 2000 Update, Table 19.

Chapter 2—Context for the Task Force's Study of Competition in Wholesale and Retail Electric Power Markets

This chapter provides the context to the Task Force's study of competition in wholesale and retail electric power markets. For approximately 70 years, state and federal policymakers regulated the generation, transmission, and distribution of electric power as natural monopolies—it was considered inefficient to have multiple sources of generation, transmission, and distribution facilities serving the same customers. The traditional "regulatory compact" required an electric power utility to serve all retail customers in a defined area in exchange for the opportunity to earn a reasonable return on its investment. This approach is often called "cost-based" or "cost-plus" regulation.

Technological and regulatory changes as discussed in Chapter 1 negated the natural monopoly assumption for the most capital intensive segment of the industry—the generation of electric power. Federal and several state policymakers introduced competition to provide for an economically efficient allocation of resources within the industry's generation sector and to overcome the perceived shortcomings of traditional cost-based regulation. This chapter describes these shortcomings. It also discusses the role of price in guiding consumption and investment decisions in competitive markets.

This chapter highlights three issues that policymakers confronted as they considered introducing competition into wholesale and retail electric power markets. First, customers under historical cost-based regulation generally paid average prices calculated over an extended period of months or years that did not vary with their consumption or with variation in the cost of generating electric power. Thus, wholesale and retail customers did not receive economically accurate price signals to guide their consumption decisions. Similarly, suppliers did not receive economically accurate price signals to guide their short term sales of existing generation and long term generation. Second, regulators had historically encouraged local utilities to build or contract for sufficient generation to serve customers within their territories and they erected entry barriers to block entry by independent generators. These actions resulted in utilities owning nearly all generation assets within their own service territories. Under cost-based regulation, the regulator would set the price for electric power, thus addressing possible market power abuses that otherwise could occur with the monopoly utility structure. Third, certain physical realities associated with electricity generation constrain regulatory and market options in this industry. The inability to economically store electric power means that electricity must generally be consumed as soon as it is generated—supply must always exactly equal demand in real time. The delivery of electric power depends, however, upon availability and pricing of the regulated transmission grid. Thus, the physical realities of the transmission grid must be considered as competition develops in wholesale electric power markets.

The Task Force received many comments identifying or endorsing various studies on aspects of the costs and benefits of competition in wholesale and retail electric power markets, particularly the formation of Regional Transmission Organizations (RTOs) or similar entities.

Appendix C contains an annotated bibliography of these studies. Many of these studies, however, provide only limited insights into the effect of restructuring in wholesale and retail electric power markets. See Box 2–1 that describes a recent Department of Energy review of such studies. This Report addresses competition in various wholesale and retail markets regardless of whether they contain an RTO or similar entity.

Box 2–1: "A Review of Recent RTO Benefit-Cost Studies: Toward More Comprehensive Assessments of FERC Electricity Restructuring Policies"

By J. Eto, B. Lesieutre, and D. Hale, Prepared for the U.S. Department of Energy, December 2005

This paper provides a review of the state of the art in RTO Cost/Benefit studies and suggests methodological improvements for future studies. The study draws the following conclusions:

In recent years, government and private organizations have issued numerous studies

[90] FERC State of the Markets Report 2005 at 30–32.

[91] Announced in December 2003, Ameren closed its acquisition of Illinois Power Co. in September 2004. *Id.* at 31.

[92] In January 2004, Black Hills Corp announced the acquisition of Cheyenne Light, Fuel & Power from Xcel Energy. In July 2004, PNM Resources, the parent of Public Service Company of New Mexico, announced the intention to acquire TNP Enterprises, the parent of Texas New Mexico Power Company from a group of private equity investors. *Id.* at 31–32. In December 2004, Exelon announced its intent to merge with PSEG, a plan that would create the nation's largest utility company by generation ownership, market capitalization, revenues, and net income. *Id.* at 32.

[93] *Id.* at 30.

of the benefits and costs of Regional Transmission Organizations (RTOs) and other electric market restructuring efforts. Most of these studies have focused on benefits that can be readily estimated using traditional production-cost simulation techniques, which compare the cost of centralized dispatch under an RTO to dispatch in the absence of an RTO, and on the costs associated with RTO start-up and operation. Taken as a whole, it is difficult to draw definitive conclusions from these studies because they have not examined potentially much larger benefits (and costs) resulting from the impacts of RTOs on reliability management, generation and transmission investment and operation, and wholesale electricity market operation.

Existing studies should not be criticized for often failing to consider these additional areas of impact, because for the most part neither data nor methods yet exist on which to base definitive analyses. The primary objective of future studies should not be to simply improve current methods, but to establish a more robust empirical basis for ongoing assessment of the electric industry's evolution. These efforts should be devoted to studying impacts that have not been adequately examined to date, including reliability management, generation and transmission investment and operational efficiencies, and wholesale electricity markets. Systematic consideration of these impacts is neither straightforward nor possible without improved data collection and analysis.

A. Overview of Cost-Based Rate Regulation—Effect on Customer Prices and Investment Decisions

State policymakers imposed rate regulation on retail sales of electric power because allowing prices to be set by the monopolist was expected to lead to uneconomic results, namely higher prices with lower output. Regulators used cost-based regulation to meet state legal requirements to ensure sufficient output at reasonable prices for consumers.

1. Effect on Customer Prices

Retail prices for most customers, although different for each customer class, often were average prices calculated over an extended period of months or years that did not vary with their consumption or with the costs of generating electric power. These rates were stable and often only varied by season (*e.g.*, summer rates may be higher than winter rates). Although time-based rates and certain regulated products such as interruptible or curtailable services have been used within the electric power industry for decades, they have not been applied to the vast majority of retail customers. In addition, many argued that retail rate structures contain cross-subsidies among customer classes.[94]

2. Effect on Investment Decisions

The usual market-based signal for efficient investment into a market—prices that align consumer demand with generators' supply under given market conditions—is unavailable under cost-based rate regulation of retail electric power prices. Under cost-based rate regulation, utilities could decide when to add generation, but their recovery of their costs for these investments was dependent on state regulators agreeing that the generation was necessary and prudent. (Most state also imposed siting regulation on construction of major electric power facilities). Thus, it was long term planners and regulators that determined when generation would be built, and it was consumers who bore the cost of investment risks once they had been approved by the state regulators. Utilities were reluctant to take investment risks that might end up being unrecoverable if the regulators deemed their cost unreasonable. By far, the most important of these decisions was for generation investment which constitutes the substantial majority of the capital investment in the electric power industry. While the intent of cost-based rate regulation, was not simply to keep price down, the effect was sometimes to dampen investment in new capacity and innovation.[95] In making decisions, regulators struggled to strike the balance between reasonable rates and providing utilities with incentives to make necessary and sufficient investments.

Regulatory mistakes in setting rates too high or too low may lead to excessive or inadequate additions of new electric power generation and other forms of investment. If rates are set too high, utilities could earn a higher return on new generation investments than would be warranted by the cost of capital. The result could be overinvestment and overbuilding. Utilities also had little incentive to design new generation plants in a cost-effective manner, to the extent regulators were unlikely to identify and disallow excessive costs to be included in customer rates. At the same time, regulatory disallowances of some costs imposed risk on utility decisions to elicit capital and build new generation, and investors sought compensation for this risk when they supplied capital to utilities.[96]

Indeed, a 1983 Department of Energy analysis of electric power generation plant construction showed that electric utilities (which were regulated under a cost-based regulatory regime) had little ability to control the construction costs of coal and nuclear generation plants. During the 1970s and early 1980s, the cost range per megawatt to build a nuclear plant varied by nearly 400 percent and by 300 percent for coal plants. The DOE study showed that some companies were not competent to manage such large-scale, capital-intensive projects. In addition, there was a tendency to custom design these plants, as opposed to use of a basic design and then refining it.[97]

Box 2–2: Market Prices

Market prices reflect myriad individual decisions about prices at which to sell or buy. Market prices are a mechanism that equalizes the quantity demanded and the quantity supplied. Rising prices signal consumers to purchase less and producers to supply more. Falling prices signal consumers to purchase more and producers to supply less. Prices will stop rising or falling when they reach the new equilibrium price: the price at which the quantity that consumers demand matches the quantity that producers supply.

One alternative to traditional rate-of-return regulation is price cap regulation. Under this approach, the regulator caps the price a firm is allowed to charge.[98]

[94] Electricity Consumers Resource Council, Profiles in Electricity Issues: Cost-of-Service Survey (Mar. 1986).

[95] *See e.g. The Economics and Regulation of Antitrust*, at 6–7.

[96] In the academic literature, the risk of utility overinvestment has been explained by the Averch-Johnson Effect. The Averch-Johnson Effect reflects that "a firm that is attempting to maximize profits is give, by the form of regulation itself, incentives to be inefficient. Furthermore, the aspects of monopoly control that regulation is intended to address, such as high prices, are not necessarily mitigated, and could be made worse, by the regulation." KENNETH E. TRAIN, OPTIMAL REGULATION 19 (1991). The Averch-Johnson Effect also predicts that if a regulator attempts to reduce a firm's profits by reducing its rate of return, the firm will have an incentive to further increase. its relative use of capital. *Id.* at 56. Thus, the most obvious regulatory control within cost-base rate regulation creates further distortions. The Averch-Johnson Effect is sometimes thought to explain why a regulated firm is led to "gold plate" its facilities, *i.e.* incur excessive costs so long as those expenses can be capitalized.

[97] U.S. Dept. of Energy, *The Future of Electric Power in America: Economic Supply for Economic Growth*, June, 1983 (DOE/PE–0045).

[98] Under price cap regulation, a firm can theoretically "produce with the cost-minimizing input mix [and] invest in cost-effective innovation." Train at 318. However, this dynamic only occurs where the price cap is fixed over time and the utility receives the benefit of cost reductions and cost-effective innovations. Further, the benefit of this increased efficiency "accrues entirely to the firm: consumers do not benefit from the production efficiency." *Id.* Where the price cap is adjusted over time, firms are induced to engage in strategic behavior. Additionally, "if, as * * * expected, the review of price caps is conducted like the price

This alternative may remedy some of the incentive problems of cost-base regulation. Another alternative is Integrated Resource Planning, which provided that choices about the building of new generation would be controlled by the regulator. Even with this oversight mechanism, regulators had few reference points to determine prudence in the choices that the builder made about design, efficiency, and materials.

In part, the struggles of regulators to ensure adequate supplies of power at reasonable rates led policy makers to examine whether competition could provide more timely and efficient incentives for what to consume and build. Advances in technology negated the assumption that generation is a natural monopoly, and thus set the stage for price and competition to provide a market entry signal, although transmission and distribution would continue to be regulated.

B. Competition in Wholesale and Retail Electric Power Markets—The Role of Price

With competition, the price of a commodity such as electric power generally reflects suppliers' costs and consumers' willingness to pay. The price signals the relative value of that commodity compared to other goods and services. How much a supplier will produce at a given price is determined by many things, including (in the long run) how much it must pay for the labor it hires, the land and resources it uses, the capital it employs, the fuel inputs it must purchase to generate the electric power, the transmission it must use to deliver the electric power to end users, and the risks associated with its investment. Consumers' overall willingness to pay for a product also is determined by a large variety of factors, such as the existence and prices of substitutes, income, and individual preferences.

1. Price Affects Customer Consumption

Price changes signal to customers in wholesale and retail markets that they should change their decisions about how much and when to consume electric power. Price increases generally provide a signal to customers to reduce the amount they consume. The dampening effect on price of a reduction in consumption helps consumers safeguard themselves against a supplier that may seek to exercise market power by increasing prices. By contrast, lower prices may encourage some customers to consume more than they would have at higher prices. Price changes thus play an important economic function by encouraging customers and suppliers to respond to changing market conditions. In the electric power industry, consumer's price responsiveness is often referred to as "demand response."[99]

The primary objective to incorporate price-based signals into wholesale and retail electric power markets is to provide consumers with price signals that accurately reflect the underlying costs of production. These signals will improve resource efficiency of electric power production due to a closer alignment between the price that customers pay for and the value they place *on* electricity. In particular, by exposing customers (some or all) to prices based on marginal production costs, resources can be allocated more efficiently.[100] Flat electricity prices based on average costs can lead customers to "over-consume—relative to an optimally efficient system in hours when electricity prices are higher than the average rates, and under-consume in hours when the cost of producing electricity is lower than average rates."[101] Exposure of customers to efficient price signals also has the benefit of increasing price response during periods of scarcity and high prices, which can help moderate generator market power and improve reliability.

When customers have many close substitutes for a particular good, a relatively small price increase will result in a relatively large reduction in how much they consume. For example, if natural gas were a very good substitute for electric power at comparable prices, then even a relatively small increase in the price of electric power could persuade many consumers to switch in part or entirely to natural gas, rather than electricity. To induce those consumers to return to using electricity, electricity prices would not need to fall by very much. However, when there are no close substitutes for electric power, prices may have to rise substantially to reduce consumption in order to restore the balance between the quantity supplied and the quantity demanded.

A substantial body of empirical literature has shown that, even if the retail price of electricity increases relatively quickly and sharply, the short-run consumption of electricity does not decline much. In other words, short-run demand for electricity is very inelastic. *See* Box 2–3. This inability to substitute other products for electricity in the short run means that changes in supply conditions (price of input fuels, etc.) are likely to cause wider price fluctuations than would be the case if customers could easily reduce their demand when prices rise. Furthermore, electric power has few viable and economic substitutes for key end-uses such as refrigeration and lighting and thus the consequences for supply shortfalls can be significant.[102] In the long run, this effect may be somewhat muted as, with time, electricity customers may have more ability to adjust their consumption in response to price changes.

Box 2–3: Demand Elasticity

The desire and ability of consumers to change the amount of a product they will purchase when its price increases is known as the price elasticity of that product. The price elasticity of demand is the ratio of the percent change in the quantity demanded to the percent change in price. That is, if a 10 percent price increase results in a 5 percent decrease in the quantity demanded, the price elasticity of demand equals −0.5 (−5%/10%). If the ratio is close to zero demand is considered "inelastic", and demand is more "elastic" as the ratio increases, especially if the ratio is greater than −1. Short-run elasticities are typically lower than long-run elasticities.

Experience in New York, Georgia, California, and other states and pricing experiments have demonstrated that customers have adjusted their consumption, and are responsive to

reviews under cost-base rate regulation, then the distinction blurs between price-cap regulation and cost-base rate regulation." *Id* at 319.

[99] U.S. Department of Energy, *Benefits of Demand Response in Electricity Markets and Recommendations for Achieving Them: A Report to the United States Congress Pursuant to Section 1252 of the Energy Policy Act of 2005*, February 2006 (DOE EPAct Report). The DOE EPAct Report discusses the benefits of demand response in electric power markets and makes recommendations to achieve these benefits.

[100] There is a substantial literature on setting rates based on marginal costs in the electric sector. See for example, M. Crew and P. Kleindorfer, *Public Utility Economics*. St. Martin's Press: New York, 1979 and B. Mitchell, W. Manning, and J. Paul Acton, *Peak-Load Pricing*. Ballinger: Cambridge, 1978. Other papers suggest that setting rates based on marginal costs will result in a misallocation of resources (*see* Borenstein, S., *The Long-Run Efficiency of Real-Time Pricing*, ENERGY JOURNAL, Vol. 26, No. 3, 2005). Nevertheless, the literature also indicates that marginal cost pricing may result in a revenue shortfall or excess, and standard rate-making practice is to require an adjustment (presumably to an inelastic component) to reconcile with embedded cost-of-service. Various rate structures to accomplish marginal-cost pricing include two-part tariffs (*see* Viscusi, Vernon, and Harrington, *Economics of Regulation and Antitrust*, MIT Press, 2000) and allocation of shortfalls to rate classes.

[101] DOE EPAct Report, p. 7.

[102] Estimates of the total costs in the United States due to August 14, 2003 blackout range between $4 billion and $10 billion. ELCON, *The Economic Impacts of the August 2003 Blackout*, February 2, 2004.

short-run price changes (*i.e.*, have a non-zero short-run price elasticity of demand). Georgia Power's Real Time Pricing (RTP) tariff option has found that industrial customers who receive RTP based on an hour-ahead market are somewhat price-responsive (short-run price elasticities ranging from approximately −0.2 at moderate prices, to −0.28 at prices of $1/kWh or more). Among day-ahead RTP customers, short-run price elasticities range from approximately −0.04 at moderate prices to −0.13 at high prices. Similar elasticities were found in the National Grid RTP pricing program. A critical peak pricing experiment in California in 2004 determined that small residential and commercial customers are price responsive and will make significant reductions in consumption (13 percent on average, and as much as 27 percent when automated controls such as controllable thermostats were installed) during critical peak periods. In addition, the California pilot found that most customers who were placed on the CPP tariffs had a favorable opinion of the rates and would be interested in continuing in the program.[103]

The ability of a customer to respond to prices requires the following conditions: (1) That time-differentiated price signals are communicated to customers, (2) that customers have the ability to respond to price signals (*e.g.*, by reducing consumption and/or turning on an on-site generator), and (3) that customers have interval meters (*i.e.*, so the utility can determine how much power was used at what time and bill accordingly).[104] Most conventional metering and billing systems are not adequate for charging time-varying rates and most customers are not used to considering price changes in making electricity consumption decisions on a daily or hourly basis.

2. Supplier Responses Interact With Customer Demand Responses to Drive Production

Generation supply responses are equally important in determining an appropriate equilibrium market price. The extent of supply responses will depend on the cost of increasing or decreasing output. Generally, the longer industry has to adjust to a change in demand, the lower will be the cost of expanding that output. With more time, firms have more opportunity to change their operations or invest in new capacity.

If the cost of increasing production is small, then a relatively small price increase may be enough to encourage existing producers to increase their production levels to provide additional supply in response to increased demand. If the cost of increasing electricity capacity is high, however, existing suppliers will not increase their production without a very strong price signal. In that case, customers would have to pay significantly higher prices to obtain additional supply. Additionally, if suppliers are already producing as much electric power as they can, increased demand can be met only from new capacity, and suppliers must be confident that prices will remain high enough for long enough to justify building a new generating plant.

These supply decisions are complicated because electric power cannot be stored economically, thus there are generally no inventories in electricity markets. Therefore, electricity generation must always exactly match electricity consumption.[105] The lack of inventories means that wholesale demand is completely determined by retail demand. Moreover, any distant generation must "travel" over a transmission system with its own limiting physical characteristics.[106] Transmission capability is required to allow customers access to distant generation sources. The transmission system is complicated by the fact that the dynamics of the AC transmission grid create network effects and can produce positive externalities (depending on the method used in accounting for transmission costs).[107] That is to say, where transmission users are not charged for the congestion impacts of their use patterns, that user's actions can cause costs to other users—costs which the causal party is not obligated to pay. This dynamic can distort the effect of price signals on dispatch efficiencies.

Moreover, aggregate retail demand fluctuates throughout the day, with higher demand during the day than at night. Fluctuating demand means that the transmission operator must have sufficient capacity to equal or exceed customer demand in real-time. Load serving entities (those entities that deliver power to meet demand or "load") must supply or procure sufficient capacity and energy (either in long-term contracts or short-term "spot" market purchases) to meet these varying loads. The costs of generating electricity are also highly variable, leading to wide disparity between the costs of generating electricity from generation plants that operate around-the-clock versus the cost of those that generate only during peak periods.

In any case, a higher price signals a profit opportunity, attracting resources where they are needed. If customer demand decreases in response to rising prices, prices are likely to fall, all else equal. In that circumstance, falling demand signals suppliers to reduce the amount of electric power that they supply. Suppliers will reduce their generation to meet the new, lower level of consumer demand, and will not be inclined to consider any new capacity increases.

3. Customer and Supplier Behavior Responding to Price Changes in Markets

In sum, the combined impact of consumers' and suppliers' responses to changed market conditions will produce a new market equilibrium price. Current prices must change when they create an imbalance between the quantity demanded and the quantity supplied. For example, when demand spikes, short-run prices might have to swing sharply higher to provide incentives for short-run supply increases. However, consumers do not have very many good substitutes for electric power, and suppliers usually cannot increase output instantly or transport distant available generation to increase the quantity supplied to a market. Even if higher prices give consumers and producers incentives to change their behavior, they may have little ability to do so in the short term. Over much longer time frames, however, both consumers and producers have more options to react to higher prices. The result is that long-run price increases usually will be much smaller than the short-run price increases needed to induce additional generation.

Chapter 3—Competition in Wholesale Electric Power Markets

A. Introduction and Overview

Congress required the Task Force to conduct a study of competition in wholesale electric power markets. Wholesale markets involve sales of electric power among generators, marketers, and load serving entities (e.g., distribution utilities) that

[103] Charles River Associates, *Impact Evaluation of the California Statewide Pricing Pilot*, Final Report, March 16, 2005, *available at http://www.energy.ca.gov/demandresponse/documents/group3_final_reports/2005-03-24_SPP_FINAL_REP.PDF*. Customers on a similar CPP program at Gulf Power also have high satisfaction with the program, which incorporates automated response to CPP events.

[104] EEI; PEPCO cautions that many customers, particularly residential and commercial customers, are relatively inflexible in responding to price changes due to constraints imposed by their operations and equipment.

[105] APPA.

[106] Alcoa.

[107] TAPS.

ultimately resell the electric power to end-use customers (e.g., residential, commercial, and industrial customers). Prior to the introduction of competition, vertically integrated utilities with excess electric power sold it to other utilities and to wholesale customers such as municipalities and cooperatives that had little or no generating capacity of their own. The Federal Energy Regulatory Commission (FERC) and its predecessor agency (the Federal Power Commission) regulated the prices, terms and conditions of interstate wholesale sales by investor-owned utilities. The desire of wholesale purchasers for access to competitive sources of electric power was a fundamental impetus to the opening of the generation sector to competition.[108]

Effective competition ensures an economically efficient allocation of resources. Congress in the Energy Policy Act of 1992 (EPACT 92) determined that competition in wholesale electric power markets would benefit from two changes to the traditional regulatory landscape: (1) Expansion of FERC's authority to order utilities to transmit, or "wheel," electric power on behalf of others over their owned transmission lines; and (2) elimination of entry barriers so non-utility entry could occur. The former change permitted wholesale customers to purchase supply from distant generators and the latter change provided customers with competitive alternatives from independent entrants.[109]

As described in Chapter 2, an important component of effective market operation is customer response to prices. The demand for wholesale power, however, is derived entirely from consumption choices at the retail level. The lack of electric power inventories only intensifies the direct link between wholesale and retail electric power markets. Yet state regulators set the prices for retail customers. State regulators generally have treated wholesale rates as an input into retail prices. But states often set retail rates that dilute the direct impact of the price of wholesale power on retail prices.[110] Thus, retail consumption decisions have been guided by prices, terms, and conditions that often do not directly reflect the wholesale price to purchase the electric power or the cost generators incurred to produce it.

This price disconnect is heightened by the fact that, if competition is to allocate resources in an economically efficient manner, customers must have access to a sufficient number of competing suppliers either via transmission or from new local generation.[111] But one of the shortcomings of cost-based rate regulation was its inability to provide incentives for investors to make economically efficient decisions concerning when, where, and how to build new generation.

Thus, the question is whether competition in wholesale markets has resulted in sufficient generation supply and transmission to provide wholesale customers with the kind of choice that is generally associated with competitive markets. In other words, has competition in wholesale electric power markets resulted in an economically efficient allocation of resources? The answer to this question is difficult to derive because each region was at a different regulatory and structural starting point upon Congress' enactment of the Energy Policy Act of 1992. These differences make it difficult to single out the determinants of consumption and investment decisions and thus make it difficult to evaluate the degree to which more competitive markets have influenced such decisions. Even the organized exchange markets have different features and characteristics. For example, some regions already had tight power pools, others were more disparate in their operation of generation and transmission. Some regions had higher population densities and thus more tightly configured transmission networks than did others. Some regions had access to fuel sources that were unavailable or less available in other regions (e.g., natural gas supply in the Southeast, hydro-power in the Northwest). Some regions operate under a transmission open-access regime that has not changed since the early days of open access in 1996, while other regions have independent provision of transmission services and organized day-ahead exchange markets for electric power and ancillary services.

This chapter discusses the impact of competition for generation supply on the ability of wholesale customers to make economic choices among suppliers and for suppliers to make economic investment decisions. The chapter addresses how entry has occurred in several regions with different forms of competition (e.g., the Midwest, Southeast, California, the Northwest, Texas, and the Northeast). This chapter also discusses how long-term purchase and supply contracts, capital requirements, regulatory intervention, and transmission investment affect supplier and customer decisions. The chapter concludes with observations on various regional experiences with wholesale competition. These observations highlight the trade-offs involved with various policy choices used to introduce competition.

B. Background

Congress enacted the EPACT 92 to jump start competition in the electric power industry. One of the stated purposes of the EPACT 92 was "to use the market rather than government regulation wherever possible both to advance energy security goals and to protect consumers." [112] Policy makers recognized that vertically integrated utilities had market power in both transmission and generation—that is they owned all transmission and nearly all generation plants within certain geographic areas. Congress, therefore, enhanced FERC's authority to order utilities, case-by-case, to transmit power for alternative sources of generation supply.

Today, vertically integrated utilities that operate their transmission systems generally offer transmission service under the terms of the standard Open Access Transmission Tariff (OATT) adopted by FERC in Order No. 888. The OATT requires a utility to offer the same level of transmission service, under the same terms and conditions and at the same rates that it provides to itself. Vertically integrated utilities (also referred to here as the transmission provider) offer two types of long-term transmission service under the OATT: network integration transmission service (network service) and point-to-point transmission service. *See* Box 3–1 for a description of both types of transmission service. For both services, the price has been predictable and stable over the long term.[113]

[108] *U.S.* v. *Otter Tail Power Company*, 410 U.S. 366 (1973) (the United States sued a vertically integrated utility for refusal to deal with the Town of Elbow Lake, MI, a town that was seeking alternative sources of wholesale power for a planned municipal distribution system).

[109] *See* EPACT 92 House Report. H.R. No. 102–474(I) at 138.

[110] *See infra* Chapter 1.

[111] *See, e.g.*, U.S. Gen. Accounting Office, GAO–03–271, LESSONS LEARNED FROM ELECTRIC INDUSTRY RESTRUCTURING 21 (2002) ("Increasing the amount of competition requires structural changes within the electric industry, such as allowing a greater number of sellers and buyers of electricity to enter the market").

[112] H.R. No. 102–474(I) at 133.

[113] The demand charge for long-term point-to-point transmission service is known in advance. For network service, the transmission customer pays a load ratio share of the transmission provider's FERC-approved transmission revenue requirement. Thus, even if redispatch to relieve transmission congestion occurs and the costs are charged to

Continued

Box 3–1: How Transmission Services Are Provided Under the OATT

OATT contracts can be for point-to-point (PTP) or "network" transmission service. Network integration transmission service allows transmission customers (*e.g.*, load serving entities) to integrate their generation supply and load demand with that of the transmission provider.

A transmission customer taking network service designates "network resources," which includes all generation owned, purchased or leased by the network customer to serve its designated load, and individual network loads to which the transmission provider will provide transmission service. The transmission provider then provides transmission service as necessary from the customer's network resources to its network load. The customer pays a monthly charge for the basic transmission service, based on a "load ratio share" (*i.e.*, the percentage share of the total load on the system that the customer's load represents) of the transmission-owning and operating utility's "revenue requirement" (*i.e.*, FERC-approved cost-of-service plus a reasonable rate of return).

In addition to this basic charge, some additional charges may be incurred. For example, when a transmission customer takes network service, it agrees to "redispatch" its generators as requested by the transmission provider. Redispatch occurs when a utility, due to congestion, changes the output of its generators (either by producing more or less energy) to maintain the energy balance on the system. If the transmission provider redispatches its system due to congestion to accommodate a network customer's needs, the costs of that redispatch are passed through to all of the transmission provider's network customers, as well as to its own customers, on the same load-ratio share basis as the basic monthly charge.

Also, the transmission provider must plan, construct, operate and maintain its transmission system to ensure that its network customers can continue to receive service over the system. To the extent that upgrades or expansions to the system are needed to maintain service to a network customer, the costs of the upgrades or expansions are included in the transmission-owning utility's revenue requirement, thus impacting the load-ratio share paid by network customers.

Point-to-point transmission service, which is available on a firm or non-firm basis and on a long-term (one year or longer) or short-term basis, provides for the transmission of energy between designated points of receipt and designated points of delivery. Transmission customers that take this kind of service specify a contract path. A customer taking firm point-to-point transmission service pays a monthly demand charge based on the amount of capacity it reserves. Generally, the demand charge may be the higher of either the transmission provider's embedded costs to provide the service, or the incremental costs of any system expansion needed to provide the service. Also, if the transmission system is constrained, the demand charge may reflect the higher of the embedded costs or the transmission provider's "opportunity" costs, with the latter capped at incremental expansion costs.

The comments submitted in response to the Task Force's request raised several concerns as to transmission-dependent customers' access to alternative generator suppliers via OATTs. In particular, some commenters noted that there is a continued possibility of transmission discrimination in their region, and that ability for transmission suppliers to discriminate can deny transmission-dependent customers access to alternative suppliers.[114] The commenters conclude that transmission discrimination can increase delivery risk because purchasers feared that their transmission transactions might be terminated for anticompetitive reasons by their vertically integrated rival, were they to purchase generation from a generator who is not affiliated with the transmission provider. The fact that electricity cannot be stored economically and electricity demand is very inelastic in the short term heightens the ill-effects of this delivery risk.

One response to this risk is to turn over operation of the transmission grid in a region to an independent operator, like the ones that now operate in New England, New York, the Mid-Atlantic, Texas, and California ("organized markets"). With the market design in these regions, there is no risk that a wholesale customer will not be able to deliver power to its retail customers (although they remain exposed to price risk).[115] See Box 3–2 for a discussion of how transmission is provided in organized wholesale markets.

Box 3–2: How Transmission Is Priced in an ISO or RTO

ISOs and RTOs (hereinafter RTOs) provide transmission service over a region under a single transmission tariff. They also operate organized electricity markets for the trading of wholesale electric power and/or ancillary services. Transmission customers in these regions schedule with the RTO injections and withdrawals of electric power on the system, instead of signing contracts for a specific type of transmission service with the transmission owner under an OATT.

The pricing for transmission service is substantially different in these regions than under the OATT. RTOs generally manage congestion on the transmission grid through a pricing mechanism called Locational Marginal Pricing (LMP). Under LMP, the price to withdraw electric power (whether bought in the exchange market or obtained through some other method) at each location in the grid at any given time reflects the cost of making available an additional unit of electric power for purchase at that location and time. In other words, congestion may require the additional unit of energy to come from a more expensive generating unit than the one that cannot be accessed due to the system congestion. In the absence of transmission congestion, all prices within a given area and time are the same. However, when congestion is present, the prices at various locations typically will not be the same, and the difference between any two locational prices represents the cost of transmission system congestion between those locations.

All existing organized markets have a uniform price auction or exchange to determine the price of electric power. Because of this variation in exchange prices at different locations, a transmission customer is unable to determine beforehand the price for electric power at any location because congestion on the grid changes constantly. To reduce this uncertainty, RTOs make a financial form of transmission rights available to transmission customers, as well as other market participants. Generally known as financial transmission rights (FTRs), they confer on the holder the right to receive certain congestion payments. Generally, an FTR allows the holder to collect the congestion costs paid by any user of the transmission system and collected by the RTO for electric power delivered over the specific path. In short, if a transmission customer holds an FTR for the path it takes service over, it will pay on net either no congestion charges (if the FTR matches the path exactly) or less congestion charges (if the FTR partially matches), providing a financial "hedge" against the uncertainty.

In general, FTRs are now available for one-year terms (or less), and are allocated to entities that pay access charges or fixed transmission rates. Pursuant to EPACT 05, FERC has begun a rulemaking to ensure the availability of long-term FTRs.

In regions with RTOs, wholesale electricity can be bought and sold through the use of negotiated bilateral contracts, through "standard commercial products" available in all regions, and through various products offered by the organized exchange market. For bilateral contracts, the contract can be individually negotiated and have terms and conditions unique to a single transaction. Standard products are available through brokers

customers, or expansion is necessary and the costs of the expansion are added to the revenue requirement, the distribution of the costs over the whole system has allowed the charges to individual customers to remain relatively stable. Customers who take either kind of service have a right to continue taking service when their contract expires, although point-to-point customers may have to pay a different rate (up to the maximum rate stated in the transmission provider's tariff) for that service if another customer offers a higher rate.

[114] APPA, TAPS. *See also* Midwest Stand Alone Transmission Companies.

[115] Prior to wholesale competition, several of the regions listed had "power pools" of utilities that undertook some central economic dispatch of plants and divided the cost savings among the vertically integrated utility members.

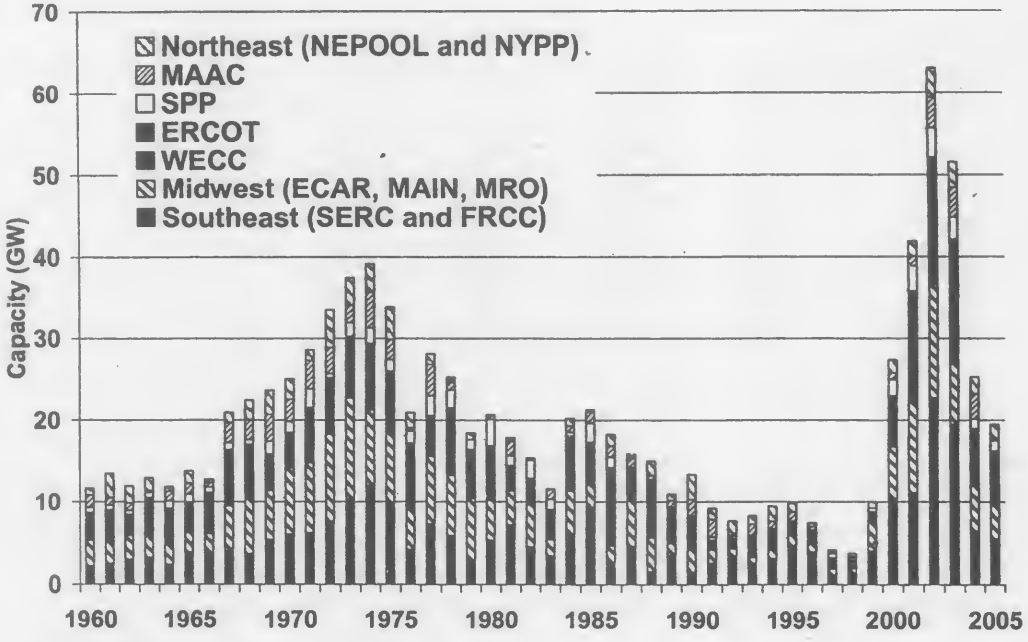
and over-the-counter (OTC) exchanges such as the NYMEX and Intercontinental Exchange (ICE).[116] Standard products have a standard set of specifications so that the main variant is price. Finally, there are organized exchange markets operated by the RTOs. In addition to offering transmission services, these organized exchange markets offer various products including electric power and ancillary services. Electric power markets typically involve sales of electric power in both hour-ahead and day-ahead markets.

Ancillary services include various categories of generation reserves such as spinning and non-spinning reserves in addition to Automatic Generation Control (AGC) for frequency control. The question remains, however, whether the price signals described in Chapter 2 have functioned to elicit the consumption and investment decisions that were expected to occur with wholesale market competition? The next section reviews generation entry in different regions.

C. Generation Investment Has Varied by Region Since Competition Increased in Wholesale Electric Power Markets

Since the adoption of open access transmission and the growth of competition, the amount of new generation investment has varied significantly by region. Figure 3–1 shows the overall pattern of new investment, broken down by region. A substantial amount of new investment has occurred in the Southeast, Midwest, and Texas. Other regions have not experienced as much investment. Wholesale customers obtain transmission services under different pricing formats in each region. Moreover, the regions that operate exchange markets for electric power and ancillary services use different forms of locational pricing, price mitigation, and capacity markets.

Figure 3-1: U.S. Electric Generating Capacity Additions (1960 – 2005)



Source: FERC Analysis of Platts PowerDat Data

These regional differences provide some insight into the impact of different policy choices on the challenge to create markets with sufficient supply choices to support competition and to allocate resources efficiently.

1. Midwest

Wholesale Market Organization: In 2004, the Midwest RTO began providing transmission services to wholesale customers in its footprint. On April 1, 2005, the MISO commenced its organized electric power market operations. Prior to this time, wholesale customers obtained transmission under each utility's OATT and there were no centralized electric power exchange markets.

New Generation Investment: The Midwest experienced a wholesale price spike during the summer of 1998.[117] An

[116] Companies can also limit their exposure to price swings through financial instruments rather than contracts for physical delivery of electricity. Such contracts are essentially a bet between two parties as to the future price level of a commodity. If the actual price for power at a given time and location is higher than a financial contract price, Party A pays Party B the difference; if the price is lower, Party B pays Party A the difference. In fact, in the United States electricity markets, such agreements are sometimes called "contracts for differences". Purely financial contracts involve no obligation to deliver physical power. In this report, we discuss contracts for physical delivery rather than financial contracts, unless otherwise noted.

[117] Fed. Energy Regulatory Comm'n, *Staff Report to the Fed. Energy Regulatory Comm'n on the Causes of Wholesale Electric Pricing Abnormalities in the Midwest During June 1998* (1998).

increase in demand due to unusually hot weather combined with unexpected generation outages created a rapid spike in wholesale prices. A significant amount of new generation was built in response to the price spike as shown in Table 3–1. For example, from January 2002 through June 2003, the Midwest added 14,471 MW in capacity.[118]

Most of the new generation was gas-fired, even though the region as a whole relies primarily on coal-fired generation.[119] More-recent entry has in fact been coal fired, in part because of rising natural gas prices.[120] The results of this entry and the subsequent drop in wholesale power prices have included: (1) merchant generators in the region declaring bankruptcy and (2) vertically-integrated utilities returning certain generation assets from unregulated wholesale affiliates to rate-base.

2. Southeast

Wholesale Market Organization: Wholesale customers in the region obtain transmission under each utility's OATT (*e.g.*, Entergy or Southern Companies). There are no centralized electric power markets specific to the region.

New Generation Investment: The Southeast's proximity to natural gas sources in the Gulf of Mexico and pipelines to transport that natural gas have made natural gas a popular fuel choice for those building plants in the region. The Southeast has seen considerable new generation construction as shown in Figure 3–1. More than 23,000 MW of capacity were added in the Southern control area between 2000 and 2005,[121] and several generation units owned by merchants or load-serving entities have been built in the Carolinas in the past few years. A significant portion of the new generation in the Southeast was non-utility merchant generation. A number of merchant companies that built plants in the 1990s have sought bankruptcy protection. Often, the plants of the bankrupt companies have been purchased by local vertically-integrated utilities and cooperatives, such as Mirant's sale of its Wrightsville plant to Arkansas Electric Cooperative Corporation and NRG's sale of its Audrain plant to Ameren.[122] Even apart from bankruptcies, some independent power producers have withdrawn from the region.

3. California

Wholesale Market Organization: The California ISO began operation in 1998 to provide transmission services. Concurrently, a separate Power Exchange (PX) operated electric power exchanges. Subsequent to the 2000–01 energy crisis, the California dissolved the PX.

New Generation Investment: Even prior to the California energy crisis, California was dependent on imported electric power from neighboring states. Much of the generation capacity for Southern California was built a substantial distance away from the population it serves, making the region heavily-dependent upon transmission. In the past few years, much of the generation in California has operated under long-term contracts negotiated by the State during the energy crisis. Since 2000–01, demand has increased in California, but construction of local generation has not kept pace. Over 6,000 MW of new generation capacity has entered California in 2002–03, but very little of it was built in congested, urban areas like San Francisco, Los Angeles and San Diego.[123] The commenters acknowledged that significant new generation has been announced or built in California in the past few years, but most of the projects have been in Northern California.[124] In the past five years, transmission investment has improved links between Southern and Northern California and accessible generation investment in the Southwest more generally has increased.

4. The Northeast

a. New England

Wholesale Market Operation: The New England ISO (ISO–NE) provides transmission services as well as operating a centralized electric power market. Under the electric power pricing mechanism adopted by the New England ISO, the expensive units used to maintain resource adequacy in some local areas are often not eligible to set the market clearing price because of the ISO's use of must-run reliability contracts. Rather, the cost of these high-priced units is spread across the region to all users.

New Generation Investment: Much of the generation in New England has been built in less populated areas of the region, such as Maine, but much of the demand for power is in southern New England. From January 2002 through June 2003, ISO–NE added 4159 MW in capacity.[125]

Capacity additions in 2004 were less than in the two previous years. In 2004, four generation projects came on line. Generation retirements in 2004 totaled 343 MW, of which 212 MW are deactivated reserves.

Demand growth in the organized New England markets has led to "load pockets," areas of high population density and high peak demand that lack adequate local supply to meet demand and transmission congestion prevents use of distant generation units to meet local demand. These pockets have not seen entry of generation to meet that demand. Transmission has not always been adequate to bridge this gap. In general, New England needs new generation in the congested areas of Boston and Southwest Connecticut or increased transmission investment to reduce congestion.

Moreover, the need for more supply in these load pockets is not reflected in high locational prices that would signal investment.[126] ISO–NE has recognized this issue and in 2003, it implemented a temporary measure known as Peaking Unit Safe Harbor (PUSH). PUSH enabled greater cost recovery for high-cost, low-use units in designated congestion areas, although PUSH units still may not be able to recover completely all their fixed costs.[127] ISO–NE also seeks to establish a locational capacity product that will project the demand three years in advance and hold annual auctions to purchase power resources for the region's needs. This proposal is part of a settlement pending before FERC. ISO–NE originally proposed a different market model called Locational Installed Capacity (LICAP). That model was opposed by a variety of stakeholders.[128]

b. New York

Wholesale Market Operation: The New York ISO (NYISO) provides transmission services as well as operating a centralized electric power market. On the one hand, NYISO uses price mitigation to guard against wholesale price spikes but, on the other, it allows high cost generators to be included in marginal location prices.

New Generation Investment: New York has traditionally built generation

[118] FERC State of the Markets Report 2004 at 109.

[119] FERC State of the Markets Report 2004 at 50.

[120] FERC State of the Markets Report 2005 at 77.

[121] Southern Companies.

[122] *See* Fitch Ratings, Wholesale Power Market Update (Mar. 13, 2006), *available at http://www.fitchratings.com/corporate/sectors/special_reports.cfm?sector_flag=2&marketsector=1&detail=&body_content=spl_rpt.*

[123] FERC State of the Markets Report 2005 at 69; FERC State of the Markets Report 2004 at 41–43.

[124] California ISO.

[125] FERC State of the Markets Report 2004 at 109.

[126] FERC State of the Markets Report 2005 at 83.

[127] FERC State of the Markets Report 2004 at 36.

[128] Press Release, ISO New England, ISO New England Announces Broad Stakeholder Agreement on New Capacity Market Design (Mar. 6, 2006), *available at http://www.iso-ne.com/nwsiss/pr/2006/march_6_settlement_filing.pdf.*

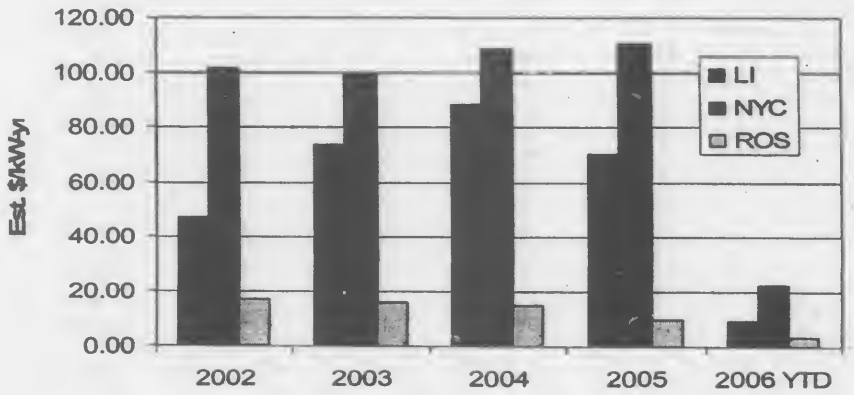
in less populated areas and moved it to more populated areas. For example, the New York Power Authority was responsible for getting hydroelectric power from the Niagara Falls area into more congested areas of the state. From January 2002 through June 2003, NYISO added 316 MW in capacity.[129] Three generating plants with a total summer capacity of 1,258 MW came on line in 2004. Three plants totaling 170 MW retired in 2004.[130]

Transmission constraints are therefore a concern, and currently, transmission constraints in and around New York City limit competition in the city and lead to more use of expensive local generation, thereby raising prices. NYISO uses price mitigation that seeks to avoid mitigating high prices that are the result of genuine scarcity, though NYISO has separate mitigation rules for New York City. In an effort to lessen distortion of market signals, NYISO includes the cost of running generators to serve load pockets in its calculation of locational prices. Thus, potential entrants get a more accurate price signal regarding investment in the load pocket.

In a further effort to spur new capacity construction, NYISO also sets a more generous "reference price" for new generators in their first three years of operation.[131] (Bids above the reference prices may trigger price mitigation.) Unlike New England, New York is seeing new generation investment in a congested area. Approximately 1,000 MW of new capacity is planned to enter into commercial operation in the New York City area in 2006. The fact that New York is better able than New England to match locational need with investment is likely due to clearer market price signals in New York, both in energy markets and capacity markets.

The effect of load pockets on prices are shown in Figure 3–2, which estimates the annual value of capacity based on weighted average results of three types of auctions run by the NYISO. Capacity prices are higher in the tighter supply areas of NYC and Long Island.

Figure 3-2: Estimate of Annual NY Capacity Values - All Auctions



c. PJM

Wholesale Market Operation: The PJM Interconnection provides transmission services as well as operating a centralized electric power market. PJM has both energy and capacity markets. PJM's energy market has locational prices. FERC recently approved the concept of PJM's proposal to shift to locational prices in its capacity markets.[132] The locational capacity market has not yet been implemented.

New Generation Investment: PJM capacity includes a broad mix of fuel types. Recent PJM expansion has added significant low-cost coal resources to PJM's overall generation mix. From January 2002 through June 2003, PJM added 7458 MW in capacity.[133] Capacity additions in 2004 were lower than in the two previous years. In 2004, 4,202 MW of new generation was completed in PJM. During the year, 78 MW of generation was mothballed and 2,742 MW was retired.[134]

Like other areas, PJM depends on transmission to move power from the areas of low-cost generation to the areas of high demand. In PJM, the flow is generally from the western part of PJM, an area with significant low-cost coal-fired generation, to eastern PJM. The easternmost part of PJM is limited by a set of transmission lines known as the Eastern Interface, which at times limits the deliverability of generation from the west. This means that higher-cost generation must be run in the eastern region to meet local demand. Within the eastern region, there are also areas of still-more-limited transmission. As a result of these kinds of transmission limitations, generation in some areas that is not economical to run is being given reliability must-run (RMR) contracts to prevent it from retiring and possibly reducing local reliability.[135] Recently, three utilities in PJM have proposed major transmission expansions to increase capacity for moving power from into eastern parts of PJM.[136]

[129] FERC State of the Markets Report 2004 at 109.

[130] FERC State of the Markets Report 2005 at 97.

[131] FERC State of the Markets Report 2004 at 39.

[132] Intial Order on Reliability Pricing Model, 115 FERC ¶ 61,079, *3 (2006).

[133] FERC State of the Markets Report 2004 at 109.

[134] FERC State of the Markets Report 2005 at 112.

[135] *Id.* at 188.

[136] American Electric Power proposes to build a new 765-kilovolt (kV) transmission line stretching from West Virginia to New Jersey, with a projected in-service date of 2014. AEP Interstate Project Summary, *available at http://www.aep.com/newsroom/resources/docs/AEP_Interstate ProjectSummary.pdf.* Allegheny Power proposes to construct a new 500 kV transmission line, with a targeted completion date of 2011, which will extend from southwestern Pennsylvania to existing substations in West Virginia and Virginia and continue east to Dominion Virginia Power's Loudoun Substation, Allegheny Power Transmission Expansion Proposal, *available at http://www.alleghenypower.com/TrAIL/TrAIL.asp.* More recently, Pepco has proposed to build a 500-kv transmission line from Northern Virginia, across the Delmarva Penninsula and into New Jersey.

5. Texas

Wholesale Market Operation: The Electric Reliability Council of Texas (ERCOT) manages the scheduling of power on an electric grid consisting of about 77,000 megawatts of generation capacity and 38,000 miles of transmission lines. ERCOT also manages financial settlement for market participants in Texas's deregulated wholesale bulk power and retail electric market. ERCOT is regulated by the Public Utility Commission of Texas. ERCOT is generally not subject to FERC jurisdiction because it does not integrated with other electric systems, *i.e.*, there is not interstate electric transmission. ERCOT is the only market in which regulatory oversight of the wholesale and retail markets is performed by the same governmental entity.

In ERCOT, for each year, ERCOT determines a set of transmission constraints within its system which it deems Commercially Significant Constraints (CSCs). These constraints create Congestion Zones for which zonal "shift factors" are determined. Once approved by the ERCOT Board, the CSCs and Congestion Zones are used by the ERCOT dispatch process for the next year. In 2005, ERCOT has six CSCs and five Congestion Zones. When the CSCs bind, ERCOT economically dispatches generation units bid against load within each zone. To keep the system in balance in real time, ERCOT issues unit-specific instructions to manage Local (intrazonal) Congestion, then clears the zonal Balancing Energy Market. The balancing energy bids from all the generators are cleared in order of lowest to highest bid.[137]

At least one study argues that when there is local congestion, local market power is mitigated in ERCOT by ad hoc procedures that are aimed at keeping prices relatively low while maintaining transmission flows within limits. As a result, prices may be too low when there is local scarcity. In particular, prices may not be high enough to attract efficient new investment to provide long-term solutions to local market power problems. It is difficult for new entrants to contest such local markets, so that the local monopoly positions are essentially entrenched.[138]

New Generation Investment: In the late 1990s, developers added more than 16,000 megawatts of new capacity to the Texas market.[139] Certain aspects of the Texas market may make it attractive to new investment. Texas consumers directly pay (via their electricity bills) for updates to the transmission system required by the addition of new plants. In other states, FERC often requires developers to pay for system upgrades upfront and recoup the cost over time through credits against their transmission rates.[140]

6. The Northwest

Wholesale Market Organization: Wholesale customers obtain transmission service through agreements executed pursuant to individual utility OATTs. There are no centralized exchange markets specific to the region, but there is an active bilateral market for short-term sales within the Northwest and to the Southwest and California. Several trading hubs with significant levels of liquidity also are sources of price information. Multiple attempts to establish a centralized Northwest transmission operator have proven unsuccessful for a variety of reasons, including difficulties in applying standard restructuring ideas to a system dominated by cascading (i.e., interdependent nodes) hydroelectric generation and difficulties in understanding the potential cost shifts that might result in restructuring contract-based transmission rights.

New Generation Investment: The Northwest's generation portfolio is dominated by hydroelectric generation, which comprises roughly half of all generation resources in the region on an energy basis.[141] The remaining generation derives primarily from coal and natural gas resources, (with smaller contributions from wind, nuclear and other resources). The hydroelectric share of generation has decreased steadily since the 1960s.

The Northwest's hydroelectric base allows the region to meet almost any capacity demands required of the region—but the region is susceptible to energy limitations (given the finite amount of water available to flow through dams). This ability to meet peak demand buffers incentives for building new generation, which might be needed to assure sufficient energy supplies during times of drought because in three years out of four, hydro generation can displace much of the existing thermal generation in the Northwest. There has, however, been generation addition in the past years to meet load growth and to attempt to capitalize on high-prices during the Western energy crisis of 2001–02. Due to high power purchase costs during this crisis, some utilities have added thermal resources as insurance against drought-induced energy shortages and high prices. Altogether, over 3800 MWs of new generation has been added to the Northwest Power Pool since 1995—75% of that was commissioned in 2001 or later.

D. Factors That Affect Investment Decisions in Wholesale Electric Power Markets

The Task Force examined comments on how competition policy choices have affected the investment decisions of both buyers and sellers in wholesale markets. A number of issues emerged including the difficulty of raising capital to build facilities that have revenue streams that are affected by changing fuel prices, demand fluctuations and regulatory intervention and a perceived lack of long term contracting options. Some comments to the Task Force assert that significant problems still exist in these markets, particularly steep price increases in some locations without the moderating effect of long-term contracting and new construction.[142] In some markets, the problem is that prices are so low as to discourage entry by new suppliers, despite growing need.[143] Experience over the last 10 years shows three different regional competition models emerging. Each has its own set of benefits and drawbacks.

1. Long-Term Purchase Contracts—Wholesale Buyer Issues

Many wholesale buyers suggested that they had sought to enter into long-term contracts but found few or no offers.[144] The Task Force attempted to determine whether the facts supported these allegations by examining 2004–05 data collected by FERC through its Electric Quarterly Reports for three regions—New York, the Midwest, and the Southeast. Appendix E contains this analysis. Although not conclusive because of data limitations described in Appendix E, the analysis showed that contracts of less than one-year dominated each of the three regional markets examined and that in two of the

[137] *ERCOT Response to the DOE Question Regarding the Energy Policy Act 2005, available at http://www.oe.energy.gov/document/ercot2.pdf.*

[138] Ross Baldick and Hui Niu, *Lessons Learned: The Texas Experience, available at http://www.ece.utexas.edu/baldick/papers/lessons.pdf.*

[139] U.S. Gen. Accounting Office, GAO–02–427, *Restructured Electricity Markets, Three States' Experiences in Adding Generating Capacity* 9 (2002).

[140] *Id.* at 19.

[141] For a complete discussion of generation characteristics of the Northwest, *see* Nw. Power & Conn. Council, The Fifth Northwest Power and Conservation Plan, Ch. 2 (2005), *available at http://www.nwcouncil.org/energy/powerplan/plan/Default.htm.*

[142] ELCON; NRECA; APPA.

[143] *E.g.*, PJM; EPSA.

[144] ELCON.

markets, longer contract terms are associated with lower contract prices on a per MWh basis.

Three reasons may exist to explain the perceived lack of ability to enter long-term purchase power contracts.[145] First, some comments argued that organized exchange markets based on uniform price auctions (*e.g.*, PJM and NYISO) have made it difficult to arrange contracts with base-load and mid-merit generators at prices near their production costs.[146] These generators would rather sell in the exchange markets and obtain the market-clearing price, which may be higher than their production costs at various times. Base-load and mid-merit generators may see relatively high profits when gas-fueled generators are the marginal units, particularly when natural gas prices rise. Box 3–2 describes how prices are set in organized exchange markets. Natural gas-fueled generators in a uniform price auction may see lower profits as their fuel costs rise, to the extent other generation becomes relatively more economical.[147] Stated another way, when natural gas units set the market price, these units may recover only a small margin over their operating costs, while nuclear and coal units recover larger margins. Under traditional regulation, by contrast, all of an owner's generation units generally are allowed the same return, which may be less than marginal units, and more than infra-marginal units, in competitive markets.

In addition, the very competitiveness of these markets cannot be assumed. For example, over ten years ago, FERC requested comments on a wholesale "PoolCo" proposal, which was the predecessor entity to today's organized electricity market with open transmission access.[148] At the time, the Department of Justice generally supported the emerging market form but warned: "The existence of a PoolCo cannot guarantee competitive pricing, since there may be only a small number of significant sellers into or buyers from the pool. The Commission should not approve a PoolCo unless it finds that the level of competition in the relevant geographic markets would be sufficient to reasonably assure that the benefits of eliminating traditional rate regulation exceed the costs."[149]

The fact that the market-clearing price in organized exchange markets may be established by a subset of generators depending upon demand and transmission congestion heightens the competitiveness concern in the organized markets. At one end, generators with high costs do not have much impact on the market prices when there is low demand and low transmission congestion, and conversely, generators with low costs do not have much impact on the market-clearing prices when there is high demand and high transmission congestion. There is a wide-range of market-clearing prices between these two end points based on the diversity of generator costs available in each region.[150] Indeed, some commenters specifically cited to recent studies of the electric industry that argue that a larger number of suppliers are needed to sustain competitive pricing in electricity markets than are needed for effective competition in other commodities.[151]

Second, the perceived lack of long-term purchase contracts may be due to a lack of trading opportunities to hedge these long-term commitments. Long-term contracts in other commodities are often priced with reference to a "forward price curve." A forward price curve graphs the price of contracts with different maturities. The forward prices graphed are instruments that can be used to hedge (or limit) the risk that market prices at the time of delivery may differ from the price in a long-term contract. In a market with liquid forward or futures contracts, parties to a long-term contract can buy or sell products of various types and durations to limit their risk due to such price differences. Currently, liquid electricity forward or futures markets often do not extend beyond two to three years.[152] In some markets, one-year contracts are the longest products generally available; in markets where retail load is being served by contracts of fixed durations, such as the three-year obligations in New Jersey and Maryland, contracts for the duration of that period are slowly growing in number. But the relative lack of liquidity may discourage parties from signing long-term contracts, because they lack the ability to "hedge" these longer-term obligations.

Third, the availability of long-term purchase contracts depends on the availability and certainty of long-term delivery options. Particularly in organized markets, transmission customers have argued that the inability to secure firm transmission rights for multiple years at a known price introduces an unacceptable degree of uncertainty into resource planning, investment and contracting.[153] They report that this financial uncertainty has hurt their ability to obtain financing for new generation projects, especially new base-load generation.

Congress addressed this issue of insufficient long-term contracting in the context of RTOs and ISOs in EPACT05. In particular, section 1233 of EPACT05 provides that:

> [FERC] shall exercise the authority of the Commission under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities, *and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.*[154]

To implement this provision in RTOs and ISOs, FERC proposed new rules regarding FTRs in February 2006. The rules would require RTOs and ISOs to offer long-term firm transmission rights. FERC did not specify a particular type of long-term firm transmission right, but instead proposed to establish guidelines for the design and administration of these rights. The proposed guidelines cover basic design and availability issues, including the length of terms the rights should have and the allocation of those rights to transmission customers. FERC has received comments on its proposal but has not yet adopted final rules.

2. Long-Term Supply Contracts—Generation Investment Issues

Commenters cited the certainty of long-term contracts as a critical requirement for obtaining financing for new generators.[155] These contracts, however, are vulnerable to certain regulatory risks. First, contracts are

[145] In competitive markets, customers also have the ability to build their own generation facility if they are unable to obtain the long-term purchase contracts that they seek.

[146] APPA, NRECA.

[147] *See, e.g.*, Public Advocate's Office of Maine, National Association of State Utility Consumer Advocates.

[148] Inquiry Concerning Alternative Power Pooling Institutions Under the Federal Power Act, Docket No. RM94–20–000.

[149] Comments of the U.S. Department of Justice, Inquiry Concerning Alternative Power Pooling Institutions Under the Federal Power Act, Docket No. RM94–20–00 filed March 2, 1995 at p. 6. *See also* Reply Comments of the U.S. Department of Justice, Inquiry Concerning Alternative Power Pooling Institutions Under the Federal Power Act, Docket No. RM94–20–00 filed April 3, 1995.

[150] *See* Comment of the Federal Trade Commission. Docket No. RM–04–7–000 (Jul. 16, 2004) at 7–8, *available at http://www.ftc.gov/os/comments/ferc/v040021.pdf.*

[151] APPA, Carnegie Mellon.

[152] Nodir Adilov, *Forward Markets, Market Power, and Capacity Investment* (Cornell Univ. Dep't of Econ. Job Mkt. Papers, 2005), *available at http://www.arts.cornell.edu/econ/na47/JMP.pdf.*

[153] APPA, TAPS.

[154] Pub. L. 109–58, § 1233, 119 Stat. 594, 958 (2005) (emphasis added).

[155] Constellation, Mirant.

subject to regulation by FERC, and a party to a contract can ask FERC to change contract prices and terms, even if the specific contract has been approved previously.[156] For example, in 2001–2002 several wholesale purchasers of electric power requested that FERC modify certain contracts entered into during the California energy crisis. The customers alleged that problems in the California electricity exchange markets had caused their contracts to be unreasonable. The sellers argued that if FERC overrides valid contracts, market participants will not be able to rely on contracts when transacting for power and managing price risk. FERC declined to change the contracts.[157] FERC cited its obligation to respect contracts except when other action is necessary to protect the public interest.[158]

A second type of regulatory uncertainty involving bankruptcy may limit future market opportunities for merchant generators and, thus, reduce their ability to raise capital. In recent years, several merchant generators (NRG, Mirant and Calpine) have sought to use the bankruptcy process to break long-term power contracts.[159] These efforts, when successful, leave counterparties facing circumstances that they did not anticipate when they entered into their contracts. This risk may give state regulators an incentive to favor construction of generation by their regulated utilities over wholesale purchases from merchant generators. These disputes have spawned conflicting rulings in the courts. In particular, these cases have centered on separate, but intertwined, issues: first, where jurisdiction over efforts to end power contracts properly lies, as between FERC and the bankruptcy courts and to what extent courts may enjoin FERC from acting to enforce power contracts; and second, what standard applies to such efforts (that is, what showing must a party make to rid itself of a contract). As FERC and the courts have only recently begun to consider these questions, the law remains unsettled, as do parties' expectations.[160]

A third type of regulatory uncertainty concerns the regulated retail service offerings in states with retail competition.[161] The uncertainty of how much supply a distribution utility will need to satisfy its customers due to customer switching that can occur in retail markets can prevent or discourage those utilities from signing long-term contracts.[162] The extent of this disincentive is unclear if competitive options are available for distribution utilities to purchase needed supply or sell excess supply.

3. Risk and Reward in the Face of Price and Cost Volatility—Capital Requirements

Building new generation in wholesale markets also is based on the ability of a company to acquire capital, either from internal sources or external capital markets. If a company can acquire the necessary capital it can build. There is no Federal regulation of entry, and most states that have permitted retail competition have eliminated any "need-based" showing to build a generation plant.

Private capital has generally funded the electric power transmission network in the United States. Under traditional cost-base rate regulation, utility investment decisions were based in part on the promise of a regulated revenue stream with little associated risk to the utility. The ratepayers often bore the risk. Money from the capital markets was generally available when utilities needed to fund new infrastructure. One significant problem, however, was that regulators had limited ability to ensure that utilities spent their money wisely.[163] Regulatory disallowances of imprudent expenditures are viewed by investors as regulatory risk. This risk can be mitigated somewhat by Integrated Resource Planning, to the extent it limits or avoids after-the-fact regulatory reviews of investment decisions.[164]

In competitive markets, projects obtain funding based on anticipated market-based projections of costs, revenues and relevant risks factors. The ability to obtain funding is impacted by the degree to which these projections compare with projected risks and returns for other investment opportunities.[165] Therefore, potential entrants to generation markets have to be able to convince the capital markets that new generation is a viable profitable undertaking. In the late 1990s investors appeared to prefer market investments over cost-based rate-regulated investments, as merchant generators were able to finance numerous generation projects, even without a contractual commitment from a customer to buy the power.[166]

In recent years, however, investors have generally favored traditional utilities over merchant generators when it comes to providing capital for large investments.[167] In part, this preference reflects the reduced profitability of many merchant generators in recent years, and the relative financial strength of many traditional utilities. It also may reflect a disproportionate impact of the collapse of credit and thus trading capability of non-utilities after Enron's financial collapse.[168] As shown in the Table in Appendix G, for example, virtually all of the companies rated A- or higher are traditional utilities, not merchant generators.

Investor preference for traditional utilities also may be affected by increasing volatility in electric power markets. As wholesale markets have opened to competition, investors recognized that income streams from the newly-built plants would not be as predictable as they had been in the past.[169] Under cost-based regulation, vertically integrated utilities' monopoly franchise service territories significantly limited the risk that they would not recover the costs of investments. Once generators had to compete for sales, generation plant investors were no longer guaranteed that construction costs would be repaid or that the output

[156] In December 2005, FERC proposed to adopt a general rule on the standard of review that must be met to justify proposed modifications to contracts under the Federal Power Act and the Natural Gas Act. *Standard of Review for Modifications to Filed Agreements*, 113 FERC ¶ 61,317 (2005) (Proposed Rule). Specifically, FERC proposed that, in the absence of specified contractual language, a party seeking to change a contract must show that the change is necessary to protect the public interest. FERC explained that its proposal recognized the importance of providing certainty and stability in energy markets, and helped promote the sanctity of contracts. A final rule is pending.

[157] *Nevada Power Company* v. *Enron*, 103 FERC ¶ 61,353, *order on reh'g*, 105 FERC ¶ 61,185 (2003); *Public Utilities Commission of California* v. *Sellers of Long Term Contracts*, 103 FERC ¶ 61,354, *order on reh'g*, 105 FERC ¶ 61,182 (2003); *PacifiCorp* v. *Reliant Energy Services, Inc.*, 103 FERC ¶ 61,355, *order on reh'g*, 105 FERC ¶ 61,184 (2003).

[158] *See Northeast Utilities Service Co.*, v. *FERC*, 55 F.3d 686, 689 (1st Cir. 1995).

[159] See Howard L. Siegel, *The Bankruptcy Court vs. Ferc—The Jurisdictional Battle*, 144 Pub. Util. Fortnightly 34 (2006).

[160] At least one rating agency treats a utility's self-built generation as an asset while treating long-term purchase contracts as imputed debt, thus making it less attractive for utilities to choose the contract option.

[161] *See infra* Chapter 4 for a discussion of regulated service offerings in states with retail competition.

[162] Mirant, Constellation.

[163] Cong. Budget Office, Financial Condition of the U.S. Electric Utility Industry (1986), *available at http://www.cbo.gov/showdoc.cfm?index=5964&sequence=0.*

[164] Southern, Duke.

[165] Commodity Futures Trading Comm'n, The Economic Purpose of Futures Markets, *available at http://www.cftc.gov/opa/brochures/opaeconpurp.htm.*

[166] APPA.

[167] Task Force Meetings with Credit Agencies, see Appendix B.

[168] U.S. Gen. Accounting Office, GAO–02–427, Restructured Electricity Markets, Three States' Experiences in Adding Generating Capacity 73 (2002).

[169] Connecticut DPUC.

from plants could be sold at a profit.[170] Financing was more readily accessed for projects like combined cycle gas and particularly gas turbines that can be built relatively quickly and were viewed at the time to have a cost advantage compared with existing generation already in operation, including less efficient gas-fueled generators.[171] In 1996, the Energy Information Administration projected that 80% of electric generators between 1995 and 2015 would be combined cycle or combustion turbines.[172] Base-load units, such as coal plants, with construction and payout periods that would put capital at risk for a much longer period of time, were harder to finance.[173]

Box 3–3: The Use of Capacity Credits in Organized Wholesale Markets

In theory, capacity credits could support new investment because suppliers and their investors would be assured a certain level of return even on a marginal plant that ran only in times of high demand. Capacity credits might allow merchant plants to be sufficiently profitable to survive even in competition with the generation of formerly-integrated local utilities that may have already recovered their fixed costs.

The increasing amount of new generation fueled by natural gas, however, has caused electricity prices to vary more frequently with natural gas prices, a commodity subject to wide swings in price.[174] With input costs varying widely, but merchant revenues often limited by contract or by regulatory price mitigation, investors may worry that merchant generators may not recover their costs and provide an attractive rate of return.

4. Regulatory Intervention May Affect Investment Returns

Generation investors must expect to recover not only their variable costs but also an adequate return on their investment to maintain long-term financial viability. One way for suppliers to recover their investment is to charge high prices during periods of high demand. However, regulators may limit recovery of high prices during these periods, and thus may deter suppliers from making needed investments in new capacity that would be economical absent these price caps.

This dynamic leads to a chicken-and-egg conundrum: If there were efficient investment, there might not be a need for wholesale price or bid caps. More investment in capacity would lead to less scarcity, and thus fewer or shorter episodes of high prices that may require mitigation. By contrast, it may be that price regulation during high-priced hours diminishes the confidence of investors that they can rely on market forces (rather than regulation) to set prices. That diminished confidence in their ability to earn sufficient investment returns thus deters entry of new generation supply.

Price mitigation through the use of price or bid caps has become an integral component of most organized markets. The use of mitigation has led generators to seek a supplemental revenue stream (capacity credits) to encourage entry of new supply. *See* Box 3–3 for a discussion of capacity credits.

In practice, however, the presence or absence of capacity credits has not always resulted in the predicted outcomes. California did not have capacity credits and did not experience much new generation, but two of the regions (the Southeast and Midwest) experienced significant new generation entry without capacity credits. Northeast RTOs with capacity credits continue to have some difficulty attracting entry, especially in major metropolitan areas.

As noted above, much of the new generation in the Southeast was non-utility merchant generation, and relied on the region's proximity to natural gas supplies. In the Midwest, in the late 1990s, largely uncapped prices were allowed to send price signals for investment. In California, price caps of various kinds have been used for a number of years, limiting price signals for new entry. In the Northeast, organized markets have offered capacity payments for long term investments in addition to electric power prices that are sometimes capped in the short term. Unfortunately, there is no conclusive result from any of these approaches—no one model appears to be the perfect solution to the problem of how to spur efficient investment with acceptable levels of price volatility.

Net revenue analyses for the centralized markets with price mitigation suggest that price levels are inadequate for new generation projects to recover their full costs. For example, in the last several years, net revenues in the PJM markets have been, for the most part, too low to cover the full costs of new generation in the region.[175] Based on 2004 data, net revenues in New England, PJM and California would have allowed a new combined-cycle plant to recover no more than 70% of its fixed costs.

Regulation also may interfere with efficient exit of generation plants due to the use of reliability-must-run requirements. In some load pockets in organized markets, plant owners are paid above-market prices to run plants that are no longer economical at the market-clearing price. For example, in its Reliability Pricing Model filing with FERC, PJM states, "PJM also has been forced to invoke its recently approved generation retirement rules to retain in service units needed for reliability that had announced their retirement. As the Commission often has held, this is a temporary and sub-optimal solution. Such compensation, like the reliability must run ("RMR") contracts allowed elsewhere, is outside the market, and permits no competition from, and sends no price signals to, other prospective solutions (such as new generation or demand resources) that might be more cost-effective."[176] To the extent that market rules allocate the cost of keeping these plants running to customers outside of the load pocket, such payments may distort price signals that, in the long run, could elicit entry. Graduated capacity payments that favor new entry of efficient plants may be a partial solution to retirement of inefficient old plants.

5. Investment in Transmission: A Necessary Adjunct to Generation Entry

Transmission access can be vital to the competitive options available to market participants. For example, merchant generators depend on the availability of transmission to sell power, and transmission constraints can limit their range of potential customers. Small utilities, such as many municipal and cooperative utilities, depend on the

[170] U.S. Gen. Accounting Office, GAO–02–427, Restructurd Electricity Markets, Three States' Experiences in Adding Generating Capacity 13 (2002).

[171] Energy Info. Admin., DOE/EIA–0562(96), The Changing Structure of the Electric Power Industry: An Update 38 (1996).

[172] *Id.*

[173] Hearing on Nuclear Power, Before the Subcomm. on Energy of the S. Comm. on Energy & Nat'l Res., Mar. 4, 2004 (statement of Mr. James Asselstine, Managing Director, Lehman Brothers); *see also* Nuclear Energy Institute, Investment Stimulus for New Nuclear Power Plant Construction: Frequently Asked Questions, *available at http://www.nei.org/documents/New_Plant_Investment_Stimulus.pdf.*

[174] Natural Gas, Factors Affecting Prices and Potential Impacts on Consumers, Testimony Before the Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, United States Senate; GA)–06–420T (February 13, 2006) at 7.

[175] Occasionally in the past few years net revenues have been sufficient to cover the costs of new peaking units, and in 2005 they were enough to cover the costs of a new coal plant. Market Monitoring Unit, PJM Interconnection, LLC, 2005 State of the Market Report, at 118 (2006) [hereinafter PJM State of the Market Report 2005], *available at http://www.pjm.com/markets/market-monitor/som.html.*

[176] Intial Order on Reliability Pricing Model, 115 FERC ¶ 61,079, *3 (2006)

availability of transmission to buy wholesale power, and transmission constraints can limit their range of potential suppliers. Much of the transmission grid is owned by vertically-integrated, investor-owned utilities and, traditionally, these utilities have an incentive to limit the use by others of the grid, to the extent such use conflicts with sales by their own generation. In short, the availability of transmission is often the keystone in determining whether a generating facility is likely to be profitable and, thus, to elicit investment in the first instance.

Since FERC issued Order No. 888 in 1996, questions have arisen concerning the efficacy of various terms and conditions governing the availability of transmission. For example, transmission customers have raised concerns regarding the calculation of Available Transfer Capacity (ATC). Another area of concern is the lack of coordinated transmission planning between transmission providers and their customers. Finally, customers have raised concerns about aspects of transmission pricing. Based on these concerns, FERC in May 2006 proposed modifications to public utility tariffs to prevent undue discrimination in the provision of transmission services. FERC is soliciting public comments on its proposed modifications.

As discussed above, generation that is built where fuel supplies are readily available, but not necessarily near demand, and construction costs are low, rely heavily on readily available transmission. The Connecticut DPUC noted that while generation growth may have been sufficient for some regions such as New England as a whole, some localized areas had demand growth without increases in supply, raising prices in load pockets. If transmission access to the load pocket were available, a large base-load plant outside the load pocket might become an attractive investment proposition.

Less regulatory intervention in wholesale markets for generation may be necessary if transmission upgrades, rather than unrestricted high prices or capacity credits, are used to address the concerns about future generation adequacy. Although capacity credits may spur generators within a load pocket to add additional capacity, capacity credits may not be required for base-load plants outside the load pocket. Those base-load plants would not have the problem of average revenues falling below average costs because they would have access to more load, and be able to run profitably during more hours of the day. Similarly, price caps may be unnecessary if improved transmission brought power from more base-load units into the congested areas. Prices would be lower because there would be less scarcity, and high cost units would be needed to run during fewer hours.

E. Observations on Wholesale Market Competition

One of the most contentious issues currently facing federal regulators is whether the different forms of competition in wholesale markets have resulted in an efficient allocation of resources. The various approaches used by the different regions show the range of available options.

1. Open Access Transmission without an Organized Exchange Market

One option is to rely upon the OATT to make generation options available to wholesale customers. No central exchange market for electric power operates in regions taking this option (the Northwest and Southeast) Instead, wholesale customers shop for alternatives through bilateral contracts with suppliers and separately arrange for transmission via the OATT. With a range of supply options to choose from, long-term bilateral contracts for physical supply can provide price stability that wholesale customers seek and a rough price signal to determine whether to build new generation or buy generation in wholesale markets. However, prices and terms can be unique to each transaction and may not be publicly available. Furthermore, the lack of centralized information about trades leaves transmission operators with system security risks that necessitate constrained transmission capacity. The lack of price transparency can also add to the difficulty of pricing long-term contracts in these markets.

This model is extremely dependent on the availability of transmission capacity that is sufficient to allow buyers and sellers to connect. Thus, it also is dependent upon the accurate calculation and reporting of transmission capacity available to market participants. Short-term availability is not sufficient, even if accurately reported, to form a basis for long term decisions such as contracting for supply or building new generation. Not only must transmission be available, but it must be seen to be available on a nondiscriminatory basis. As the FERC noted in Order 2000, persistent allegations of discrimination can discourage investment even if they are not proven. Without the assurance of long term transmission rights, wholesale customers may remain dependent on local generation owned by one or only a few sellers and be denied the competitive options supplied by more distant generation. Similarly, new suppliers may have no means of competing with incumbent generators located close to traditional load.

2. Policy Options in Organized Wholesale Markets

In organized markets, market participants have access to an exchange market where prices for electric power are set in reference to supply offers by generators and demand by wholesale customers (including Load Serving Entities or LSEs). Such an exchange market could have prices set by a number of mechanisms. All existing U.S. exchange markets have a uniform price auction to determine the price of electric power. Uniform price auctions theoretically provide suppliers an incentive to bid their marginal costs, to maximize their chance of getting dispatched. The principal alternative to uniform price auctions is a pay-as-bid market.

The academic research on whether pay-as-bid auctions can actually result in lower prices has been evolving, and the results are at best mixed. Theoretically, pay-as-bid auctions do not result in lower market-clearing prices and may even raise prices, as suppliers base their bids on forecasts of market-clearing prices instead of their marginal costs. More recent research suggests that pay-as-bid can sometimes result in lower costs for customers.[177] But, the pay-as-bid approach may reduce dispatch efficiency, to the extent generator bids deviate from their marginal costs.[178]

A uniform price auction may allow some generators (*e.g.*, coal- or nuclear-fueled units) to earn a return above those typically allowed under cost-based regulation, but it also may limit the return of other generators (*e.g.*, natural gas-fueled units) to a return below those typically allowed under cost-based regulation. In a competitive market, a unit's profitability in a uniform price auction will depend on whether, and by how much, its production costs are below the market clearing price. A uniform price auction

[177] Par Holmberg, *Comparing Supply Function Equilibria of Pay-as-Bid and Uniform Price Auctions* (Uppsala University, Sweden Working Paper 2005:17, 2005); G. Federico & D. Rahman, *Bidding in an Electricity Pay-As-Bid Auction* (Nuffield College Discussion Paper No 2001–W5, 2001); Joskow, Difficult Transition at 6–7.

[178] Alfred E. Kahn, *et al.*, *Uniform Pricing or Pay-as-Bid Fricing: A Dilemma for California and Beyond* (Blue Ribbon Panel Report, study commissioned by the California Power Exchange, 2001).

may thus produce prices that are very high compared with the costs of some generators and yet not high enough to give investors an incentive to build new generation that could moderate prices going forward. The uniform price auction creates strong incentives for entry by low-cost generators that will be able to displace high cost generators in the merit dispatch order. Three policy options have been suggested to address the tension between market-clearing prices with uniform auction and entry.

a. Unmitigated Exchange Market Pricing

One possible, but controversial, way to spur entry is to let wholesale market prices rise. As discussed in Chapter 2, the market will likely respond in two ways. First, the resulting price spikes will attract capital and investment. To assure that the price signals elicit appropriate investment and consumption decisions, they must reflect the differences in prices of electricity available to serve particular locations. Where transmission capacity limits the availability of electric power from some generators within a regional market, the cost of supplying customers within the region may vary. Without locational prices, investors may not make wise choices about where to invest in new generation.

Unfortunately, it is difficult to distinguish high prices due to the exercise of market power from those due to genuine scarcity. High prices due to scarcity are consistent with the existence of a competitive market, and therefore perhaps suggest less need for regulatory intervention. High prices stemming from the exercise of market power in the form of withholding capacity may justify regulatory intervention. Being able to distinguish between the two situations is therefore important in markets with market-based pricing.[179]

Second, higher prices will likely signal to customers that they should change their decisions about how much and when to consume. Price increases signal to customers to reduce the amount they consume. Indeed, during the Midwest wholesale price spikes in the summer of 1998, demand fell during the period in which prices rose and customers purchased little supply during those periods.[180] For an efficient reduction in consumption to occur, however, retail customers must have the ability to react to accurate price signals. As discussed in Chapter 4, customers often have limited incentive, even in markets with retail competition, to reduce their consumption when the marginal cost of electricity is high. This is because retail rates in the short-term do not vary to account for the costs of providing the electricity at the actual time it was consumed.

b. Moderation of Price Volatility With Caps and Capacity Payments

To date, the alternative to unmitigated exchange market pricing has been price and bid caps in wholesale exchange markets. Although price and bid caps may moderate wide swings in market-clearing prices, not all the caps in place may be necessary to prevent exercise of market power or set at appropriate levels. Higher caps may strike a balance between the desire of policy makers to smooth out the peaks of the highest price spikes and the need to demonstrate where capital is required and can recover its full investment. Some argue, however, that high price caps may burden consumers with high prices and yet not allow prices to rise to the level that will actually insure that investors will recover the cost of new investment. Thus prices can rise significantly and yet not elicit entry by additional supply that could moderate price in later periods.

Capacity payments are one way to ensure that investors recover their fixed costs. Capacity payments can provide a regular payment stream that, when added to electric power market income, can make a project more economically viable than it might be otherwise. Like any regulatory construct, however, capacity payments have limitations. It is difficult to determine the appropriate level of capacity payments to spur entry without over-taxing market participants and consumers.

To the extent that capacity rules change, this creates a perception of risk about capacity payments that may limit their effectiveness in promoting investment and ultimately new generation. When rules change, builders and investors may also take advantage of short-term capacity payment spikes in a manner that is inefficient from a longer-term perspective.

If capacity payments are provided for generation, they may prompt generation entry when transmission or demand response would be more affordable and equally effective. Capacity payments also may disproportionately reward traditional utilities and their affiliates by providing significant revenues for units that are fully depreciated. Capacity payments also may discourage entry by paying uneconomical units to keep running instead of exiting the market. These concerns can be addressed somewhat by appropriate rules—*e.g.*, NYISO's rules giving capacity payment preference to newly-entered units—but in general, it is difficult to tell whether capacity payments alone would spur economically efficient entry.

One issue that has arisen is whether capacity prices should be locational, similar to locational electric power prices. PJM, ISO–NE and NYISO have either proposed or implemented locational capacity markets that may increase incentives for building in transmission-constrained, high-demand areas. The combination of high electric power prices and high capacity prices in these areas may combine to create an adequate incentive to build generation in load pockets.[181]

c. Encouraging Additional Transmission Investment

Building the right transmission facilities may encourage entry of new generation or more efficient use of existing generation. But transmission expansion to serve increased or new load raises the difficulty of tying the economic and reliability benefits of transmission to particular consumers. In other words, because transmission investments can benefit multiple market participants, it is difficult to assess who should pay for the upgrade. This challenge may cause uncertainty about the price for transmission and about return on investment both for new generators and for transmission providers.

If transmission entry can connect low-cost resources to high-demand areas, it is closely linked to the issues of generation entry. Transmission entry, however, can in theory remove the kinds of transmission congestion that results in higher prices in load pockets. Transmission entry may be a double-edged sword: if it is expected to occur, it would reduce the incentive of companies to consider generation entry, by eliminating the high prices they hope to capture.

Both generation and transmission builders face the issue of dealing with an existing transmission owner or an RTO/ISO to obtain permission to build. Moreover, there are substantial difficulties to site new transmission lines. It is difficult to assess whether

[179] *See generally Edison Mission Energy, Inc.* v. *FERC*, 394 F.3d 964 (DC Cir. 2005).

[180] Robert J. Michaels and Jerry Ellig, *Price Spike Redux: A Market Emerged, Remarkably Rational*, 137 Pub. Util. Fortnightly 40 (1999). Wholesale customers with supply contracts for which the prices were tied to the market price paid higher prices for electric power during those hours.

[181] Siting in these areas can be difficult or impossible as a result of land prices, environmental restrictions, aesthetic considerations, and other factors.

these risks are higher for transmission builders than for generation builders.

d. Governmental Control of Generation Planning and Entry

The final alternative is a regulatory rather than a market mechanism to assure that adequate generation is available to wholesale customers. As a method to spur investment, regulatory oversight of planning has some positive aspects, but it also has costs. Using regulation through governmentally determined resource planning to encourage entry could result in more entry than market-based solutions, but that entry may not occur where, when or in a way that most benefits customers. Regulatory oversight of investment also means regulators can bar entry for reasons other than efficiency. The stable rate of return on invested capital offered under rate-regulation can encourage investment. On the other hand, rate-regulation can lead to overinvestment, excessive spending and unnecessarily high costs. Regulation also lacks the accountability that competition provides. Mistakes as to where and how investments should be made may be borne by ratepayers. In competitive markets, the penalties for such mistakes would fall on management and shareholders. The specter of future accountability for investment decisions can lead to better decision-making at the outset.[182]

It is possible that regulatory oversight of planning would result in greater fuel diversity, and thus less exposure to risks associated with changes in fuel prices or availability. It could also lessen potential boom-bust cycles where investors overreact to market signals and too many parties invest in one region. That reaction creates overcapacity, which in turn leads to lower prices. One large drawback to regulation, however, is the regulator's lack of knowledge about the correct price to set. It is difficult to set the correct price unless frequent experimentation with price changes is possible, and yet consumers generally do not favor significant price variation.

Chapter 4—Competition in Retail Electric Power Markets

A. Introduction and Overview

Congress required the Task Force to conduct a study of competition in retail electricity markets. This chapter examines the development of competition in retail electricity markets and discusses the status of competition in the 16 states and District of Columbia that currently allow their customers to choose their electricity supplier.

Although it has been almost a decade since states started to implement retail competition, residential customers in most of these states still have very little choice among suppliers. Few residential customers have switched to alternative suppliers or marketers in these states. Commercial and industrial customers, however, have more choices and options than residential customers, but in several states these customers have become increasingly dissatisfied with increasing prices. Residential, commercial, and industrial customers in states with retail competition often have limited ability to adjust their consumption in response to price changes.

One of the main impediments to market-based competition has been the lack of entry by alternative suppliers and marketers to serve retail customers. Unlike markets in other industries, most states required the distribution utility to offer customers electricity at a regulated price as a backstop or default if the customer did not choose an alternative electricity supplier or the chosen supplier went out of business. States argued that a regulated service was necessary to ensure universal access to affordable and reliable electricity.

States often set the price for the regulated service at a discount below then-existing rates and capped the price for multi-year periods. These initial discounts sought to approximate the anticipated benefits of competition for residential customers. Since then, wholesale prices have increased. More than any other policy choice surrounding the introduction of retail competition, this policy of requiring distribution utilities to offer service at low prices unintentionally impeded entry by alternative suppliers to serve retail customers—new entrants cannot compete against a below-market regulated price.

States with below-market, regulated prices now face a chicken-or-egg problem and "rate shock." With rate caps set to expire for the regulated service that most residential customers use, states are loath to subject their customers to substantially higher market prices that the distribution utilities indicate they must charge. These higher prices are even more painful to customers because they have few tools to adjust their consumption as wholesale prices vary over time. However, if states require the distribution utility to offer regulated service at below-market rates, retail entry, and thus competition, will not occur. Moreover, below-market rates put the solvency of the distribution utility at risk.

This conundrum is further complicated by the fact that most distribution utilities that offer the regulated service no longer own generation assets. The utilities in many states sold their generation assets or transferred them to unregulated affiliates at the beginning of retail competition. Thus, distribution utilities that offer the regulated service must purchase supply in wholesale markets. Attempts to reassemble the vertically integrated distribution company face the reality that prices for many generation assets may be higher now than when they were divested at the beginning of retail competition. If the utility re-purchases these assets at these higher prices, it is likely to have "sold low and bought high." In both cases, the competitiveness of wholesale prices has a direct impact on the retail prices consumers pay.

This chapter addresses the status and impact of retail competition in seven states that the Task Force examined in detail: Illinois, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Texas. See Appendix D for each state profile. These seven states represent the various approaches that states have used to introduce retail competition.[183] The Chapter also discusses why it is difficult at this time to determine whether retail prices are higher or lower than they otherwise would be absent the move to retail competition.

The chapter provides several observations based on the experiences of states that have implemented retail

[182] Regulatory solutions, more so than market-based outcomes, may outlive the circumstances that made them seem reasonable.

[183] Restructured states as of May 2006 include: Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, and Virginia, plus the District of Columbia. The seven profiled states include a range of conditions that are similar to the other states with retail competition. Virginia is similar to Pennsylvania in that their transitions to retail competition are over approximately a 10-year period. Maine and Rhode Island are similar to New York and Texas in that prices for POLR service have been regularly adjusted to reflect changes in wholesale prices. Delaware, the District of Columbia, Illinois, Michigan, New Hampshire, Ohio and Rhode Island share the situation in Maryland with the transition period of fixed prices for residential and small C&I POLR service coming to an end in the near future. Massachusetts' rate cap period ended recently. Many of the states about to end the transition period, share the development of approaches to bring POLR prices for residential and small C&I customers up to market rates in stages rather than all at once. Several of these states also share Maryland's and New Jersey's interest in auctions for procuring POLR service supplies. Oregon's situation differs from the other states in that only nonresidential customers can shop and the shopping is limited to a short window of time each year.

competition with an emphasis on how states can minimize market distortions once the rate caps expire. States with expiring rates caps face several choices on whether and how to rely on competition, rather than regulation, to set the retail price for electric power.

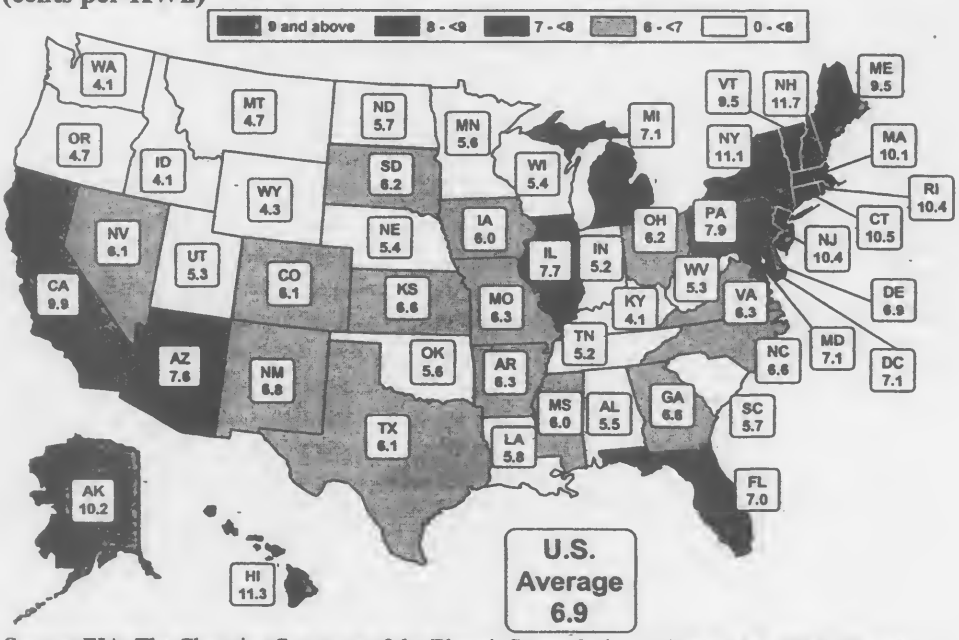
B. Background on Provision of Electric Service and the Emergence of Retail Competition

For most of the 20th century, local distribution utilities typically offered electric service at rates designed for different customer classes (*e.g.*, residential, commercial, and industrial). State regulatory bodies set these rates based on the utility's costs of generating, transmitting, and distributing the electricity to customers. Locally elected boards oversaw the rates for customers of public power and cooperative utilities. For investor-owned systems, the regulated rate included an opportunity to earn an authorized rate of return on investments in utility plant used to serve customers. Public power and cooperative systems operate under a cost of service non-profit structure and rates typically include a margin adequate to cover unanticipated costs and support new investment.

With minor variations, monopoly distribution utilities deliver electricity to retail customers.[184] Industrial customers sometimes had more options as to service offerings and rate structures (*e.g.*, time-of-use rates, etc.) than residential and small business customers.[185]

Beginning in the early 1990s, several states with high electricity prices began to explore opening retail electric service to competition. As discussed in Chapter 1 and Figure 4–1, rates varied substantially among utilities, even those in the same state. Some of the disparity was due to different natural resource endowments across regions—most important the hydroelectric opportunities in the Northwest and states such as Kentucky and Wyoming with abundant coal reserves. Also, some states required utilities to enter into PURPA contracts at prices much higher than the utilities' avoided costs. In addition to these rate disparities, some industrial customers contended that their rates subsidized lower rates for residential customers.

Figure 4-1: U.S. Electric Power Industry, Average Retail Price of Electricity by State, 1995 (cents per KWh)



Source: EIA, The Changing Structure of the Electric Power Industry (December 1996), Figure 11.

With retail competition, customers could choose their electric supplier or marketer, but the delivery of electricity would still be done by the local distribution utility.[186] The idea was that customers could obtain electric service at lower prices if they could choose among suppliers. For example, they could buy from suppliers located outside their local market, from new entrants into generation, or from marketers, any of which might have lower prices than the local distribution utility. Moreover, the ability to choose among alternative suppliers would reduce any market power that local suppliers might otherwise have, so that purchases could be made from the local suppliers at lower prices than would otherwise be the case. Also, customers might be able to buy electricity on innovative price or other terms offered by new suppliers.

[184] In 30 states retail electric customers continue to receive service almost exclusively under a traditional regulated monopoly utility service franchise. These states include 44% of all U.S. retail customers which represents 49% of electricity demand.

[185] For example, Georgia law allows any new customers with loads of 900 kilowatts or more to make a one time selection from among competing eligible electric suppliers. Southern.

[186] The FERC and the state will continue to regulate the price for transmission and distribution services and, in most states, the local distribution utility will continue to deliver the electricity, regardless of which generation supplier the customer chooses.

In 1996, California enacted a comprehensive electric restructuring plan to allow customers to choose their electricity supplier. To accommodate retail choice, California extensively restructured the electric power industry. The legislation:

(1) Established an independent system operator to operate the transmission grid throughout much of the state so that all suppliers could access the transmission grid to serve their retail customers;

(2) Established a separate wholesale trading market for electricity supply so that utilities and alternative suppliers could purchase supply to serve their retail customers;

(3) Mandated a 10 percent immediate rate reduction for residential and small commercial customers for those customers that did not choose an alternative supplier;

(4) Authorized utilities to collect stranded costs related to those generation investments that were unlikely to be as valuable in a competitive retail environment; and

(5) Implemented an extensive public benefits program funded by retail ratepayers.[187]

Other states also enacted comprehensive legislation. In May 1996, New Hampshire enacted retail competition legislation—Rhode Island (August 1996), Pennsylvania (December 1996), Montana (April 1997), Oklahoma (May 1997), and Maine (May 1997)—all followed suit. By January 2001, some 22 states and the District of Columbia had adopted retail competition legislation. Regulatory commissions in four other states (including Arizona which also enacted legislation) had issued orders requiring or endorsing retail choice for retail electric customers. (See chart and timeline with retail choice legislation dates) Several states, primarily those with low-cost electricity such as Alabama, North Carolina, and Colorado, concluded that the retail competition would not benefit their customers. In Colorado, for example, limitations on transmission access and a high concentration among generator suppliers led the state to be concerned that these suppliers would exercise market power to the detriment of customers. These states opted to keep traditional utility service.

States adopting retail competition plans generally did so to advance several goals. These goals included:

- Lower electricity prices than under traditional regulation through access to lower cost power in competitive wholesale markets where generators competed on price and performance;
- Better service and more options for customers through competition from new suppliers;
- Innovation in generating technologies, grid management, use of information technology, and new products and services for consumers;
- Improvements in the environment through displacement of dirtier, more expensive generating plants with cleaner, cheaper, natural gas and renewable generation.

At the same time, legislatures and regulators affirmed support for the availability of electricity to all customers at reasonable rates with continuation of safe and reliable service and consumer protections under regulatory oversight under the restructured model. Boxes 4–1 and 4–2 describe the Pennsylvania and New Jersey Legislatures' finding and expected results of retail competition.

Box 4–1: Findings of the Pennsylvania Legislature

The findings of the Pennsylvania General Assembly demonstrate these varied goals:

(1) Over the past 20 years, the federal government and state government have introduced competition in several industries that previously had been regulated as natural monopolies.

(2) Many state governments are implementing or studying policies that would create a competitive market for the generation of electricity.

(3) Because of advances in electric generation technology and federal initiatives to encourage greater competition in the wholesale electric market, it is now in the public interest to permit retail customers to obtain direct access to a competitive generation market as long as safe and affordable transmission and distribution is available at levels of reliability that are currently enjoyed by the citizens and businesses of this Commonwealth.

(4) Rates for electricity in this commonwealth are on average higher than the national average, and significant differences exist among the rates of Pennsylvania electric utilities.

(5) Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.

Source: Pennsylvania HB 1509 (1995), *available at http://www.legis.state.pa.us/WU01/LI/BI/BT/1995/0/HB1509P4282.HTMhttp://www.legis.state.pa.us/WU01/LI/BI/BT/1995/0/HB1509P4282.HTMhttp://www.legis.state.pa.us/WU01/LI/BI/BT/1995/0/HB1509P4282.HTM*

Box 4–2: Findings of the New Jersey Legislature

"The [New Jersey] Legislature finds and declares that it is the policy of this State to:

(1) Lower the current high cost of energy, and improve the quality and choices of service, for all of this State's residential, business and institutional consumers, and thereby improve the quality of life and place this State in an improved competitive position in regional, national and international markets;

(2) Place greater reliance on competitive markets, where such markets exist, to deliver energy services to consumers in greater variety and at lower cost than traditional, bundled public utility service; * * *

(3) Ensure universal access to affordable and reliable electric power and natural gas service;

(4) Maintain traditional regulatory authority over non-competitive energy delivery or other energy services, subject to alternative forms of traditional regulation authorized by the Legislature;

(5) Ensure that rates for non-competitive public utility services do not subsidize the provision of competitive services by public utilities; * * *

C. Meltdown and Retrenchment

Starting in the late spring 2000 and lasting into the spring of 2001, California experienced high natural gas prices, a strained transmission system, and generation shortages. Wholesale prices increased substantially during this time frame. State law capped residential provider of last resort (POLR) rates at levels that were soon below the market price paid by utilities for wholesale electric power. One of California's large investor owned utilities declared bankruptcy because it could not increase its retail rates to cover the high wholesale power prices. The state stepped in to acquire electricity supply on behalf of two of the three IOUs operating in California.[188] California eventually suspended retail competition for most customers while it reconsidered how to assure adequate electric supplies and continuation of service at affordable rates in a competitive wholesale market environment. The suspension continues today. Box 4–3 describes the State's role in purchasing electricity and the all-time high prices it paid, and continues to pay, for such electricity.

[187] Ca. AB 1890, *available at http://www.leginfa.ca.gov/pub/95–96/bill/asm/ab_1851–1900/ab_1890_bill_960924_chaptered.pdf.*

[188] *See, e.g.*, California Attorney General's Energy White Paper, A Law Enforcement Perspective on the California Energy Crisis, Recommendations for Improving Enforcement and Protecting Consumers in Deregulated Energy Markets (Apr. 2004), *available at http://ag.ca.gov/publications/energywhitepaper.pdf;* Federal Energy Regulatory Commission, *Final Repart an Price Manipulation in Western Energy Markets: Fact Finding Investigatian of Potential Manipulatian of Electric and Natural Gas Prices,* Docket No. PA02–2–000 (March 26, 2003); U.S. General Accounting Office, *Restructured Electricity Markets, Califarnia Market Design Enabled Exercise of Market Power,* (June 2002), *available at http://www.gaa.gov/new.items/d02828.pdf.*

Box 4–3: The State of California's Electricity Purchases at All-Time High Prices

In 2001, the California spent over $10.7 billion to purchase electricity on the spot market to supply customer's daily needs. The state also signed long-term contracts worth approximately $43 billion for 10 years. These contracts represented about one-third of the three utilities' requirements for the same period (2001–2011). Viewed with the benefit of perfect hindsight, the state entered these long-term contracts when prices were at an all-time high. Future prices hovered in the range of $350–$550 per MWh during the time the State negotiated its long-term contracts and in April future prices peaked at $750/MWh as the state finalized its last contract. By August 2001, future prices had sunk below $100. Thus, as of May 2006, the state is obligated to pay well over market prices for at least 5 more years. See Southern California Edison.

The experience in California and its ripple effects in the western region prompted several states to defer or abandon their efforts to implement retail competition. Since 2000, no additional states have adopted retail competition. Indeed, some states including Arkansas and New Mexico, which had previously adopted retail competition plans, repealed them.

Other large states such as Texas, New York, Pennsylvania, New Jersey, and Illinois moved ahead with retail competition as planned. These states have ended, or are about to end, their POLR service rate caps and will soon rely on competitive wholesale and retail markets for electricity.

As shown in Figure 4–2, at present, 16 states and the District of Columbia have restructured at least some of the electric utilities in their states and allow at least some retail customers to purchase electricity directly from competitive retail suppliers. Restructured states as of April 2006 include: Connecticut, Delaware, District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, and Virginia.

Figure 4-2: United States Map Depicting States with Retail Competition, 2003

Source: EIA, available at http://www.eia.doe.gov/cneaf/electricity/chg_str/restructure.pdf

D. Experience with Retail Competition

With these expected benefits in mind, the Task Force examined seven states in depth to report the status of retail competition. These states represent the different approaches taken to introduce retail competition. The states include Illinois, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Texas and they. These states are referred to as "profiled states."

In most profiled states, competition has not developed as expected. Few alternative suppliers currently serve residential customers. To the extent that there are multiple suppliers serving customers, prices have not decreased as expected, and the range of new options and services is limited. Much of the lack of expected benefits can be attributed to the fact that some states still have capped residential POLR rates. Commercial and industrial customers generally have more choices than residential customers because most do not have the option to take POLR service at discounted, regulated rates, have substantially larger demand (load), and have lower marketing/customer service costs.

This section first reviews the status of retail competition in the profiled states with an emphasis on entry of new suppliers, migration of customers to alternative suppliers, and the difficulties in drawing conclusions about retail competition's effect on prices. The section then discusses how regulated POLR service has distorted entry decisions of alternative suppliers. The section also discusses the lessons learned from the use of POLR that may assist states as they decide how to structure future POLR service.

1. Status of Retail Competition

a. States Have Allowed Distant Suppliers to Access Local Customers and Have Encouraged Distribution Utilities to Divest Generation

The profiles revealed that each state took some measures to encourage entry of new suppliers to compete with the supply offered by the incumbent utility. Each of the profiled states adopted policies to allow suppliers other than the local incumbent distribution utility access to local retail customers by requiring the utilities in the state to join an independent system operator (ISO) or regional transmission organization (RTO). As discussed in Chapter 3, larger wholesale electricity geographic markets enable retail suppliers and marketers to buy generation supplies from a wider range of local and distant sources (*e.g.*, neighboring utilities with excess generation, independent power producers, cogenerators, *etc.*). Even if no new generation facilities are built, independent operation and management of the transmission grid increases the choices available to retail customers and makes it more difficult for local generators to exercise market power.

Some states such as Massachusetts, New Jersey, and New York ordered or encouraged utilities to divest generation assets to independent power producers (IPP) either to eliminate possible transmission discrimination or to secure accurate stranded cost valuations.[189] These divestitures have generally not required that a utility sell its generation assets to more than one company to eliminate the potential for the exercise of generation market power, but often generating facilities have been purchased by more than one IPP.[190] In other states, such as Illinois and Pennsylvania, several utilities voluntarily divested their generation assets by selling them or moving them into unregulated affiliates.[191]

The result of these divestitures has been that regulated distribution utilities in profiled states operate fewer generation assets than in the past. Distribution utilities that are required to serve customers must access the wholesale supply market to obtain generation supply to serve their customers. Table 4–2 shows the amount of a state's generation that was under operation by the state's regulated distribution utilities (*i.e.*, in the "rate base") prior to retail competition and after the start of retail competition.

TABLE 4–1.—DISTRIBUTION UTILITY OWNERSHIP OF GENERATION ASSETS IN THE STATE IN WHICH IT OPERATES

State	Prior to restructuring (percent)	2002 (percent)
Illinois	97.0%	9.1%
Maryland	95.4	0.1
Massachusetts	86.6	9.0
New Jersey	81.2	6.8
New York	84.3	32.4
Pennsylvania	92.3	12.3
Texas	88.3	41.2

Source: U.S. Department of Energy, Energy Information Administration, State Profiles, Table 4 in each state profile, *available at http://www.eia.doe.gov/cneaf/electricity/st_profiles/e_profiles_sum.html.* The pre-retail competition statistics are from 1997 and the post-retail competition statistics are from 2002.

Other states, such as Texas, limited the market share that any one generation supplier can hold in a region, thus providing more of an opportunity for other suppliers to enter.[192] Still others such as New York have helped organize introductory discounts from alternative suppliers, thus providing customers an incentive to switch to these new suppliers.[193]

b. Alternative Suppliers Serving Retail Customers and Migration Statistics

In the profiled states, substantial numbers of generation suppliers serve large industrial and large commercial customers. For example, in Massachusetts, over 20 direct suppliers provide service to commercial and industrial customers, along with over 50 licensed electricity brokers or marketers.[194] In Massachusetts, however, there are substantially fewer active suppliers serving residential customers—only four in Massachusetts.[195] In New Jersey, commercial and industrial customers can choose among nearly 20 suppliers, but residential customers have a choice of one or two competitive suppliers.[196]

For residential customers, Texas and New York are the two states in which more than just a handful of suppliers serve residential customers. In Texas, residential customers have approximately 15 suppliers from which to choose.[197] In New York, between six and nine suppliers offer services to residential customers in each service territory.[198] Very few, if any, suppliers provide service to residential customers in the other profiled states or in other retail competition states. One notable exception has been the municipal aggregation program in Ohio described in Box 4–4.

Box 4–4: Customer Choice Through Municipal Aggregation in Ohio

In New York, Texas, and most other states retail customer switching occurs primarily through individual customers making a choice to pick a specific alternative retail supplier. In Ohio, however, most switching activity has occurred through aggregations of customers seeking a supplier under the statewide "Community Choice" aggregation option. In Ohio, the retail competition law provides for municipal referendums to seek an alternative supplier and allows municipalities to work together to find an alternative supplier. The largest aggregation pool, the Northeast Ohio Public Energy council is made up of 100 member communities and serves approximately 500,000 residents. Aggregation accounts for most of the residential switching in Ohio. The Ohio program allows individual customers to opt out of the aggregation. In most other states, aggregation programs use an approach under which customers must specifically opt in to participate. Participation rates generally are much higher under opt out than under opt in programs.

In those territories with more generation suppliers, the migration or number of residential customers switching from the POLR service to an alternative competitive supplier is the greatest. For example, in Massachusetts, as of December 2005, 8.5 percent of the residential customers had migrated to a competitive supplier. Approximately 41

[189] *See* Massachusetts, New Jersey, and New York profiles, Appendix D. *See also* FTC Staff Report *Competition and Consumer Protection Perspectives on Electric Power Regulation Reform: Focus on Retail Competition* (Sept. 2001) at 43 [hereinafter FTC Retail Competition Report].

[190] The price of generation assets have been volatile since these divestitures occurred. The asset prices are often based not only to the cost of the fuel necessary to generate the electricity, but also to the location of the asset on the transmission grid.

[191] *See* Illinois and Pennsylvania profiles, Appendix D. *See also* FTC Retail Competition Report, Appendix A (State profiles of Illinois and Pennsylvania).

[192] Texas profile, Appendix D.

[193] New York profile, Appendix D.

[194] Massachusetts Department of Telecommunications and Energy, List of Competitive Suppliers/Electricity Brokers, *available at http://www.mass.gov/dte/restruct/company.htm.*

[195] Massachusetts Department of Telecommunications and Energy, Active Licensed Competitive Suppliers and Electricity Brokers, *available at http://www.mdss.gov/dte/restruct/competition/index.htm#Licensed%20Competitive%20Suppliers%20and%20Electricity%20Brokers.*

[196] New Jersey Board of Public Utilities, List of Licensed Suppliers of Electric, *available at http://www.bpu.state.nj.us/home/supplierlist.shtml.* For example, in the Connectiv territory, there are 18 commercial and industrial (C&I) and 1 residential suppliers. Eighteen suppliers serving C&I customers and 1 serving residential customers in the PSE&G service territory.

[197] Texas Public Utilities Commission, Texas Electric Choice Compare Offers from Your Local Electric Providers, *available at http://www.powertochoose.org/default.asp.*

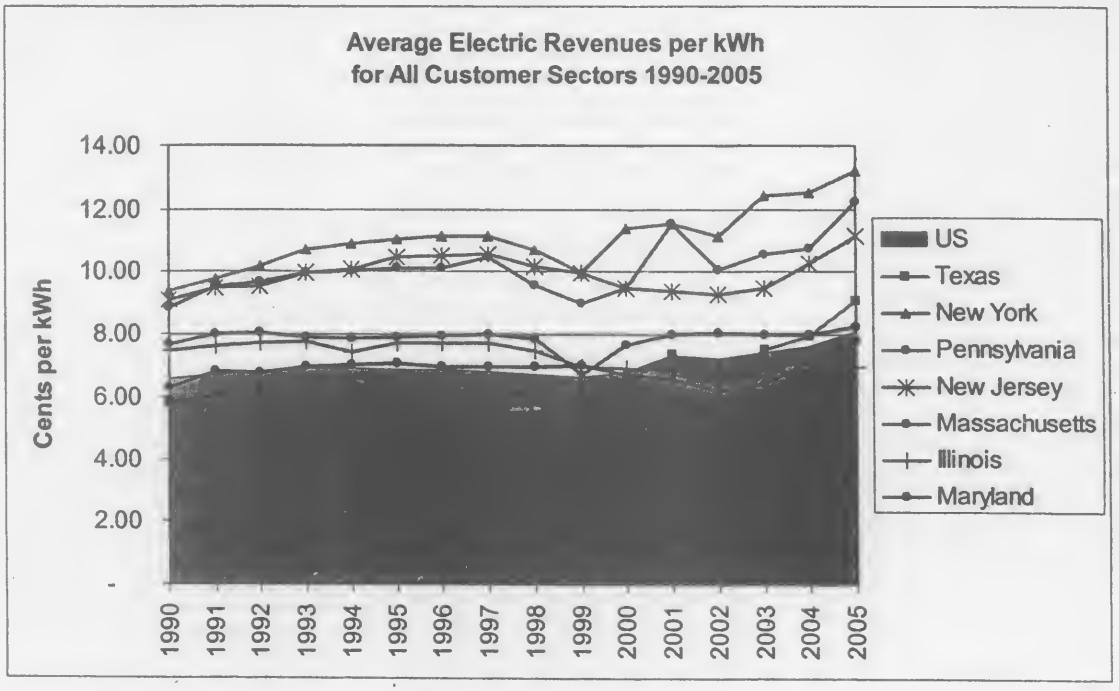
[198] New York State Public Service Commission, Competitive Electric and Gas Marketer Source Directory, *available at http://www3.dps.state.ny.us/e/esco6.nsf/.*

percent of large commercial and industrial customers had switched to alternative suppliers, representing 57.5% of the load.[199] In states with a large number of suppliers serving residential customers, higher percentages of residential customers had switched to a new supplier with approximately 26% choosing a new supplier in Texas.[200] Of course, once alternative suppliers serve customers, the local distribution utility no longer provides generation supply, but continues to deliver the generation supply over its transmission and distribution system.

c. Retail Price Patterns by Type of Customer

Figures 4–3 shows average revenues per kilowatt hour for all customer types in the profiled states against the national average for the period 1990–2005. The U.S. national average was generally flat at 8 cents per kWh during this period. New York, Massachusetts, and New Jersey have generally been higher than the national average and Texas, Pennsylvania, Maryland, and Illinois have been lower. In 2004 and 2005 retail prices in all states have begun to increase.

Figure 4-3. Average Revenues per kWh for Retail Customers 1990-2005 Profiled States vs. National Average



Source: EIA Form 861 data, and Monthly Electricity Report for average electric revenues per kWh all sectors, all retail providers.

i. Residential and Commercial Customers

It is difficult to draw conclusions about how competition has affected retail prices for residential customers in those states in which residential customers continue to take capped POLR service (*e.g.*, Maryland, Illinois; and portions of New York, Pennsylvania, and Texas). Price comparisons of regulated prices shed little light on the price patterns as a result of retail competition.

For those states in which the residential rate caps have expired, POLR prices have increased recently. In New Jersey, residential rate caps on POLR service expired in the summer of 2003. Since then, the state has conducted an internet auction to procure POLR supply of various contract lengths (one and three year contracts). The state holds annual auctions to replace the suppliers with expiring contracts and to acquire additional supply. Rates for the generation portion of POLR service were flat in 2003 and 2004 after adjusting for deferred charges, but they increased in 2005 and 2006 with rates increasing approximately 13% between 2005 and 2006.[201]

In Massachusetts, capped POLR rates expired in February 2005. Since then customers who had not chosen an alternative supplier were still able to obtain POLR service. Massachusetts based the generation portion of the POLR service on the price of supply procured in wholesale markets through fixed-priced, short-term (three or six months) supply contracts. Rates for the

[199] Massachusetts profile, Appendix D.

[200] Texas profile, Appendix D.

[201] New Jersey profile, Appendix D. *See also* Kenneth Rose, 2003 Performance of Electric Power Markets, Review Conducted for the Virginia State Corporation Commission (Aug. 29, 2003) at II–19.

generation portion of POLR service in the Boston Edison (north) territory increased from 7.5 to 12.7 cents per KWh from 2005 to 2006.[202]

ii. Large Industrial Customers

Similar to the situation described above for residential customers, large industrial customers that continue to use a fixed price POLR service shed little light on price patterns. A number of states, however, have revised their POLR policies for large customers such that the POLR price for generation is a pass-through of the hourly wholesale price for electricity plus a fixed administrative fee. For example, Maryland, New Jersey, and New York have adopted this type of POLR pricing for large industrial customers.[203] In these states, substantial numbers of customers, as described above, have switched to alternative suppliers.

Large industrial customers have cited how their rates have increased since the beginning of retail competition.[204] Indeed, some commenters suggested that the Task Force compare prices for customers of the same utility that operates in a state that did not implement retail competition to examine the effect of retail competition on rates.[205]

The difficulty with this type of comparison is that many factors simultaneously influence prices that may not be related to retail competition. For example, one state may have reduced the cross-subsidies of residential by industrial customers, and another may not have, so that a price comparison would be misleading. Access to different generators (with low or high prices) may be affected by transmission congestion such that comparing two states as if they were in the same physical location would be misleading. Finally, some states may be deferring recovery of costs to a future time period whereas other states are not. Thus, a simple price comparison may not reveal whether retail competition has benefited customers, without consideration of these and other factors. At this point it is difficult for the Task Force to provide a definitive explanation of price differences between states.

[202] Massachusetts profile, Appendix D.

[203] Although POLR price is based on the hourly wholesale price of electricity, customers in New York and New Jersey who purchase this service are unaware of the price until they are billed.

[204] *See, e.g.*, ELCON; Portland Cement; Alliance of State Leaders; Alcoa.

[205] Portland Cement; Lehigh Cement.

d. Results of Efforts To Bring Accurate Price Signals Into Retail Electric Power Markets

The impact of retail competition to bring efficient price signals to retail customers has been mixed. Residential POLR service rate caps have not increased customer exposure to time-based rates. The exception has been real-time pricing as the POLR service for the largest customers in New Jersey, Maryland, and New York.

Commenters argue that POLR rate structure can have a major effect on customer price responsiveness, especially among larger customers. A broad spectrum of utilities, state regulators, and ISOs argue that variable rates permit customers to react to price changes because these rates allow customers to clearly see how much money they can save.[206] Indeed, the experience of the largest customers in National Grid USA's New York area, suggests that after the introduction of retail competition, customers using real-time pricing demonstrate price sensitivity.[207]

In states with traditional cost-based regulation, utilities have used various incentives for customers to reduce consumption during periods in which there is high demand and transmission congestion (*e.g.*, hot summer days). The existence of retail competition has, in some instances, discouraged the use of these traditional types of programs, particularly when POLR is no longer the responsibility of distribution utilities.[208] Without the need to maintain a portfolio of resources to meet POLR, distribution utilities may no longer value these types of programs as a resource to ensure reliable and efficient grid operation. Shifting the responsibility of grid operation and reliability to regional organizations such as ISOs/RTOs further decreases the direct interest by distribution utilities in these types of product offerings.

e. Retail Competition and Rural America

Many rural areas are served by small non-profit electric cooperative and public power utilities. Historically rural areas were among the last to be electrified and the most costly to serve. Customers are scattered and residential and small loads predominate. Electric distribution cooperative service areas have been opened to competition under some state plans. No states have required municipal and/or public power utilities to implement retail competition.

Eight states with retail competition required electric cooperatives to implement retail competition in their service territories. These states are Arizona, Delaware, Maine, Maryland, Michigan, New Hampshire, Pennsylvania and Virginia. With the exception of Pennsylvania, state public utility commissions regulated retail rates of electric cooperatives and approved the retail competition plans for each cooperative. Pennsylvania's restructuring legislation left the design and implementation of retail competition to the individual distribution cooperatives and their boards. The Pennsylvania Public Utility Commission is responsible for licensing competitive retail providers in cooperative service territories. Cooperative retail competition plans have been fully implemented in Delaware, Maine, New Hampshire, Pennsylvania, and Virginia. In Arizona and Michigan some aspects of cooperative retail competition plans are still in administrative or judicial proceedings. Michigan currently has allowed electric cooperatives to offer retail competition to a portion of their very large industrial and commercial customers. Action on extending competition to other customers in Michigan has been deferred.

Six more states allow electric cooperatives to opt in to retail competition on a vote of their boards or membership. These are Illinois, Montana, New Jersey, Ohio, and Texas. None of these states regulate the rates or services of electric distribution cooperatives, so design and implementation of cooperative retail competition plans is left to the individual cooperative. Licensing of competitive providers is handled by the state, but providers must enter into agreements with the cooperative in order to begin enrolling retail customers. A handful of individual cooperatives in Montana and Texas elected to provide retail competition options for their members.

Tracking the progress of retail competition in rural areas is difficult because most states do not post switching data or maintain up to date information on active suppliers in cooperative service territories. Nevertheless, it was possible to determine that there were few alternative competitive providers, if any, for residential customers of rural systems open to retail competition. There were no competitive providers enrolling customers in coop systems in

[206] Constellation, PEPCO, Southern and EEI, ICC, IURC, and NYPSC, ISO–NE.

[207] National Grid.

[208] For example, when PEPCO divested its generation assets it stopped actively supporting its air-conditioner DLC program.

Maine, New Hampshire, Pennsylvania, Arizona, Maryland, and Virginia in May 2006. In Delaware, and Montana, competitive providers had been licensed to serve coop customers, but it is unclear that any are currently enrolling customers. Licensed provider and switching information for Texas cooperatives is not yet available.

B. POLR Service Price Significantly Affects Entry of New Suppliers

Each of the profiled states has required local distribution utilities to offer a POLR service for customers who do not select an alternative generation service provider or whose supplier has exited the market. The price that the distribution utility charges for regulated POLR service is usually "fixed" for an extended period—that is, it does not vary with increases or decreases in wholesale prices. The most significant portion of the POLR service price is the generation portion of the POLR service. Many states denote this as the "price to beat" or the "shopping credit." It also represents the amount that the customer avoids paying the distribution utility when the customer chooses an alternative generation service provider. The customer instead pays the alternative electricity supplier's charges for generation services.

The comments reported that the price of POLR service is the most significant factor affecting whether new suppliers will enter the market and compete to serve customers.[209] The POLR price is the price that new suppliers, including unregulated affiliates of the distribution utility, must compete against if they are to attract customers.[210]

1. Contrasting Visions of POLR Service

The comments revealed two long-term visions of POLR service. In the first vision, POLR is a long-term option for customers. In the second vision, POLR is a temporary service for customers between suppliers. The first vision entails POLR service that closely approximates traditional utility service, but in a market place with other sources of supply available to customers. POLR service under the first vision often features prices that are fixed over extended periods of time. In this vision, government-regulated POLR service competes head-to-head with private, for-profit retail suppliers.[211] An analogous example may be the United States Postal Service as a provider of parcel postage service in competition with for-profit, package delivery services such as United Parcel Service, DHL, and Federal Express. Alternative suppliers may grow in this vision as they find additional approaches to attract customers, but POLR service will likely retain a substantial portion of sales, particularly sales to residential customers. This type of POLR service serves as a yardstick against which alternative suppliers compete. Most states have used this version of POLR.[212]

In the second vision, POLR service is a barebones, temporary service consisting of retail access to wholesale supply, primarily for customers who are between suppliers. In this vision, alternative suppliers serve the bulk of retail customers. The alternative suppliers compete primarily against each other with a variety of price and service offers designed to attract different types of customers. This type of POLR service acts as a stopgap source of supply that ensures that electric service is not interrupted for customers when an alternative supplier leaves the market or is no longer willing to serve particular customers. Wholesale spot market prices or prices that vary with each billing cycle may be acceptable as the price for POLR service under this vision.[213] A comparable supply arrangement for this version of POLR service is the high risk pool for automobile insurance operated in any of several states.[214] Texas and Massachusetts provide current examples of this vision, as is Georgia in its design for retail natural gas sales.[215]

Some of profiled states incorporated aspects of both visions of POLR service for different types of customers. For example, New Jersey adopted the first approach for POLR service to residential customers and the second approach for POLR service to large commercial and industrial customers.[216] Large C&I customers are generally expected to be well-informed buyers with wide energy procurement experience. As such, some states determined that large C&I customers are more likely to be able to quickly obtain the benefits of retail competition without additional help from state regulators provided in the form of fixed price POLR prices.

2. Key POLR Service Design Decisions

The profiled states took different approaches to design their POLR service offerings. Key design decisions involved the pricing of the POLR, how to acquire POLR supply, and the duration of the POLR obligation. Each of these can affect entry conditions that alternative suppliers face. This section describes each of the decisions.

a. Pricing of POLR Service

The profiled states generally set the POLR price at the pre-retail competition regulated price for electric power less a discount. The discounts usually persist over a specified multi-year period. Assuming that competition generally lowers prices, one rationale for the discounts was to provide a proxy for the effects of competition applied to customers viewed as less likely to be

[209] The comments also identified other factors that depress or delay entry into retail competition markets besides the policies surrounding POLR discussed above. It is difficult for the Task Force to evaluate which additional factors are the most important because of the lack of entry in most states. For example, the Pennsylvania Consumer Advocate identified several factors that depressed retail entry by suppliers to serve residential customers, including "the acquisition costs associated with marketing programs to reach residential customers, the costs of serving such customers once acquired, and the rising prices for generation supply service in the wholesale market" PA OCA at 3. The Maine Public Advocate echoed these and identified the "miscalculation by some suppliers as to the risks and rewards for retail electricity competition" ME PA at 3. The Industrial Customers identified that retail markets are not fully competitive because of the insufficient generation divestitures that left suppliers with market power. ELCON at 2. Other factors identified by Industrial Customers include inability of alternative suppliers to gain access to necessary transmission services to serve their customers. ELCON at 6. Others customers suggested the lack of uniform rules throughout every service territory hinder ease of entry for suppliers. Wal-Mart at 13. Other commenters argued that alternative suppliers need access to customer usage data from utilities to be able to market to prospective customers. Constellation at 43. Still others argued for no minimum stay requirements at POLR and constrained shopping windows, which can dampen entry. RESA at 30–31, Strategic at 10, Wal-Mart at 13.

[210] There is one potential exception. Suppliers that offer a substantially different product, "green" power from wind turbines, for example, may be able to charge a higher price and still attract customers.

[211] *See, e.g.*, ICC, PPL, and PA OCA.

[212] *See, e.g.*, PA OCA; NASUCA.

[213] *See, e.g.*, RESA, Wal-Mart, NEMA, and Suez.

[214] Most states have a mechanism by which high risk drivers can obtain insurance. Often insurers in a state are assigned a portion of the pool of high risk drivers based on that firm's share of drivers outside the pool. AIPSO manages many of the pools and maintains links with individual state programs at *https://www.aipso.com/adc/DesktopDefault.aspx?tabindex=0&tabid=1*. Similar plans are available in many states for individuals with prior health conditions who are seeking health insurance coverage. *See* Communicating for Agriculture and the Self-Employed, *Comprehensive Health Insurance of High-Risk Individuals*, 19th Ed. (2005).

[215] Texas will end its "price to beat" system in 2007 (Texas profile). Massachusetts ended its rate-capped POLR service in February 2005 (Massachusetts profile). In the Atlanta Gas Light distribution territory, the distribution utility petitioned the Georgia Public Service Commission to withdraw from retail sales. In Georgia, under the amended Natural Gas Competition and Deregulation Act of 1997, a customer who does not choose as alternative supplier is randomly assigned to an alternative supplier. Discussion and documentation about the Georgia natural gas retail competition program are *available at http://www.psc.state.ga.us/gas/ngdereg.asp*.

[216] New Jersey profile, Appendix D.

able to quickly obtain such savings for themselves. The Illinois POLR service discount, for example, was developed to bring local prices into line with regional prices. Those customers in areas with relatively low prices before customer choice did not receive discounts below previous regulated rates at the beginning of retail competition. In contrast, customers in the Commonwealth Edison territory, the area with the highest cost-based rates, received 20% discounts to bring retail POLR prices there into line with regional average bundled service prices prior to the restructuring legislation.[217]

b. The Extent and Timing of Pass Through of Fuel Cost Changes

States also have considered the extent to which they should adjust the regulated POLR price to allow for changes in fuel costs to generate electricity. Some states have separated fuel costs from other cost components, because fuel costs have been more volatile than other input prices—they are the largest variable cost component, and can be calculated for each type of generation unit, based on public information. These factors also suggest that a generation firm does not have much control over its fuel costs once the generation investment has been made. For example, Texas instituted twice yearly adjustments in the POLR service (price to beat) price calculations. By adjusting POLR prices for changes in fuel costs, the Texas regulators have been able to prevent the POLR price from slipping too far away from competitive price levels, thus maintaining the POLR price as a closer proxy for the competitive price.[218] If retail prices fall too far below wholesale prices, the POLR supplier may have financial difficulties and alternative suppliers will be unlikely to enter or remain as active retailers.[219]

c. POLR Price and the Shopping Credit

When a retail customer picks an alternative supplier, the distribution utility with a POLR obligation avoids the costs of procuring generation supply for that consumer. The distribution utility therefore "credits" the customer's bill so that the customer pays the alternative supplier for the electricity supplied.[220] This avoided charge is known as the shopping credit and is equal to the regulated POLR service price. States have used two approaches to determine the level of the shopping credit. One view is that the shopping credit equals the avoided cost or the proportion of POLR procurement costs attributable to a departing customer. Maine, for example, has estimated avoided costs on this basis with no additional estimated avoided costs.[221] This view results in a lower shopping credit and total POLR price. An alternative perspective is that the distribution utility also avoids other costs on top of avoided procurement costs, including marketing and administrative costs.[222] This view results in a higher shopping credit and total POLR price. In Pennsylvania, the POLR shopping credit included several other elements such as avoided marketing and administrative costs.[223] Some observers attributed the early high volume of switching to alternative suppliers in Pennsylvania to the additional avoidable costs that were included in the Pennsylvania shopping credit calculations.[224]

d. The Multi-Year Period for POLR Service

Every state that implemented retail competition has determined the length for which POLR should continue to be available to customers at a discount from prior regulated prices. The length of this period has generally corresponded to the distribution utility's collection of "stranded" generation costs. In a competitive retail environment, utilities no longer were assured that they could recover the costs of all of their state-approved generation investments. Most states faced claims of utility stranded costs associated with generation facilities that were unlikely to earn enough revenues to recover fixed costs once customers can seek out alternative, lower-priced retail suppliers. States allowed utilities with stranded costs to recover those costs through charges on distribution services that cannot be bypassed.[225]

Each state that authorized the collection of stranded costs faced decisions on how to determine these costs and the duration of the collection period. These decisions fundamentally altered the electric power industry and were at the center of some of the most contentious issues facing state regulators. First, some states required that some or all generation be sold to obtain a market-based determination of the level of stranded costs. For example, Maine and New York took this approach.[226] In other states, such as Illinois, utilities voluntarily divested generation assets. As noted above, the result of these divestitures is that generation is no longer primarily in the hands of regulated distribution utilities.[227]

e. Procurement for POLR Service

Given that most utilities no longer own generation to satisfy all of their POLR obligations, utilities have taken different approaches to acquire the necessary generation supply. For example, the utilities in New Jersey that offer residential POLR service acquire the generation supply through the use of three overlapping 3-year contracts, each for approximately one third of the projected load.[228] This "laddering" of supply contracts reduces the volatility of retail electricity prices for customers, but it does not assure that the prices paid by POLR service consumers are at the short-term competitive level.[229] Other states have used different ways to hedge the volatility in short-term energy prices. For example, New York distribution utilities have long-term supply contracts with the purchasers of their divested generation assets ("vesting contracts") based on pre-divestiture average generation prices.[230]

E. Observations on How POLR Service Policies Affect Competition

One of the most contentious issues currently facing state regulators is whether and how to price POLR service once the rate caps expire. This situation is especially vexing for those states that had stranded cost recovery periods

[217] Illinois profile, Appendix D.

[218] Texas profile, Appendix D.

[219] *See* discussion of the California energy crisis in which one of the state's utilities declared bankruptcy because, in part, capped POLR rates were substantially below wholesale prices.

[220] The distribution utility continues to charge the customer a delivery charge to cover the transmission and distribution expense (the "wires" charge).

[221] Thomas L. Welch, Chairman, Maine Public Utilities Commission, UtiliPoint PowerHitters interview (January 24, 2003), *available at http://mainegov-images.informe.org/mpuc/staying_informed/about_mpuc/commissioners/ph-welch.pdf.*

[222] *See* Kenneth Rose, *Electric Restructuring Issues for Residential and Small Business Customers*, National Regulatory Research Institute Report NRRI 00–10 (June 2000), *available at http://www.nrri.ohio-state.edu/dspace/bitstream/2068/610/1/00–10.pdf*, for a discussion of adders and their relationship to wholesale prices and headroom for entrants in Pennsylvania and other states.

[223] *Id.*

[224] Over time, the size of the shopping credit in Pennsylvania faded in significance as the competitive rates increased relative to POLR service prices due to fuel cost increases. See the pattern of customer switching in the Pennsylvania profile in the appendix.

[225] FTC Retail Competition Report, State Profiles, Appendix A.

[226] New York profile, Appendix D; FTC Retail Competition Report, New York State Profile, Appendix A.

[227] Illinois profile, Appendix D.

[228] New Jersey profile, Appendix D.

[229] *See, e.g.*, ME OPA.

[230] New York profile, Appendix D.

during which fixed POLR prices became substantially lower than current wholesale prices. The rate caps expire in 2006 for states such as Maryland, Delaware, Illinois, Ohio, and Rhode Island, and customers that did not choose an alternative supplier are faced with the prospect of substantially increased electricity prices relative to those in effect when retail competition began six or seven years ago. The various state POLR policies show the range of options available to these states.

1. POLR Service Price to Approximate the Market Price

For the POLR service price to provide economically efficient incentives for consumption and supply decisions, it must closely approximate or be linked to a competitive market price based on supply and demand at a given point in time. If the POLR service price does not closely match the competitive price, it is likely to distort consumption and investment decisions away from theoretically optimal allocation of electricity resources. Theoretically, competitive market prices align consumers' willingness to pay for a service with a suppliers cost of supply (where, in the long run, cost includes a fair market return on investment). This alignment is thought to lead to an economically efficient allocation of resources, wherein no alternate distribution of resources could lead to greater benefits to society as a whole.

Experience within the profiled states shows that approximating the competitive price is not an easy task. Not only does the competitive price change when prices of inputs change, but the price also acts as an investment signal for new generation. The competitive price can quickly and dramatically move. Over the past several years, the initial fixed discounts for POLR service have resulted in POLR service prices that are below market prices or occasionally above market prices, but never at the market price for long.[231] When the POLR prices are below competitive levels, even efficient alternative suppliers cannot profit by entering or continuing to serve retail customers.[232] Firms with the POLR obligation can become financially distressed, as they did in California during its energy crisis.[233]

Some of the change in the market price is likely to be due to changes in fuel prices. A POLR service design that adjusts the retail electricity price for changes in the prices of fuels used by marginal generators makes a better proxy for the market price than one that is fixed. When the POLR price is adjusted to incorporate underlying fuel price changes, but it is adjusted infrequently, the POLR price can repeatedly change from being above the competitive market price to below the competitive market price.[234] In this way, a fixed price creates incentives for customers to move back and forth from POLR service to alternative suppliers. This repeated switching can create additional costs for both POLR service providers and alternative suppliers and it can reduce the certainty that both POLR service and competitive suppliers may need in order to make long-term supply arrangements. If there are other identifiable cost components that fluctuate widely, including them in POLR service price adjustments will also increase the likelihood that the POLR service price will be a reasonable proxy for the competitive price.

2. Lack of Market-Based Pricing Distorts Development of Competitive Retail Markets

A second issue arises when below-market POLR service prices persist during a period of rising fuel prices and wholesale supply prices. In these circumstances, customers are likely to experience a shock when POLR service prices are adjusted to match prevailing wholesale prices. This situation can create public pressure to continue the fixed POLR rates at below-market levels. For example, some jurisdictions have considered a gradual phase-in of the price increase to bring POLR prices to the market level. The shortfall between the market POLR price and the price customers pay is usually deferred and collected later from the POLR provider's customers.

Although this approach reduces rate shock for customers, it is likely to distort retail electricity markets. First, a phase-in continues to provide inaccurate price signals for customers and undermines incentives to reduce consumption or to conserve electric power use. Second, it prevents entry of alternative suppliers by keeping the POLR rate below market for additional years. Third, it results in higher prices in future years as the deferred revenues are recovered. Fourth, if surcharges to pay for deferred revenues are not designed carefully, the charges can disrupt existing competition by forcing customers with alternative suppliers to pay for part of the deferred revenues. Fifth, if wholesale prices decline, customers will choose alternative suppliers and this migration will create a stranded cost problem because the POLR provider will have lost customers who were counted on to pay the higher prices. Moreover, if the state prevents the stranded cost problem by imposing large exit fees on POLR service customers, competition may not develop even after POLR service prices rise to market levels because POLR service customers will be locked in to the POLR provider. Finally, continued POLR service price caps in an environment of increasing wholesale price increases can endanger the financial viability of the distribution utility.

3. Different POLR Services Designed for Different Classes of Customer

Some states have different POLR service designs for different customer classes. POLR service prices offered to large C&I customers generally have entailed less discounting from regulated rates or competitive market-based procurement and have been based on wholesale spot market prices.

Large C&I customers generally have a better understanding of price risk, the means to reduce it, and the costs to reduce it than do other customer classes. In addition, suppliers often can customize service offerings to the unique needs of these large customers.[235] Large C&I customers, with their larger loads, also may be better equipped to respond to efficient price signals than other classes of customers. The result of this price response may be to improve system reliability and dissipate market power in peak demand periods.[236]

In states in which this division between POLR service for large C&I customers and POLR service for residential and small C&I customers has been implemented, there has been more switching to competitive providers among large C&I customers.[237] Many alternative suppliers have reportedly developed customized time of use

[231] *See, e.g.*, Wal-Mart; WPS Resources; ICC; PPL; RESA.

[232] *See, e.g.*, Wal-Mart; RESA.

[233] *See, e.g.*, EEI.

[234] *See, e.g.*, RESA.

[235] *See, e.g.*, Wal-Mart and 10–11; Morgan.

[236] In case 03–E–0641, the New York Public Service Commission required New York utilities to file tariffs for mandatory real-time pricing (RTP) for large C&I customers. The order observed that "average energy pricing reduces customers' awareness of the relationship between their usage and the actual cost of electricity, and obscures opportunities to save on electric bills that would become apparent if RTP were used to reveal varying price signals." It further notes that "if a sufficient number of customers reduced load in response to RTP, besides benefiting themselves, the reduction in peak period usage would ameliorate extremes in electricity costs for all other customers."

[237] New Jersey profile, Appendix D; RESA.

contracts for large C&I customers.[238] Moreover, the profiled states show that there are a substantial number of suppliers actively serving large C&I customers. Box 4–5 describes the unique sign-up period that Oregon has developed for its non-residential customers.

Box 4–5: Oregon's Annual Window for Switching for Nonresidential Customers

Nonresidential customers of the two large investor-owned distribution utilities in Oregon can switch to an alternative supplier, but the switching process is unique. Nonresidential customers must make their selections during a limited annual window. The window must be at least 5 days in duration, but usually a month is allowed. In addition to picking the alternative supplier, the largest customers must select a contract duration. One option specifies a minimum duration of 5 years, with an annual renewal after that. As of 2005, alternative suppliers were anticipated to serve about 10% of load in one distribution area and about 2.1% in the other. The former utility offered choice beginning in 2003. The latter utility began customer choice in 2005. Detailed descriptions are available at *http://www.oregon.gov/PUC/electric_restruc/indices/ORDArpt12-04.pdf.*

Exposure of all customers to time-based prices is not necessary to introduce price-responsiveness into the retail market.[239] As a first step, customers who are the most price-sensitive and elastic could be exposed to time-based rates. Niagara Mohawk in upstate New York has taken this approach for its largest customers, as have Maryland and New Jersey for their largest customers. California is considering setting real-time pricing as the default rate for medium-sized and larger commercial and industrial customers. Another means to introduce price-responsiveness is to provide customers voluntary time-based rate programs, along with assistance in equipment purchase or financing. The actions of the New York PSC to require voluntary TOU for residential customers, and the Illinois legislature to require that residential customers be offered real-time pricing as a voluntary tariff are examples of such a policy. Of course, the point is that competition will provide customers with the mix of products and services that match their needs and preferences—not a determination of the popularity of real-time pricing.

4. Use of Auctions To Procure POLR Service

As discussed above, New Jersey has used an auction process to procure POLR supply for both residential and C&I customers. Illinois has proposed to use a similar auction when its rate caps expire. Auctions may allow retail customers to obtain the benefit of competition in wholesale markets as suppliers compete to supply the necessary load. However, as discussed in Chapter 3, if there is a load pocket, use of an auction is unlikely to help this process and thus the benefits of competition may not be as great.

5. Consumer Awareness of Customer Choice and Engendering Interest in Alternative Suppliers

Observers of restructuring in other industries have found that the growth of customer choice can be a slow process. A commonly cited example is that it took 15 years before AT&T lost half of long-distance service customers to alternative suppliers.[240] One reason why retail competition could be slow to develop is that the expected gains from learning more about market choices are too small to make it worthwhile to learn.[241] Residential customers with small loads might be in this position in states with retail customer choice.[242]

The pricing of POLR service and aid in computing the "shopping credit" may be elements that can encourage more rapid development of retail competition by making the rewards for active search sufficient to motivate search behavior by residential consumers. Some states that have low "shopping credits" have had little retail entry. Some retail competition states have had substantial consumer education programs, including Web sites with orientation materials and price comparisons.[243] These efforts minimize the cost of learning more about the market and about market alternatives and can, therefore, make market search beneficial to customers.

New York has engaged in a different approach to encourage the development of retail competition. It is helping to organize temporary discounts from alternative suppliers and ordering distribution utilities to make these discounts known to consumers who contact the distribution utility.[244] These efforts have increased residential switching and reduced prices, at least for the short term. Experience indicates that once residential customers switch to alternative suppliers, they seldom return to POLR service once the temporary discounts no longer apply.[245]

[FR Doc. 06–5247 Filed 6–9–06; 8:45 am]
BILLING CODE 6717–01–C

[238] *See, e.g.*, Consolidated Edison; Alliance for Retail Energy Markets; Constellation; PPL; RESA; NY PSC; Direct Energy; Reliant; PA OCA; Wal-Mart; Morgan.

[239] Steven Braithwait and Ahmad Faruqui, *The Choice Not to Buy: Energy Sovings and Policy Alternatives for Demond Response*, PUBLIC UTILITIES FORTNIGHTLY, March 15, 2001.

[240] James Zolnierek, Katie Rangos, and James Eisner, Federal Communication Commission, Common Carrier Bureau, Industry Analysis Division, *Long Distonce Market Shores, Second Quorter 1998* (September 1998), pp. 19–20, available at *http://www.fcc.gov/Bureaus/Common_Corrier/Reports/FCC-State_Link/IAD/mksh2q98.pdf*, and Thomas L. Welch, Chairman, Maine Public Utilities Commission, UtiliPoint PowerHitters interview (January 24, 2003) available at *http://moinegov-imoges.informe.org/mpuc/stoying_informed/about_mpuc/commissioners/ph-welch.pdf.*

[241] Economists refer to this phenomenon as rational ignorance. Clemson University, *The Theory of Rotionol Ignorance*, The Community Leaders' Letter, Economic Brief No. 29, available at *http://www.strom.clemson.edu/teoms/ced/econ/8-3No29.pdf.*

[242] Joskow, Interim Assessment.

[243] *See, e.g.*, ELCON; Progress Energy; Constellation; PEPCO; PA OCA.

[244] In Case 05–M–0858, the New York Public Service Commission adopted the "PowerSwitch" alternative supplier referral program, first developed by Orange and Rockland, as the model for all state utilities.

[245] New York State Consumer Protection Board, Comment to the New York State Public Service Commission, Case 05–M–0334, Orange and Rockland Utilities, Inc., Retail Access Plan (May 2, 2005) at 5. The Board indicates that retail customers who have participated in "PowerSwitch" are returning to POLR service at a rate of less than 0.1% per month. The Board applauds PowerSwitch because it is completely voluntary and provides assured initial savings to consumers.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8183–6]

Science Advisory Board Staff Office; Advisory Council on Clean Air Compliance Analysis; Notification of a Public Advisory Committee Meeting (Teleconference)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency), Science Advisory Board (SAB) Staff Office announces a public teleconference for the Advisory Council on Clean Air Compliance Analysis.

DATES: The teleconference will take place on June 29, 2006 from 1 p.m. to 3 p.m. (Eastern Time).

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-number and access code must contact Dr. Holly Stallworth, Designated Federal Officer (DFO), EPA Science Advisory Board

Staff Office (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail: (202) 343–9867.

SUPPLEMENTARY INFORMATION:

Background: The Advisory Council on Clean Air Compliance Analysis (Council) is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The Council is charged with providing advice, information and recommendations to the Agency on the economic issues associated with programs implemented under the Clean Air Act and its Amendments. Pursuant to a requirement under section 812 of the 1990 Clean Air Act Amendments, EPA conducts periodic studies to assess the benefits and the costs of the Clean Air Act. The Council has been the chief reviewing body for these studies and has issued advice on a retrospective study issued in 1997, a prospective study issued in 1999, and, since 2003, analytic blueprints for a second prospective study on the costs and benefits of clean air programs covering the years 1990–2020. EPA's Office of Air and Radiation (OAR) is proceeding to implement past advice offered by the Council on its forthcoming "Second Prospective Analysis." OAR's Web site on these section 812 studies may be found at *http://www.epa.gov/oar/sect812/*.

The Council teleconference will provide an opportunity for members to receive an update from EPA/OAR on the status of its Second Prospective Analysis. Council members will discuss whether any additional advisory activities are needed prior to OAR's issuance of a full draft report. The meeting agenda and any background materials will be posted on the SAB Web site at: *http://www.epa.gov/sab* prior to the meeting.

Procedures for Providing Public Input: Members of the public may submit relevant written or oral information for the Council to consider during the advisory process. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker with no more than a total of fifteen minutes for all speakers. Interested parties should contact the DFO, contact information provided above, in writing via e-mail at least by June 22, 2006, in order to be placed on the public speaker list.

Meeting Accommodations: For information on access or services for individuals with disabilities, please contact Dr. Holly Stallworth at (202) 343–9867, or via e-mail at *stallworth.holly@epa.gov*. To request accommodation of a disability, please contact Dr. Stallworth, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: June 7, 2006.

Anthony F. Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. E6–9187 Filed 6–12–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8183–7]

Science Advisory Board Staff Office; Clean Air Scientific Advisory Committee (CASAC); Notification of a Public Advisory Committee Meeting of the CASAC Lead Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the Clean Air Scientific Advisory Committee's (CASAC) Lead Review Panel (Panel) to conduct a peer review of EPA's *Air Quality Criteria for Lead (Second External Review Draft), Volumes I and II* (EPA/600/R–05/144aB–bB, May 2006); and to conduct a consultation on the Agency's *Analysis Plan for Human Health and Ecological Risk Assessment for the Review of the Lead National Ambient Air Quality Standards* (Draft, May 31, 2006).

DATES: The meeting will be held from 8:30 a.m. (Eastern Time) on Wednesday, June 28, 2006, through 12 p.m. (Eastern Time) on Thursday, June 29, 2006.

Location: The meeting will take place at the Marriott at Research Triangle Park, 4700 Guardian Drive, Durham, NC, 27703, Phone: (919) 941–6200.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to submit a written or brief oral statement (five minutes or less) or wants further information concerning this meeting must contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9994; fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov*. General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: EPA is in the process of updating, and revising where appropriate, the air quality criteria document (AQCD) for lead. Section 109(d)(1) of the Clean Air Act (CAA) requires that EPA carry out a periodic review and revision, as appropriate, of the air quality criteria and the national ambient air quality standards (NAAQS) for the six "criteria" air pollutants, including lead. On December 1, 2005, EPA's National Center for Environmental Assessment National, Research Triangle Park (NCEA–RTP), within the Agency's Office of Research and Development (ORD), made available for public review and comment a revised draft document, *Air Quality Criteria for Lead (First External Review Draft), Volumes I and II* (EPA/600/R–05/144aA–bA). This first draft Lead air quality criteria document (AQCD) represented a revision to the previous EPA document, *Air Quality Criteria for Lead*, EPA–600/8–83/028aF–dF (published in June 1986) and an associated supplement (EPA–600/8–89/049F) published in 1990. Under CAA sections 108 and 109, the purpose of the revised AQCD is to provide an assessment of the latest scientific information on the effects of ambient lead on the public health and welfare, for use in EPA's current review of the NAAQS for lead. Detailed summary information on the revised draft AQCD for lead is contained in a previous EPA **Federal Register** notice (70 FR 72300, December 2, 2005).

EPA is soliciting advice and recommendations from the CASAC by means of a peer review of the revised draft Lead AQCD. The CASAC, which is comprised of seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and NAAQS under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. Earlier this year, the SAB Staff Office established a CASAC Lead Review Panel to provide EPA with advice and recommendations concerning lead in ambient air. The Panel complies with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

This meeting is a continuation of the CASAC Lead Review Panel's peer review of the current draft Lead AQCD. The Lead Panel met in a public meeting on February 28 and March 1, 2006 to conduct its initial peer review of the first draft Lead AQCD. The report from that meeting, dated April 26, 2006, is posted on the SAB Web site at: *http://www.epa.gov/sab/pdf/casac-06-005.pdf.*

In addition, in conjunction with its preparation of the Lead Staff Paper, EPA's Office of Air Quality Planning and Standards (OAQPS), within the Office of Air and Radiation (OAR), on May 31, 2006 released a draft *Analysis Plan for Human Health and Ecological Risk Assessment for the Review of the Lead National Ambient Air Quality Standards.* The purpose of this analysis plan is to outline the scope, approaches, and methods that Agency staff are planning to use for the human health and ecological risk assessments for lead. This plan also highlights key issues in the estimation of human health and ecological exposure and risks posed by lead under existing air quality levels ("as is" exposures and health risks). Furthermore, this analysis plan is intended to facilitate consultation with the CASAC, as well as public review, for the purpose of obtaining advice on the overall scope, approaches, and key issues in advance of the completion of such analyses and presentation of results in the first draft Lead Staff Paper.

Technical Contact: Any questions concerning the second draft Lead AQCD should be directed to Dr. Lori White, NCEA–RTP, at phone: (919) 541–3146, or e-mail: *white.lori@epa.gov.* Any questions concerning the *Analysis Plan for Human Health and Ecological Risk Assessment for the Review of the Lead National Ambient Air Quality Standards* should be directed to Ms. Ginger Tennant, OAQPS, at phone: (919) 541–4072, or e-mail: *tennant.ginger@epa.gov.*

Availability of Meeting Materials: The *Air Quality Criteria for Lead (Second External Review Draft), Volumes I and II* (May 2005) can be accessed via the Agency's NCEA Web site at: *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=154041.* The *Analysis Plan for Human Health and Ecological Risk Assessment for the Review of the Lead National Ambient Air Quality Standards* (Draft, May 31, 2006) can be accessed via EPA's Technology Transfer Network (TTN) Web Site at: *http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_cr_pd.html.* In addition, a copy of the draft agenda for this meeting will be posted on the SAB Web site at: *http://www.epa.gov/sab* (under the "Agendas" subheading) in advance of this CASAC Lead Review Panel meeting. Other meeting materials, including the charge to the CASAC Lead Review Panel, will be posted on the SAB Web site prior to this meeting at: *http://www.epa.gov/sab/panels/casac_lead_review_panel.htm.*

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the CASAC Lead Review Panel to consider during the advisory process. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Mr. Butterfield, DFO, in writing (preferably via e-mail), by June 21, 2006, at the contact information noted above, to be placed on the public speaker list for this meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by June 23, 2006, so that the information may be made available to the Panel for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Butterfield at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: June 7, 2006.

Anthony F. Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. E6–9186 Filed 6–12–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8183–5]

Science Advisory Board Staff Office; Clean Air Scientific Advisory Committee (CASAC); Notification of a Public Meeting of the CASAC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public meeting of the Clean Air Scientific Advisory Committee (CASAC) to provide input on the Agency's process for reviewing National Ambient Air Quality Standards (NAAQS) for criteria air pollutants.

DATES: The meeting will be held from 1 to 4 p.m. (Eastern Time) on Thursday, June 29, 2006.

Location: The meeting will take place at the Marriott at Research Triangle Park, 4700 Guardian Drive, Durham, NC, 27703, Phone: (919) 941–6200.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to submit written or brief oral comments (three minutes or less) or wants further information concerning this meeting must contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9994; fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov.* General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The CASAC, which is comprised of seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (CAA) (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and NAAQS under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App.

On December 15, 2005, the EPA Deputy Administrator initiated a review of the process that the Agency uses to periodically review and revise, as appropriate, the air quality criteria and NAAQS for the six criteria air pollutants, pursuant to section 109(d)(1) of the CAA. In response to the Agency's request, on February 17, 2006 the SAB Staff Office Director solicited individual input from current and former CASAC members into this review of the NAAQS review process. These individual responses, which were compiled by the SAB Staff Office and provided to the Agency from March 16 to March 29, 2006, are available on the SAB Web site at URL: *http://www.epa.gov/sab/panels/epa_rev_naaqs_rev_proc.htm.* On April 3, 2006, EPA made publicly-available a

March 2006 report of the Agency's NAAQS Process Review Workgroup, along with the recommendations of EPA's Office of Research and Development (ORD) and Office of Air and Radiation (OAR).

In response to the Agency's request, the CASAC is holding the public meeting to provide its input for EPA's recommended changes to the NAAQS review process. To facilitate the discussion at this June 29 meeting, on May 12, 2006 the CASAC provided the Administrator with its preliminary thoughts on the recommended changes to the NAAQS review process. The CASAC's May 12, 2006 letter to the Administrator is also posted on the SAB Web site at the above URL.

Availability of Meeting Materials: A copy of the draft agenda for this meeting will be posted on the SAB Web site at: *http://www.epa.gov/sab* (under the "Agendas" subheading) in advance of this public CASAC meeting. Other background and meeting-related materials, including discussion questions for the CASAC, will be posted prior to this meeting at URL: *http://www.epa.gov/sab/panels/epa_rev_naaqs_rev_proc.htm.*

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the CASAC to consider during this public meeting. *Oral Statements:* Individuals or groups requesting an oral presentation at this meeting will be limited to three minutes per speaker, with a total of no more than 30 minutes for all speakers. Interested parties should contact Mr. Butterfield, DFO, in writing (preferably via e-mail), by June 22, 2006, at the contact information noted above, to be placed on the public speaker list for this meeting.

Written Statements: Written statements should be received in the SAB Staff Office by June 22, 2006, so that the information may be made available to the CASAC members for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Butterfield at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: June 7, 2006.

Vanessa Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. E6–9188 Filed 6–12–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8183–8]

Draft NPDES General Permit for Groundwater Remediation Discharge Facilities in Idaho (Permit No. ID–G91–0000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft NPDES general permit.

SUMMARY: The Director, Office of Water and Watersheds, EPA Region 10, is proposing to issue a general National Pollutant Discharge Elimination System (NPDES) permit for groundwater remediation discharge facilities in Idaho, pursuant to the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.* The draft general permit authorizes the discharge of treated groundwater from new and existing facilities to surface waters of the United States within the State of Idaho. Interested persons may submit comments on the proposed general permit to EPA Region 10 at the address below.

DATES: Comments must be received or postmarked by August 14, 2006. A fact sheet has been prepared which sets forth the principal factual, legal, policy, and scientific information considered in the development of the draft general permit.

The draft general permit contains a variety of technology-based and water quality-based effluent limitations for 55 pollutants of concern commonly found in contaminated groundwater, along with administrative and monitoring requirements, as well as other standard conditions, prohibitions, and management practices. Effluent limits are applied at end-of-pipe with no mixing zone. However, mixing zones are available on an individual basis at the discretion of the Idaho Department of Environmental Quality (IDEQ) for pollutants with water quality-based effluent limits. Mixing zones will be granted through an individual State certification that will be attached to EPA's authorization to discharge letter.

Public Comment: Interested persons may submit written comments on the draft general NPDES permit to the attention of Robert Rau at the address below. Copies of the draft general permit and fact sheet are available upon request. The general permit and fact sheet may also be downloaded from the Region 10 Web site at *http://www.epa.gov/r10earth/waterpermits.htm* (click on draft permits, then Idaho). All comments should include the name, address, and telephone number of the commenter and a concise statement of comment and the relevant facts upon which it is based. Comments of either support or concern which are directed at specific, cited permit requirements are appreciated.

After the expiration date of the Public Notice on August 14, 2006, the Director, Office of Water and Watersheds, EPA Region 10, will make a final determination with respect to issuance of the general permit. The proposed requirements contained in the draft general permit will become final upon issuance if no significant comments are received during the public comment period.

ADDRESSES: Comments on the proposed general permit should be sent to Robert Rau; USEPA Region 10; 1200 6th Ave, OWW–130; Seattle, Washington 98101. Comments may also be received via electronic mail at *rau.rob@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained by contacting Robert Rau at the address above, or by visiting the Region 10 Web site at *http://www.epa.gov/r10earth/waterpermits.htm.* Requests may also be made to Audry Washington at (206) 553–0523, or electronically mailed to: *washington.audry@epa.gov.* For further information regarding the State's certification of the general permit, contact Johnna Sandow at the address below.

SUPPLEMENTARY INFORMATION:

Public Hearing

Persons wishing to request a public hearing should submit their written request by August 14, 2006 stating the nature of the issues to be raised as well as the requester's name, address and telephone number to Robert Rau at the address above. If a public hearing is scheduled, notice will be published in the **Federal Register**. Notice will also be posted on the Region 10 Web site, and will be mailed to all interested persons receiving copies of the draft permit.

Administrative Record

The complete administrative record for the draft permit is available for public review at the EPA Region 10 headquarters at the address listed above.

Other Legal Requirements

A. State Water Quality Standards and State Certification

EPA is also providing Public Notice of IDEQ's intent to certify the general permit pursuant to section 401 of the Clean Water Act. IDEQ has provided a draft certification that the draft general permit complies with State Water Quality Standards (IDAPA 58.01.02), including the State's antidegradation policy.

Persons wishing to comment on State certification of the draft general NPDES permit should send written comments to Ms. Johnna Sandow at the IDEQ State Office, 1410 N. Hilton, Boise, Idaho 83706, or via electronic mail at *johnna.sandow@deq.idaho.gov.*

B. Endangered Species Act

EPA has determined that issuance of the groundwater remediation discharge General Permit will have no affect any threatened or endangered species, designated critical habitat, or essential fish habitat.

C. Executive Order 12866

EPA has determined that this general permit is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

D. Paperwork Reduction Act

The information collection requirements of this permit were previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. However, general NPDES permits are not "rules" subject to the requirements of 5 U.S.C. 553(b), and is therefore not subject to the RFA.

F. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" (defined to be the same as "rules" subject to the RFA) on tribal, state, and local governments and the private sector. However, general NPDES permits are not "rules" subject to the requirements of 5 U.S.C. 553(b), and is therefore not subject to the RFA.

Dated: June 1, 2006.

Christine Psyk,

Associate Director, Office of Water and Watersheds, Region 10.

[FR Doc. E6–9190 Filed 6–12–06; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board Policy Statements

AGENCY: Farm Credit Administration.

ACTION: Notice.

SUMMARY: The Farm Credit Administration (FCA) is publishing the list of FCA Board policy statements, which has not changed since its last publication.

FOR FURTHER INFORMATION CONTACT: Wendy Laguarda, Senior Counsel, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: On November 25, 2005, we published a list of all current FCA Board policy statements and the text of each in their entirety. (*See* 70 FR 71142.) This list is still current and is being republished. (We are not publishing the text.) The FCA will continue to publish policy statements in their full text when there are changes.

FCA Board Policy Statements

FCA–PS–34 Disclosure of the Issuance and Termination of Enforcement Documents
FCA–PS–37 Communications During Rulemaking
FCA–PS–41 Alternative Means of Dispute Resolution
FCA–PS–44 Travel
FCA–PS–53 Examination Philosophy
FCA–PS–59 Regulatory Philosophy
FCA–PS–62 Equal Employment Opportunity Programs and Diversity
FCA–PS–64 Rules for the Transaction of Business of the Farm Credit Administration Board
FCA–PS–65 Release of Consolidated Reporting System Information
FCA–PS–67 Nondiscrimination on the Basis of Disability in Agency Programs and Activities
FCA–PS–68 FCS Building Association Management Operations Policies and Practices
FCA–PS–71 Disaster Relief Efforts by Farm Credit Institutions
FCA–PS–72 Financial Institution Rating System (FIRS)
FCA–PS–77 Borrower Privacy
FCA–PS–78 Official Names of Farm Credit System Institutions

Dated: June 7, 2006.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E6–9157 Filed 6–12–06; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 7, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. Adam Bank Group, Inc., Ocala, Florida; to become a bank holding company by acquiring at least 89 percent of the voting shares of American Commerce Bank, Tampa, Florida.

2. Security Bank Corporation, Macon, Georgia; to acquire 100 percent of the

voting shares of SBKC Interim Bank, Suwanee, Georgia.

In connection with this application, SBKC Interim Bank will merge with Homestead Bank, Suwanee, Georgia, and will operate under the name of Security Bank of Gwinnett County.

3. Sequatchie Valley Bancshares, Inc., Dunlap, Tennessee; to merge with FN Bancorp, Inc., Tullahoma, Tennessee, and thereby indirectly acquire voting shares of First National Bank of Tullahoma, Tullahoma, Tennessee.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. MB Financial, Inc., Chicago, Illinois; to merge with First Oak Brook Bancshares, Inc., Oak Brook, Illinois; and thereby indirectly acquire voting shares of Oak Brook Bank, Oak Brook, Illinois.

C. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. United Bancorporation of Wyoming, Inc., Jackson, Wyoming, to acquire 100 percent of the voting shares of United Bank of Idaho, Driggs, Idaho, a *de novo* bank.

D. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Friendship Bancshares, Inc., Meta, Missouri; to acquire 7.47 percent of the voting shares of Branson Bancshares, Inc., Branson, Missouri, and thereby indirectly acquire voting shares of Branson Bank, Branson, Missouri.

Board of Governors of the Federal Reserve System, June 8, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–9197 Filed 6–12–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (EDT), June 20, 2006.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the May 16, 2006 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Internal Controls.

Parts Closed to the Public

4. Internal personnel matters.
5. Procurement matters.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs. (202) 942–1640.

Dated: June 9, 2006.

Thomas K. Emswiler,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 06–5408 Filed 6–9–06; 1:06 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator; American Health Information Community Chronic Care Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the sixth meeting of the American Health Information Community Chronic Care Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, U.S.C., App.).

DATES: June 28, 2006 from 1 p.m. to 3 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/cc_main.html.*

SUPPLEMENTARY INFORMATION: The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Dated: June 2, 2006.

Kathryn Barr,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator.

[FR Doc. 06–5332 Filed 6–12–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator; American Health Information Community Electronic Health Records Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the sixth meeting of the American Health Information Community Electronic Health Records Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.).

DATES: June 27, 2006 from 1 p.m. to 3 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/ehr_main.html.*

SUPPLEMENTARY INFORMATION: The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Dated: June 22, 2006.

Kathryn Barr,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator.

[FR Doc. 06–5333 Filed 6–12–06; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator; American Health Information Community Consumer Empowerment Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the sixth meeting of the American Health Information Community Consumer Empowerment Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: June 19, 2006 from 1 p.m. to 3 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/ce_main.html.*

SUPPLEMENTARY INFORMATION: The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Kathryn Barr,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator.

[FR Doc. 06–5334 Filed 6–12–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator; American Health Information Community Biosurveillance Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the sixth of the American Health Information Community Biosurveillance Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: June 22, 2006 from 1 p.m. to 3 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/bio_main.html.*

SUPPLEMENTARY INFORMATION: The meeting will be available via Web cast as *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Kathryn Barr,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator.

[FR Doc. 06–5335 Filed 6–12–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretary's Advisory Committee on Genetics, Health, and Society; Request for Public Comment

AGENCY: Office of the Secretary, HHS.

ACTION: A request for public comment on a draft report to the Secretary of Health and Human Services on policy issues raised by the prospect of a U.S. large population cohort project for the study of genetic variation, the environment, and common disease.

SUMMARY: The Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS) is requesting public comment on a draft report on policy issues raised by the prospect of the U.S. undertaking a large population cohort project for the study of genes, environment, and disease. A copy of the report, "Policy Issues Associated with Undertaking a Large U.S. Population Cohort Project on Genes, Environment, and Disease," is available electronically at *http://www4.od.nih.gov/oba/sacghs/public_comments.htm.* A copy may also be obtained from the National Institutes of Health (NIH) Office of Biotechnology Activities (OBA) by e-mailing Ms. Amita Mehrotra at *mehrotraa@od.nih.gov* or calling 301–496–9838.

DATES: In order for public comments to be considered by SACGHS in finalizing its report to the Secretary, the public is asked to submit comments by July 31, 2006.

ADDRESSES: Public comments on the draft report should be addressed to Reed V. Tuckson, M.D., Chair, SACGHS, and transmitted to SACGHS via an e-mail to Ms. Mehrotra at *mehrotraa@od.nih.gov.* Comments may also be submitted by mailing or faxing a copy to NIH OBA at 6705 Rockledge Drive, Suite 750, Bethesda, MD, 20892 NIH OBA's fax number is 301–496–9839.

FOR FURTHER INFORMATION CONTACT: Ms. Amita Mehrotra, NIH OBA, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, 301–496–9838, *mehrotraa@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provide advice on these issues. For more information about the Committee, please visit its Web site: *http://www4.od.nih.gov/oba/sacghs.htm.* In a 2004 priority-setting process, SACGHS determined that opportunities and challenges associated with conducting large population cohort studies aimed at understanding the relationships of genes, the environment, and common, complex diseases warranted in-depth study. A large population initiative raises many policy issues for a number of reasons, including: (1) It will involve an unprecedented number of people (500,000 to 1,000,000 or more individuals) and, thereby, will have a significant public profile and a direct impact on many people; (2) it requires a relatively large investment of public resources and, as such, warrants deliberation and a broad consensus about the relative value to science, society, and the Nation; and (3) the nature of the information that will be derived from it raises ethical, legal, social and public policy concerns could be unique and/or significant, particularly in view of the number of potential participants.

NIH Director, Elias A. Zerhouni, M.D., specifically requested SACGHS's advice on the scientific, public, and ethical processes and pathways that might help NIH or HHS make decisions about undertaking such an effort. Dr. Zerhouni specified that the Committee could be most helpful to the Secretary by conducting an inquiry that includes the following steps:

- Step 1: Delineate the questions that need to be addressed in order for policymakers to determine whether the U.S. Government should undertake, in any form, a large population project to elucidate the influence of genetic variation and environmental factors on common, complex disease.
- Step 2: Explore the ways in which, or processes by which, the questions that are identified in Step 1 can be addressed, including the need for any intermediate research studies, pilot projects, or policy analysis efforts.
- Step 3: Taking into account the possible ways in which the questions could be addressed, determine which approaches are optimal and feasible and recommend a specific course of action for moving forward.

SACGHS has developed a draft report that summarizes its findings and conclusions relevant to the development of a large population research initiative in the United States. The report focuses on preliminary and intermediate questions, steps, and strategies in five areas that should be addressed before an informed decision can be made about whether the United States should undertake such a project. These five areas are: (1) Research policy; (2) research logistics; (3) regulatory and ethical issues; (4) public health implications of research results; and (5) social implications of research results. The report also identifies options for how these issues might be addressed. A central theme of the report is that decisions about such a project must take account of public views and attitudes and that public engagement must be sought in planning for and implementing a large population project.

In view of the wide range of public policy issues and questions raised in the draft report, SACGHS hopes to receive input from the wide range of individuals, communities and groups who may have an interest in whether a large population cohort project is undertaken in the U.S. These include but are certainly not limited to members of the general public and patient community; scientists in many fields but certainly genomics, environmental health, epidemiology, and public health; health professionals; bioethicists; and legal, public policy, and public engagement experts. Comments on any aspect of the draft report are welcome. In particular, the committee would

appreciate the public's assessment of whether: (1) The policy issues identified in the draft report are appropriately focused; (2) any policy issues have been overlooked; and, (3) the issues are organized in appropriate categories and addressed in such a way as to give policy makers sufficient understanding of why the issue is important. In addition, the committee would value feedback on the sections of the draft report that discuss the importance of public engagement and the mechanisms that could be employed to achieve such engagement.

SACGHS will be able to consider comments received by July 31, 2006, as it prepares its final report. The report and public comments will be discussed at a future SACGHS meeting.

Comments will be available for public inspection at the NIH Office of Biotechnology Activities Monday through Friday between the hours of 8:30 a.m. and 5 p.m.

Dated: June 2, 2006.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. E6–9136 Filed 6–12–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration for Native Americans

AGENCY: Administration for Native Americans, Administration for Children and Families, HHS.

ACTION: Award announcement.

SUMMARY: The Administration for Native Americans (ANA) herein announces a Program Expansion Supplement to the Red Lake Band of Chippewa Indians, Red Lake, Minnesota. This supplement for $136,400 will extend funding for 11 youth volunteers through the second year of the project. In FY 2005, ANA provided an urgent grant award to the Tribe to assist in mitigating the effects of the tragic events of the school shooting in March 2005 that resulted in the death of students, faculty and staff. The shooting marked the highest death toll in U.S. school shootings since the Columbine High School massacre in April 1999.

Due to the devastation created by the high school shooting, ANA is providing urgent financial assistance for minor renovations to the local community centers to support positive community development; funding to hire 11 volunteers to assist youth and members of the community in coping with this event; and building support systems, which will aid in preventing future tragedies.

FOR FURTHER INFORMATION CONTACT: Sheila Cooper, Director of Program Operations, toll-free at 877–922–9262.

SUPPLEMENTARY INFORMATION: This award will be made pursuant to Section 803 of the Native American Programs Act of 1974.

Dated: June 7, 2006.

Kimberly Romine,

Deputy Commissioner, Administration for Native Americans.

[FR Doc. E6–9209 Filed 6–12–06; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006E–0025]

Determination of Regulatory Review Period for Purposes of Patent Extension; INCRELEX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for INCRELEX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions 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.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product INCRELEX (mecasermin [rDNA origin] injection). INCRELEX is indicated for the long-term treatment of growth failure in children with severe primary IGF–1 deficiency (Primary IGFD) or with growth hormone gene deletion who have developed neutralizing antibodies to growth hormone. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for INCRELEX (U.S. Patent No. 5,681,814) from Genentech, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 24, 2006, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of INCRELEX represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for INCRELEX is 4,828 days. Of this time, 4,644 days occurred during the testing phase of the regulatory review period, while 184 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: June 13, 1992. The applicant claims June 16, 1992, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 13, 1992, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: February 28, 2005. FDA has verified the applicant's claim that the new drug application (NDA) for Increlex (NDA 21–839) was initially submitted on February 28, 2005.

3. *The date the application was approved*: August 30, 2005. FDA has verified the applicant's claim that NDA 21–839 was approved on August 30, 2005.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,058 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 14, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 11, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–9138 Filed 6–12–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006E–0026]

Determination of Regulatory Review Period for Purposes of Patent Extension; LUVERIS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for LUVERIS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions 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.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product LUVERIS (lutropin alfa). LUVERIS, concomitantly administered with follitropin alfa for injection, is indicated for stimulation of follicular development in infertile hypogonadotropic hypogonadal women with profound luteinizing hormone deficiency. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for LUVERIS (U.S. Patent No. 5,639,639) from Genzyme Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 24, 2006, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of LUVERIS represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LUVERIS is 3,927 days. Of this time, 2,670 days occurred during the testing phase of the regulatory review period, while 1,257 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: January 9, 1994. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 9, 1994.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: May 1, 2001. FDA has verified the applicant's claim that the new drug application (NDA) for Luveris

(NDA 21–322) was initially submitted on May 1, 2001.

3. *The date the application was approved*: October 8, 2004. FDA has verified the applicant's claim that NDA 21–322 was approved on October 8, 2004.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,780 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 14, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 11, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–9139 Filed 6–12–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004E–0393]

Determination of Regulatory Review Period for Purposes of Patent Extension; UROXATRAL

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for UROXATRAL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions 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.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product UROXATRAL (alfuzosin hydrochloride). UROXATRAL is indicated for the treatment of the signs and symptoms of benign prostatic hyperplasia. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for UROXATRAL (U.S. Patent No. 4,661,491) from Sanofi-Synthelabo, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 19, 2004, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of UROXATRAL represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for UROXATRAL is 2,477 days. Of this time, 1,560 days occurred during the testing phase of the regulatory review period, while 917 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: September 1, 1996. The applicant claims August 31, 1996, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was September 1, 1996, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 8, 2000. FDA has verified the applicant's claim that the new drug application (NDA) for UROXATRAL (NDA 21–287) was initially submitted on December 8, 2000.

3. *The date the application was approved*: June 12, 2003. FDA has verified the applicant's claim that NDA 21–287 was approved on June 12, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,481 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets

Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 14, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 11, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (*See* H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–9201 Filed 6–12–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004E–0308]

Determination of Regulatory Review Period for Purposes of Patent Extension; RESTYLANE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for RESTYLANE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit written comments and petitions 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.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device RESTYLANE. RESTYLANE is indicated for mid-to-deep dermal implantation for the correction of moderate to severe facial wrinkles and folds, such as nasolabial folds. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for RESTYLANE (U.S. Patent No. 5,827,937) from Q-Med AB, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 24, 2006, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of RESTYLANE represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for RESTYLANE is 1,491 days. Of this time, 949 days occurred during the testing phase of the regulatory review period, while 542 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) involving this device became effective*: November 14, 1999. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the act for human tests to begin became effective on August 4, 2000. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on November 14, 1999, which represents the IDE effective date.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: June 19, 2002. FDA has verified the applicant's claim that the premarket approval application (PMA) for RESTYLANE (PMA P020023) was initially submitted June 19, 2002.

3. *The date the application was approved*: December 12, 2003. FDA has verified the applicant's claim that PMA P020023 was approved on December 12, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 879 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 14, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 11, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted,

except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–9213 Filed 6–12–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006E–0043]

Determination of Regulatory Review Period for Purposes of Patent Extension; TYGACIL

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TYGACIL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions 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.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product TYGACIL (tigecycline). TYGACIL is indicated for the treatment of infections caused by susceptible strains of the designated microorganisms in the conditions listed in this paragraph for patients 18 years of age and older: (1) Complicated skin and skin structure infections caused by *Escherichia coli* (*E. coli*), *Enterococcus* (*Entero.*) *faecalis* (vancomycin-susceptible isolates only), *Staphlococcus* (*Staph.*) *aureus* (methicillin-susceptible and -resistant isolates), *Streptococcus* (*Strept.*) *agalactiae*, *Strept. anginosus* group (includes *S. anginosus*, *S. intermedius*, and *S. constellatus*), *Strept. Pyogenes*, and *Bacteroides* (*B.*) *fragilis*, and (2) Complicated intra-abdominal infections caused by *Citrobacter freundii*, *Enterobacter cloacae*, *E. coli*, *Klebsiella* (*K.*) *oxytoca*, *K. pneumoniae*, *Entero. faecalis* (vancomycin-suspectible isolates only), *Staph. aureus* (methicillin-susceptible isolates only), *Strept. anginosus* group (includes *S. anginosus*, *S. intermedius*, and *S. constellatus*), *B. fragilis*, *B. thetaiotaomicron*, *B. uniformis*, *B. vulgatus*, *Clostridium perfringens*, and *Peptostreptococcus micros*. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TYGACIL (U.S. Patent No. 5,529,990) from Wyeth Holdings Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 24, 2006, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of TYGACIL represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TYGACIL is 2,487 days. Of this time, 2,304 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: August 26, 1998. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 26, 1998.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 15, 2004. FDA has verified the applicant's claim that the new drug application (NDA) for Tygacil (NDA 21–821) was initially submitted on December 15, 2004.

3. *The date the application was approved*: June 15, 2005. FDA has verified the applicant's claim that NDA 21–821 was approved on June 15, 2005.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,335 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 14, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 11, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one

copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–9214 Filed 6–12–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on this project or to obtain a copy of the data collection plans and instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Advanced Education Nursing Traineeship and Nurse Anesthetist Traineeship Forms

The Health Resources and Services Administration (HRSA) developed the Advanced Education Nursing Traineeship (AENT) and Nurse Anesthetist Traineeship (NAT) Forms for the Guidance Application for the Traineeship Programs. The AENT/NAT Traineeship forms are used annually by new applicants that are applying for AENT and NAT funding. The AENT and NAT programs provide training grants to educational institutions to increase the numbers of advanced education nurses. Award amounts are based on enrollment, traineeship support, graduate data and two funding preferences to institutions which meet the criteria for the preference.

The AENT/NAT Traineeship forms include information on program participants such as the number of enrollees, number of graduates and the types of programs they are enrolling into and/or graduating from. These forms will be available electronically through Grants.gov. AENT and NAT applicants will have a single access point to submit their grant applications and AENT/NAT Traineeship forms.

The system will be designed so that the data from the prior year's submission will be pre-populated. This will significantly reduce the burden to AENT and NAT applicants. They will need only edit those sections that have changed. The electronic system will conduct automated checks on data validity, data consistency and application completeness. This facilitates application review and eliminates much of the previously required data cleansing. Finally, data from this system will be used in the award determination and validation process. Additionally, the data will be used to ensure programmatic compliance, report to Congress and policymakers on the program accomplishments, formulate, and justify future budgets for these activities submitted to the Office of Management and Budget and Congress.

The estimated average annual burden per year is as follows:

Type of respondent	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours
AENT	350	1	1	350
NAT	80	1	1	80
Total	430			430

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of notice.

Dated: June 6, 2006.

Cheryl R. Dammons,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–9199 Filed 6–12–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c) (2) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the Heath Resources and Services Administration Reports Clearance Officer on (301) 443–1129.

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; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques of other forms of information technology.

Proposed Project: Emergency Systems for Advance Registration of Volunteer Health Professionals (ESAR–VHP)—NEW

The Emergency Systems for Advance Registration of Volunteer Health Professionals (ESAR–VHP) program requires that each State and Territory develop a system for registering and verifying the licenses, credentials, and privileges of health care volunteers in advance of an emergency. HRSA proposes to develop a common set of standards and definitions that each State and Territory must use in developing these State-based volunteer registry systems. The establishment of a common set of standards and definitions will give each State the ability to quickly identify and better utilize volunteer health professionals in an emergency and provide a common framework for sharing pre-registered volunteers between States.

HRSA will be developing the standards and definitions in collaboration with the States, the American Hospital Association, Joint Commission on Accreditation of Healthcare Organizations, American Board of Medical Specialties, National Council of State Boards of Nursing, American Medical Association, American Nurses Association, and other health professional associations.

The burden estimate for this project is as follows:

Form	Number of respondents	Average number of responses per respondent	Total responses	Hours per response	Total burden hours
Volunteer Application	135,000	1	135,000	.33	44,550
Highest Level Verification	*54	125	6,750	.17	1,148
Lowest Level Verification	54	2,375	128,250	.05	6,413
Total	135,054		270,000		52,111

* States/territories are counted once in the total for respondents to avoid duplicatation.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received with 60 days of this notice.

Dated: June 6, 2006.

Cheryl R. Dammons,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–9200 Filed 6–12–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirements for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

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; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Hospital Available Beds for Emergencies and Disasters (HAvBED) System: (NEW)

The HAvBED system will be a web-based hospital bed reporting/tracking system to assist the U.S. Department of Health and Human Services (HHS) only during disasters and public health emergencies. HAvBED does not duplicate the systems already in place to track hospital beds. It is designed to dynamically amalgamate data and accept manually entered data to give emergency operations managers a real-time view of specific hospital bed availability on a large geographic scale. During a disaster or public health emergency States will be asked to report hospital bed availability no more than twice daily; although the severity of the event may require less or more reporting per day.

Currently, hospital bed tracking systems are operational in some States to meet the needs of the healthcare system during routine operations. Local and State governments, emergency management agencies and the healthcare systems have developed systems that support jurisdictional emergency operations without regard to cooperation with outside systems or entities. Local systems have been developed over time to meet the changing needs at the local level. The systems have been developed locally to meet the needs of the local healthcare system. A mass casualty event would overwhelm the ability of local systems to work out their differences in the middle of a response.

During a disaster or public health emergency it may be necessary for Federal officials to work with State partners to evacuate or move patients from one area of the country to another as was the case during hurricanes Katrina and Rita in 2005. The health and safety of the hospital patient is paramount at all times during a hospital stay, but never more acute while being moved to another location. To ensure that patients receive the highest level of care during an emergency it is necessary to know where the necessary resources are in real-time.

The estimate of burden is based on hospitals reporting the data twice a day everyday for two weeks.

Submission type	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
HAvBED	100	28*	2,800	.083	233

*Based on 2 responses per day for a period of 14 days.

If a mass casualty event occurred and hundreds of hospital patients or victims needed hospital care across the country, it is possible that hundreds of hospitals would be needed to house the wounded. In that case the burden estimate would increase proportionally to the needs of the event.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 6, 2006.

Cheryl R. Dammons,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–9210 Filed 6–12–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Preventing Motor Vehicle Crashes Among Novice Teen Drivers

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Preventing Motor Vehicle Crashes Among Novice Teen Drivers.

Type of Information Collection Request: NEW. *Use of Information:* Motor vehicle crash risk is particularly elevated among novice young drivers during the first 6 months and 1000 miles of independent driving. Previously, researchers in the Prevention Research Branch of the NICHD have demonstrated the efficacy of educational/behavioral interventions for increasing parental management of teen driving and reducing exposure to high-risk driving conditions during the first 12 months after licensure. The current research seeks to test the effectiveness of providing education to facilitate parental management of teen driving when delivered at motor vehicle administration offices at the time the teen obtains a permit, at the time of license, or at both permit and license. *Frequency of Response:* Three interviews; *Affected Public:* Individuals or households; *Type of Respondents: Teens* and Parents/guardians. The annual reporting burden is as follows: *Estimated Number of Respondents:* 2000 teens and 2000 parents; *Estimated Number of Responses per Respondents:* 3; *Average Burden Hours Per Response:* 0.35; and *Estimated Total Annual Burden Hours Requested:* 4000. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Parents/guardians	2000	3	.35	2100
Teens	2000	3	.35	2100
Total	4000	3	.35	4200

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information Contact: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Bruce Simons-Morton, Ed.D., 6100 Executive Blvd, Suite 7B13M, Rockville, MD 20852. (Phone: 301–496–5674). (E-mail: *Mortonb@mail.nih.gov*))

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: June 5, 2006.

Paul Johnson,

NICHD Project Clearance Liaison, National Institutes of Health.

[FR Doc. E6–9137 Filed 6–12–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities, Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Minority Health and Health Disparities, June 13, 2006, 8:30 a.m. to

June 13, 2006, 5 p.m., National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD, 20892 which was published in the **Federal Register** on May 26, 2006, Vol 71 FR 30431.

The meeting location changed to the Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, Maryland 20814. The meeting is partially Closed to the public.

Dated: June 06, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5313 Filed 6–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Tumor Microenvironment Study Section, June 12, 2006, 8 a.m. to June 13, 2006 4 p.m., Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD, 20817 which was published in the **Federal Register** on May 5, 2006, 71 FR 26550–26552.

The meeting will be held at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: June 6, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5311 Filed 6–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Molecular and Cellular Endrocrinology Study Section, June 15, 2006, 8 a.m. to June 16, 2006, 5 p.m. Double Tree Hotel, 8120 Wisconsin Ave, Bethesda, MD, 20814 which was published in the **Federal Register** on April 28, 2006, 71 FR 25181–25184.

The meeting will be held at the Ramada Inn, Rockville, 1775 Rockville Pike, Rockville, MD 20851. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: June 6, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5312 Filed 6–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Bacterial Pathogenesis Study Section, June 29, 2006, 8 a.m. to June 30, 2006, 1 p.m. St. Regis Hotel, 923 16th and K Street, NW., Washington, DC 20006 which was published in the **Federal Register** on May 31, 2006, 71 FR 30946–30948.

The meeting will be held at the St. Gregory Hotel and Suites, 2033 M Street, NW., Washington, DC 20036. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: June 6, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5314 Filed 6–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Quick Trial on Imaging and Image Guided Interventions.

Date: June 16, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Xiang-Ning Li, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, 301–435–1744, *lixiang@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Brian disorders and Clinical Neuroscience Integrated Review Group, Cell Death in Neurodengenration Study Section.

Date: June 19–20, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hamilton Crowne Plaza, 1001 14th Street NW., Washington, DC 20005.

Contact Person: David L. Simpson, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, 301–435–1278, *simpsod@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due tot he timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Imaging of Tourette's Syndrome.

Date: June 22–23, 2006.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suite Hotel-Downtown DC, 1250 22nd Street NW., Washington, DC 20037.

Contact Person: Julius Cinque, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, 301–435–1252, *cinque@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cell Biology SBIR/STTR Applications.

Date: June 26, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sofitel Lafayette Square, 806 15th Street NW., Washington, DC 20005.

Contact Person: Noni Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, 301–435–1023, *byrnesn@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Imaging and Modeling.

Date: June 28, 2006.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sally Ann Amero, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7849, Bethesda, MD 20892, 301–435–1159, *ameros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts in Emotion and Stress.

Date: June 28, 2006.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, 301–435–0692, *roberlu@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Social Sciences and Population Studies Study Section.

Date: June 29–30, 2006.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Clarion Hotel Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bob Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, 301–435–0694, *wellerr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Arthritis, Connective Tissue and Skin Sciences: A member conflict Panel.

Date: June 30, 2006.

Time: 11:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tamizchelvi Thyagrajan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016K, MSC 7814, Bethesda, MD 20892, 301–451–1327, *tthyagar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnerships.

Date: July 5, 2006.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 480 King Street, Alexandria, VA 22314.

Contact Person: Lawrence E. Boerboom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7814, Bethesda, MD 20892, 301–435–8367, *boerboom@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Assays and Methods Development.

Date: July 6–7, 2006.

Time: 7 p.m. to 9:45 a.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Ping Fan, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–435–1740, *fanp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Obesity.

Date: July 7, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Abubakar A. Shaikh, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, 301–435–1042, *shaikna@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nursing Prevention and Management Programs.

Date: July 7, 2006.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elisabeth Koss, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–0906, *kosse@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Devices and Detection Systems.

Date: July 7, 2006.

Time: 9:45 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Ping Fan, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rocklege Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–435–1740, *fanp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuropathic Pain.

Date: July 10, 2006.

Time: 11 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joseph G. Rudolph, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–435–2212, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, GTIE Member Conflict.

Date: July 10, 2006.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Barbara Whitmarsh, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, (301) 435–4511, *whitmarshb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Behavioral Neuroscience.

Date: July 11–12, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Christine L. Melchior, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176 MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Ear.

Date: July 11, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Judith A. Finkelstein, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, 301–435–1249, *finkelsj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Angiotensin and Renal Disease.

Date: July 11, 2006.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joyce. C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Musculoskeletal Rehabilitation Sciences Study Section.

Date: July 12–14, 2006.

Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Auditory Physiology.
Date: July 12, 2006.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: John Bishop, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892 (301) 435–1250, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, LCMI Member Conflict Applications.
Date: July 12, 2006.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Ghenima Dirami, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2159, MSC 7818, Bethesda, MD 20892, 301–594–1321, *diramig@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Bacterial, Fungal, and Parasitic Diseases.
Date: July 13, 2006.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Rossana Berti, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3191, MSC 7846, Bethesda, MD 20892, 301–402–6411, *bertiros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA NS06–007 Diagnostic Technologies for Chemical Threat Exposure SBIR Awards.
Date: July 13, 2006.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate cooperative agreement applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mushtaq A. Khan, DVM, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Molecular and Cellular Biology Study Section.
Date: July 13–14, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Watergate Hotel, 2650 Virginia Ave., NW., Washington, DC 20037.
Contact Person: Kenneth A. Roebuck, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, 301–435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genees Genomic Genetics Post Fellowship.
Date: July 13–14, 2006.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Mary P. McCormick, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, 301–435–1047, *mccormim@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, HIV/AIDS Vaccines Study Section.
Date: July 13–14, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, 301–435–1165, *walkermc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemistry Biophysics SBIR/STTR Panel.
Date: July 13–14, 2006.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Vonda K. Smith, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemical and Bioanalytical Sciences.
Date: July 13–14, 2006.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: David R. Jollie, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, 301–435–1722, *jollieda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Risk Prevention Fellowship.
Date: July 14, 2006.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Doubletree Hotel, 801 New hampshire Avenue, NW., Washington, DC 20037.
Contact Person: Karen Lechter, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, 301–435–0726, *lechterk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bridges to the Future.
Date: July 14, 2006.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Cathleen L. Cooper, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Neuroimaging.
Date: July 14, 2006.
Time: 2 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Bernard F. Driscoll, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *driscolb@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 6, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5315 Filed 6–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Secretary's Advisory Committee on Genetics, Health, and Society; Request for Public Comment

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: A request for public comment on a draft report to the Secretary of Health and Human Services on policy issues raised by the prospect of a U.S. large population cohort project for the study of genetic variation, the environment, and common disease.

SUMMARY: The Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS) is requesting public comment on a draft report on policy issues raised by the prospect of the U.S. undertaking a large population cohort project for the study of genes, environment, and disease. A copy of the report, "Policy Issues Associated with Undertaking a Large U.S. Population Cohort Project on Genes, Environment, and Disease," is available electronically at *http://www4.od.nih.gov/oba/sacghs/public_comments.htm*. A copy may also be obtained from the National Institutes of Health (NIH) Office of Biotechnology Activities (OBA) by e-mailing Ms. Amita Mehrotra at *mehrotraa@od.nih.gov* or calling 301–496–9838.

DATES: In order for public comments to be considered by SACGHS in finalizing its report to the Secretary, the public is asked to submit comments by July 31, 2006.

ADDRESSES: Public comments on the draft report should be addressed to Reed V. Tuckson, M.D., Chair, SACGHS, and transmitted to SACGHS via an e-mail to Ms. Mehrotra at *mehrotraa@od.nih.gov*. Comments may also be submitted by mailing or faxing a copy to NIH OBA at 6705 Rockledge Drive, Suite 750, Bethesda, MD, 20892. NIH OBA's fax number is 301–496–9839.

FOR FURTHER INFORMATION CONTACT: Ms. Amita Mehrotra, NIH OBA, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, 301–496–9838, *mehrotraa@od.nih.gov*.

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provide advice on these issues. For more information about the Committee, please visit its Web site: *http://www4.od.nih.gov/oba/sacghs.htm*. In a 2004 priority-setting process, SACGHS determined that opportunities and challenges associated with conducting large population cohort studies aimed at understanding the relationships of genes, the environment, and common, complex diseases warranted in-depth study. A large population initiative raises many policy issues for a number of reasons, including: (1) It will involve an unprecedented number of people (500,000 to 1,000,000 or more individuals) and, thereby, will have a significant public profile and a direct impact on many people; (2) it requires a relatively large investment of public resources and, as such, warrants scrutiny of and deliberation about the relative value to science, society, and the Nation; and (3) the nature of the information that will be derived from it raises ethical, legal, social and public policy concerns could be unique and/or significant, particularly in view of the number of potential participants.

NIH Director, Elias A. Zerhouni, M.D., specifically requested SACGHS's advice on the scientific, public, and ethical processes and pathways that might help NIH or HHS make decisions about undertaking such an effort. Dr. Zerhouni specified that the Committee could be most helpful to the Secretary by conducting an inquiry that includes the following steps:

- Step 1: Delineate the questions that need to be addressed in order for policymakers to determine whether the U.S. Government should undertake, in any form, a large population project to elucidate the influence of genetic variation and environmental factors on common, complex disease.
- Step 2: Explore the ways in which, or processes by which, the questions that are identified in Step 1 can be addressed, including the need for any intermediate research studies, pilot projects, or policy analysis efforts.
- Step 3: Taking into account the possible ways in which the questions could be addressed, determine which approaches are optimal and feasible and recommend a specific course of action for moving forward.

SACGHS has developed a draft report that summarizes its findings and conclusions relevant to the development of a large population research initiative in the United States. The report focuses on preliminary and intermediate questions, steps, and strategies in five areas that should be addressed before an informed decision can be made about whether the United States should undertake such a project. These five areas are: (1) Research policy; (2) research logistics; (3) regulatory and ethical issues; (4) public health implications of research results; and (5) social implications of research results. The report also identifies options for how these issues might be addressed. A central theme of the report is that decisions about such a project must take account of public views and attitudes and that public engagement must be sought in planning for and implementing a large population project.

In view of the wide range of public policy issues and questions raised in the draft report, SACGHS hopes to receive input from the wide range of individuals, communities and groups who may have an interest in whether a large population cohort project is undertaken in the U.S. These include but are certainly not limited to members of the general public and patient community; scientists in many fields but certainly genomics, environmental health, epidemiology, and public health; health professionals; bioethicists; and legal, public policy, and public engagement experts. Comments on any aspect of the draft report are welcome. In particular, the committee would appreciate the public's assessment of whether: (1) The policy issues identified in the draft report are appropriately focused; (2) any policy issues have been overlooked; and, (3) the issues are organized in appropriate categories and addressed in such a way as to give policy makers sufficient understanding of why the issue is important. In addition, the committee would value feedback on the sections of the draft report that discuss the importance of public engagement and the mechanisms that could be employed to achieve such engagement.

SACGHS will be able to consider comments received by July 31, 2006, as it prepares its final report. The report and public comments will be discussed at a future SACGHS meeting.

Comments will be available for public inspection at the NIH Office of Biotechnology Activities Monday through Friday between the hours of 8:30 a.m. and 5 p.m.

Dated: June 2, 2006.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. E6–9135 Filed 6–12–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Cross-site Evaluation of the Garrett Lee Smith Memorial Suicide Prevention and Early Intervention Programs—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) will conduct the cross-site evaluation of the Garrett Lee Smith Memorial Suicide Prevention and Early Intervention State/Tribal Programs and the Garrett Lee Smith Memorial Suicide Prevention Campus Programs. The data collected through the cross-site evaluation will address four stages of program activity: (1) The context stage will assess the existing databases and availability of data sources, (2) the product stage will describe the products and services that are developed and utilized by these programs, (3) the process stage will assess the progress on key activities and milestones related to implementation of program plans, and (4) the impact stage will assess the impact of program activities on youth/students, gatekeepers, faculty/staff, and program partners within States/Tribal sites and campus sites.

Data will be collected from suicide prevention program staff (project directors, evaluators), key program stakeholders (state/local officials, child-serving agency directors, gatekeepers, mental health providers, campus administrators), training participants, college students, and campus faculty/staff. Data collection will take place in 14 State/Tribal sites and 22 campus sites. Data collection for the cross-site evaluation will be conducted over a three-year period that spans FY 2006 through FY 2008. Because the State/Tribal grantees differ from the campus grantees in programmatic approaches, specific data collection activities also vary by type of program. The following describes the specific data collection activities and the 15 data collection instruments to be used, followed by a summary table of number of respondents and respondent burden:

- *Existing Database Inventory (2 versions).* The Existing Database Inventory includes two versions to be administered to one respondent from (1) the 14 State/Tribal grantees and (2) the 22 Campus grantees. The Existing Database Inventory will be completed once in year FY 2007 and once in FY 2008 of the cross-site evaluation by program staff. The questions included assess the availability of existing data, the integration of data systems, and the data elements that may or may not be collected in each system. The Existing Database Inventory will take approximately 30 minutes to complete and the number of existing databases within each grantee site will determine the number of items to complete. Questions on the Existing Database Inventory are open-ended and multiple choice.
- *Product and Services Inventory—State/Tribal (2 versions).* The Product and Services Inventory for State/Tribal grantees includes 2 versions. The State/Tribal grantees will complete the State/Tribal Product and Services Inventory—Baseline version once in FY 2006 and the State/Tribal Product and Services Inventory—Follow-up version quarterly thereafter in FY 2007 and FY 2008. The baseline version assesses the development and utilization of products and services during the first year of grant funding, and the follow-up version updates the development of products and services on a quarterly basis. These products and services may include awareness campaign products and materials; risk identification training materials and workshops; and enhanced services, including early intervention, family support, and postsuicide intervention services, as well as evidence-based programs. Both versions of the State/Tribal Product and Services Inventory will take approximately 45 minutes and the number of products and services developed and utilized within each grantee site will determine the number of items to complete. Questions on both versions of the State/Tribal Product and Services Inventory are open-ended and multiple choice.
- *Product and Services Inventory—Campus (2 versions).* The Product and Services Inventory for Campus grantees includes 2 versions. The Campus grantees will complete the Campus Product and Services Inventory—Baseline version once in FY 2006 and will complete the Campus Product and Services Inventory—Follow-up version quarterly thereafter in FY 2007 and 2008. The baseline version assesses the development and utilization of products and services during the first year of grant funding, and the follow-up version updates the development of products and services on a quarterly basis. These products and services may include awareness campaign products and materials; risk identification training materials and workshops; and enhanced services, including early intervention, family support, and postsuicide intervention services, as well as evidence-based programs. Both versions of the Campus Product and Services Inventory will take approximately 45 minutes and the number of products and services developed and utilized within each grantee site will determine the number of items to complete. Questions on both versions of the State/Tribal Product and Services Inventory are open-ended and multiple choice.
- *Referral Network Survey (1 version).* The Referral Network Survey will be administered to representatives of organizations and/or agencies involved in the referral networks that support the 14 State/Tribal suicide prevention programs. Based on estimates of the number referral networks and referral network agencies across the 14 grantees, it is estimated that there will be a total of 1,248 respondents, or 416 per year. The questions included on the Referral Network Survey will describe the referral networks, the agencies and organizations involved and at what level and the types of agency agreements and protocols are in place to support youth who are identified at risk for suicide. Questions on the Referral Network Survey include multiple-choice, Likert-scale, and open-ended. The Referral Network Survey includes 37 items and will take approximately 40 minutes to complete.

• *Training Exit Survey (1 version).* The Training Exit Survey will be administered to participants in suicide prevention training activities held in the 14 State/Tribal sites following their participation in training activities. Data will be collected from approximately 14,000 training participants, or 4,667 per year, one time immediately following their training experience in each year of the cross-site evaluation. The questions on the Training Exit Survey obtain information to assess the content of the training, the participants' intended use of the skills and knowledge learned, and satisfaction with the training experience. Questions on the Training Exit Survey include multiple-choice, Likert-scale, and open-ended. The Training Exit Survey includes 34 items and will take approximately 10 minutes to complete.

• *Training Utilization and Penetration (TUP) Key Informant Interview (1 version).* The TUP Key Informant Interview is a qualitative follow-up interview administered to individuals who participated in training activities as part of the State/Tribal suicide prevention programs. One training activity will be identified in each of the 14 State/Tribal sites and five key informants who completed the selected training will be randomly selected for participation, for a total of 70 respondents, or 23 respondents per year. The TUP will be administered within 2 months of the training experience to assess whether the suicide prevention knowledge, skills and/or techniques learned through training were utilized and had an impact on youth. The interviews will include close-ended background questions, with the remaining questions being open-ended and semi-structured. The TUP includes 23 items and will take approximately 40 minutes to complete.

• *Suicide Prevention Exposure, Awareness and Knowledge Survey (SPEAKS)—Student Version (1 version).* The SPEAKS—Student version assesses the exposure, awareness and knowledge of suicide prevention activities among the student population on campus as result of the suicide prevention program. Questions include whether students have been exposed to suicide prevention materials, their agreement with myths and facts about suicide, and the availability of resources to provide assistance to those at risk for suicide. The SPEAKS—Student Version will be administered to 8,800 respondents, or 2,933, per year. A random sample of students will be drawn without replacement in each year of administration. The SPEAKS—Student Version is web-based and includes multiple-choice, Likert-scale and true/false questions. The SPEAKS—Student Version includes 53 items and will take approximately 15 minutes to complete.

• *Suicide Prevention Exposure, Awareness and Knowledge Survey (SPEAKS)—Faculty/Staff Version (1 version).* The SPEAKS—Faculty/Staff version assesses the exposure, awareness and knowledge of suicide prevention activities among faculty/staff on campus as result of the suicide prevention program. Questions include whether faculty/staff have been exposed to suicide prevention materials, their agreement with myths and facts about suicide, and the availability of resources to provide assistance to those at risk for suicide. The SPEAKS—Faculty/Staff version will be administered to 2,200 respondents, or 733 per year. A random sample of faculty/staff will be drawn without replacement in each year of administration. The SPEAKS—Faculty/Staff Version is web-based and includes multiple-choice, Likert-scale and true/false questions. The SPEAKS—Faculty/Staff Version includes 52 items and will take approximately 15 minutes to complete.

• *Campus Infrastructure Interviews (4 versions).* The Campus Infrastructure Interviews include 4 versions of the qualitative interviews to be administered to five different respondent types; (1) Administrator, (2) Student Group Leader, (3) Counseling Center Staff, (4) Faculty/Staff-human services department, and (5) Faculty/Staff-non-human service department. Five individuals from each of the 22 Campus sites will be selected as key informants to participate in the Campus Infrastructure Interview either in FY 2007 or in FY 2008, for a total of 110 respondents. Questions on the Campus Infrastructure Interview include whether respondents are aware of suicide prevention activities, what the campus culture is related to suicide prevention, and what specific efforts are in place to prevent suicide among the campus population. Questions will include close-ended background questions, with the remaining questions being open-ended and semi-structured. The Campus Infrastructure Interviews include 29 items and will take approximately 60 minutes to complete.

In addition to the above described data collection activities, data from existing sources (i.e., management information systems (MIS), administrative records, case files, etc.) will be analyzed across grantee sites to support the impact stage of the cross-site evaluation. Specifically, for the cross-site evaluation of the State/Tribal Programs, existing program information related to the number of youth identified at risk as a result of screening or early identification activities, the youth who are referred for services, and the youth who present for services will be analyzed by the cross-site evaluation team to determine the impact of suicide prevention program activities. For the cross-site evaluation of the Campus programs, existing program data related to the number of students who are at risk for suicide, the number who seek services, and the type of services received will be analyzed to determine the impact of Campus program activities on the student and campus populations. Because this information is obtained through existing sources, data collection instruments were not developed as part of the cross-site evaluation and no identifiable respondents exist; therefore no respondent burden has been estimated.

Internet-based technology will be used for collecting data via Web-based surveys, and for data entry and management. The average annual respondent burden is estimated below. The estimate reflects the total respondents across project years, the average annual number of respondents, the average annual number of responses, the time it will take for each response, and the average annual burden.

TOTAL AND ANNUAL AVERAGES: RESPONDENTS, RESPONSES AND HOURS

Measure name	Total number of respondents (across 3 project years)	Annualized number of respondents	Annualized number responses/ respondent	Hours/ response	Annualized response burden*
Existing Database Inventory-State version	14	14	1	0.50	7
Existing Database Inventory-Campus version	22	22	1	0.50	11
Product and Services Inventory-State version-baseline	14	14	1	0.75	11
Product and Services Inventory-State version-follow-up	14	14	2	0.75	21

TOTAL AND ANNUAL AVERAGES: RESPONDENTS, RESPONSES AND HOURS—Continued

Measure name	Total number of respondents (across 3 project years)	Annualized number of respondents	Annualized number responses/ respondent	Hours/ response	Annualized response burden*
Product and Services Inventory-Campus version-baseline	22	22	1	0.75	17
Product and Services Inventory-Campus version-follow-up	22	22	2	0.75	33
Training Exit Survey	14,000	4,667	1	0.17	793
Training Utilization and Penetration (TUP) Key Informant Interview	70	23	1	0.67	15
Referral Network Survey	1,248	416	1	0.67	279
Suicide Prevention Exposure, Awareness and Knowledge Survey-Student Version (SPEAKS-S)	8,800	2,933	1	0.25	733
Suicide Prevention Exposure, Awareness and Knowledge Survey-Faculty/Staff (SPEAKS-FS)	2,200	733	1	0.25	183
Campus Infrastructure Interview-Student Leader Version	22	7	1	1.0	7
Campus Infrastructure Interview-Faculty/Staff Version	44	15	1	1.0	15
Campus Infrastructure Interview-Administrator Version	22	7	1	1.0	7
Campus Infrastructure Interview-Counseling Center Staff Version	22	7	1	1.0	7
Total	26,536	8,916			2,139

*Rounded to the nearest whole number.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 7, 2006.

Anna Marsh,

Director, Office of Program Services.

[FR Doc. E6–9172 Filed 6–12–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a Teleconference meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council on June 23, 2006, from 11 a.m. to 12:30 p.m.

The meeting will include the review, discussion and evaluation of grant applications reviewed by Initial Review Groups (IRGs). Therefore, a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, section 10(d).

A portion of the meeting will also be open and include discussion of the Center's current administrative, legislative, and program developments. The public is invited to attend the open session in person or listen to the discussions via telephone. Due to limited space, seating will be on a registration-only basis. To register, contact the Council Executive Secretary, Ms. Cynthia Graham (see contact information below), to obtain the teleconference call-in number and access code. Please communicate with Ms. Graham to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the open session of the meeting, and a roster of Council members may be obtained by accessing the SAMHSA Council Web site, *http://www.samhsa.gov/council*, as soon as possible after the meeting, or by contacting Ms. Graham. The transcript for the meeting will also be available on the SAMHSA Council Web site within three weeks after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment National Advisory Council.

Meeting Date: June 23—11 a.m.–12:30 p.m.

Place: 1 Choke Cherry Road, Room L–1057, Video Conference Room, Rockville, Maryland 20857.

Type: Closed: June 23—11 a.m.—11:30 a.m. Open: June 23–11:30 a.m.–12:30 p.m.

For Further Information Contact: Cynthia Graham, M.S., Executive Secretary, SAMHSA/CSAT National Advisory Council, 1 Choke Cherry Road, Room 5–1036, Rockville, MD 20857. Telephone: (240) 276–1692. FAX: (240) 276–1690. E-mail: *cynthia.graham@samhsa.hhs.gov.*

Dated: June 6, 2006.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health, Services Administration.

[FR Doc. E6–9171 Filed 6–12–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Importer's Input Record

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Importer's Input Record. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (71 FR 12384–

12385) on March 10, 2006, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 13, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget Desk Officer at *Nathan.Lesser@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Importers ID Input Record.

OMB Number: 1651–0064.

Form Number: Form–5106.

Abstract: This document is filed with the first formal entry which is submitted or the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection.

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annualized Cost on the Public: N/A.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: June 6, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6–9160 Filed 6–12–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Harbor Maintenance Fee

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Harbor Maintenance Fee. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (71 FR 19198) on April 13, 2006, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 13, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget Desk Officer at *Nathan.Lesser@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Harbor Maintenance Fee.

OMB Number: 1651–0055.

Form Number: Forms 349 and 350.

Abstract: This collection of information will be used to verify that the Harbor Maintenance Fee paid is accurate and current for each individual, importer, exporter, shipper, or cruise line.

Current Actions: This submission is being submitted to extend the expiration date with a change to the burden hours.

Type of Review: Extension (without change).

Estimated Number of Respondents: 5,200.

Estimated Time Per Respondent: 40 minutes.

Estimated Total Annual Burden Hours: 2,816.

Estimated Total Annualized Cost on the Public: N/A.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: June 6, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6–9161 Filed 6–12–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Crew Member's Declaration

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Crew Member's Declaration. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (71 FR 12386) on March 10, 2006, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 13, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget Desk Officer at *Nathan.Lesser@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Crew Members Declaration.

OMB Number: 1651–0021.

Form Number: Form–5129.

Abstract: This document is used to accept and record importations of merchandise by crew members, and to enforce agricultural quarantines, the currency reporting laws, and the revenue collection laws.

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Individuals, Business or other for-profit.

Estimated Number of Respondents: 5,968,351.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 298,418.

Estimated Total Annualized Cost on the Public: N/A.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: June 6, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6–9162 Filed 6–12–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Notice to Student or Exchange Visitor; Form I–515A. OMB Control No. 1615–0083.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 4, 2006, at 71 FR 16822. The notice allowed for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 13, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0083 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(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, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of existing information collection.

(2) *Title of the Form/Collection:* Notice to Student or Exchange Visitor.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–515A. U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. This form is used by DHS to allow an F, M, or J alien who is without documentation for entry into the United States, to enter temporarily for a 30-day period. To extend the authorized duration of the visit, the F, M, and J alien must obtain the required documents and submit them to the Student and Exchange Visitor Program (SEVP) office within the 30-day period.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,300 responses at .166 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,378 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529, (202) 272–8377.

Dated: June 8, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E6–9166 Filed 6–12–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Revision of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Petition for Alien Relative, Form I–130; OMB Control No. 1615–0012.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 14, 2006.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0012 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(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, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Petition for Alien Relative.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–130. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. This information collection is used by citizens and lawful permanent residents of the United States to petition on behalf of alien relatives who wish to immigrate.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 183,034 responses at 1.5 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 274,551 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529, (202) 272–8377.

Dated: June 13, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E6–9167 Filed 6–12–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before July 13, 2006.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). Please refer to the permit number for the application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Fish and Wildlife Biologist, at the above Portland address.

SUPPLEMENTARY INFORMATION: The following applicants have applied for survival enhancement permits to conduct certain activities with an

endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits review and comment from the public, and from local, State, and Federal agencies on the following permit requests.

Permit No. TE–054394

Applicant: The Bureau of Land Management, Medford, Oregon

The permittee requests an amendment to remove/reduce to possession (collect seeds) the *Lomatium cookii* (Cook's lomatium) in conjunction with scientific research in Jackson and Josephine Counties, Oregon, for the purpose of enhancing its survival.

Permit No. TE–125969

Applicant: Hendrik Aalbert Thomassen, Leiden, The Netherlands

The applicant requests a permit to take (capture, measure, collect biological samples, band, and release; and record vocalizations) the nightingale reed warbler (*Acrocephalus luscinius*) in conjunction with ecological and genetics research on the islands of Guam, Saipan, and Alamagan for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that we may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: May 23, 2006.

Theresa E. Rabot,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E6–9164 Filed 6–12–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of applications.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to enhancement of survival of endangered species.

DATES: Written comments on these permit applications must be received by July 13, 2006.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Fisheries and Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; facsimile 303–236–0027. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act [5 U.S.C. 552A] and Freedom of Information Act [5 U.S.C. 552], by any party who submits a request for a copy of such documents within 20 days of the date of publication of this notice to Kris Olsen, by mail or by telephone at 303–236–4256. All comments received from individuals become part of the official public record.

SUPPLEMENTARY INFORMATION: The following applicants have requested issuance of enhancement of survival permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. TE–067729

Applicant: Keith Gido, Kansas State University, Division of Biology, Manhattan, Kansas

The applicant requests a permit amendment to add fin clipping on Colorado pikeminnow (*Ptychocheilus lucius*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Permit No. TE–058896

Applicant: Kris Gruwell, HDR Engineering, Inc., Salt Lake City, Utah

The applicant requests a permit amendment to add surveys for Mexican spotted owl (*Strix occidentalis lucida*) and black-footed ferrets (*Mustela nigripes*) to their permit in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Permit No. TE–127250

Applicant: Bowdoin National Wildlife Refuge, U.S. Fish and Wildlife Service, Malta, Montana

The applicant requests a permit to take Interior least terns (*Sterna antillarum athalassos*) and piping plovers (*Charadrius melodus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Dated: May 24, 2006.

James J. Slack,

Deputy Regional Director, Denver, Colorado.

[FR Doc. E6–9168 Filed 6–12–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before July 13, 2006.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Fish and Wildlife Biologist, at the above Portland address.

SUPPLEMENTARY INFORMATION: The following applicants have applied for

scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (we) solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

Permit No. TE–122620

Applicant: Joseph B. Platt, Irvine, California

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys in Ventura, Los Angeles, Orange, San Diego, Riverside, and San Bernardino Counties, California, for the purpose of enhancing its survival.

Permit No. TE–074017

Applicant: Jackie Charbonneau, Livermore, California

The permitee requests an amendment to take (harass by survey, capture, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys and demographic studies in Alameda County, California, for the purpose of enhancing its survival.

Permit No. TE–052744

Applicant: Shannon Hickey, Davis, California

The permitee requests an amendment to take (harass by survey, capture, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys and demographic studies throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–122632

Applicant: Kimberly Ferree, Encinatas, California

The applicant requests a permit to take (harass by survey, and locate and monitor nests) the coastal California gnatcatcher (*Polioptila californica californica*), take (harass by survey, locate and monitor nests, capture, band, and release) the southwestern willow flycatcher (*Empidonax traillii extimus*), and take (locate and monitor nests, capture, band, and release) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with ecological research and surveys for the purpose of enhancing their survival throughout the range of each species in California.

Permit No. TE–123409

Applicant: Rachel Bomkamp, Plancentia, California

The applicant requests a permit to take (capture, and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–123412

Applicant: Zachary Parker, Fresno, California.

The applicant requests a permit to take (capture, and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in southern California for the purpose of enhancing their survival.

Permit No. TE–020548

Applicant: U.S. Geological Survey-BRD, Western Ecological Research Center, Vallejo, California

The permittee requests an amendment to take (capture, handle, collect biological samples, and radio-tag) the California clapper rail (*Rallus longirostris obsoletus*) in conjunction with ecological research throughout the species range in California for the purpose of enhancing its survival.

Permit No. TE–124994

Applicant: USDA Forest Service, San Bernardino National Forest, San Bernardino, California.

The applicant requests a permit to take (capture and release) the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) in conjunction with surveys and population monitoring in San Bernardino, Los Angeles, Riverside, and Orange Counties, California, for the purpose of enhancing its survival.

Permit No. TE–126141

Applicant: Craig A. Stockwell, Fargo, North Dakota.

The applicant requests a permit to take (capture, mark, and release) the Mohave tui chub (*Siphateles bicolor mohavensis*) in conjunction with ecological studies in San Bernardino, California, for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that we may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: June 1, 2006.

Michael Fris,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. E6–9183 Filed 6–12–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Programmatic Statewide Red-cockaded Woodpecker Safe Harbor Agreement, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Alabama Department of Conservation and Natural Resources (ADCNR, or Applicant) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit (ESP) under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The ESP application includes a proposed Safe Harbor Agreement (SHA) for the endangered Red-cockaded Woodpecker (*Picoides borealis*) (RCW) for a period of 99 years, along with a supporting Environmental Assessment (EA). We announce the

opening of a 30-day comment period and request comments from the public on the proposed SHA and the supporting EA.

DATES: Written comments should be sent to the Service's Regional Office (see **ADDRESSES**) and must be received on or before July 13, 2006.

ADDRESSES: To obtain copies of the proposed SHA and the supporting EA for review, write to the Service's Southeast Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits). Send your comments to this address as well. For commenting guidelines, see "Public Comments" under **SUPPLEMENTARY INFORMATION.**

Documents will also be available for public inspection by appointment during normal business hours at the Regional Office in Atlanta, or at our Field Office located at 1208-B Main Street, Daphne, Alabama 36526. Do not write to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Gooch, Regional Safe Harbor Coordinator, at the Atlanta address above, 404–679–7124 (phone), or 404–679–7081 (facsimile), or Mr. Dan Everson, Fish and Wildlife Biologist, at the Daphne address above or 251–441–5837 (phone).

SUPPLEMENTARY INFORMATION: The Applicant has applied to the Service for an ESP under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). The application includes a proposed SHA for the endangered RCW for a period of 99 years, along with a supporting EA. We announce the opening of a 30-day comment period and request comments from the public on the proposed SHA and the supporting EA. If approved, the SHA would allow the Applicant to issue certificates of inclusion throughout the state of Alabama to eligible non-Federal landowners that complete an approved Safe Harbor Management Agreement (SHMA).

Background

The EA identifies and describes several alternatives. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public, subject to the requirements of the Privacy Act and Freedom of Information Act. For further information and instructions on reviewing and commenting on this application, see **ADDRESSES** and, in this section, "Public Comments."

Under a SHA, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act. SHAs encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through SHAs are found in 50 CFR 17.22 and 17.32.

ADCNR's proposed Statewide SHA is designed to encourage voluntary RCW habitat restoration or enhancement activities by relieving a landowner who enters into a landowner-specific agreement (*i.e.*, the SHMA) from any additional responsibility under the Act beyond that which exists at the time he or she enters into the program. The SHMA will identify any existing RCWs and any associated habitat (the baseline) and will describe the actions that the landowner commits to take (*e.g.*, hardwood midstory removal, cavity provisioning) or allows to be taken to improve RCW habitat on the property, and the time period within which those actions are to be taken and maintained. A participating landowner must maintain the baseline on his/her property (*i.e.*, any existing RCW groups and/or associated habitat), but may be allowed the opportunity to incidentally take RCWs at some point in the future if above-baseline numbers of RCWs are attracted to that site by the proactive management measures undertaken by the landowner. It is important to note that the SHA does not envision, nor will it authorize, incidental take of existing RCW groups, with one exception. This exception is incidental take related to a baseline shift; in this circumstance, the baseline will be maintained but redrawn or shifted on that landowner's property. Among the minimization measures proposed by the Applicant are no incidental taking of RCWs during the breeding season, consolidation of small, isolated RCW populations at sites capable of supporting a viable RCW population, and measures to improve current and potential habitat for the species. Further details on the topics described above are found in the aforementioned documents available for review under this notice.

The geographic scope of the Applicant's SHA is the State of Alabama. Lands potentially eligible for inclusion include all privately owned lands, State lands, and public lands owned by cities, counties, and municipalities with potentially suitable RCW habitat.

We have evaluated several alternatives to the proposed action, and these are described at length in the accompanying EA. The alternative of our paying landowners for desired management practices is not being pursued because we are presently unable to fund such a program. An alternative by which interested private or non-Federal property owners would prepare an individual permit application/Agreement with us also was evaluated. Under that alternative, we would process each permit application/Agreement individually. This would increase the effort, cost, and amount of time it would take to provide safe harbor assurances to participating landowners and also cause such benefits to be applied on a piecemeal, individual basis. We have determined the previously identified alternatives, which would result in delays and lack of a coordinated effort, would likely result in a continued decline of the RCWs on private lands due to habitat fragmentation, lack of beneficial habitat management, and the effects of demographic isolation.

A no-action alternative was also explored, but this alternative is not likely to increase the number of RCW groups or RCW habitat, nor would it alleviate landowner conflicts. Instead, the action proposed here, although it authorizes future incidental take, is expected to attract sufficient interest among Alabama landowners to generate substantial net conservation benefits to the RCW on a landscape level. The proposed SHA was developed in an adaptive management framework to allow changes in the program based on new scientific information, including but not limited to biological needs and management actions proven to benefit the species or its habitat.

Public Comments

Written data or comments should be submitted to the Regional Office at the address listed under **ADDRESSES** and must be submitted in writing to be adequately considered in the Service's decision-making process. Please reference the "Proposed Programmatic Alabama Statewide Red-cockaded Woodpecker Safe Harbor Agreement" in your comments, or in requests for the documents discussed in this notice.

Decision

We will not make our final determination until after the end of the 30-day comment period, and we will fully consider all comments received during the comment period. If the final

analysis shows the SHA to be consistent with the Service's policies and applicable regulations, the Service will sign the SHA and issue the ESP.

Authority

We are providing this notice under section 10(c) of the Endangered Species Act and implementing regulations for the National Environmental Policy Act (40 CFR part 1506).

Dated: May 25, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–9169 Filed 6–12–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Formal Modification of Issued Incidental Take Permit (ITP); Availability of an Environmental Assessment (EA); Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an EA and Habitat Conservation Plan (HCP)/Application for amendment to an issued incidental take permit. D & E Investments (permittee) requests an amendment to its ITP Number PRT–787172, which was issued in 1994 under the Endangered Species Act of 1973, as amended (Act), for the take of the Alabama beach mouse (*Peromyscus polionotus ammobates*) (ABM). The proposed take would be incidental to otherwise lawful activities, including the construction, occupancy, use, operation, and maintenance of a residential condominium at Kiva Dunes on the Fort Morgan Peninsula, in Baldwin County, Alabama.

DATES: We must receive your written comments on the ITP amendment application, modified HCP, and EA on or before July 13, 2006.

ADDRESSES: You may obtain hard or electronic copies of the application, HCP, and EA by sending a letter to the Service's Southeast Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: HCP Coordinator), or to the Service's Ecological Services Field Office, 1208–B Main Street, Daphne, Alabama 36526, or by sending an e-mail to *Aaron_Valenta@fws.gov*. Submit your written data or comments concerning the proposed amendment and/or the documents by mail to the Regional Office, by e-mail to *Aaron_Valenta@fws.gov*, or by hand-delivery to either Service office. For more about how to request documents or submit comments, see "Public Comments Solicited" under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Valenta, Regional Permit Coordinator (see **ADDRESSES**), telephone: (404) 679–4144; or Acting Field Supervisor, Daphne Field Office (see **ADDRESSES**), telephone: (251) 441–6181.

SUPPLEMENTARY INFORMATION: We announce the availability of an EA and HCP/Application for amendment to an issued incidental take permit. The permittee requests an amendment to ITP Number PRT–787172, which was issued on April 29, 1994, under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), for the take of the ABM. The proposed take would be incidental to otherwise lawful activities, including the construction, occupancy, use, operation, and maintenance of a residential condominium at Kiva Dunes on the Fort Morgan Peninsula, in Baldwin County, Alabama.

The amendment would allow the permittee to build a 12-story condominium with eight units per floor on four beachfront lots, instead of the four single-family residences, yet unbuilt, that we originally approved the permittee to build. The proposed action would involve approval of the modified HCP developed by the permittee, as required by section 10(a)(2)(B) of the Act, to minimize and mitigate for incidental take of the ABM, the threatened green sea turtle (*Chelonia mydas*), the threatened loggerhead sea turtle (*Caretta caretta*), and the endangered Kemp's ridley sea turtle (*Lepidochelys kempi*). A detailed description of the mitigation and minimization measures to address the effects of the project to the ABM and sea turtles is provided in the permittee's HCP and also in our EA.

Public Comments Solicited

We specifically request information, views, and opinions from the public via this notice, including the identification of any other aspects of the human environment not already identified in the EA. Further, we specifically solicit information regarding the adequacy of the HCP as measured against our ITP issuance criteria found in 50 CFR parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods (see **ADDRESSES**). If you contact us via e-mail, please include your name and return mailing address in your e-mail message. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly by telephone (see **FOR FURTHER INFORMATION CONTACT**).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Background

The ABM is one of eight subspecies of the old field mouse restricted to coastal dunes. We estimate that ABM historically occupied approximately 45 kilometers (28 miles) of shoreline. Monitoring (trapping and field observations) of the ABM population on other private lands that hold, or are under review for, an ITP during the last five years indicates that the Fort Morgan Peninsula remains occupied (more or less continuously) by ABM along its primary and secondary dunes, as well as the escarpment and suitable interior habitat.

The permittee owns approximately 252 acres of land south of Alabama Highway 180 on the Fort Morgan Peninsula. The site is approximately 12.5 miles west of the intersection of Highway 180 with Alabama Highway 59 in Gulf Shores, Baldwin County, Alabama. On May 3, 1994, the Service issued ITP number PRT–787172, authorizing the take of ABM incidental to construction and occupancy of the Kiva Dunes development. The single project includes a golf course, and both multi-family and single-family residential areas located north of currently designated critical habitat. The ITP did not establish a maximum number of units to be developed as part of the project. The site development plan incorporated in the original HCP anticipated the construction and occupancy of 531 residential units within the 91 acres designated for

residential development, which was in accordance with the then-current Baldwin County zoning for the site. The original site development plan was to consist of 30 single-family home sites abutting critical habitat, known at that time to be occupied by the ABM, and 60 single-family home sites in other areas of the property, and multi-family development in the interior portions of the property. The ITP took into consideration the impacts of the permittee's project as described in the original development plans, and, authorized construction of two dune walkovers within ABM Critical Habitat. A subsequent modification of the ITP issued by the Service on December 12, 1997, authorized the construction and maintenance of an additional 16 dune walkovers within critical habitat to allow individual homeowners to access the beach portions of their property without impacting the dune system by pedestrian traffic.

The ITP imposes numerous conditions to ensure appropriate avoidance, minimization, and mitigation of adverse impacts to ABM on the property as a result of project development. Among its major conservation measures, the ITP reduces the impacts from the construction on lots abutting critical habitat (Lots 1B through 30B), including the home site footprint, driveway, patio, deck, landscaping, and foundation plantings, by limiting construction to 45 percent of the area lying between the east-west roadway (Kiva Way) and the Critical Habitat line. As a result, 55 percent of the area lying between Kiva Way and the Critical Habitat line must be permanently preserved. In addition, the ITP includes written criteria and specifications for implementing the conservation provisions of the HCP, including measures for long-term protection, management, and enhancement of dedicated ABM habitat to the maximum extent practicable. Golf course construction was completed in 1995 and utilities have been installed. South of Kiva Way, construction has been completed on six homes and initiated on three additional homes. North of Kiva Way, 45 homes have been completed or are under construction.

The permittee seeks to replat four undeveloped single-family home sites south of Kiva Way (Lots 27, 28, 29, and 30) on the east side of the property. In lieu of building single-family units on these lots as originally planned, the permittee proposes to build a 12-story condominium with eight units per floor, with a parking deck and other amenities. Zoning for the condominium building has been approved by the Baldwin County Commission.

Under the proposed site development plan modification, the condominium building and associated amenities, including landscaping and lighting, would occupy a total combined area of 1.24 acres of the total 2.75 acres on Lots 27–30. All of the proposed construction activity would occur within 45 percent of the area on these lots that is already authorized to be developed under the ITP. Other modifications proposed by the permittee include the use of lighting restrictions on the condominium building and a reduction in the number of dune walkovers, from four for the original four lots, to two total for the proposed condominium building. The total occupancy of the overall Kiva Dunes project would be approximately 21 percent less than that contemplated under the original site development plan authorized under the ITP and HCP.

The Service's EA considers the effect of the project on nesting sea turtles as well as ABM. The green sea turtle has a circumglobal distribution and is found in tropical and subtropical waters. The Florida population of this species is federally listed as endangered; elsewhere the species is listed as threatened. Primary nesting beaches in the southeastern United States occur in a six-county area of east-central and southeastern Florida, where nesting activity ranges from approximately 350 to 2,300 nests annually. Our turtle nesting surveys of the Fort Morgan Peninsula, from Laguna Key west to Mobile Point, from 1994 to 2005, have not confirmed any green turtle nests, though some crawls were suspected in 1999 and 2000.

The loggerhead turtle is listed as a threatened species throughout its range. This species is circumglobal, preferring temperate and tropical waters. In the southeastern United States, 50,000 to 70,000 nests occur annually, about 90 percent of which occur in Florida. Most nesting in the Gulf outside of Florida appears to be in the Chandeleur Islands of Louisiana; Ship, Horn and Petit Bois Islands in Mississippi; and the Gulf-fronting sand beaches of Alabama. For the past six years, our nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, have confirmed that loggerheads continually nest within the area. In 2004, we documented 53 nests; however, Hurricane Ivan destroyed the majority of those nests prior to hatchling emergence.

The Kemp's ridley sea turtle is an endangered species throughout its range. Adults are found mainly in the Gulf of Mexico. Immature turtles can be found along the Atlantic coast as far north as Massachusetts and Canada. The species' historic range includes tropical and temperate seas in the Atlantic Basin and within the Gulf of Mexico. Nesting occurs primarily in Tamaulipas, Mexico, but occasionally nesting activities have been documented in Texas and other Southern States, including an occasional nest in North Carolina. In 1999, a Kemp's ridley sea turtle nested on Bon Secour National Wildlife Refuge, which is approximately two miles west of the Kiva Dunes site.

The EA considers the effects of two project alternatives: (1) A no-action alternative that would not change the original ITP; and (2) an amendment to the ITP that would authorize the construction of a 12-story condominium on the lots currently permitted for four single residences. The difference between the two alternatives relates to the number of residents that would occupy the four Gulf-front lots (numbers 27 through 30). The amount of undisturbed habitat remaining on the site after construction has been completed would be the same.

Alternative 2, the construction of the condominium building, would cause the permanent loss of 45 percent of the habitat north of Critical Habitat for the four lots, or 1.24 acres. The area would include all construction and improvements, including amenities, parking, lighting, and landscaping. However, all of these impacts would occur within the footprint of the development authorized by the original ITP. Therefore, as is the case with Alternative 1, the direct habitat loss that would result from the implementation of this alternative would not exceed that currently permitted.

The overall density of the project would be less than originally planned under the County's zoning density authorization. The previously issued ITP included the entire Kiva Dunes development. Although the number of occupants on the four single-family home sites within the permitted area would increase with the placement of the condominium building, the total occupancy within the overall development would be decreased from that contemplated and approved under the original ITP. As originally proposed, the site development plan for the Kiva Dunes project had 531 units. Under the proposed site development plan modification, there would be 420 units. This represents a decrease of 111 units from that authorized by the ITP, or 21 percent fewer individuals utilizing the permitted area based on the Service's calculation of four persons per unit during peak season. Therefore, the

preferred alternative would result in the reduction of overall residential density within the permit area.

All avoidance, minimization, and mitigation measures for ABM protection provided in the ITP (as described in Alternative 1) would be maintained under this alternative. In addition, the permittee proposes other modifications to the current amended HCP that would reduce habitat impacts for ABM, as well as additional measures to protect sea turtles. The permittee would evaluate the escarpment prior to construction and retain the greatest amount of escarpment possible in the construction of the condominium building. The number of dune walkovers would be reduced from four to two. One of the two remaining dune walkovers would have to be larger than originally proposed under the Amendment to the ITP, based on more recent communication from the Fort Morgan Volunteer Fire Department requesting that additional beach access be provided for life safety issues. The impacts of the dune walkovers on critical habitat would be reduced from approximately 8000 square feet to approximately 5000 square feet. Lighting restrictions and other measures required by the Service would also be incorporated to address protected species that were not included in the original ITP.

Authority: This notice is provided pursuant to section 10 of the Act and National Environmental Policy Act regulations at 40 CFR 1506.6.

Dated: May 24, 2006.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E6–9170 Filed 6–12–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Scientific Earthquake Studies Advisory Committee

AGENCY: U.S. Geological Survey.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 106–503, the Scientific Earthquake Studies Advisory Committee (SESAC) will hold its thirteenth meeting. The meeting location is the Colorado School of Mines campus at the Green Center in Golden Colorado. The Green Center is located between 15th & 16th on Arapahoe (925 16th Street). The Committee is comprised of members from academia, industry, and State government. The Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

The Committee will provide guidance on how to move from hazard assessment into risk-based products developed with partners.

Meetings of the Scientific Earthquake Studies Advisory Committee are open to the public.

DATES: July 6, 2006, commencing at 9 a.m. and adjourning at Noon on July 7, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. David Applegate, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192. (703) 648–6714. *applegate@usgs.gov.*

Dated: June 6, 2006.

Frances Pierce,

Acting Associate Director for Geology.

[FR Doc. 06–5329 Filed 6–12–06; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection Informaion; Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C., chapter 3507) and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on an extension of a currently approved information collection (OMB #1024–0064).

DATES: Comments on this notice must be received by August 14, 2006.

ADDRESSES: Send comments to: Edward O. Kassman, Jr., Regulatory Specialist, Planning, Evaluation & Permits Branch, Geologic Resources Division, National Park Service, P.O. Box 25287, Lakewood, Colorado 80225. E-mail: *Edward_Kassman@nps.gov.* To request copies of the regulations contact: Edward O. Kassman, Jr. at the above address. The information collection may be viewed on-line at: *http://www2.nature.nps.gov/geology/mining/9a_text.htm* and *http://www2.nature.nps.gov/geology/oil_and_gas/9b_text.htm.*

FOR FURTHER INFORMATION CONTACT: Edward O. Kassman, Jr., at 303–969–2146.

SUPPLEMENTARY INFORMATION:

Title: NPS/Minerals Management Program/Mining Claims and Non-Federal Oil and Gas Rights.

OMB Number: 1024–0064.

Expiration Date: August 31, 2006.

Type of Request: Revision of a currently approved information collection.

Description of Need: The NPS regulates mineral development activities inside park boundaries on mining claims and on non-Federal oil and gas rights under regulations codified at 36 CFR part 9, subpart A ("9A regulations"), and 36 CFR part 9, subpart B ("9B Regulations"), respectively. The NPS promulgated both sets of regulations in the late 1970's. In the case of mining claims, the NPS promulgated the 9A regulations pursuant to congressional authority granted under the Mining in the Parks Act of 1976, 16 U.S.C. 1901 *et seq.*, and individual park enabling statutes. For non-Federal oil and gas rights, the NPS regulates development activities pursuant to authority under the NPS Organic Act of 1916, 16 U.S.C. 1 *et seq.*, and individual enabling statutes. As directed by Congress, the NPS developed the regulations in order to protect park resources and visitor values from the adverse impacts associated with mineral development in park boundaries. NPS specifically requests comments on: (1) The need for information including whether the information has practical utility; (2) the accuracy of the reporting burden hour estimates; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including the use of automated collection techniques or other forms of information technology.

It is the practice of the NPS to make all comments, including names and addresses of respondents who provide that information, available for public review following the conclusion of the NEPA process. Individuals may request that the NPS withhold their name and/or address from public disclosure. If you wish to do this, you must state this prominently at the beginning of your comments. Commentators using the Web site can make such a request by checking the box "keep my information private." NPS will honor such requests to the extent allowable by law, but you should be aware that NPS may still be required to disclose your name and address pursuant to the Freedom of Information Act.

Description of Respondents: ¼ medium to large publicly owned companies and ¾ private entities.

Estimated Annual Reporting Burden: 4224 hours.

Estimated Average Burden Hours Per Response: 176 Hours.

Estimated Average Number of Respondents: 24 annually.

Estimated Frequency of Response: 24 annually.

Dated: June 8, 2006.

Leonard E. Stowe,

NPS, Information and Collection Clearance Officer.

[FR Doc. 06–5341 Filed 6–12–06; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Denali National Park and Preserve, Alaska; Final South Denali Implementation Plan and Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the Final South Denali Implementation Plan and Environmental Impact Statement.

SUMMARY: The National Park Service (NPS) announces the availability of the Final South Denali Implementation Plan and Environmental Impact Statement (EIS) for Denali National Park & Preserve. The document describes and analyzes the environmental impacts of a preferred alternative and one action alternative for providing increased access and recreational opportunities in the South Denali region. A no action alternative is also evaluated.

DATES: A Record of Decision will be made no sooner than 30 days after the date the Environmental Protection Agency's Notice of Availability for the final EIS appears in the **Federal Register**.

ADDRESSES: The final plan and EIS may be viewed online at *http://www.southdenaliplanning.com* or *http://parkplanning.nps.gov*. Hard copies or CDs of the Final South Denali Implementation Plan and EIS are available on request from the address below.

FOR FURTHER INFORMATION CONTACT: Mike Tranel, Chief of Planning, Denali National park and Preserve, 240 West 5th Avenue, Anchorage, Alaska 99501. Telephone: (907) 644–3611.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the NPS, in cooperation with the State of Alaska and Matanuska-Susitna Borough, has prepared a final EIS that considers three alternatives for providing increased access and recreational opportunities in the South Denali region. The purpose of the plan and EIS is to address the needs of a growing visitor population in the south Denali region for the next two decades. The south Denali region is defined to include the southern portions of Denali National Park and Preserve, Denali State Park in its entirety, and adjoining lands owned and managed by the State of Alaska and the Matanuska-Sustina Borough. The implementation plan and EIS was initiated to address the rapidly growing level of visitation, resource management concerns, and anticipated demand for future uses of public lands in the south Denali region.

The final plan and EIS includes a range of alternatives based on planning objective's environmental resources, and public input. Each alternative represents a development concept that addresses the needs and concerns of the land managers, local communities, and visitors. The three alternatives evaluated in this EIS include two action alternatives and a no-action alternative.

Alternative A (No Action): Under Alternative A, no new actions would be implemented to support the 1997 Record of Decision for the *South Side Denali Development Concept Plan* except for those projects already approved and initiated. This alternative represents no change from current management direction and therefore represents the existing condition in the South Denali region. However, it does not ensure a similar future condition, which could be affected by factors unrelated to this planning effort.

Alternative B (Peters Hills Alternative): Under this alternative a new nature center would be constructed on approximately 2.5 acres in the Peters Hills inside the southern boundary of Denali State Park. The total building requirement would be approximately 7,500 square feet. A paved parking area would be constructed near the junction of Petersville Road and the proposed access road (MP 28 of Petersville Road) to accommodate private vehicles. An access road approximately 7 miles in length would be constructed from MP 28 of Petersville Road to the nature center. Upgrading and widening Petersville Road between MP 9.3 and 28 is a connected action that would be necessary to implement this alternative. Approximately 31 miles of trails would be constructed in the vicinity of the new nature center.

Alternative C (Parks Highway, Preferred Alternative): Under this alternative a new visitor complex would be constructed on approximately 4.1 acres near Curry Ridge in Denali State Park. The total building requirement would be approximately 16,000 square feet. A paved parking area would be constructed on the natural bench across from the Denlia View South Wayside near Parks Highway MP 134.6. An access road approximately 3.5 miles in length would be constructed from the parking area to the visitor center. Approximately 13 miles of trails would be constructed in the vicinity of the new visitor center.

The Notice of Availability of the Draft South Denali Implementation Plan and EIS was published in the **Federal Register** on September 9, 2005. The 60-day public comment period ended on November 15, 2005. Five public hearings (Anchorage, Wasilla, upper Susitna Valley, Denali Park, and Fairbanks) were held in the fall of 2005. Comments were received from 72 agencies, organizations, and individuals. In response to public comment, the preferred alternative (Alternative C, Parks Highway) was modified to include additional land use controls along the Parks Highway and Petersville Road corridors, mitigation measures for alleviating conflicts between motorized and non-motorized use, and the addition of wildlife monitoring in Denali State Park.

The responsible official for a Record of Decision on the proposed action is the NPS Regional Director in Alaska.

Dated: April 20, 2006.

Marcia Blaszak,

Regional Director, Alaska.

[FR Doc. 06–5344 Filed 6–12–06; 8:45 am]

BILLING CODE 4310–BF–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a General Management Plan and Environmental Impact Statement (GMP/EIS)

AGENCY: National Park Service, Interior.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–109 section 102(2)(C)), the National Park Service (NPS) is preparing a General Management Plan and Environmental Impact Statement (EIS) for Fire Island National Seashore, located in the towns of Islip and Brookhaven, Suffolk County, New York. Established by Act of Congress in 1964, much of Fire Island National Seashore is composed of a barrier island encompassing approximately 19,500 acres of both upland and tidal land. Seventeen villages and hamlets are

located within Fire Island National Seashore—primarily on the western end of the island. The park also manages the William Floyd Estate, a 611 acre historic property located on the mainland in Mastic, NY.

The GMP/EIS will be prepared by planners in the NPS Northeast Region, with assistance from advisors and consultants and will propose a long-term approach to managing Fire Island National Seashore. Consistent with the park's mission, NPS policy, and other laws and regulations, alternatives will be developed to guide the management of the park over the next 15 to 20 years. A range of alternatives will be formulated for natural and cultural resource protection, visitor use and interpretation, facilities development, and operations. The EIS will assess the impacts of alternative management strategies that will be described in the general management plan for Fire Island National Seashore. The public will be invited to express comments about the management of the park early in the process through public meetings and other media; and will have an opportunity to review and comment on the draft GMP/EIS. Following public review processes outlined under NEPA, the final plan will become official, authorizing implementation of the preferred alternative. The target date for the Record of Decision is April 2010.

Dated: April 14, 2006.

Mary A. Bomar,

Regional Director.

[FR Doc. 06–5345 Filed 6–12–06; 8:45 am]

BILLING CODE 4310–21–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan/ Environmental Impact Statement, Montezuma Castle and Tuzigoot National Monuments, Arizona

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Termination of the Environmental Impact Statement for the General Management Plan, Montezuma Castle and Tuzigoot National Monuments.

SUMMARY: The National Park Service (NPS) is terminating preparation of an Environmental Impact Statement (EIS) for the General Management Plan, Montezuma Castle and Tuzigoot National Monuments, Arizona. A Notice of Intent to prepare the EIS for the Montezuma Castle and Tuzigoot National Monuments General Management Plan was published May 29, 2003 (Vol. 68, No. 103).The National Park Service has since determined that an Environmental Assessment (EA) rather than an EIS is the appropriate environmental documentation for the general management plan.

SUPPLEMENTARY INFORMATION: The general management plan will establish the overall direction for the national monuments, setting broad management goals for managing the area over the next 15 to 20 years. The plan was originally scoped as an EIS. Few public comments were received during scoping or in response to the preliminary alternatives. The majority of the concerns expressed by stakeholders focused on continued access to recreational activities. No major concerns were raised regarding the effects on cultural resources resulting from the proposed changes in management of the monuments. Most of the comments received on the preliminary alternatives favored the preferred alternative. Two roundtables attended by representatives from Federal and state agencies, and local governments were conducted. These meetings focused on opportunities to work in partnership and no controversial issues were identified.

In the general management planning process the NPS planning team developed three alternatives for the national monument, none of which would result in substantial changes in the operation and management of the monuments. The preferred alternative primarily focuses on maintaining and protecting resources, expanding interpretation and visitor opportunities where appropriate, addressing maintenance/operations needs, developing new operations facilities within previously disturbed areas. The impact analysis of the alternatives revealed no major (significant) effects on the human environment or impairment of park resources and values. Most of the impacts to the monument's resources and values were negligible to minor in magnitude with the remainder being of moderate level.

For these reasons the NPS determined the appropriate National Environmental Policy Act documentation for the general management plan is an EA.

The draft general management plan/ EA is expected to be distributed for a 30 day public comment period in the fall of 2006 and a decision is expected be made in 2007. The NPS will notify the public by mail, website, and other means, and will include information on where and how to obtain a copy of the EA, how to comment on the EA, and the length of the public comment period.

FOR FURTHER INFORMATION CONTACT: Kathy Davis, Superintendent, Montezuma Castle and Tuzigoot National Monuments; P.O. Box 219, Camp Verde, Arizona, 86322; e-mail: *Kathy_M_Davis@nps.gov.*

Dated: April 28, 2006.

Michael D. Snyder,

Director, Intermountain Region.

[FR Doc. E6–9192 Filed 6–12–06; 8:45 am]

BILLING CODE 4312–EJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meetings

AGENCY: National Park Service; Interior.

ACTION: Notice of public meetings.

SUMMARY: This notice announces a public meeting of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2).

Date: Thursday, August 24, 2006, 7 p.m.

Address: Lehman Township Municipal Building, Municipal Road, Bushkill, PA 18324.

The agenda will include reports from Citizen Advisory Commission members including committees such as National Resources, Inter-Governmental, Cultural Resources, By-Laws, Special Projects, and Public Visitation and Tourism. Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures. The agenda is set up to invite the public to bring issues of interest before the Commission.

Date: Saturday, November 4, 2006, 9 a.m.

Address: Frankford Township Municipal Building, 151 State Highway 206, Augusta, NJ 07822.

The agenda will include reports from Citizen Advisory Commission members including committees such as Natural Resources, Inter-Governmental, Cultural Resources, By-Laws, Special Projects, and Public Visitation and Tourism. Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures. The agenda is set up to invite the public to bring issues of interest before the Commission.

Date: Thursday, January 11, 2007, 7 p.m., Snow date: January 18, 2007.

Address: Monroe County Conservation District, 8050 Running Valley Road, Stroudsburg, PA 18360.

The agenda will include reports from Citizen Advisory Commission members including committees such as Natural Resources, Inter-Governmental, Cultural Resources, By-Laws, Special Projects, and Public Visitation and Tourism. Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures. The agenda is set up to invite the public to bring issues of interest before the Commission.

FOR FURTHER INFORMATION CONTACT: Superintendent John J. Donahue at 570–588–2418.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

Dated: May 12, 2006.

John J. Donahue,

Superintendent.

[FR Doc. 06–5343 Filed 6–12–06; 8:45 am]

BILLING CODE 4312–JG–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Transfer of an Easement From the City of Philadelphia, Through Its Fairmount Park Commission, to the United States of America for the Management of Washington Square as an Addition to Independence National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Notice of property transfer.

SUMMARY: Under the conditions of the Memorandum of Understanding (MU–SECY–1–9001), an easement for Washington Square as an addition to Independence National Historical Park has been conveyed from the City of Philadelphia, through its Fairmount Park Commission, to the United States of America for management by the National Park Service.

FOR FURTHER INFORMATION CONTACT: Dennis Reidenbach at 215–597–7120.

SUPPLEMENTARY INFORMATION: Memorandum of Understanding (MU–SECY–9001) of November 25, 1991 provided that an easement would be conveyed from the City of Philadelphia through its Fairmount Park Commission to the United States of America for management of Washington Square as a part of Independence National Historical Park, after the completion of major capital improvements to bring the property to National Park Service Standards. The restoration, repair, and rehabilitation of Washington Square was determined to have been completed to the satisfaction of the Secretary of Interior. Following the completion of the required improvements, the City of Philadelphia through its Fairmount Park Commission by deed dated May 18, 2005 conveyed an easement to the United States of America acceptable to the Secretary of the Interior consisting of the right to protect, maintain and manage Washington Square in accordance with federal laws and regulations pertaining to units of the National Park System, including the right to allow and control public access to said site.

Dated: October 14, 2005.

Dennis R. Reidenbach,

Superintendent, National Park Service, Independence National Historical Park.

[**Editorial Note:** This document received at the Office of the Federal Register on June 8, 2006.]

[FR Doc. 06–5342 Filed 6–12–06; 8:45 am]

BILLING CODE 4312–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

San Luis Drainage Feature Reevaluation, Alameda, Contra Costa, Fresno, Kern, Kings, Merced, San Joaquin, San Luis Obispo, and Stanislaus Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement (EIS) for the San Luis Drainage Feature Reevaluation.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation has prepared a Final EIS for the San Luis Drainage Feature Reevaluation. Under section 1502.14(e) of the NEPA regulations, the Council for Environmental Quality requires identification of a preferred alternative in the Final EIS. To comply with this requirement and in accordance with the Federally-mandated Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies, Reclamation has identified the National Economic Development alternative, the In-Valley/Drainage-Impaired Area Land Retirement Alternative, as the preferred alternative.

DATES: Reclamation will not make a decision on the proposed action until at least 30 days after release of the Final EIS. After the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

ADDRESSES: To obtain a compact disc or paper copy of the Final EIS, please e-mail Ms. Sammie Cervantes at *scervantes@mp.usbr.gov* or write Ms. Cervantes at Bureau of Reclamation, 2800 Cottage Way (MP–730), Sacramento, CA 95825. The Final EIS may be viewed online at *http://www.usbr.gov/mp/sccao/sld/docs/index.html.*

See the **SUPPLEMENTARY INFORMATION** section for locations where copies of the Final EIS are available.

FOR FURTHER INFORMATION CONTACT: Please contact Mr. Gerald Robbins at 916–978–5061, fax 916–978–5094, or e-mail: *grobbins@mp.usbr.gov.*

SUPPLEMENTARY INFORMATION:

Background

The proposed Federal action is to plan and construct a drainage system for the San Luis Unit. This proposed action would meet the needs of the San Luis Unit for drainage service, fulfill the requirements of a February 2000 Court Order issued in litigation concerning drainage in the San Luis Unit, and be completed under the authority of Public Law 86–488. The Final EIS evaluates seven Action Alternatives in addition to a No Action Alternative: In-Valley Disposal, In-Valley Groundwater Quality Land Retirement, In-Valley Water Needs Land Retirement, In-Valley Drainage Impaired Area Land Retirement, Ocean Disposal, Delta-Chipps Island Disposal, and Delta Carquinez Strait Disposal. All of the alternatives would include common elements: on-farm and in-district actions, drainwater collection systems, regional reuse facilities, the Firebaugh sumps, and land retirement of at least 44,106 acres. In addition to the common elements, the action alternatives (except the Ocean Disposal) involve varying levels of drainwater treatment (by reverse osmosis, and/or biological selenium treatment) and/or additional land retirement. The resources evaluated in the Final include: surface

water resources, groundwater resources, biological resources, selenium bioaccumulation, geology and seismicity, energy resources, air resources, agricultural production and economics, land use and soil resources, recreational resources, cultural resources, aesthetics, regional economics, and social issues and environmental justice. Reclamation determined that the action alternatives were unlikely to affect traffic and transportation, noise, utilities and public services, and Indian Trust Assets.

Copies of the Final EIS are available for review and inspection at the following public libraries:

- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225; telephone 303–445–2072;
- Bureau of Reclamation, Mid-Pacific Regional Library, 2800 Cottage Way, Sacramento, CA 95825; telephone 916–978–5593;
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW., Main Interior Building, Washington, DC 20240–0001;
- Alameda County Public Library, 2450 Stevenson Boulevard, Fremont, CA 94538; telephone 510–745–1400;
- Contra Costa County Library, 1750 Oak Park Boulevard, Pleasant Hill, CA 94523; telephone 925–646–6434;
- Fresno County Public Library, 2420 Mariposa Street, Fresno, CA 93721; telephone 559–488–3195;
- Kern County Public Library, 701 Truxton Avenue, Bakersfield, CA 93301; telephone 661–868–0701;
- Kings County Public Library, 401 North Douty Street, Hanford, CA 93230; telephone 559–582–0261;
- Merced County Public Library, 1312 South 7th Street, Los Banos, CA 95334; telephone 209–826–5254;
- San Joaquin County Public Library, 605 North El Dorado Street, Stockton, CA 95334; telephone 209–937–8221;
- San Luis Obispo County Public Library Bookmobile, PO Box 8107, San Luis Obispo, CA 93403; telephone for Bookmobile schedule/location 805–788–2145;
- Stanislaus County Public Library, 1500 I Street, Modesto, CA 95354; telephone 209–558–7800;
- UC Berkeley Water Resources Center Archives, 410 O'Brien Hall, Berkeley, CA 94720; telephone 510–642–2666.

Additional Information

Additional information is available online at *http://www.usbr.gov/mp/sccao/sld/index.html*. A Notice of Availability of the Draft EIS was published in the **Federal Register** on June 2, 2005 (70 FR 32370). The Final EIS contains responses to all comments received and reflects comments and any additional information received during the review period.

Reclamation's practice is to make any communication related to proposed projects, including names and home addresses, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which will be honored to the extent allowable by law. There may be circumstances in which a respondent's identity may also be withheld from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your communication. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Susan L. Ramos,

Assistant Regional Director, Mid-Pacific Region.

[FR Doc. E6–9184 Filed 6–12–06; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 18, 2005, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedule II:

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Dextropropoxyphene, bulk (non-dosage form) (9273).	II
Phenylacetone (8501)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sales to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than August 14, 2006.

Dated: June 7, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–9177 Filed 6–12–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on January 26, 2006, Roche Diagnostics Operations, Inc., Attn: Regulatory Compliance, 9115 Hague Road, Indianapolis 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in Schedule I & II:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Cocaine (9041)	II
Ecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II
Alphamethadol (9605)	II

The company plans to import the listed controlled substances for the manufacture of diagnostic products for distribution to its customers.

The company plans to import the listed controlled substances for the manufacture of controlled substances in bulk for distribution to its customers.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than July 13, 2006.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in Schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: June 7, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–9176 Filed 6–12–06; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before July 28, 2006. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means: Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001. E-mail: *requestschedule@nara.gov*. FAX: 301–837–3698. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, Bureau of Industry and Security (N1–476–06–1, 3 items, 3 temporary items). Inputs, master files, and documentation associated with an electronic information system used to generate alphanumeric identification numbers for the exporting community seeking licenses for dual-use technologies.

2. Department of Commerce, Bureau of Industry and Security (N1–476–06–2, 4 items, 4 temporary items). Inputs, outputs, master files, and documentation associated with an electronic information system used for the submission of export license

applications, commodity classification requests, and high performance computer notices.

3. Department of Commerce, Bureau of Industry and Security (N1–476–06–3, 4 items, 4 temporary items). Inputs, outputs, master files, and documentation associated with an electronic imaging system used to create and make available to the export community electronic images of all export and classification requests and supporting documentation.

4. Department of Commerce, Bureau of Industry and Security (N1–476–06–4, 4 items, 4 temporary items). Inputs, outputs, master files, and documentation associated with an electronic imaging system used to create and manage electronic images of export license applications.

5. Department of Commerce, Bureau of Industry and Security (N1–476–06–5, 4 items, 4 temporary items). Inputs, outputs, master files, and documentation associated with an electronic information system used to track anti-boycott compliance by U.S. exporters.

6. Department of Commerce, Bureau of Industry and Security (N1–476–06–6, 4 items, 4 temporary items). Inputs, outputs, master files, and documentation associated with an electronic information system used to track anti-boycott enforcement actions relating to U.S. exporters.

7. Department of Homeland Security, Federal Emergency Management Agency (N1–311–06–2, 2 items, 2 temporary items). Routine photographs and mission-related photographs that lack historical value. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

8. Department of Homeland Security, U.S. Coast Guard (N1–26–05–21, 4 items, 4 temporary items). Records of the Health Services Program including inventory logs and prescription records for controlled substances administered by U.S. Coast Guard pharmacies. Also included are electronic copies of records created using electronic mail and word processing.

9. Department of Homeland Security, U.S. Coast Guard (N1–26–06–4, 7 items, 5 temporary items). Inputs, outputs, and electronic mail and word processing copies associated with an electronic information system used to describe and maintain marine navigational aids. Proposed for permanent retention are the master files and documentation.

10. Department of the Interior, National Park Service (N1–79–06–1, 2 items, 2 temporary items). Law enforcement commission case files maintained by the Visitor and Resource Protection Office. Also included are electronic copies of records created using electronic mail and word processing applications.

11. Department of Labor, Administrative Review Board (N1–174–06–2, 8 items, 8 temporary items). Records involving labor-related legal cases, including adjudicative case files, working papers, decision files, chronological files, and correspondence files. Also included are electronic copies of records created using electronic mail and word processing.

12. Department of Transportation, Federal Motor Carrier Safety Administration (N1–557–05–2, 63 items, 63 temporary items). Records created and maintained by the Office of Chief Counsel. Included are such records as budget background files, reference files, monthly reports, legal opinions, litigation files, enforcement files, subpoena files, rulemaking files, and legislative files. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

13. Department of the Treasury, Internal Revenue Service (N1–58–06–4, 1 item, 1 temporary item). Quarterly certification documents required of supervisors to demonstrate compliance with the Revenue Restructuring Act of 1998.

14. Environmental Protection Agency, Agency-wide (N1–412–06–7, 3 items, 2 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to directive and policy guidance documents issued by specific programs and regions, regardless of recordkeeping medium. Paper recordkeeping copies of directives and policy guidance documents that are unpublished and related background materials were previously approved for disposal. Paper recordkeeping copies of directives and policy guidance documents that are published and/or released to the public and related background materials that are necessary to fully document the development of the directive or guidance were previously approved as permanent. Also covered by this schedule are electronic copies of records created using electronic mail.

15. Environmental Protection Agency, Agency-wide (N1–412–06–8, 3 items, 2 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to speeches and testimony, regardless of recordkeeping medium. Paper recordkeeping copies of speeches and testimony by employees other than senior officials were previously approved for disposal. Paper recordkeeping copies of speeches and testimony by senior officials were previously approved as permanent. Also covered by this schedule are electronic copies of records created using electronic mail.

16. Environmental Protection Agency, Agency-wide (N1–412–06–9, 4 items, 3 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to publications and promotional items, regardless of recordkeeping medium. Paper recordkeeping copies of routine publications and promotional items, and paper recordkeeping copies of working papers and background materials for all publications and promotional materials were previously approved for disposal. Paper recordkeeping copies of publications or promotional items depicting mission activities were previously approved as permanent. Also covered by this schedule are electronic copies of records created using electronic mail.

17. Environmental Protection Agency, Agency-wide (N1–412–06–10, 3 items, 2 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to controlled and major correspondence, regardless of recordkeeping medium. Paper recordkeeping copies of controlled and major correspondence of the offices of Division Directors and other personnel were previously approved for disposal. Paper recordkeeping copies of controlled and major correspondence of specified senior-level officials were previously approved as permanent. Also covered by this schedule are electronic copies of records created using electronic mail.

18. Environmental Protection Agency, Agency-wide (N1–412–06–11, 5 items, 3 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to training materials, regardless of recordkeeping medium. Paper and audiovisual recordkeeping copies of routine training course plans and materials used for personnel and management training unrelated to the agency's environmental mission were previously approved for disposal. Paper and audiovisual recordkeeping copies of mission-related training course plans and materials used for training in functions or activities related to the agency's environmental goals and programs were previously approved as permanent. Also covered by this

schedule are electronic copies of records created using electronic mail.

Dated: June 6, 2006.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E6–9158 Filed 6–12–06; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

Agency Holding the Meeting: Nuclear Regulatory Commission.

Date: Weeks of June 12, 19, 26, July 3, 10, 17, 2006.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and Closed.

Matters to be Considered:

Week of June 12, 2006

There are no meetings scheduled for the Week of June 12, 2006.

Week of June 19, 2006—Tentative

Friday, June 23, 2006

9 a.m. Affirmation Session (Public) (Tentative)

a. AmerGen Energy Company, LLC (License Renewal for Oyster Creek Nuclear Generating Station) Docket No. 50–0219, Legal challenges to LBP–06–07 and LBP–06–11 (Tentative)

b. Nuclear Management Company, LLC (Palisades Nuclear Plant, license renewal application), Appeal by Petitioners of LBP–06–10 (ruling on standing, contentions, and other pending matters) (Tentative).

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1).

Week of June 26, 2006—Tentative

There are no meetings scheduled for the Week of June 26, 2006.

Week of July 3, 2006—Tentative

There are no meetings scheduled for the Week of July 3, 2006.

Week of July 10, 2006—Tentative

There are no meetings scheduled for the Week of July 10, 2006.

Week of July 17, 2006—Tentative

There are no meetings scheduled for the Week of July 17, 2006.

ADDITIONAL INFORMATION: By a vote of 5–0 on June 6, 2006, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Management Issues (Closed—Ex. 2)" be held June 8, 2006, and on less than one week's notice to the public.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TTD: 301–415–2100, or by e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: June 8, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–5387 Filed 6–9–06; 10:09 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8989]

In the Matter of EnergySolutions, LLC (formerly Envirocare of Utah, LLC); Order Modifying Exemption from 10 CFR Part 70

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Order Modifying Exemption from Requirements of 10 CFR part 70.

FOR FURTHER INFORMATION CONTACT: James Park, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–5835, fax number: (301) 415–5397, e-mail: *JRP@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing an Order pursuant to section 274f of the Atomic Energy Act to EnergySolutions, LLC (formerly Envirocare of Utah, LLC) concerning EnergySolutions' exemption from certain NRC licensing requirements for special nuclear material. This Order reflects the change in company name from Envirocare of Utah, LLC to EnergySolutions, LLC.

II. Further Information

EnergySolutions, LLC (EnergySolutions) operates a low-level waste (LLW) disposal facility in Clive, Utah. This facility is licensed by the State of Utah, an Agreement State. EnergySolutions also is licensed by Utah to dispose of mixed waste, hazardous waste, and 11e.(2) byproduct material (as defined under section 11e.(2) of the Atomic Energy Act of 1954, as amended). By letter dated March 3, 2006, EnergySolutions notified the NRC that the company had changed its name from Envirocare of Utah, LLC and requested that the NRC reflect this name change in identified NRC staff documents.

Section 70.3 of 10 CFR part 70 requires persons who own, acquire, deliver, receive, possess, use, or transfer special nuclear material (SNM) to obtain a license pursuant to the requirements in 10 CFR part 70. The licensing requirements in 10 CFR part 70 apply to persons in Agreement States possessing greater than critical mass quantities as defined in 10 CFR 150.11.

Pursuant to 10 CFR 70.17(a), "the Commission may . . . . grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest."

By previous Orders, Envirocare of Utah, LLC was exempted from certain NRC regulations and was permitted, under specified conditions, to possess waste containing SNM in greater quantities than specified in 10 CFR part 150, at its LLW disposal facility located in Clive, Utah, without obtaining an NRC license pursuant to 10 CFR part 70. The first such Order was published in the **Federal Register** on May 21, 1999 (64 FR 27826). The most recent revision to this Order was published in the

Federal Register on August 1, 2005 (70 FR 44123).

The modified Order set forth below reflects the change in company name from Envirocare of Utah, LLC to EnergySolutions, LLC. No other substantive changes to the August 1, 2005 Order have been made. The exemption conditions would be revised as follows.

III. Modified Order

1. For waste with no more than 20 weight percent of materials listed in Condition 2, concentrations of SNM in individual waste containers must not exceed the following values at time of receipt:

TABLE A

SNM nuclide	Maximum SNM concentration in waste containing the described materials (g SNM/g waste)	
	No materials listed in condition 2	Maximum of 20 weight percent of materials listed in condition 2 and no more than 1 weight percent of beryllium
U–235 (>50%)[a]	6.2E–4	5.4E–4
U–235 (=50%)	6.9E–4	6.1E–4
U–235 (=20%)	8.3E–4	7.4E–4
U–235 (=10%)	9.9E–4	8.8E–4
U–235 (=5%)	1.0E–3	9.6E–4
U–235 (=3%)	1.3E–3	1.1E–3
U–235 (=2%)	1.7E–3	1.5E–3
U–235 (=1.5%)	2.3E–3	2.1E–3
U–235 (=1.35%) ...	2.8E–3	2.5E–3
U–235 (=1.2%)	3.5E–3	3.2E–3
U–235 (=1.1%)	4.5E–3	4.2E–3
U–235 (=1.05%) ...	5.0E–3	4.8E–3
U–233	4.7E–4	4.3E–4
Pu-239	2.8E–4	2.6E–4
Pu-241	2.2E–4	1.9E–4

[a] Percentage value refers to weight percent enrichment in U–235. For enrichments that fall between identified values in the table, the higher value is the applicable value (*e.g.*, for an enrichment of 14 weight percent U–235, the applicable concentration limit is that for 20 weight percent U–235).

For waste with more than 20 weight percent of materials listed in Condition 2, concentrations of SNM in individual waste containers must not exceed the following values at time of receipt:

TABLE B

Radionuclide	Maximum SNM concentration in waste containing the described materials (g SNM/g waste)	
	Unlimited quantities of materials listed in condition 2	Unlimited quantities of materials listed in conditions 2 and 3
U–235 (>50%)	3.4E–4	1.2E–5
U–235	N/A	3.1E–4[a]
U–233	2.9E–4	1.1E–5
Pu-239	1.7E–4	7.5E–6
Pu-241	1.3E–4	5.3E–6

[a] For uranium at any enrichment with sum of materials listed in Condition 2 and beryllium not exceeding 45 percent of the weight of the waste.

Plutonium isotopes other than Pu-239 and Pu-241 do not need to be considered in demonstrating compliance with this condition. When mixtures of these SNM isotopes are present in the waste, the sum-of-the-fractions rule, as illustrated below, should be used.

The concentration values in Condition 1 are operational values to ensure criticality safety. Where the values in Condition 1 exceed concentration values in the corresponding conditions of the State of Utah Radioactive Material License (RML), the concentration values in the RML, which are averaged over the container, may not be exceeded. Higher concentration values are included in Condition 1 to be used in establishing the maximum mass of SNM for non-homogeneous solid waste and liquid waste.

The measurement uncertainty values should be no more than 15 percent of the concentration limit, and represent the maximum one-sigma uncertainty associated with the measurement of the concentration of the particular radionuclide. When determining the applicable U–235 concentration limit for a specific enrichment percentage, the analytical uncertainty shall be added to the result (*e.g.*, for a measurement value of U–235 enrichment percentage of 1.1 +/-0.2, the U–235 concentration limit corresponding to an enrichment percent of 1.35 shall be used). This shall be applied to analytical methods employed by the generator prior to receipt and by EnergySolutions upon receipt.

The SNM must be homogeneously distributed throughout the waste. If the SNM is not homogeneously distributed, then the limiting concentrations must not be exceeded on average in any contiguous mass of 600 kilograms of waste.

Liquid waste may be stabilized provided the SNM concentration does not exceed the SNM concentration limits in Condition 1. For containers of liquid waste with more than 600 kilograms of waste, the total mass of SNM shall not exceed the SNM concentration in Condition 1 times 600 kilograms of waste. Waste containing free liquids and solids shall be mixed prior to treatment. Any solids shall be maintained in a suspended state during transfer and treatment.

2. Except as allowed by Tables A and B in Condition 1, waste must not contain "pure forms" of chemicals containing carbon, fluorine, magnesium, or bismuth in bulk quantities (*e.g.*, a pallet of drums, a B–25 box). By "pure forms," it is meant that mixtures of the above elements, such as magnesium oxide, magnesium carbonate, magnesium fluoride, bismuth oxide, etc., do not contain other elements. These chemicals would be added to the waste stream during processing, such as at fuel facilities or treatment such as at mixed waste treatment facilities. The presence of the above materials will be determined by the generator, based on process knowledge or testing.

3. Except as allowed by Tables A and B in Condition 1, waste accepted must not contain total quantities of beryllium, hydrogenous material enriched in deuterium, or graphite above one tenth of one percent of the total weight of the waste. The presence of the above materials will be determined by the generator, based on process knowledge, physical observations, or testing. 4 Waste packages must not contain highly water soluble forms of uranium greater than 350 grams of uranium-235 or 200 grams of uranium-233. The sum of the fractions rule will apply for mixtures of U–233 and U–235. Highly soluble forms of uranium include, but are not limited to: Uranium sulfate, uranyl acetate, uranyl chloride, uranyl formate, uranyl fluoride, uranyl nitrate, uranyl potassium carbonate, and uranyl sulfate. The presence of the above materials will be determined by the generator, based on process knowledge or testing.

5. Waste processing of waste containing SNM will be limited to stabilization (mixing waste with reagents), micro-encapsulation and macro-encapsulation using low-density and high-density polyethylene, macro-encapsulation with cement grout, spray-washing, organic destruction (CerOx process and Solvent Electron Technology process), and thermal desorption.

EnergySolutions shall confirm that the SNM concentration in the rinse water does not exceed the limits in Condition 1 following spray-washing, prior to further treatment. If the rinse water is evaporated, the evaporated product shall comply with the requirements in Condition 1. EnergySolutions shall perform sampling and analysis of the liquid effluent collection system at a frequency of one sample per 300 gallons or when the system reaches capacity, whichever is less.

EnergySolutions shall track the SNM mass of waste treated using the CerOx process. When the total concentration of SNM is 85 percent of the sum of the fraction rule in Condition 1, EnergySolutions shall confirm the SNM concentration in the phase reactor tank and replace the solutions. The 10 percent enriched limit shall be used for uranium-235. The contents of the phase reactor tank should be solidified prior to disposal.

When waste is processed using the thermal desorption process and the Solvent Electron Technology process, EnergySolutions shall confirm the SNM concentration following processing and prior to returning the waste to temporary storage.

6. EnergySolutions shall require generators to provide the following information for each waste stream:

Pre-shipment

Waste Description. The description must detail how the waste was generated, list the physical forms in the waste, and identify uranium chemical composition.

Waste Characterization Summary. The data must include a general description of how the waste was characterized (including the volumetric extent of the waste, and the number, location, type, and results of any analytical testing), the range of SNM concentrations, and the analytical results with error values used to develop the concentration ranges.

Uniformity Description. A description of the process by which the waste was generated showing that the spatial distribution of SNM must be uniform, or other information supporting spatial distribution.

Manifest Concentration. The generator must describe the methods to be used to determine the concentrations on the manifests. These methods could include direct measurement and the use of scaling factors. The generator must describe the uncertainty associated with sampling and testing used to obtain the manifest concentrations.

EnergySolutions shall review the above information and, if adequate, approve in writing this pre-shipment waste characterization and assurance plan before permitting the shipment of a waste stream. This will include statements that EnergySolutions has a written copy of all the information required above, that the characterization information is adequate and consistent with the waste description, and that the information is sufficient to demonstrate compliance with Conditions 1 through 4. Where generator process knowledge is used to demonstrate compliance with Conditions 1, 2, 3, or 4, EnergySolutions shall review this information and determine when testing is required to provide additional information in assuring compliance with the Conditions. EnergySolutions shall retain this information as required by the State of Utah to permit independent review.

At Receipt

EnergySolutions shall require generators of SNM waste to provide a written certification with each waste manifest that states that the SNM concentrations reported on the manifest do not exceed the limits in Condition 1, that the measurement uncertainty does not exceed the uncertainty value in Condition 1, and that the waste meets Conditions 2 through 4.

7. Sampling and radiological testing of waste containing SNM must be performed in accordance with the following: one sample for each of the first ten shipments of a waste stream; or one sample for each of the first 100 cubic yards of waste up to 1,000 cubic yards of a waste stream, and one sample for each additional 500 cubic yards of waste following the first ten shipments or following the first 1,000 cubic yards of a waste stream. Sampling and radiological testing of debris waste containing SNM (that is exempted from sampling by the State of Utah) can be eliminated if the SNM concentration is lower than one tenth of the limits in Condition 1. EnergySolutions shall verify the percent enrichment by appropriate analytical methods. The percent enrichment determination shall be made by taking into account the most conservative values based on the measurement uncertainties for the analytical methods chosen.

8. EnergySolutions shall notify the NRC, Region IV office within 24 hours if any of the above conditions are not met, including if a batch during a treatment process exceeds the SNM concentrations of Condition 1. A written notification of the event must be provided within 7 days.

9. EnergySolutions shall obtain NRC approval prior to changing any activities associated with the above conditions.

Based on the staff's evaluation, the Commission has determined, pursuant to 10 CFR 70.17(a), that the exemption of above activities at the EnergySolutions disposal facility is authorized by law, and will not endanger life or property or the common defense and security and is otherwise in the public interest. Accordingly, by this Order, the Commission grants an exemption subject to the stated conditions. The exemption will become effective after the State of Utah has incorporated the above conditions into EnergySolutions' radioactive materials license. In addition, at that time, the Order published on August 1, 2005 will no longer be effective.

Pursuant to the requirements in 10 CFR Part 51, the Commission has determined that an Environmental Assessment is not required as the proposed action (change in company name) is administrative and therefore falls within the categorical exclusion provisions of 10 CFR 51.22(c)(11).

IV. Availability of Documents

Documents related to this action, including the application for amendment and supporting documentation, will be available electronically at the NRC's Electronic Reading Room at *http://www.NRC.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the document related to this notice is: EnergySolutions' March 3, 2006 request (ML060740549).

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 30th day of May, 2006.

For the Nuclear Regulatory Commission.

Jack R. Strosnider,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E6–9181 Filed 6–12–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8989]

In the Matter of EnergySolutions, LLC (formerly Envirocare of Utah, LLC) Order Modifying Exemption from 10 CFR Part 70

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Order Modifying Exemption from Requirements of 10 CFR part 70.

FOR FURTHER INFORMATION CONTACT: James Park, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–5835, fax number: (301) 415–5397, e-mail: *JRP@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing an Order pursuant to section 274f of the Atomic Energy Act to EnergySolutions, LLC (formerly Envirocare of Utah, LLC) concerning EnergySolutions' exemption from certain NRC licensing requirements for special nuclear material. This Order reflects the change in company name from Envirocare of Utah, LLC to EnergySolutions, LLC.

II. Further Information

EnergySolutions, LLC (EnergySolutions) operates a low-level waste (LLW) disposal facility in Clive, Utah. This facility is licensed by the State of Utah, an Agreement State. EnergySolutions also is licensed by Utah to dispose of mixed waste, hazardous waste, and 11e.(2) byproduct material (as defined under section 11e.(2) of the Atomic Energy Act of 1954, as amended). By letter dated March 3, 2006, EnergySolutions notified the NRC that the company had changed its name from Envirocare of Utah, LLC and requested that the NRC reflect this name change in identified NRC staff documents.

Section 70.3 of 10 CFR part 70 requires persons who own, acquire, deliver, receive, possess, use, or transfer special nuclear material (SNM) to obtain a license pursuant to the requirements in 10 CFR part 70. The licensing requirements in 10 CFR part 70 apply to persons in Agreement States possessing greater than critical mass quantities as defined in 10 CFR 150.11.

Pursuant to 10 CFR 70.17(a), "the Commission may * * * grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest."

By previous Orders, Envirocare of Utah, LLC was exempted from certain NRC regulations and was permitted, under specified conditions, to possess waste containing SNM in greater quantities than specified in 10 CFR part 150, at its LLW disposal facility located in Clive, Utah, without obtaining an NRC license pursuant to 10 CFR part 70. The first such Order was published in the **Federal Register** on May 21, 1999 (64 FR 27826). The most recent revision to this Order was published in the **Federal Register** on August 1, 2005 (70 FR 44123).

The modified Order set forth below reflects the change in company name from Envirocare of Utah, LLC to EnergySolutions, LLC. No other substantive changes to the August 1, 2005 Order have been made. The exemption conditions would be revised as follows.

III. Modified Order

1. For waste with no more than 20 weight percent of materials listed in Condition 2, concentrations of SNM in individual waste containers must not exceed the following values at time of receipt:

TABLE A

SNM Nuclide	Maximum SNM concentration in waste containing the described materials (g SNM/g waste)	
	No materials listed in Condition 2	Maximum of 20 weight percent of materials listed in Condition 2 and no more than 1 weight percent of beryllium
U–235 (>50%) [a].	6.2E–4	5.4E–4
U–235 (=50%)	6.9E–4	6.1E–4
U–235 (=20%)	8.3E–4	7.4E–4
U–235 (=10%)	9.9E–4	8.8E–4
U–235 (=5%)	1.0E–3	9.6E–4
U–235 (=3%)	1.3E–3	1.1E–3
U–235 (=2%)	1.7E–3	1.5E–3
U–235 (=1.5%).	2.3E–3	2.1E–3
U–235 (=1.35%).	2.8E–3	2.5E–3
U–235 (=1.2%).	3.5E–3	3.2E–3
U–235 (=1.1%).	4.5E–3	4.2E–3
U–235 (=1.05%).	5.0E–3	4.8E–3
U–233	4.7E–4	4.3E–4
Pu–239	2.8E–4	2.6E–4
Pu–241	2.2E–4	1.9E–4

[a] Percentage value refers to weight percent enrichment in U–235. For enrichments that fall between identified values in the table, the higher value is the applicable value (*e.g.*, for an enrichment of 14 weight percent U–235, the applicable concentration limit is that for 20 weight percent U–235).

For waste with more than 20 weight percent of materials listed in Condition 2, concentrations of SNM in individual waste containers must not exceed the following values at time of receipt:

TABLE B

Radionuclide	Maximum SNM concentration in waste containing the described materials (g SNM/g waste)	
	Unlimited quantities of materials listed in Condition 2	Unlimited quantities of materials listed in Conditions 2 and 3
U–235 (>50%)	3.4E–4	1.2E–5
U–235	N/A	3.1E–4 [a]
U–233	2.9E–4	1.1E–5
Pu–239	1.7E–4	7.5E–6
Pu–241	1.3E–4	5.3E–6

[a] For uranium at any enrichment with sum of materials listed in Condition 2 and beryllium not exceeding 45 percent of the weight of the waste.

Plutonium isotopes other than Pu–239 and Pu–241 do not need to be considered in demonstrating compliance with this condition. When mixtures of these SNM isotopes are present in the waste, the sum-of-the-fractions rule, as illustrated below, should be used.

$$\frac{\text{U-233 conc}}{\text{U-233 limit}}+\frac{\text{100wt\%U-235 conc}}{\text{100wt\%U-235 limit}}+\frac{\text{10wt\%U-235 conc}}{\text{10wt\%U-235 limit}}+\frac{\text{Pu-239 conc}}{\text{Pu-239 limit}}+\frac{\text{Pu-241 conc}}{\text{Pu-241 limit}}\leq 1$$

The concentration values in Condition 1 are operational values to ensure criticality safety. Where the values in Condition 1 exceed concentration values in the corresponding conditions of the State of Utah Radioactive Material License (RML), the concentration values in the RML, which are averaged over the container, may not be exceeded. Higher concentration values are included in Condition 1 to be used in establishing the maximum mass of SNM for non-homogeneous solid waste and liquid waste.

The measurement uncertainty values should be no more than 15 percent of the concentration limit, and represent the maximum one-sigma uncertainty associated with the measurement of the concentration of the particular radionuclide. When determining the applicable U–235 concentration limit for a specific enrichment percentage, the analytical uncertainty shall be added to the result (*e.g.*, for a measurement value of U–235 enrichment percentage of 1.1+/−0.2, the U–235 concentration limit corresponding to an enrichment percent of 1.35 shall be used). This shall be applied to analytical methods employed by the generator prior to receipt and by EnergySolutions upon receipt.

The SNM must be homogeneously distributed throughout the waste. If the SNM is not homogeneously distributed, then the limiting concentrations must not be exceeded on average in any contiguous mass of 600 kilograms of waste.

Liquid waste may be stabilized provided the SNM concentration does not exceed the SNM concentration limits in Condition 1. For containers of liquid waste with more than 600 kilograms of waste, the total mass of SNM shall not exceed the SNM concentration in Condition 1 times 600 kilograms of waste. Waste containing free liquids and solids shall be mixed prior to treatment. Any solids shall be maintained in a suspended state during transfer and treatment.

2. Except as allowed by Tables A and B in Condition 1, waste must not contain "pure forms" of chemicals containing carbon, fluorine, magnesium, or bismuth in bulk quantities (*e.g.*, a pallet of drums, a B–25 box). By "pure forms," it is meant that mixtures of the above elements, such as magnesium oxide, magnesium carbonate, magnesium fluoride, bismuth oxide, etc., do not contain other elements. These chemicals would be added to the waste stream during processing, such as at fuel facilities or treatment such as at mixed waste treatment facilities. The presence of the above materials will be determined by the generator, based on process knowledge or testing.

3. Except as allowed by Tables A and B in Condition 1, waste accepted must not contain total quantities of beryllium, hydrogenous material enriched in deuterium, or graphite above one tenth of one percent of the total weight of the waste. The presence of the above materials will be determined by the generator, based on process knowledge, physical observations, or testing.

4. Waste packages must not contain highly water soluble forms of uranium greater than 350 grams of uranium-235 or 200 grams of uranium-233. The sum of the fractions rule will apply for mixtures of U–233 and U–235. Highly soluble forms of uranium include, but are not limited to: uranium sulfate, uranyl acetate, uranyl chloride, uranyl formate, uranyl fluoride, uranyl nitrate, uranyl potassium carbonate, and uranyl sulfate. The presence of the above materials will be determined by the generator, based on process knowledge or testing.

5. Waste processing of waste containing SNM will be limited to stabilization (mixing waste with reagents), micro-encapsulation and macro-encapsulation using low-density and high-density polyethylene, macro-encapsulation with cement grout, spray-washing, organic destruction (CerOx process and Solvent Electron Technology process), and thermal desorption.

EnergySolutions shall confirm that the SNM concentration in the rinse water does not exceed the limits in Condition 1 following spray-washing, prior to further treatment. If the rinse water is evaporated, the evaporated product shall comply with the requirements in Condition 1. EnergySolutions shall perform sampling and analysis of the liquid effluent collection system at a frequency of one sample per 300 gallons or when the system reaches capacity, whichever is less.

EnergySolutions shall track the SNM mass of waste treated using the CerOx process. When the total concentration of SNM is 85 percent of the sum of the fraction rule in Condition 1, EnergySolutions shall confirm the SNM concentration in the phase reactor tank and replace the solutions. The 10 percent enriched limit shall be used for uranium-235. The contents of the phase reactor tank should be solidified prior to disposal.

When waste is processed using the thermal desorption process and the Solvent Electron Technology process, EnergySolutions shall confirm the SNM concentration following processing and prior to returning the waste to temporary storage.

6. EnergySolutions shall require generators to provide the following information for each waste stream:

Pre-shipment

Waste Description. The description must detail how the waste was generated, list the physical forms in the waste, and identify uranium chemical composition.

Waste Characterization Summary. The data must include a general description of how the waste was characterized (including the volumetric extent of the waste, and the number, location, type, and results of any analytical testing), the range of SNM concentrations, and the analytical results with error values used to develop the concentration ranges.

Uniformity Description. A description of the process by which the waste was generated showing that the spatial distribution of SNM must be uniform, or other information supporting spatial distribution.

Manifest Concentration. The generator must describe the methods to be used to determine the concentrations on the manifests. These methods could include direct measurement and the use of scaling factors. The generator must describe the uncertainty associated with sampling and testing used to obtain the manifest concentrations.

EnergySolutions shall review the above information and, if adequate, approve in writing this pre-shipment waste characterization and assurance plan before permitting the shipment of a waste stream. This will include statements that EnergySolutions has a written copy of all the information required above, that the characterization information is adequate and consistent with the waste description, and that the information is sufficient to demonstrate compliance with Conditions 1 through 4. Where generator process knowledge is used to demonstrate compliance with Conditions 1, 2, 3, or 4, EnergySolutions

shall review this information and determine when testing is required to provide additional information in assuring compliance with the Conditions. EnergySolutions shall retain this information as required by the State of Utah to permit independent review.

At Receipt

EnergySolutions shall require generators of SNM waste to provide a written certification with each waste manifest that states that the SNM concentrations reported on the manifest do not exceed the limits in Condition 1, that the measurement uncertainty does not exceed the uncertainty value in Condition 1, and that the waste meets Conditions 2 through 4.

7. Sampling and radiological testing of waste containing SNM must be performed in accordance with the following: One sample for each of the first ten shipments of a waste stream; or one sample for each of the first 100 cubic yards of waste up to 1,000 cubic yards of a waste stream, and one sample for each additional 500 cubic yards of waste following the first ten shipments or following the first 1,000 cubic yards of a waste stream. Sampling and radiological testing of debris waste containing SNM (that is exempted from sampling by the State of Utah) can be eliminated if the SNM concentration is lower than one tenth of the limits in Condition 1. EnergySolutions shall verify the percent enrichment by appropriate analytical methods. The percent enrichment determination shall be made by taking into account the most conservative values based on the measurement uncertainties for the analytical methods chosen.

8. EnergySolutions shall notify the NRC, Region IV office within 24 hours if any of the above conditions are not met, including if a batch during a treatment process exceeds the SNM concentrations of Condition 1. A written notification of the event must be provided within 7 days.

9. EnergySolutions shall obtain NRC approval prior to changing any activities associated with the above conditions.

Based on the staff's evaluation, the Commission has determined, pursuant to 10 CFR 70.17(a), that the exemption of above activities at the EnergySolutions disposal facility is authorized by law, and will not endanger life or property or the common defense and security and is otherwise in the public interest. Accordingly, by this Order, the Commission grants an exemption subject to the stated conditions. The exemption will become effective after the State of Utah has incorporated the above conditions into EnergySolutions' radioactive materials license. In addition, at that time, the Order published on August 1, 2005 will no longer be effective.

Pursuant to the requirements in 10 CFR part 51, the Commission has determined that an Environmental Assessment is not required as the proposed action (change in company name) is administrative and therefore falls within the categorical exclusion provisions of 10 CFR 51.22(c)(11).

IV. Availability of Documents

Documents related to this action, including the application for amendment and supporting documentation, will be available electronically at the NRC's Electronic Reading Room at *http://www.NRC.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the document related to this notice is: EnergySolutions' March 3, 2006 request (ML060740549).

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 30th day of May, 2006.

For the Nuclear Regulatory Commission.

Jack R. Strosnider,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E6–9247 Filed 6–12–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293–LR; ASLBP No. 06–848–02–LR]

Entergy Nuclear Operations, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding: Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station).

A Licensing Board is being established pursuant to a March 21, 2006 notice of opportunity for hearing (71 FR 6101 (March 27, 2006)) to consider the respective May 25 and May 26, 2006 requests of Pilgrim Watch and the Massachusetts Attorney General challenging the January 25, 2006 application for renewal of Operating License No. DPR–35, which authorizes Entergy Nuclear Operations, Inc. (Entergy), to operate the Pilgrim Nuclear Power Station at 2028 megawatts (Mwt) thermal. The Entergy Nuclear Operations, Inc. renewal application seeks to extend the current operating license for the facility, which expires on June 8, 2012, for an additional twenty years.

The Board is comprised of the following administrative judges:

Ann Marshall Young, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Nicholas G. Trikouros, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.302.

Issued at Rockville, Maryland, this 7th day of June 2006.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E6–9180 Filed 6–12–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Regulation S–P; OMB Control No. 3235–0537; and SEC File No. 270–480.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities

and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") requests for extension of the previously approved collection of information discussed below.

• Regulation S–P—Privacy of Consumer Financial Information.

The Commission adopted Regulation S–P (17 CFR part 248) under the authority set forth in section 504 of the Gramm-Leach-Bliley Act (15 U.S.C. 6804), sections 17 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78q, 78w), sections 31 and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a–30(a), 80a–37), and sections 204 and 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4, 80b–11). Regulation S–P implements the requirements of Title V of the Gramm-Leach-Bliley Act ("Act"), which include the requirement that at the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer of such financial institution's policies and practices with respect to disclosing nonpublic personal information to affiliates and nonaffiliated third parties ("privacy notice"). Title V of the Act also provides that, unless an exception applies, a financial institution may not disclose nonpublic personal information of a consumer to a nonaffiliated third party unless the financial institution clearly and conspicuously discloses to the consumer that such information may be disclosed to such third party; the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and the consumer is given an explanation of how the consumer can exercise that nondisclosure option ("opt out notice"). The privacy notices required by the Act are mandatory. The opt out notices are not mandatory for financial institutions that do not share nonpublic personal information with nonaffiliated third parties except as permitted under an exception to the statute's opt out provisions. Regulation S–P implements the statute's requirements with respect to broker-dealers, investment companies, and registered investment advisers ("covered entities"). The Act and Regulation S–P also contain consumer reporting requirements. In order for consumers to opt out, they must respond to opt out notices. At any time during their continued relationship, consumers have the right to change or update their opt out status. Most covered entities do not share nonpublic personal information with nonaffiliated third parties and therefore are not required to provide opt out notices to consumers under Regulation S–P. Therefore, few consumers are required to respond to opt out notices under the rule.

Currently, there are approximately 20,434 covered entities (approximately 6,280 registered broker-dealers, 4,939 investment companies, and, out of a total of 10,210 registered investment advisers, 9,215 registered investment advisers that are not also registered broker-dealers) that must prepare or revise the annual and initial privacy notices they provide to their customers. To prepare or revise their privacy notices, each of the approximately 11,219 covered entities that is a broker-dealer or investment company requires an estimated 40 hours at a cost of $2,424 (32 hours of professional time at $70 per hour plus 8 hours of clerical or administrative time at $23 per hour) and each of the approximately 9,215 covered entities that is an investment adviser but not also a broker-dealer requires an estimated 5 hours at a cost of $303 (4 hours of professional time at $70 per hour plus 1 hour of clerical or administrative time at $23 per hour). Thus, the total compliance burden per year is 494,835 hours (40 hours for 11,219 broker-dealers and investment companies, and 5 hours for 9,215 investment advisers that are not also broker-dealers × 11,219 = 448,760, 5 × 9,215 × 46,075, and 448,760 + 46,075 × 494,835), and $29,987,001 ($2,424 × 11,219 = $27,194,856, $303 × 9,215 = $2,792,145, and $27,194,856 + $2,792,145 = $29,987,001).

The wage estimates of $70 per hour for professional time and $23 per hour for clerical or administrative time used in the foregoing calculations are based on estimated mean hourly wages of $68.23 for lawyers and $22.56 for all other legal support workers in the U.S. Department of Labor's Bureau of Labor Statistics' November 2004 National Industry-Specific Occupational Employment and Wage Estimate, NAICS 523100—Securities and Commodity Contracts Intermediation and Brokerage (available online, as of March 2, 2006, at *http://www.bls.gov/oes/current/naics4_523100.htm*) adjusted upward for inflation by 2.5% based on the percentage increase in the employment cost indexes for white collar workers and for administrative support, including clerical, workers from December 2004 to December 2005, as reported in the U.S. Department of Labor's Bureau of Labor Statistics' Employment Cost Index for wages and salaries for private industry workers by industry and occupational group (not seasonally adjusted) (available online, as of March 2, 2006, at *http://www.bls.gov/news.release/eci.t06.htm*).

Compliance with Regulation S–P is necessary for covered entities to achieve compliance with the consumer financial privacy notice requirements of Title V of the Act. The required consumer notices are not submitted to the Commission. Because the notices do not involve a collection of information by the Commission, Regulation S–P does not involve the collection of confidential information. Regulation S–P does not have a record retention requirement per se, although the notices to consumers it requires are subject to the recordkeeping requirements of Rules 17a–3 and 17a–4. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (1) the Desk Officer for the SEC, Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 5, 2006.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–9152 Filed 6–12–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27389; File No. 812–13274]

Pruco Life Insurance Company, et al.; Notice of Application

June 6, 2006.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an amended order under section 6(c) of the Investment Company Act of 1940, as amended (the "Act") granting exemptions from the provisions of sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder.

APPLICANTS: Pruco Life Insurance Company ("Pruco Life"), Pruco Life Insurance Company of New Jersey ("Pruco Life of New Jersey," and collectively with Pruco Life, the "Insurance Companies"), Pruco Life Flexible Premium Variable Annuity Account ("Pruco Life Account"); Pruco Life of New Jersey Flexible Premium Variable Annuity Account ("Pruco Life of New Jersey Account," and collectively with Pruco Life Account, the "Accounts"); and Prudential Investment Management Services LLC ("PIMS", and collectively with the Insurance Companies, and the Accounts "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order amending an existing order under section 6(c) of the Act, exempting them from section 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to permit, under specified circumstances, the recapture of certain credits previously applied to purchase payments made under (1) the Prudential Premier Variable Annuity X Series ("X Series Contract"), or (2) variable annuity contracts issued by the Insurance Companies that are substantial similar in all material respects to the X Series Contract ("Future Contracts"). Applicants also request that the order extend to any NASD member broker-dealer controlling, controlled by, or under common control with the Insurance Companies, whether existing or created in the future, that serves as a distributor or principal underwriter of the X Series Contracts offered through the Accounts or any other separate accounts established in the future by the Insurance Companies ("Future Accounts") to support Future Contracts.

FILING DATE: The application was filed on January 18, 2006, and amended on April 5, 2006.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 3, 2006, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o The Prudential Insurance Company of America, 213 Washington Street, Newark, NJ 07102–2992, Attn: C. Christopher Sprague, Esq.

FOR FURTHER INFORMATION CONTACT: Sally Samuel, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 100 F Street, NE., Washington, DC 20549 (tel. (202) 551–8090).

Applicants' Representations

1. In Investment Company Act Release Nos. 25999 (April 9, 2003) (notice) and 26043 (April 30, 2003) (order), the Commission granted an order (the "2003 Order") that permits, under specified circumstances, the recapture of a 6% bonus payment (a "Credit") applied to certain purchase payments made under deferred variable annuity contracts that the Insurance Companies issue through the Accounts, as well as contracts that the Insurance Companies may in the future issue through the Accounts or any future account. The 2003 Order applied to the versions of the Strategic Partners Annuity One contract (File Nos. 333–37728 and 333–49230).

2. The 2003 Order, in turn, amended a prior exemptive order (the "2002 Order") that contemplated the granting, and recapture under certain circumstances, of a Credit of 3%, 4%, or 5%, depending on the amount of the purchase payment and the age of the owner. See Investment Company Act Release Nos. 25660 (July 15, 2002) (notice) and 25695 (August 12, 2002) (order). Applicants wish to leave the 2002 Order and the 2003 Order intact, thus allowing them to continue to recapture Credits under the versions of the Strategic Partners Annuity One contracts.

3. In this application, Applicants seek an order allowing them to recapture credits under a new variable annuity contract, the X Series Contract. Applicants in this application are identical to the applicants in the 2002 Order and the 2003 Order.

4. Applicants request that the amended order extend to any NASD member broker-dealer controlling, controlled by, or under common control with, the Insurance Companies, whether existing or created in the future, that serves as a distributor or principal underwriter of the X Series Contracts offered through the Accounts or any Future Account ("Broker-Dealers"). Applicants note that the X Series Contracts will be sold through such Broker-Dealers and also through broker-dealers that are NASD-registered and not affiliated with the Insurance Companies or the Broker-Dealers (the "Unaffiliated Broker-Dealers"). Each Unaffiliated Broker-Dealer will have entered into a dealer agreement with PIMS or an affiliate of PIMS prior to offering the X Series Contracts.

5. Applicants also request that the amended order sought herein apply to any other separate account of the Insurance Companies currently existing that will support any Future Contracts or any Future Accounts established to support Future Contracts.

6. The X Series Contracts are flexible premium deferred variable annuity contracts that are registered on Form N–4 (File Nos. 333–130989 and 333–131035). The minimum initial purchase payment is $10,000, and any additional purchase payment must be at least $100 (except for contract owners who participate in certain periodic purchase payment programs). The maximum issue age for the X Series Contract is 75, meaning that, for (i) contracts with one owner, the owner must be 75 or younger (ii) contracts that are jointly-owned, the oldest owner must be 75 or younger, and (iii) for entity-owned contracts, the annuitant must be 75 or younger.

7. There are various insurance features under the X Series Contract and charges associated with those features. There is a 1.55% annual insurance charge that is deducted daily from the unit value of each subaccount, consisting of 1.40% for mortality and expense risks and 0.15% for administrative expenses. For X Series Contracts valued less than $100,000, there is a maintenance fee equal to the lesser of $35 ($30 in New York) or 2% of unadjusted account value, which is assessed annually on the X Series Contract's anniversary date or upon surrender. The maintenance fee is deducted pro rata from both the variable investment options and the fixed option under the X Series Contract. The applicant insurers impose no fee with respect to the first 20 transfers in an annuity year, but after the 20th such transfer, currently impose a fee of $10 per transfer. There is a contingent deferred sales charge ("CDSC") under the X Series Contract, the amount of which is based on the "age" of each purchase payment being withdrawn. During the first year after a purchase payment is made, the CDSC is equal to

9%. In subsequent years, the CDSC is as follows: 8.5% in year 2, 8% in year 3, 7% in year 4, 6% in year 5, 5% in year 6, 4% in year 7, 3% in year 8, and 2% in year 9. After nine years have elapsed from the date on which the purchase payment was made, no CDSC is imposed with respect to that purchase payment. No CDSC is imposed in connection with the calculation of a death benefit payment. In addition, no CDSC is imposed on the portion of a withdrawal that can be taken as part of the free withdrawal feature of the X Series Contract. The free withdrawal amount available in each annuity year is equal to 10% of the sum of all purchase payments made during the year and prior to the beginning of that year, except that (i) only purchase payments that would be subject to a CDSC are included in that calculation and (ii) a free withdrawal amount that is not used in a given year cannot be carried over to future years. For purposes of calculating the CDSC, partial withdrawals are deemed to be taken first from any free withdrawal amount and thereafter from purchase payments (on a first-in, first-out basis). Where permitted by law, an X Series Contract owner may request to surrender without a CDSC upon the occurrence of a medically-related contingency event, such as a diagnosis of a fatal illness (a "Medically-Related Surrender").

8. An X Series Contract owner may select one or more of several optional benefits. The Guaranteed Minimum Income Benefit is subject to a charge of 0.50% per year of the average protected income value during each year, and the charge is deducted annually in arrears each annuity year. The Lifetime Five Income Benefit (which allows the owner to withdraw a specified protected value through periodic withdrawals or a series of payments for life) is subject to a charge of 0.60% annually of the average daily net assets in the sub-accounts. The X Series Contract also offers a variant of the Lifetime Five benefit (called Spousal Lifetime Five) which, for a charge of 0.75% annually, guarantees income until the second-to-die of two individuals married to each other. The Highest Daily Value death benefit (which provides a death benefit equal to the higher of the basic death benefit or the "highest daily value") is subject to a charge of 0.50% annually of the average daily net assets of the sub-accounts. Finally, the combination 5% roll-up/HAV death benefit (which refers to a death benefit equal to the greater of (i) the "highest anniversary value" or (ii) purchase payments plus credits, adjusted for withdrawals, appreciated at 5% annually) is subject to a charge of 0.50% annually of the average daily net assets of the sub-accounts. (For New York contracts, the only optional death benefit will be the Highest Anniversary Value Death Benefit).

9. In addition to the optional insurance features, the X Series Contract offers several optional administrative features at no additional cost (*e.g.*, auto rebalancing, systematic withdrawals).

10. The X Series Contract offers both variable investment options and a one-year fixed rate option. The X Series Contract also may offer an enhanced, dollar cost averaging fixed interest rate option. At present, only portfolios of American Skandia Trust are available as variable investment options. Under the X Series Contract, Applicants reserve the right to add new underlying funds and series, and to substitute new portfolios for existing portfolios (subject to Commission approval).

11. An owner choosing to annuitize under the X Series Contract will have only fixed annuity options available. Those fixed annuity options include annuities based on a single measuring life or joint lives, based on a single measuring life or joint lives with a period certain (*e.g.*, 5 years, 10 years, or 15 years), or based on a period certain only. If the owner fails to choose an annuity option, the default is to a life annuity with 10 years certain. The latest annuitization date is the first day of the month immediately following the annuitant's 95th birthday.

12. The bonus credit under the X Series Contract (the "New Credit") will vary depending on the age of the older of the owner and any joint owner on the date that the purchase payment is made, but not on the amount of the purchase payment. Specifically, if the elder owner is 80 or younger when a purchase payment is made, the New Credit will equal 5%, regardless of the purchase payment amount. If the elder owner is between ages 81 and 85 when the purchase payment is made, then the New Credit will be 3%, regardless of the amount of the purchase payment. Applicants would recapture the New Credit if (i) the X Series Contract is surrendered during the free look period, or (ii) the New Credit was applied within 12 months prior to death or (iii) the New Credit was applied within 12 months prior to a request for a Medically-Related Surrender. No CDSC is applied in connection with any transaction in which the New Credit would be recaptured. Applicants seek an amended order pursuant to section 6(c) of the Act exempting them from sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit an Insurance Company to recapture the New Credit described herein in the instances described in the immediately preceding sentence.

13. Finally, the X Series Contract will offer a "longevity credit" that will be paid on the 10th annuity anniversary and each annuity anniversary thereafter. The longevity credit will equal 0.40% of the sum of all purchase payments (less withdrawals) that are more than 9 years old. Applicants are not seeking an exemption to recapture the longevity credit.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the Act and the rules promulgated under the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants request that the Commission, pursuant to section 6(c) of the Act, issue an order amending the 2003 Order to the extent necessary to permit the recapture of the New Credit under the circumstances described above. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants submit that the recapture of the New Credit will not raise concerns under sections 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act, and Rule 22c–1 thereunder for the same reasons given in support of the 2003 Order. The New Credit will be recaptured only if the owner (i) exercises his/her free look right (ii) dies within 12 months after receiving a New Credit or (iii) requests a medically-related surrender within 12 months after receiving a New Credit. The amounts recaptured equal the New Credits provided by each Insurance Company from its own general account assets.

4. When the Insurance Companies recapture the New Credit, they are merely retrieving their own assets, and the owner has not been deprived of a proportionate share of the applicable Account's assets, because his or her interest in the New Credit amount has not vested. With respect to New Credit recaptures upon the exercise of the free-look privilege, it would be unfair to allow an owner exercising that privilege to retain a New Credit amount under an

X Series Contract that has been returned for a refund after a period of only a few days. If the Insurance Companies could not recapture the New Credit during the free look period, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit. Applicants also note that the Contract owner is entitled to retain any investment gain attributable to the New Credit, even if the New Credit is ultimately recaptured. Furthermore, the recapture of New Credits if death or a Medically-Related Surrender occurs within 12 months after the receipt of a New Credit is designed to provide the Insurance Companies with a measure of protection against "anti-selection." The risk here is that an owner, with full knowledge of impending death or serious illness, will make very large payments and thereby leave the Insurance Companies less time to recover the cost of the New Credit, to their financial detriment.

5. Applicants submit that the provisions for recapture of the New Credit under the X Series Contract do not, and any such Future Contract provisions will not, violate section 2(a)(32) and 27(i)(2)(A) of the Act, and rule 22c–1 thereunder, and that the relief requested is consistent with the exemptive relief provided under the 2003 Order and other Commission precedent.

6. Applicants submit that their request for an amended order that applies to any Account or any Future Account established by an Insurance Company in connection with the issuance of X Series Contracts and Future Contracts, and underwritten or distributed by PIMS or other broker-dealers, is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in this application. Having Applicants file additional applications would impair Applicants' ability effectively to take advantage of business opportunities as they arise.

7. Applicants undertake that Future Contracts funded by the Accounts or by Future Accounts that seek to rely on the order issued pursuant to the application will be substantially similar to the X Series Contracts in all material respects.

Conclusion

Applicants submit that their request for an amended order meets the standards set out in section 6(c) of the Act and that an order amending the 2003 Order should, therefore, be granted.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–9153 Filed 6–12–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53935; File No. SR–CBOE–2003–41]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto To List and Trade Options on Corporate Debt Securities

June 2, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 22, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. On March 1, 2003, CBOE filed Amendment No. 1 to the proposed rule change.[3] CBOE filed Amendment No. 2 to the proposed rule change on August 24, 2005.[4] CBOE filed Amendment No. 3 to the proposed rule change on May 26, 2006.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, CBOE replaced and superseded the original Exhibit A, which contained its rule text, in its entirety. In addition, CBOE provided explanatory commentary in response to questions raised by Commission staff regarding the proposal including, but not limited to, listing and maintenance standards, strike price intervals, and margins.

[4] Amendment No. 2 replaced and superseded the Exchange's original Form 19b–4 in its entirety.

[5] Amendment No. 3 replaced and superseded the Exchange's original Form 19b–4 in its entirety.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to introduce for trading a new type of option, called "Corporate Debt Security Options" ("CDSOs"), which would be options based on corporate bonds. The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.com*), at the principal office of CBOE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Over-the-counter ("OTC") transactions in corporate debt securities (*e.g.*, bonds and notes) recently have been become subject to enhanced transparency and now are reported publicly through the NASD's Trade Reporting and Compliance Engine ("TRACE") system. This enhanced transparency and price reporting has given rise to an OTC market in options on corporate debt securities over the past few years. CBOE believes that an exchange-traded alternative may provide a useful risk management and trading vehicle for member firms and their customers.

The Exchange understands that products similar to CDSOs that are proposed in this rule filing are currently traded in the OTC market by hedge funds, proprietary trading firms, and a few very large fixed income funds. These market participants have indicated that there could be room for significant growth in OTC trading of options on corporate debt securities as transparency further improves in the market for the underlying corporate debt securities and if a listed option product were introduced. CBOE expects that users of these OTC products would be among the primary users of exchange-traded CDSOs. CBOE states that its

member firms have also indicated to the Exchange that the listing and trading of CDSOs would allow their customers to better manage the risk associated with the volatility of underlying bond positions. Additionally, CBOE notes that persons writing CDSOs would have the corresponding ability to earn option premium income and carefully tailor their own risk exposure. Further, CBOE's members have indicated that these customers desire the enhanced liquidity that an exchange-traded product would bring. CBOE believes that CDSOs listed on the Exchange would have three important advantages over the contracts that are traded in the OTC market. First, as a result of greater standardization of contract terms, exchange-listed contracts should develop more liquidity. Second, counter-party credit risk would be mitigated by the fact that the contracts are issued and guaranteed by The Options Clearing Corporation ("OCC"). Finally, the price discovery and dissemination provided by CBOE and its members would lead to more transparent markets. CBOE believes that the Exchange's ability to offer CDSOs would aid it in competing with the OTC market and at the same time expand the universe of listed products available to interested market participants.

Accordingly, the Exchange proposes to list and trade CDSOs that are designed to offer investors exposure to actively traded OTC corporate bonds that have initial amounts outstanding over $250 million. The face value of a corporate debt security underlying a CDSO would be $100,000. Proposed CBOE Rule 28.7 would provide that there would be up to five expiration months, none further out than 15 months, but the Exchange could list additional expiration months further out than 15 months where a reasonable active secondary market exists.

Series with strike prices in, at, and out-of-the-money initially would be listed (up to ten per month initially). The Exchange represents that it would delist CDSO series for which there is no open interest. In addition, the Exchange proposes to limit the strike price intervals that it could list for CDSO series, which, as proposed, would be fixed at a percentage of principal amounts (based on a par quote basis of $100) as follows:

- 0.5% ($0.50) or greater, provided that the series to be listed is no more than 5% above or below the current market price of a corporate debt security either reported on TRACE during TRACE system hours or effected through on or through the facilities of a national securities exchange, as applicable, on the day prior to the day the series is first listed for trading;
- 1.0% ($1.00) or greater, provided that the series to be listed is no more than 10% above or below the current market price of a corporate debt security either reported on TRACE during TRACE system hours or effected on or through the facilities of a national securities exchange, as applicable, on the day prior to the day the series is first listed for trading; and
- 2.5% ($2.50) or greater, provided that the series to be listed is greater than 10% above or below the current market price of a corporate debt security either reported on TRACE during TRACE system hours or effected on or through facilities of a national securities exchange, as applicable, on the day prior to the day the series is first listed for trading.

The increments proposed herein are designed to allow the Exchange flexibility to list strike increments at appropriate levels, while at the same time would establish reasonable limits on the number of strikes that may be listed in order to diminish any potential effect on the Exchange's quote capacity thresholds. The Exchange affirms that, as structured, it has sufficient systems capacity to support the listing of CDSOs in the strike price increments proposed herein.

According to the Exchange, the option premium would be quoted in points where each point equals $1,000. The minimum tick would be 0.05 ($50.00). The expiration date would be the Saturday immediately following the third Friday of the expiration month. CDSOs would be European-style options and could be exercised only on the last day of expiration. Trading in CDSOs ordinarily would cease on the business day (usually a Friday) preceding the expiration date. Trading hours would be 8:30 a.m. to 3:02 p.m. Chicago time.

Prices of CDSOs generally would be based on the prices of corporate debt securities that are reported through TRACE by members of NASD. The TRACE rules require NASD members dealing in corporate debt securities to report transactions in eligible debt securities to TRACE within 15 minutes of execution. NASD currently notifies subscribers regarding general TRACE reporting system outages via the following electronic communications: (i) *http://apps.nasd.com/Regulatory_Systems/trace_sub.asp;* and (ii) *http://www.nasdaqtrader.com/dynamic/newsindex/vendoralerts_2005.stm.*

The settlement process for CDSOs would be the same as the settlement process for equity options under CBOE rules, except as necessary to take into account that the securities underlying CDSOs are debt securities.[6] CDSOs would be physically settled and exercise notices that are properly tendered would result in delivery of the underlying corporate debt securities on the third business day following exercise. Payment of a CDSO's exercise price would be accompanied by payment of accrued interest on the underlying corporate debt security from, but not including, the last interest payment date to, and including, the exercise settlement date, as specified in OCC rules.

CBOE states that issuers generally calculate the accrued interest in one of two methods, each of which is detailed in Appendix A to the contract specifications set forth in Exhibit B. The Exchange would notify OCC of the accrued interest calculation methodology that applies to each corporate debt security prior to the listing thereof. CBOE has proposed to establish tiered position limits based upon a policy to cap position limits at 10% of the total float of the underlying bond. The "total float" of the underlying corporate debt security would exclude amounts held by 10% holders of the corporate debt security. In other words, if a person holds more than 10% of a particular corporate debt security, the amount held by such person would not be included in the "total float" for purposes of determining the applicable position and exercise limits. For example, if a person holds 14% of the total outstanding issuance of a corporate debt security, the applicable position and exercise limits would only be based on the remaining 86% of the issuance that is not held by such person. The Exchange believes that the 10% threshold amount is a reasonable measure of those market participants, such as pension funds, that have purchased a corporate debt security for long-term investment versus those that have purchased a corporate debt security with a willingness to sell such security in the short-term period and thus increase the amount of liquidity in the particular issue. CBOE also believes this 10% level is sufficient to inhibit market manipulation or to mitigate other possible disruptions in the market. CBOE's proposed lowest position limit for equity options is 13,500 contracts, which, if exercised, would represent approximately 19.28% of the minimum

[6] If the outstanding debt issuance amount of an underlying corporate debt security is insufficient to satisfy the delivery requirements under CBOE Rule 11.3, OCC rules provide for special settlement exercise procedures.

float of an equity security eligible to underlie a CBOE equity option (seven million shares).[7] Moreover, CBOE's proposed 13,500 equity option contract limit applies to those options having an underlying security that does not meet the requirements for a higher option contract limit. CBOE believes the proposed 10% position limit for CDSOs, which is significantly less than that for equity options, is sufficiently high to account for the differences in liquidity between the equity and debt markets. Therefore, CBOE proposes the following tiers:

Issue float	Position limit
$200,000,000–$499,999,000.	200 contracts.
500,000,000–749,999,000	500 contracts.
750,000,000–999,999,000	750 contracts.
1,000,000,000–2,499,999,000.	1,000 contracts.
2,500,000,000 and greater	2,500 contracts.

The Exchange is proposing comprehensive initial listing and ongoing maintenance requirements for CDSOs, which are set forth in proposed CBOE Rules 5.3.10 and 5.4.14. In addition to standards such as the required amount of underlying security holders and outstanding float amounts, the Exchange is also proposing as a criterion for listing a particular corporate debt security for options trading that the issuer of the corporate debt security or the issuer's parent, if the issuer is a wholly-owned subsidiary, has at least one class of common or preferred equity securities registered under section 12(b) of the Act.[8] This criterion is designed to ensure that there is adequate information publicly available regarding the issuer of a corporate debt security underlying an option traded on the Exchange. The corporate debt security market is largely an OTC market and many corporate debt securities, including those among the most actively traded, are not themselves registered under section 12 of the Act. The issuers of many unregistered corporate debt securities, however, have equity securities registered under section 12 of the Act. These issuers are required to provide periodic reports to the public due to the equity registration, and the Exchange believes that the fact that their corporate debt securities are unregistered does not diminish in practical terms the information provided by their periodic reports. Thus, CBOE believes that the proposed requirement would enable a wide array of actively traded corporate debt securities to be eligible for options trading while ensuring sufficient public disclosure of information about any corporate debt securities underlying exchange-traded options.[9]

The Exchange is proposing as another listing criterion that the stock of an issuer of a corporate debt security be eligible for options trading under CBOE Rule 5.4. The provisions of CBOE Rule 5.4 would require that an equity security underlying an option be itself widely held and actively traded. The Exchange believes that a requirement that the stock of an issuer of a corporate debt security meet the criterion of CBOE Rule 5.4 would provide additional indicia that such issuer's securities are subject to widespread investor interest. Moreover, the Exchange believes that this requirement would ensure that a corporate debt securities option is not used as a proxy for equity options trading of an issuer whose stock does not meet the criterion of CBOE Rule 5.4.

With respect to credit ratings of corporate debt securities, the initial listing standards would provide that corporate debt securities on which options transactions are listed must have credit ratings issued by Moody's Investors Service ("Moody's") that are Caa[10] or higher and credit ratings issued by Standard & Poor's that are CC[11] or higher. The proposed maintenance standards require that the corporate debt securities maintain the ratings set forth in the initial listing standards. CBOE believes that these initial and maintenance standards are appropriate because they provide a measure of certainty with respect to the satisfaction of regularly scheduled interest payments on the corporate debt security, which triggers the corresponding requirement to pay the accrued interest under proposed CBOE Rule 28.15. The Exchange also believes that market participants investing in corporate debt securities should have the opportunity to use CDSOs to mitigate risk when the underlying corporate debt security is subject to credit downgrades and potentially price declines.

The proposed margin (both initial and maintenance) for writing uncovered puts or calls would be as follows. An[12] option writer would be required to deposit and maintain 100% of the current market value of the option plus 10% of the aggregate contract value minus the amount by which the option is out-of-the-money, if any, subject to a minimum for calls equal to 100% of the current market value of the option plus 5% of the aggregate contract value for any corporate debt security that is rated investment-grade.[13] For non-investment-grade[14] corporate debt securities, the margin requirement would be 100% of the current market value of the option plus 15% of the aggregate contract value minus the amount by which the option is out-of-the-money, if any, subject to a minimum for calls equal to 100% of the current market value of the option plus 10% of the aggregate contract value. Writers of options on convertible corporate debt securities would be required to deposit and maintain 100% of the current market value of the option plus 20% of the aggregate contract value minus the

[7] *See* CBOE Rule 4.11 (Position Limits).

[8] 15 U.S.C. 78*l*(b).

[9] Proposed CBOE Rule 5.3.10 was amended to also include the requirement that the issuer of a corporate debt security has registered the offer and sale of the security under the Securities Act of 1933.

[10] Under Moody's rating definitions, "obligations rated Caa are judged to be of poor standing and are subject to very high credit risk." Moody's has two ratings lower than Caa: Ca and C. Moody's defines Ca-rated obligations as "highly speculative and are likely in, or very near, default, with some prospect of recovery of principal and interest." Moody's defines C-rated obligations as "the lowest rated class of bonds and are typically in default, with little prospect for recovery of principal or interest."

[11] Under Standard & Poor's rating definitions, "an obligation rated CC is currently highly vulnerable to nonpayment." Standard & Poor's has two ratings lower than CC: C and D. Under Standard & Poor's definitions, C-rated obligations "may be used to cover a situation where a bankruptcy petition has been filed or similar action has been taken, but payments on this obligation are being continued." Under Standard & Poor's definitions, "an obligation rated 'D' is in payment default. The 'D' rating category is used when payments on an obligation are not made on the date due even if the applicable grace period has not expired, unless Standard & Poor's believes that such payments will be made during such grace period. The 'D' rating also will be used upon the filing of a bankruptcy petition or the taking of a similar action if payments on an obligation are jeopardized."

[12] Pursuant to a telephone conversation between Angelo Evangelou, Assistant General Counsel, and Dennis O'Callahan, Director Research and Product Development, CBOE, and Bonnie Gauch, Special Counsel, Marc McKayle, Special Counsel, and Ronesha Butler, Special Counsel, Division of Market Regulation, Commission, on June 1, 2006, the description contained in this paragraph was conformed to reflect the provisions contained in proposed CBOE Rule 12.3.

[13] The definition of an investment-grade corporate debt security is set forth in proposed CBOE Rule 12.3(a)(15). The proposed definition mirrors the definition set forth in NASD rules pertaining to TRACE. For purposes of CBOE Rule 12.3, the Exchange would interpret the lowest of the four highest generic rated categories referenced in the proposed definition for "Investment Grade" to be, for example, Baa in the case of Moody's Investors Services and BBB in the case of Standard and Poor's.

[14] The proposed definition of a non-investment-grade corporate debt security is set forth in proposed CBOE Rule 12.3(a)(16). The proposed definition mirrors the definition set forth in the NASD rules pertaining to TRACE. The Exchange would interpret the lowest of the four highest generic rated categories referenced in the proposed definition for "Non-Investment Grade" to be, for example, Baa in the case of Moody's Investors Services and BBB in the case of Standard and Poor's.

amount by which the option is out-of-the-money, if any, subject to a minimum for calls equal to 100% of the current market value of the option plus 10% of the aggregate contract value. In the case of puts for each of investment-grade, non-investment-grade, and convertible corporate debt securities, the minimum margin required would be 100% of the current market value of the option plus 5%, 10%, and 10%, respectively of the put exercise price. This methodology incorporates the same formula in CBOE Chapter 12 that the Exchange applies to all other option classes, but with percentages that consider the specific market factors pertaining to debt rating and type of the corporate debt security. For example, the Exchange requires a deposit of 100% of the current market value of the option plus a 20% Initial/Maintenance Margin and a 10% Minimum Margin. This same level would apply to convertible corporate debt securities that are the underlying for options listed under the proposed CBOE Chapter 28 rules. For investment-grade corporate debt securities that underlie options listed under the proposed CBOE Chapter 28 rules, the Exchange is proposing a 10% Initial/Maintenance Margin and a 5% Minimum Margin because investment grade corporate debt securities generally experience lower price movements and lower volatility levels than stocks. CBOE states that, since non-investment-grade corporate debt securities exhibit price movements that are higher than investment-grade corporate debt securities, it is proposing a 15% Initial/Maintenance Margin and a 5% Minimum Margin for those securities. The Exchange believes that these proposed margin levels also are consistent with the Commission's Net Capital Rule for the underlying corporate debt securities.[15]

CBOE believes that the operational capacity used to accommodate the trading of CDSOs on the Exchange would have a negligible effect on the total capacity used by the Exchange to trade its products on a daily basis.

To the extent that features of CDSOs differ from other security options, CBOE would issue a circular to its members before the initiation of trading in CDSOs that would specify the special characteristics of CDSOs. This circular would highlight the exercise methodology of the series, explain the cash adjustment procedures, identify the new symbols for the CDSO series, and identify the initial expiration months and strike prices available for trading. The Exchange notes that these procedures are similar to the procedures used when the Exchange listed both A.M.- and P.M.-settled SPX Index options in 1992.

The Exchange would monitor the media for rating downgrades and other corporate actions to ensure the Exchange's maintenance standards are fulfilled, and monitor for any corporate actions that may influence the pricing of corporate debt securities and CDSOs. In addition, the Exchange would work with OCC to revise the Options Disclosure Document to incorporate CDSOs in a manner that is satisfactory to both the Exchange and the Commission.

The Exchange believes that the introduction of CDSOs would increase the variety of listed options to investors and expand the risk management choices for debt securities participants.

2. Statutory Basis

The Exchange believes that its proposal, as amended, is consistent with the requirements of section 6(b) of the Act,[16] in general, and section 6(b)(5) of the Act[17] in particular, in that it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest. The Exchange states that the introduction of CDSOs would increase the variety of listed options to investors and expand the risk management choices for debt securities participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change, as amended, would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which CBOE consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2003–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2003–41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2003–41 and should be submitted on or before July 5, 2006.

[15] 17 CFR 240.15c3–1.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–9154 Filed 6–12–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53938; File No. SR–Phlx–2006–36]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Until June 5, 2007, a Pilot Program for Listing Options on Selected Stocks Trading Below $20 at One-Point Intervals

June 5, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 25, 2006, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Phlx filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Commentary .05 to Phlx Rule 1012, "Series of Options Open for Trading," to extend until June 5, 2007, its pilot program for listing options series on selected stocks trading below $20 at one-point intervals ("Pilot Program"). As set forth in Phlx Rule 1012, Commentary .05, the Pilot Program allows the Phlx to list options classes overlying five individual stocks with strike price intervals of $1 where, among other things, the underlying stock closes below $20 on its primary market on the day before the Phlx selects the stock for the Pilot Program. The Phlx also may list $1 strike prices on any options classes selected by other options exchanges that have adopted similar pilot programs.[5] The text of the proposed rule change is available on the Phlx's Web site (*http://www.phlx.com*), at the Phlx's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Pilot Program for one year so that the Exchange may continue to list options at $1 strike price intervals within the parameters specified in Phlx Rule 1012, Commentary .05.

The Commission approved the Pilot Program allowing the listing of strike prices for options at $1 intervals for securities trading under $20, and extended it twice through June 5, 2006.[6] The Exchange proposes to extend the Pilot Program for a period of one year, through June 5, 2007. The Pilot Program will remain unchanged so that, under the terms of the Pilot Program, the Phlx may establish $1 strike price intervals on options classes overlying no more than five individual stocks designated by the Exchange where the underlying stock closes below $20 on its primary market on the trading day before the Exchange selects the stock for the Pilot Program. Under the terms of the Pilot Program, the strike prices listed pursuant to the Pilot Program must be between $3 and $20 and may be no more than $5 above or below the closing price of the underlying stock on the preceding day. In addition, strike prices listed pursuant to the Pilot Program may not be listed within $.50 of an existing $2.50 strike price, and $1 strike prices are not applied to long term options series ("LEAPS"). Pursuant to the Pilot Program, the Exchange may list $1 strike prices on options classes selected by other options exchanges for inclusion in their $1 strike price pilot programs.

In July 2003, the Phlx chose and listed five options classes with $1 strike price intervals, and thereafter listed $1 strike prices in options classes selected by other options exchanges for inclusion in their $1 strike price pilot programs. The Phlx currently lists 22 options classes with $1 strike prices.[7] According to the Phlx, the Exchange's ability to list options at $1 strike price intervals pursuant to the Pilot Program has given investors the opportunity to more closely and effectively tailor their options investments to the price of the underlying stock, has allowed the Exchange to take advantage of competitive opportunities to list options at $1 strike prices, and has stimulated price competition among the options exchanges in these options.

In the Phlx Pilot Extensions, the Commission indicated that if the Phlx sought to extend, expand, or request permanent approval of the Pilot Program, it would be required to include a Pilot Program report with its filing.[8] The Phlx's Pilot Program Report ("Pilot Program Report"), included as Exhibit 3 to the proposal, reviews the Exchange's experience with the Pilot Program. According to the Phlx, the Pilot Program Report clearly supports the Exchange's belief that extension of the Pilot Program is proper. Among other things, the Phlx believes that the Pilot Program Report shows the strength and efficacy of the Pilot Program on the Exchange, as reflected by the increase in the percentage of $1 strikes in comparison to total options volume traded on the Phlx at $1 strike price intervals as compared to other options volume and the continuing robust open interest of options traded on the Phlx at $1 strike price intervals. The Phlx believes that the Pilot Program Report establishes that the Pilot Program has

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Commission approved the Phlx's Pilot Program on June 11, 2003, and extended it twice through June 5, 2006. See Securities Exchange Act Release Nos. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003) (order approving File No. SR–Phlx–2002–55) (approving the Pilot Program through June 5, 2004) ("Phlx Approval Order"); 49801 (June 3, 2004), 69 FR 32652 (June 10, 2004) (notice of filing and immediate effectiveness of File No. SR–Phlx–2004–38) (extending the Pilot Program through June 5, 2005); and 51768 (May 31, 2005), 70 FR 33250 (June 7, 2005) (notice of filing and immediate effectiveness of File No. SR–Phlx–2005–35) (extending the Pilot Program through June 5, 2006) (collectively, "Phlx Pilot Extensions").

[6] See Phlx Approval Order and Phlx Pilot Extensions, *supra* note 5.

[7] The Phlx continues to list the $1 strike prices in the options classes that it initially chose for the Pilot Program: TYCO International, LTD (TYC), Micron Tech. (MU), Oracle Co. (ORQ), Brocade Comm. (UBF), and Juniper Networks (JUP).

[8] See Phlx Pilot Extensions, *supra* note 5.

not created and in the future should not create capacity problems for the systems of the Exchange or the Options Price Reporting Authority ("OPRA"). In addition, the Pilot Program Report explains that most delistings of $1 strike price options series occurred to ensure that the chosen $1 strike price issues remained within the parameters of the Pilot Program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5),[10] in particular, in that it is designed to perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and to promote just an equitable principles of trade. The Phlx believes the proposal would achieve this by allowing the continued listing of options at $1 strike price intervals within certain parameters, thereby stimulating customer interest in options overlying the lowest tier of stocks and creating greater trading opportunities and flexibility and providing customers with the ability to more closely tailor investment strategies to the precise movement of the underlying stocks.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Phlx has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Phlx has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay to allow the Exchange to continue listing $1 strike prices without a lapse in the operation of the Pilot Program.

The Commission waives the five-day pre-filing notice requirement. In addition, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will permit the Pilot Program to continue without interruption through June 5, 2007.[13] For this reason, the Commission designates that the proposal become operative on June 5, 2006.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2006–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington; DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2006–36. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] As set forth in the Commission's initial approval of the Pilot Program, if the Phlx proposes to: (1) Extend the Pilot Program; (2) expand the number of options eligible for inclusion in the Pilot Program; or (3) seek permanent approval of the Pilot Program, it must submit a Pilot Program report to the Commission along with the filing of its proposal to extend, expand, or seek permanent approval of the Pilot Program. The Phlx must file any such proposal and the Pilot Program report with the Commission at least 60 days prior to the expiration of the Pilot Program. The Pilot Program report must cover the entire time the Pilot Program was in effect and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options the Phlx selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the Phlx's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Phlx addressed them; (6) any complaints that the Phlx received during the operation of the Pilot Program and how the Phlx addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program. *See* Phlx Approval Order, *supra* note 5.

you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2006–36 and should be submitted on or before July 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–9155 Filed 6–12–06; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request, Comment Request, Notice of Office of Management and Budget Approval

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA. Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of thispublication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Application for Widow's or Widower's Insurance Benefits—20 CFR 404.335–404.338, 404.603—0960–0004.* SSA uses the information collected on the SSA–10–BK to determine whether the applicant meets the statutory and regulatory conditions for entitlement to widow(er)'s Social Security Title II benefits. The respondents are applicants for widow's or widower's insurance benefits.

Type of Request: Extension of an OMB-approved information collection.

Collection method	Number of respondents	Estimated completion time	Burden hours
Personal Interview (Modernized Claims System)	324,482	14–15 minutes	78,416
Paper	17,078	15 minutes	4,270
Totals	341,560		82,686

2. *Waiver of Right to Appear-Disability Hearing—20 CFR 404.913–404.914, 404.916(b)(5), 416.1413–416.1414, 416.1416(b)(5)—0960–0534.* The SSA–773–U4 is used by claimants or their representatives to officially waive the right to appear at a disability hearing. The disability hearing officer uses the signed form as a basis for not holding a hearing and for preparing a written decision based solely on the evidence of the record. The respondents are claimants for disability under Titles II and XVI of the Social Security Act, or their representatives, who wish to officially waive their right to appear at a disability hearing.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 200.

Frequency of Response: 1.

Average Burden per Response: 3 minutes.

Estimated Annual Burden: 10 hours.

3. *Childhood Disability Evaluation Form—20 CFR 416.924(g)—0960–0568.* The information collected on the SSA–538–F6 is used by SSA and the State Disability Determination Services (DDSs) to record medical and functional findings concerning the severity of impairments of children claiming Supplemental Security Income (SSI) benefits based on disability. The SSA–538–F6 is used for initial determinations of SSI eligibility; appeals; and in initial continuing disability reviews. The respondents are DDSs which make disability determinations on behalf of SSA under Title XVI of the Social Security Act.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 750,000.

Frequency of Response: 1.

Average Burden per Response: 25 minutes.

Estimated Annual Burden: 312,500 hours.

4. *Medical Consultant's Review of Physical Residual Functional Capacity Assessment—20 CFR 404.1545–.1546, 404.1640, 404.1643, 404.1645, 416.945–.946—0960–0680.* The SSA–392 is used by SSA's regional review component to facilitate the medical consultant's review of the Physical Residual Functional Capacity Assessment form (RFC). The SSA–392 records the reviewing medical consultant's assessment of the RFC prepared by the adjudicating component. The medical consultant only completes an SSA–392 when the adjudicating component's RFC is in the claims file. The SSA–392 is required for each RFC completed. Respondents are medical consultants who review the adjudicating component's completion of the RFC for quality purposes.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 256.

Frequency of Response: 359.

Number of Responses: 91,904.

Average Burden per Response: 12 minutes.

Estimated Annual Burden: 18,380 hours.

5. *You Can Make Your Payment By Credit Card—0960–0462.* The SSA–4588 and SSA–4589 are used by SSA to update an individual's record to reflect that a payment has been made on their overpayment and to effectuate payment through the appropriate credit card company. The SSA–4588 is sent to

[15] 17 CFR 200.30–3(a)(12).

overpaid individuals with an initial notice of overpayment, and the SSA–4589 is sent to overpaid individuals who have been previously notified of their debt. The SSA–4588 is sent out only once to the debtor, with the official first notice of overpayment, while the SSA–4589 is sent on a monthly basis until the debt is repaid. Respondents are Title II beneficiaries and Title XVI recipients who have outstanding overpayments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 5,000 hours.

6. *Continuing Education Information Collection under Non-Attorney Demonstration Project—0960–NEW.* Section 303 of the Social Security Protection Act of 2004 (SSPA) provides for a 5-year demonstration project to be conducted by SSA under which the direct payment of SSA approved fees is extended to certain non-attorney claimant representatives. Under the demonstration project, to be eligible for direct payment of fees, a non-attorney representative must fulfill a series of statutory requirements. One of these steps is to demonstrate completion of relevant continuing education courses. Through the services of a private contractor, SSA must collect the requested information to determine if a non-attorney representative has met this statutory requirement to be eligible for direct payment of fees for his or her claimant representation services. The information collection is needed to comply with the legislation. The respondents are non-attorney representatives who apply for direct payment of fees.

Type of Request: Collection in use without OMB number.

Number of Respondents: 300.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 150 hours.

II. The information collection listed below has been submitted to OMB for clearance. Your comments on the information collection would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

Instructions for Completion of Federal Assistance Application—0960–0184. The information on Form SSA–96 will be used to assist SSA in selecting grant proposals for funding based on their technical merits. The information will also assist in evaluating the soundness of the design of the proposed activities, the possibilities of obtaining productive results, the adequacy of resources to conduct the activities and the relationship to other similar activities that have been or are being conducted. The respondents are State and local governments, State-designated protection and advocacy groups, colleges and universities and profit and nonprofit private organizations.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 400.

Frequency of Response: 2.

Average Burden Per Response: 14 hours.

Estimated Annual Burden: 11,200 hours.

III. Notice of Office of Management and Budget Approval

Administrative Review Process for Adjudicating Disability, Parts 404, 405, 416 and 422. As required by the Paperwork Reduction Act, SSA is providing notice of the Office of Management and Budget's approval of the information collections contained in 20 CFR parts, 404, 416 and 422. The OMB number for this collection is 0960–0710, expiring March 31, 2009.

Dated: June 6, 2006.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E6–9146 Filed 6–12–06; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Special Benefits for Certain World War II Veterans—20 CFR 408, Subparts G, H, I, J & L—0960–0683.* Title VIII of the Social Security Act, Special Benefits for Certain World War II Veterans (SVB), allows, under certain circumstances, the payment of SVB to qualified veterans who reside outside the United States. The accompanying regulations set out the requirements an individual must meet in order to establish continuing eligibility to, and insure correct payment amount of, SVB and/or State recognition payments.

Additionally, they provide requirements that a State must meet in order to elect, modify, or terminate a Federal agreement. The respondents are individuals who receive Title VIII SVB, and/or States that elect Federal administration of their recognition payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 60.

Estimated Annual Burden: 22 hours.

Section No.	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden
§ 408.704–.714	1	1	60	1
§ 408.802(b)	5	1	15	1.25
§ 408.814	5	1	15	1.25
§ 408.820(c)	5	1	15	1.25
§ 408.923(b)	1	1	60	1
§ 408.931(b) & § 408.932(d)	1	1	60	1
§ 408.932(c)	2	1	15	.50
§ 408.932(e)	2	1	15	.50
§ 408.941(b) &.				
§ 408.942	2	1	15	.50
§ 408.944(a)	2	1	30	1
§ 408.1000(a)	1	1	60	1
§ 408.1007;.				
§ 408.1009(a)–(b)	1	1	60	1
§ 408.1009(c)	1	1	60	1
§ 408.1210(c)–(d)	1	1	120	2
§ 408.1215	10	1	15	2.50
§ 408.1230	20	1	15	5.00

2. *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Learning, Hospitals and Other Non-Profit Organizations—20 CFR 435—0960–0616.* The information contained in 20 CFR 435 of the Code of Federal Regulations provides SSA's standards in the administration of grants and agreements awarded to institutions of higher learning, hospitals, other non-profit and/or commercial organizations. It provides administrative guidelines and reporting, recordkeeping and disclosure requirements for applicable recipients of grants and agreements. Respondents are applicants and recipients for grants and agreements with SSA.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 196.

Estimated Annual Burden: 12,871 hours.

Section No.	Number of responses	Frequency of response	Average burden per response (hours)	Estimated annual burden (hours)
435.21 Rec-kp	1	N/A	40	40
435.23 Rec-kp	143	Quarterly (4)	1	572
435.25 Rpt	157	Biannually (2)	4	1,256
435.33 Rpt	1	Annually (1)	1	1
435.44 Rpt	1	Annually (1)	2	2
435.51 Rpt	196	Quarterly (4)	12	9,408
435.53 Rec-kp	196	Annually (1)	8	1,568
435.81 Rpt	1	Annually (1)	16	16
435.82 Rpt	1	Annually (1)	8	8

3. *Medical Consultant's Review of Psychiatric Review Technique Form—20 CFR 404.1520a, 404.1640, 404.1643, 404.1645, 416.920a—0960–0677.* SSA measures the performance of the State Disability Determination Services (DDSs) in the area of quality of documentation and determinations on claims. In mental claims, a Psychiatric Review Technique Form (PRTF) is completed by the DDS. The SSA–3023 is only completed when an adjudicating component's PRTF is in the file. An SSA–3023 is required for each completed PRTF and is used by the regional review component to facilitate SSA's medical/psychological consultants' review of the PRTF for quality purposes. The respondents are medical/psychological consultants who review the Psychiatric Review Technique Form for quality purposes.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 344.

Frequency of Response: 194.

Total Annual Responses: 66,736.

Average Burden per Response: 12 minutes.

Estimated Annual Burden: 13,347 hours.

4. *Privacy and Disclosure of Official Records and Information; Availability of Information and Records to the Public—20 CFR 401.40(b)&(c), 401.55(b), 401.100(a), 402.130, 402.185—0960–0566.* The Privacy Act of 1974 (5 U.S.C. 552a) authorizes SSA to collect certain information for access to and amendment or correction of records. The information collected is used by SSA to: (1) Identify individuals who request access to their records; (2) designate an individual to receive and review their medical records; (3) amend or correct records; (4) obtain consent from an individual to release his/her records to others (consent is submitted by letter in writing or by use of the SSA–3288, or other consent form). The Freedom of Information Act authorizes SSA to collect information needed to facilitate the release of information from SSA records. Respondents are individuals or businesses requesting access to, correction of, or disclosure of SSA records.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 3,028,500.

Estimated Annual Burden: 159,133 hours.

Type of request	Number of respondents	Frequency of response	Average burden per response	Estimated annual burden (hours)
Access to Records	10,000	1	11 minutes ..	1,833
Designating a Representative for Disclosure of Records	3,000	1	2 hours	6,000
Amendment of Records	100	1	10	17
Consent of Release of Records	3,000,000	1	3 minutes	150,000
FOIA Requests for Records	15,000	1	5 minutes	1,250
Waiver/Reduction of Fees	400	1	5 minutes	33
Totals	3,028,500	.....	.....	159,133

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Request for Withdrawal of Application—20 CFR 404.640—0960–0015.* The filing of an application for Social Security benefits may be to the claimant's disadvantage. The withdrawal procedure provides a method for overcoming and nullifying this disadvantage. The SSA–521 collects the required information to effectuate withdrawal of benefits or of an application for benefits. The respondents are applicants or claimants for Social Security benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 8,333 hours.

2. *Statement of Claimant or Other Person—20 CFR 404.702, 416.570—0960–0045.* The SSA–795 is used to obtain information from claimants or other persons having knowledge of facts in connection with claims for Social Security or Supplemental Security Income (SSI) benefits when there is no standard form which collects the needed information. The information is used by SSA to process claims for benefits or for ongoing issues related to the above programs. The respondents are applicants/beneficiaries for Social Security benefits or SSI payments, or others who are in a position to provide information pertinent to the claims.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 305,500.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 76,375 hours.

3. *Application for Search of Census Records for Proof of Age—20 CFR 404.716–0960–0097.* The information collected on Form SSA–1535–U3 is needed to provide sufficient identifying information to allow an accurate search of census records to establish proof of age for an individual applying for Social Security benefits. It is used for individuals who must establish proof of age as a factor of entitlement, and cannot otherwise document their date of birth. The respondents are applicants for Social Security benefits who must establish their date of birth as a factor of entitlement.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 18,030.

Frequency of Response: 1.

Average Burden per Response: 12 minutes.

Estimated Annual Burden: 3,606 hours.

4. *Claim for Amounts Due in the Case of a Deceased Beneficiary—20 CFR 404.503(b)–0960–0101.* SSA collects information using form SSA–1724 when there is insufficient information in the file to identify the person(s) entitled to an underpayment, or that person's address. This information is needed when there is an underpayment due to a deceased beneficiary. Generally, the SSA–1724 is used in cases where a surviving widow(er) is not already entitled to a monthly benefit on the same earnings record, or is not filing for a lump-sum death payment as a living-with spouse. The respondents are applicants for underpayments in cases of deceased beneficiaries.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 300,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 50,000 hours.

5. *Statement of Care and Responsibility for Beneficiary—20 CFR 404.2020, 404.2025, 408.620, 408.625, 416.620, 416.625–0960–0109.* Form SSA–788 is used to obtain information from the beneficiary's custodian about the representative payee applicant's concern and responsibility for the beneficiary. The respondents are individuals who have custody of the beneficiary where someone else has filed to be the beneficiary's representative payee.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 130,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 21,667 hours.

6. *Self-Employment/Corporate Officer Questionnaire—20 CFR 404.435(e), 404.446–0960–0487.* Form SSA–4184 is used to develop earnings and corroborate the claimant's allegations of retirement when the claimant is self-employed or a corporate officer. The information collected is used to determine the benefit amount. The respondents are self-employed individuals or corporate officers who apply for retirement or survivors' insurance benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden per Response: 20 minutes.

Estimated Annual Burden: 16,667 hours.

7. *Application for Special Benefits for World War II Veterans—20 CFR 408, Subparts B, C and D–0960–0615.* Title VIII of the Social Security Act (Special Benefits for Certain World War II Veterans) allows for the payment of a monthly benefit to a qualified World War II veteran who resides outside the United States. The regulations set out the requirements an individual must meet in order to qualify for and become entitled to Special Veterans Benefits (SVB). SSA–2000–F6 is the application used to elicit the information necessary to determine entitlement to SVB. The respondents are individuals who are applying for SVB under Title VIII of the Social Security Act.

Type of Request: Revision of an OMB-approved information collection.

Estimated Annual Burden: 359 hours.

Section No.	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual hour burden
§ 408.202(d); § 408.210; § 408.230(a); § 408.305; §§ 408.310–.315	325	1	20	108
§ 408.232(a)	5	1	15	1.25
§ 408.320	5	1	15	1.25
§ 408.340	5	1	15	1.25
§ 408.345	2	1	15	.50
§ 408.351(d) & (f)	2	1	30	1.00
§ 408.355(a)	5	1	15	1.25
§ 408.360(a)	2	1	15	.50
§ 408.404(c)	20	1	15	5.00
§ 408.410–412	20	1	15	5.00
§ 408.420(a), (b)	230	1	15	58.00
§ 408.430 & .432	215	1	30	108.00
§ 408.435(a), (b),(c)	230	1	15	58.00
§ 408.437(b), (c),(d)	20	1	30	10.00
Totals	1,086			359

8. *Prohibition of Payment of SSI Benefits to Fugitive Felons and Parole/Probation Violators—20 CFR 416.708(o)–0960–0617.* Section 1611(e)(4) of the Social Security Act precludes eligibility for SSI benefits for certain fugitives and probation/parole violators. Regulations at 20 CFR 416.708(o) require that a report is given to SSA when an individual is fleeing to avoid prosecution for a crime, fleeing to avoid custody or confinement after conviction of a crime, or violating a condition of probation or parole. The respondents are SSI applicants/recipients or representative payees of SSI recipients who are reporting that a recipient is a fugitive felon or probation/parole violator.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden per Response: 1 minute.

Estimated Annual Burden: 17 hours.

9. *Application for SSA Employee Testimony—20 CFR 403.100–155—0960–0619.* SSA's regulations at 20 CFR 403.100–155 establish policies and procedures whereby an individual, organization, or governmental entity may request official Agency information, records, or testimony of an agency employee in a legal proceeding to which the agency is not a party. The request, which must be in writing to the Commissioner, must fully set out the nature and relevance of the sought testimony. Respondents are individuals or entities who request testimony from SSA employees in a legal proceeding.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 100.

Frequency of Response: 1.

Average Burden per Response: 60 minutes.

Estimated Annual Burden: 100 hours.

10. *Representative Payee Report-Special Veterans Benefits—20 CFR 408.665—0960–0621.* Title VIII allows the payment of monthly benefits by the Commissioner of Social Security to qualified World War II veterans who reside outside the U.S. A representative payee may be appointed to receive and manage the monthly payment for the beneficiary's use and benefit. The SSA–2001–F6 is completed by the payee to determine if he has used the benefits properly and continues to demonstrate strong concern for the beneficiary. Respondents are persons or organizations who act on behalf of beneficiaries receiving SVB.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 100.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 17 hours.

Dated: June 6, 2006.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E6–9147 Filed 6–12–06; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the

SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *SSA Survey of Online Services Internet Panel–0960–New.* SSA plans to conduct an online panel survey with pre-retirement individuals. The survey will ask a number of questions about participants' experiences with SSA's Internet-based services. The results of the survey will be used to assess awareness of SSA Internet-based services and to identify ways to increase awareness of these services in the pre-retirement population. The respondents are individuals ages 50–67 who are employed and who have agreed to be contacted via e-mail for online surveys.

Type of Request: New information collection.

Number of Respondents: 1,000,

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 250 hours.

2. *Authorization for the Social Security Administration to Obtain Account Records From a Financial Institution and Request for Records—20 CFR 416.200, 416.203—0960–0293.* The SSA–4641–U2 provides financial institutions with the applicant, recipient, or deemor's authorization to disclose records. Responses to the questions are used, in part, to determine whether the resources requirements are met in the Supplemental Security Income (SSI) program. The respondents are financial institutions used by SSI applicants, recipients and/or deemors.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 500,000.

Frequency of Response: 1.

Average Burden per Response: 6 minutes.

Estimated Annual Burden: 50,000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Application for Special Age 72-or-Over Monthly Payments—20 CFR 404.380–404.384—0960–0096.* Form SSA–19–F6 collects the information needed to determine whether a claimant can qualify for Special Age 72 payments. Eligibility requirements will be evaluated based on the data collected on this form. The respondents are individuals who reached age 72 before 1972.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 10.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 2 hours.

2. *Medical or Psychological Review of Childhood Disability Evaluation Form (SSA–538)—20 CFR 416.1040, 416.1043, 416.1045, 416.924(g)—0960–0675.* Form SSA–536 is used by SSA medical or psychological consultants to document their review and assessment of the Childhood Disability Evaluation Form, SSA–538, prepared by State Disability Determination Services employees. A childhood disability evaluation is required in each SSI childhood disability case that is reviewed. The respondents are 256 SSA medical and psychological consultants.

Type of Request: Extension of an OMB-approved information collection.

Number of Responses: 17,000.

Frequency of Response: 1.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 3,400 hours.

3. *Claimant's Medication—20 CFR 404.1512, 416.912—0960–0289.* The HA–4632, completed by applicants for disability benefits, provides an updated list of medications used by the claimant. This enables the Administrative Law Judge hearing the case to fully inquire into the medical treatment the claimant is receiving and the effect of medications on the claimant's impairments and functional capacity. The respondents are applicants for Old Age, Survivors and Disability Insurance (OASDI) benefits, and/or SSI payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 171,939.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 42,985 hours.

4. *Authorization for the Social Security Administration to Obtain Account Records from a Financial Institution and Request for Records (Medicare Low-Income Subsidy)—0960–New.* Under the aegis of the Medicare Modernization Act of 2003, Medicare beneficiaries can apply for a subsidy for the Medicare Prescription Drug Plan (Part D) program. In some cases selected for the Medicare Quality Review System (OMB No. 0960–0707), SSA will need to verify the details of applicants' accounts at financial institutions to determine if they are eligible for the subsidy. Form SSA–4640 will give SSA the authority to contact financial institutions about beneficiaries' accounts. It will also be used by financial institutions to verify the information requested by SSA. The respondents are applicants for the Medicare Part D program subsidy and financial institutions where applicants have accounts.

Type of Request: New information collection.

Total Estimated Annual Burden: 834 hours.

	Medicare Part D subsidy applicants	Financial institutions	Totals
Number of respondents	10,000	10,000	20,000.
Frequency of response	1	1	1.
Average burden per response (minutes)	1 minute	4 minutes	5 minutes.
Estimated annual burden (hours)	167 hours	667 hours	834 hours.

Dated: June 6, 2006.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E6–9148 Filed 6–12–06; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Social Security Ruling, SSR 06–02p]

Title II: Adjudicating Child Relationship Under Section 216(h)(2)(A) of the Social Security Act When Deoxyribonucleic Acid (DNA) Test Shows Sibling Relationship Between Claimant and a Child of the Worker Who Is Entitled Under Section 216(h)(3) of the Social Security Act on the Worker's Earnings Record

AGENCY: Social Security Administration (SSA).

ACTION: Notice of social security ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR 06–02p. To be entitled to child's insurance benefits on the earnings record of a worker under section 202(d) of the Social Security Act (The Act), a claimant must prove, among other things, that he or she is the worker's child. There are several ways a child can do this. As is pertinent to this Ruling, three of the ways are meeting either the State law definition of child under section 216(h)(2)(A) of the Act or one of the two federal law definitions of child under section 216(h)(3) of the Act. This Ruling provides that if the results of Deoxyribonucleic Acid (DNA) testing show a high probability that an entitled child is the sibling of a child claimant who is filing under the State law definition and we have already determined that the entitled child is the worker's natural child under one of the two federal law definitions in section 216(h)(3), we will rely on the 216(h)(3) determination when we determine whether the child claimant is the worker's child in accordance with section 216(h)(2)(A) of the Act. Under these circumstances, we will not determine whether the child who is entitled under one of the federal law definitions in section 216(h)(3) also meets the definition of child under State law.

DATES: Effective Date: June 13, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Jayne Neubauer or Pete White, Social Security Specialists, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–7303 or (410) 594–2041 or TTY (800) 966–5609.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and special veterans benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and policy interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are binding as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance.)

Dated: June 5, 2006.

Jo Anne B. Barnhart,

Commissioner of Social Security.

Policy Interpretation Ruling

Title II: Adjudicating Child Relationship Under Section 216(H)(2)(A) Of The Social Security Act When Deoxyribonucleic Acid (Dna) Test Shows Sibling Relationship Between Claimant And A Child Of The Worker Who Is Entitled Under Section 216(H)(3) Of The Social Security Act

Purpose: To explain our policy when:

- We have determined under section 216(h)(3) of the Act that a child (referred to here as "C1") is the natural child of the worker;
- We must determine whether another child (referred to here as "C2") is the worker's child under section 216(h)(2)(A) of the Act; and
- The results of sibling DNA testing show a high probability of a sibling relationship between C1 and C2.

Citations (Authority): Sections *202(d), 205(a), 216(e), 216(h)(2)(A), 216(h)(3)* and *702(a)(5)* of the Social Security Act; Regulations No. 4, subpart D, sections *404.350, 404.354* and *404.355.*

Pertinent History: To be entitled to child's insurance benefits on the earnings record of a worker under section 202(d) of the Act, a claimant must prove, among other things, that he or she is the worker's child. A claimant may prove that he or she is the child of the worker in any of the following four ways:

1. The claimant could inherit the worker's property as the worker's child under the law of intestate succession of the appropriate State. *See* section 216(h)(2)(A) of the Act, 42 U.S.C. 416(h)(2)(A); 20 CFR 404.355(a)(1).
2. The claimant is the worker's natural child and the worker and the claimant's mother or father went through a ceremony that would have resulted in a valid marriage between them except for a "legal impediment." *See* section 216(h)(2)(B) of the Act, 42 U.S.C. 416(h)(2)(B); 20 CFR 404.355(a)(2).
3. The claimant is the worker's natural child and, at the appropriate time, the worker acknowledged in writing that the claimant was the worker's child, was decreed by a court to be the claimant's parent, or was ordered by a court to contribute to the claimant's support because the claimant was the worker's child. *See* section 216(h)(3) of the Act, 42 U.S.C. 416(h)(3); 20 CFR 404.355(a)(3).
4. The claimant is shown by evidence satisfactory to us to be the worker's natural child, and the worker was living with the claimant or contributing to the claimant's support at the appropriate time. *See* section 216(h)(3) of the Act, 42 U.S.C. 416(h)(3); 20 CFR 404.355(a)(4).

For purposes of this policy interpretation ruling, paragraph 1 above is the State law definition of "child," and paragraphs 2 through 4 are the Federal law definitions of "child." [1]

This policy interpretation ruling applies when the results of sibling DNA testing show a high probability of a sibling relationship between a child claimant (C2) and a child (C1) whom we have determined to be the worker's child under one of the federal law definitions in section 216(h)(3) of the Act. This Ruling addresses two questions:

1. If C1 meets the requirements of section 216(h)(3), must C1 also meet the State law definition of child in order for us to use evidence of the sibling

[1] A claimant also may qualify as the worker's child by proving that he or she is the legally adopted child, stepchild or equitably adopted child of the worker, or that he or she is the grandchild or step-grandchild of the worker or the worker's spouse. See section 216(e) of the Act, 42 U.S.C. 416(e); 20 CFR 404.356–404.359. This ruling does not address these relationships.

relationship between C1 and C2 in determining whether C2 is the worker's child under section 216 (h)(2)(A)?

2. For the purpose of determining whether C2 meets the state law definition of child under section 216(h)(2)(A), can we consider C1 to be the worker's natural child, based on the determination of eligibility under section 216(h)(3)?

These questions are not explicitly addressed by either the statute or our regulations. They have arisen because, in some cases, the evidence used to establish that C1 is the worker's child under section 216(h)(3) of the Act might not satisfy the standard required to show that C1 is the worker's child under state law. For example, under section 216(h)(3)(A)(ii) of the Act, the claimant must show "by evidence satisfactory to the Commissioner" that the worker is the claimant's parent and was "living with or contributing to the support of" the claimant at the appropriate time. The State law that we apply under section 216(h)(2)(A) of the Act often provides for a higher standard of proof (e.g., "clear and convincing evidence") to prove that a person is the child of the worker for purposes of intestate succession.

Policy Interpretation: Under our current policy interpretation, when we must determine whether C2 qualifies as the worker's child under section 216(h)(2)(A) of the Act, we must apply the law of intestate succession that the courts of the appropriate State (the State of the worker's domicile at the appropriate time or the District of Columbia if the worker was not a domiciliary of a State at the appropriate time) would apply to decide whether C2 could inherit intestate property as the worker's child. Under this ruling, we will continue to apply the above policy interpretation. However, we will not review C1's relationship to the worker under State law in determining C2's relationship to the worker when:

- We have determined that C1 meets one of the federal definitions of child in section 216(h)(3) of the Act,
- There is no reason to question that determination, and
- The results of DNA testing show a high probability of a sibling relationship between C1 and C2.

We will rely on the determination under section 216(h)(3) establishing C1 as the natural child of the worker, for purposes of determining C2's relationship to the worker under the requirements and standards of proof provided in State law. We will consider C1 to be the known child of the worker as determined under section 216(h)(3). Then, under section 216(h)(2)(A) of the Act, we will apply the law of intestate succession of the appropriate State to determine whether the results of the DNA test between C1 and C2 (and any other evidence of C2's relationship to the worker) establish C2's status as the worker's child.

This policy is supported by the relevant statutes. Under section 205(a) of the Act we have:

> full power and authority to make rules and regulations to establish procedures, *not inconsistent with the provisions of this title,* which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

(Emphasis added.) Under section 702(a)(5) of the Act, we "may prescribe such rules and regulations as * * * [we determine] necessary or appropriate to carry out the functions of the Administration."

The policy interpretation in this Ruling is consistent with the relevant provisions of the Act and enhances the efficiency of the claims adjudication process.

Under the circumstances covered by this Ruling, our policy is consistent with section 216(h)(2)(A) of the Act because we will apply State law to determine whether C2 is the worker's child. We will determine whether the evidence relating to C2's relationship to the known child of the worker (C1), and any other evidence of C2's relationship to the worker, establishes that C2 is the worker's child under the standards of the applicable State law. Moreover, the policy avoids the redundancy and unnecessary administrative burden that would occur if we reviewed C1's relationship to the worker under State law when we have already determined that C1 is the worker's child under one of the federal definitions in section 216(h)(3) of the Act.

Effective Date: This SSR is effective upon publication in the **Federal Register**.

Cross-References: Program Operations Manual System sections *GN00306.050, GN00306.055, GN00306.060, GN00306.065, GN00306.075, GN00306.085, GN00306.100, GN00306.105, GN00306.110, GN00306.120, GN00306.125, GN00306.130*

[FR Doc. E6–9156 Filed 6–12–06; 8:45 am]
BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance Boscobel Municipal Airport, Boscobel, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is giving notice that a portion of the airport property containing 60.6 acres located between the airport and the Wisconsin River is not needed for aeronautical use as currently identified on the Airport Layout Plan.

This parcel was originally acquired through Grant No. AIP–01 in 1998. The parcel was an uneconomic remnant left from land acquisition from an airport expansion project, presently open and undeveloped. The land comprising this parcel is, therefore, no longer needed for aeronautical purposes. The sale of this parcel will allow for the airport to purchase other property that will provide approach protection for the airport. Income from the sale will be used to improve the airport. There are no impacts to the airport by allowing the airport to dispose of the property.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before July 13, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra E. DePottey, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 713–4363/FAX Number (612) 713–4364. Documents reflecting this FAA action may be reviewed at this same location or at the Boscobel Municipal Airport, Boscobel, WI.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA intends to authorize the disposal of the subject airport property at Boscobel Municipal Airport, Boscobel, WI. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination that all measures covered by the program are eligible for Airport Improvement Program funding from the FAA. The disposition of proceeds from

the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Issued in Minneapolis, MN on May 25, 2006.

Robert A. Huber,

Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. 06–5324 Filed 6–12–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance Waupaca Municipal Airport, Waupaca, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is giving notice that a portion of the airport property containing 16.6 acres located across the Waupaca River from the airport and is not needed for aeronautical use as currently identified on the Airport Layout Plan.

This parcel was originally purchased as part of a larger City purchase in December 1944. The parcel is presently open and undeveloped. The land comprising this parcel is, therefore, no longer needed for aeronautical purposes. Income from the sale will be used to improve the airport. There are no impacts to the airport by allowing the airport to dispose of the property.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before July 13, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra E. DePottey, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 713–4363/FAX Number (612) 713–4364. Documents reflecting this FAA action may be reviewed at this same location or at the Waupaca Municipal Airport, Waupaca, WI.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA intends to authorize the disposal of the subject airport property at Waupaca Municipal Airport, Waupaca, WI. Following is a legal description of the subject airport property to be released at Waupaca Municipal Airport in Waupaca, Wisconsin and described as follows:

A parcel of land located in part of SW ¼ of the NW ¼ of the Section 35, Town 22 North Range 12 East, City of Waupaca, Waupaca County, Wisconsin.

Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination that all measures covered by the program are eligible for Airport Improvement Program funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Issued in Minneapolis, MN on May 25, 2006.

Robert A. Huber,

Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. 06–5325 Filed 6–12–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–25004]

Identification of Vehicles: Oregon Department of Transportation Tax Credentials; Petition for Determination

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of petition for determination; request for comments.

SUMMARY: FMCSA announces that it has received a petition or formal request from the Oregon Department of Transportation (ODOT) for a determination whether the State may continue to require motor carriers to display weight-mile tax credentials. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) prohibits States from requiring motor carriers to display in, or on, commercial motor vehicles any form of identification other than forms required by the Secretary of Transportation. However, SAFETEA–LU also provides that a State may continue to require display of credentials that are required under a State law regarding motor vehicle license plates or other displays that the Secretary determines are appropriate. ODOT requested that FMCSA make a determination that its weight-mile tax credentials are appropriate under SAFETEA–LU. FMCSA requests public comment on ODOT's petition for determination.

DATES: Comments must be received on or before July 13, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket No. FMCSA–2006–25004] using any of the following methods:

- *Web Site: http://dmses.dot.gov/submit.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket number for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want to be notified that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477). This statement is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and

Truck Standards and Operations, MC–PSD, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone: 202–366–4009. E-mail: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4306 of SAFETEA–LU prohibits States from requiring motor carriers to display in or on commercial motor vehicles any form of identification other than forms required by the Secretary of Transportation [49 U.S.C. 14506(a)]. However, § 14506(b)(3) provides, in part, that "a State may continue to require display of credentials that are required * * * under a State law regarding motor vehicle license plates or other displays that the Secretary determines are appropriate."

ODOT requests that FMCSA make a determination that the State's weight-mile tax credentials are appropriate in the context of 49 U.S.C. 14506(a). Oregon has been requiring motor carriers to obtain weight-mile tax credentials since 1947.

Oregon Revised Statutes (ORS) 825.454 authorize ODOT to require the use of identification devices, such as cab cards, stamps or carrier identification numbers, to identify, and be carried in or placed upon, each motor vehicle authorized to be operated in Oregon. ODOT may require annual application for identification devices and it may charge a fee not to exceed $8 for each device issued on an annual basis. ORS 825.450 requires ODOT to issue a permanent credential and ORS 825.470 authorizes issuance of temporary credentials. Until 2001, ODOT required out-of-state carriers to display a special Oregon license plate on each truck registered to operate in the State. State legislation passed in 2001 eliminated the need for out-of-state based vehicles to display the Oregon license plate and substituted the simpler requirement to carry a permanent or temporary paper credential.

ODOT states the current weight-mile tax credentials identify a motor carrier's Oregon account, facilitate reporting and payment of the tax, and assist in tracking vehicle-miles traveled over Oregon highways. ODOT also believes truck drivers want to have the credential at hand when fueling in Oregon, because fuel providers use it to verify that a vehicle is exempt from Oregon fuel tax. ODOT advises that approximately 15,000 out-of-state based carriers operate 283,000 trucks that carry a permanent Oregon tax credential. It also advises that approximately 10,000 trucks with a 10-day temporary credential operate within the State at any given time. A copy of ODOT's petition for determination is available for review in the docket for this notice.

Request for Comments

FMCSA requests public comment on ODOT's request that the Agency determine whether the State may continue to require commercial motor carriers to display weight-mile tax credentials. Interested parties are requested to limit their comments to the display of weight-mile tax credentials, as FMCSA has no authority to review the tax for which the credential is issued. FMCSA will consider all comments received by close of business on July 13, 2006. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. FMCSA will file comments received after the comment closing date in the public docket and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file in the public docket relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: June 7, 2006.

David Hugel,

Deputy Administrator.

[FR Doc. E6–9150 Filed 6–12–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–21016]

Stagecoach Group PLC & Coach USA, Inc., et al.—Control—Megabus USA LLC

AGENCY: Surface Transportation Board, DoT.

ACTION: Notice Tentatively Approving Finance Transaction.

SUMMARY: Stagecoach Group PLC (Stagecoach) and its subsidiary Coach USA, Inc. (Coach), noncarriers, and various subsidiaries of each (collectively, applicants), have filed an application under 49 U.S.C. 14303 to acquire control of the newly created Megabus USA LLC (Megabus USA), which is currently owned by co-applicant Independent Bus Company, Inc. (Independent), a wholly owned subsidiary of Coach. Applicants state that currently Megabus USA does not hold federally issued authority. This application is filed on the premise that Megabus USA actually obtains the authority it seeks. Persons wishing to oppose this application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by July 28, 2006. Applicants may file a reply by August 14, 2006. If no comments are filed by July 28, 2006, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–21016 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to the applicants' representatives: Betty Jo Christian and David H. Coburn, STEPTOE & JOHNSON LLP, 1330 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Eric S. Davis, (202) 565–1608 [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339].

SUPPLEMENTARY INFORMATION:

Stagecoach is a public limited company organized under the laws of Scotland. It is one of the world's largest providers of passenger transportation services and had annual revenues for the fiscal year ending April 30, 2005, of over $3.3 billion. Stagecoach, and certain intermediate subsidiaries, acquired control of Coach in September 1999.[1] Coach, a Delaware corporation, controls numerous federally regulated motor carriers. The motor carriers controlled by Coach had gross operating revenues for the 12-month period ending with the date of this application greater than the $2 million threshold required for Board jurisdiction.

Megabus USA is currently a noncarrier, but plans to seek authorization from the Federal Motor Carrier Safety Administration to operate as a motor common carrier of passengers. Once authorization is granted, Megabus USA will utilize a fleet of approximately 18 motorcoaches to provide scheduled express bus service over regular routes between Chicago and several Midwestern cities. These routes, and the motorcoaches and drivers, are currently used by Independent under the name "Megabus.com," which holds federally issued authority under MC–168548.

[1] *See Stagecoach Holdings PLC—Control—Coach USA, Inc., et al.*, STB Docket No. MC–F–20948 (STB served July 22, 1999).

Once Megabus USA obtains authority, Independent will surrender that trade name and cease operations performed under its name.

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction found to be consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Stagecoach and Coach have submitted information, as required by 49 CFR 1182.2, including the information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Applicants state that the proposed transaction will have no impact on the adequacy of transportation services available to the public, that the proposed transaction will not have an adverse effect on total fixed charges, and that the interests of employees of Megabus USA will not be adversely impacted. Additional information, including a copy of the application, may be obtained from the applicants' representatives.

On the basis of the application, and if Megabus USA does in fact obtain only the authority as described herein, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated, and unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed finance transaction is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this notice will be deemed as having been vacated.

3. This notice will be effective July 28, 2006, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th Street, SW., Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: June 7, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E6–9204 Filed 6–12–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34863]

BNSF Railway Company—Acquisition and Operation Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board, DoT.

ACTION: Notice of Exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board is granting a petition for exemption from the prior approval requirements of 49 U.S.C. 11323, *et seq.*, for BNSF Railway Company, a Class I carrier, to acquire and operate approximately 25 miles of rail line of Union Pacific Railroad Company (UP), a Class I carrier, extending from UP milepost 81.1 at Union, CO, to UP milepost 56.1 at Sterling, CO.

DATES: The exemption will be effective on July 13, 2006. Petitions to stay must be filed by June 23, 2006. Petitions to reopen must be filed by July 3, 2006.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34863 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on petitioner's representative: Sidney L. Strickland, Jr., 3050 K Street, NW., Suite 101, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, e-mail, or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail: *asapdc@verizon.net;* telephone: (202) 306–4004. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.]

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 7, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E6–9203 Filed 6–12–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–38

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2003–38, Commercial Revitalization Deduction.

DATES: Written comments should be received on or before August 14, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Commercial Revitalization Deduction.

OMB Number: 1545–1818.

Revenue Procedure Number: Revenue Procedure 2003–38.

Abstract: Pursuant to § 1400I of the Internal Revenue Code, Revenue Procedure 2003–38 provides the time and manner for states to make

allocations of commercial revitalization expenditures to a new or substantially rehabilitated building that is placed in service in a renewal community.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local and tribal governments, and business or other for-profit organizations.

Estimated Number of Respondents: 80.

Estimated Average Time per Respondent: 2 hours, 30 minutes.

Estimated Total Annual Burden Hour: 200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 5, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–9141 Filed 6–12–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–255–82]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulations, FI–255–82 (TD 7852), Registration Requirements With Respect to Debt Obligations (§ 5f.103–1(c)).

DATES: Written comments should be received on or before August 14, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation should be directed to R. Joseph Durbala, (202)–622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Registration Requirements With Respect to Debt Obligations.

OMB Number: 1545–0945.

Regulation Project Number: FI–255–82.

Abstract: These regulations require an issuer of a registration-required obligation and any person holding the obligation as a nominee or custodian on behalf of another to maintain ownership records in a manner which will permit examination by the Internal Revenue Service in connection with enforcement of the Internal Revenue laws.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations and, state, local or tribal governments.

Estimated Number of Recordkeepers: 50,000.

Estimated Time Per Recordkeeper: 1 hour.

Estimated Total Annual Burden Hours: 50,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 5, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–9142 Filed 6–12–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8860

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8860, Qualified Zone Academy Bond Credit.

DATES: Written comments should be received on or before August 14, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Qualified Zone Academy Bond Credit.

OMB Number: 1545–1606.

Form Number: 8860.

Abstract: Under Internal Revenue Code section 1397E, a qualified zone academy bond is a taxable bond issued after 1997 by a state or local government, with the proceeds used to improve certain eligible public schools. In lieu of receiving interest payments from the issuer, an eligible holder of the bond is generally allowed an annual income tax credit. Eligible holders of qualified zone academy bonds use Form 8860 to figure and claim this credit.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for profit organizations and state, local or tribal governments.

Estimated Number of Respondents: 33.

Estimated Time Per Respondent: 6 hours., 10 min.

Estimated Total Annual Burden Hours: 204.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 5, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–9143 Filed 6–12–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–W

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–W, Estimated Tax for Corporations.

DATES: Written comments should be received on or before August 14, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, (202) 622–3634, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Estimated Tax for Corporations.

OMB Number: 1545–0975.

Form Number: 1120–W.

Abstract: Under section 6655 of the Internal Revenue Code, a corporation with an income tax liability of $500 or more must make four required installments of estimated tax during the tax year or be subject to a penalty for failure to pay estimated income tax. Form 1120–W is used by corporations to compute their estimated income tax and the amount of each required installment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 900,000.

Estimated Time Per Respondent: 10 hrs., 17 min.

Estimated Total Annual Burden Hours: 9,316,190.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 5, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–9144 Filed 6–12–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, July 6, 2006 from 11 a.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Thursday, July 6, 2006, from 11 a.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: June 5, 2006.

Venita Gardner,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–9145 Filed 6–12–06; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
June 13, 2006

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Establishment of Nonessential Experimental Population Status for 15 Freshwater Mussels, 1 Freshwater Snail, and 5 Fishes in the Lower French Broad River and in the Lower Holston River, Tennessee; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU01

Endangered and Threatened Wildlife and Plants; Establishment of Nonessential Experimental Population Status for 15 Freshwater Mussels, 1 Freshwater Snail, and 5 Fishes in the Lower French Broad River and in the Lower Holston River, Tennessee

AGENCY: Fish and Wildlife, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in cooperation with the State of Tennessee and Conservation Fisheries, Inc., a nonprofit organization, propose to reintroduce 15 mussels listed as endangered under section 4 of the Endangered Species Act of 1973, as amended (Act): Appalachian monkeyface (pearlymussel) (*Quadrula sparsa*), birdwing pearlymussel (*Conradilla caelata = Lemiox rimosus*), cracking pearlymussel (*Hemistena* or currently =Lastena *lata*), Cumberland bean (pearlymussel) (*Villosa trabalis*), Cumberlandian combshell (*Epioblasma brevidens*), Cumberland monkeyface (pearlymussel) (*Quadrula intermedia*), dromedary pearlymussel (*Dromus dromas*), fanshell (*Cyprogenia stegaria*), fine-rayed pigtoe (*Fusconaia cuneolus*), orangefoot pimpleback (pearlymussel) (*Plethobasus cooperianus*), oyster mussel (*Epioblasma capsaeformis*), ring pink (mussel) (*Obovaria retusa*), rough pigtoe (*Pleurobema plenum*), shiny pigtoe (*Fusconaia cor*), and white wartyback (pearlymussel) (*Plethobasus cicatricosus*); 1 endangered aquatic snail: Anthony's riversnail (*Athearnia anthonyi*); 2 endangered fishes: duskytail darter (*Etheostoma percnurum*) and pygmy madtom (*Noturus stanauli*); and 3 fishes listed as threatened under section 4 of the Act: slender chub (*Erimystax cahni*), spotfin chub (=turquoise shiner) (*Erimonax monachus*), and yellowfin madtom (*Noturus flavipinnis*) into their historical habitat in the free-flowing reach of the French Broad River below Douglas Dam to its confluence with the Holston River, Knox County, Tennessee, and in the free-flowing reach of the Holston River below Cherokee Dam to its confluence with the French Broad River. Based on the evaluation of species experts, none of these 21 species currently exist in these river reaches or their tributaries. These species are being reintroduced under the authority of section 10(j) of the Act and would be classified as a nonessential experimental population (NEP).

The geographic boundaries of the proposed NEP would extend from the base of Douglas Dam (river mile (RM) 32.3 (51.7 kilometers (km)) down the French Broad River, Knox and Sevier Counties, Tennessee, to its confluence with the Holston River and then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)) and would include the lower 5 RM (8 km) of all tributaries that enter these river reaches.

These proposed reintroductions are recovery actions and are part of a series of reintroductions and other recovery actions that the Service, Federal and State agencies, and other partners are conducting throughout the species' historical ranges. This proposed rule provides a plan for establishing the NEP and provides for limited allowable legal take of these 16 mollusks and 5 fishes within the defined NEP area. We have decided to include all 21 species in a single rulemaking to allow us to restore the aquatic ecosystem as quickly as possible as we bring each of these species on line in the propagation facilities. We have reasons to believe all of these species co-existed in the past, and also want the public to understand that all of these species will be reintroduced into the same stretch of river rather than being confused by 21 separate NEPs.

DATES: We will consider comments on this proposed rule that are received by August 14, 2006. Requests for a public hearing must be made in writing and received by July 28, 2006.

ADDRESSES: You may submit comments and other information, identified by Regulatory Information Number (RIN) 1018–AU01, by any of the following methods:

- Mail or Hand Delivery: Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Field Office, 446 Neal Street, Cookeville, Tennessee, 38501.
- Fax: 931–528–7075.
- E-mail: *timothy_merritt@fws.gov*. Include "Attn: French Broad/Holston Rivers NEP" in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Please see the "Public Comments Solicited" section below for information about submitting comments.

The comments and materials we receive during the comment period will be available for public inspection, by appointment, during normal business hours at our Tennessee Field Office at the above address. If you wish to request a public hearing, you may mail or hand deliver your written request to the Tennessee Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Timothy Merritt, U.S. Fish and Wildlife Service at the above address (telephone 931/528–6481, facsimile 931/528–7075).

SUPPLEMENTARY INFORMATION:

Background

1. *Legislative:* Under section 10(j) of the Act, the Secretary of the Department of the Interior may designate reintroduced populations established outside the species' current range, but within its historical range, as "experimental." Based on the best scientific and commercial data available, we must determine whether experimental populations are "essential" or "nonessential" to the continued existence of the species. Regulatory restrictions are considerably reduced under a nonessential experimental population (NEP) designation.

Without the NEP designation, the Act provides that species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9, the consultation requirements of section 7 and the special regulations provisions of section 4(d). Section 9(a)(1)(B) of the Act prohibits the take of endangered wildlife. "Take" is defined by the Act as "harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct." Service regulations (50 CFR 17.31) generally extend the prohibitions of take to threatened wildlife but these general provisions may be altered as deemed by the Secretary to be necessary and advisable for the conservation of threatened species. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also states that Federal agencies must, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they

are authorized, funded, or carried out by a Federal agency.

A population designated as experimental is treated for the purposes of section 9 of the Act as threatened, regardless of the species' designation elsewhere in its range. Threatened designation allows us greater discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species. Although a special 4(d) rule can contain the prohibitions and exceptions necessary and appropriate to conserve that species, regulations issued under section 4(d) for NEPs are usually less restrictive with regard to human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat an NEP as a threatened species when the NEP is located within a National Wildlife Refuge or National Park, and section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act apply. When NEPs are located outside a National Wildlife Refuge or National Park, we treat the population as proposed for listing and only the conference provisions of section 7(a)(4) apply. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are advisory in nature and do not restrict agencies from authorizing, funding, or carrying out activities.

2. *Biological Information:* The lower French Broad and Holston Rivers historically supported a diverse fish, snail, and mussel fauna, possibly as many as 85 mussel species and subspecies, or about 65 percent of the mussel diversity once known from the entire Tennessee River system (Parmalee and Bogan, 1998; Steve Ahlstedt, U.S. Geological Survey (USGS), personal communication (pers. comm.) 2004). Of this once rich aquatic fauna, 7 mussel species are extinct, and 21 federally listed species (i.e, the 15 mussels, 1 aquatic snail, and 5 fishes listed above in the **SUMMARY** section) are extirpated from these river reaches. The only federally listed mussel still occurring in the proposed NEP area is the endangered pink mucket (Lampsilis abrupta), which still occurs in both the lower French Broad and lower Holston Rivers (Steve Ahlstedt, pers. comm. 2004). The pink mucket is not one of the 15 mussel species we are proposing to reintroduce under this NEP.

Although much of the mussel fauna and some of the snail and fish fauna were eliminated from these river reaches, considerable suitable physical habitat remains, and various Federal (primarily the Tennessee Valley Authority (TVA)) and State natural resources agencies, industries, and municipalities have worked together to improve the water quality below the dams. Fish populations are rebounding (including the appropriate fish host species for mussel glochidia) and snail populations are expanding in both rivers, and non-federally listed mussels and snails released into the lower French Broad River to test the area's suitability for mollusk transplants are doing well. Based on the results of recent studies and observations by knowledgeable scientists (P. Rakes and J. Shute, Conservation Fisheries, Inc. (CFI), pers. comm. 2004; Ed Scott and Charlie Saylor, TVA, pers. comm. 2004; James Layzer and Steve Ahlstedt, USGS, pers. comm. 2004), these river reaches now provide suitable habitat for reintroductions to occur.

Since the mid-1980s, CFI, a nonprofit organization, with support from us, the Tennessee Wildlife Resources Agency (TWRA), U.S. Forest Service, National Park Service, TVA, and Tennessee Aquarium, has successfully translocated, propagated, and reintroduced spotfin chubs, duskytail darters, yellowfin madtoms, and smoky madtoms into Abrams Creek, Great Smoky Mountains National Park, Blount County, Tennessee. These fish historically occupied Abrams Creek prior to an ichthyocide treatment in the 1950s. An NEP designation for Abrams Creek was not needed since the entire watershed occurs on National Park Service land; section 7 of the Act applies regardless of the NEP designation, and existing human activities and public use are consistent with protection and take restrictions needed for the reintroduced populations. Natural reproduction by all four species in Abrams Creek has been documented, but the spotfin chub appears to be the least successful in this capacity (Rakes and Shute 2004a, 2004b). We have also worked with CFI to translocate, propagate, and reintroduce these same four fish into an NEP established for a section of the Tellico River, Monroe County, Tennessee (67 FR 52420, August 12, 2002). Propagated fish of these four species were released into the Tellico River starting in 2003 and continuing in 2004. It is still too early to determine the success of these releases, but it is believed that the habitat and water quality is sufficient to ensure future success similar to the Abrams Creek reintroductions. CFI has also successfully placed yellowfin madtoms in an existing NEP on the North Fork Holston River, Washington County, Virginia. This site is separated from the proposed NEP on the lower Holston River by reservoirs, and the fish is not known from any of these reservoirs or intervening river sections. These reservoirs and river sections act as barriers to movement by the fish and assure that the North Fork Holston River population will remain geographically isolated and easily identifiable as a distinct population from the proposed Lower Holston River population.

3. *Listing Information, Distribution, and Recovery Goals/Objectives:* The Appalachian monkeyface (pearlymussel) (*Quadrula sparsa*) (Lea 1841) was listed as an endangered species on June 14, 1976 (41 FR 24062). We finalized a recovery plan for the species in July 1984 (Service 1984a). It historically occurred in the Tennessee River and three of its tributaries: the Clinch, Holston, and Powell Rivers (Service 1984a). We are unaware of historical records of the species in the French Broad River, but archeological records (Parmalee and Bogan 1998) of this species exist from the Little Pigeon River (a lower French Broad River tributary). The species may still survive in extremely low numbers in the Powell River in Tennessee and the Clinch River in Virginia (Parmalee and Bogan 1998). No downlisting (reclassification from endangered to threatened) criteria are provided in the recovery plan. The delisting objectives for the Appalachian monkeyface (Service 1984a) are to: (1) Restore the viability of the Clinch and Powell River populations; (2) reestablish or discover viable populations in one additional river; (3) ensure that the species is protected from present and foreseeable threats to the continued existence of any population; and (4) determine that there are noticeable improvements in coal-related problems and substrate quality in the Powell River and that no increase in coal-related sedimentation has occurred in the Clinch River.

The birdwing pearlymussel (*Conradilla caelata* = *Lemiox rimosus*) (Conrad 1834) was listed as an endangered species on June 14, 1976 (41 FR 24062). We finalized a recovery plan for the species in July 1984 (Service 1984b). We also established an NEP for the birdwing pearlymussel and 15 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66

FR 32250). Historical records exist for the species in 11 rivers in the Tennessee River system, and one record exists from an unknown location in the Cumberland River. Historically, the species occurred in the Tennessee River near the confluence of the French Broad and Holston Rivers, in the Holston River just upstream of its confluence with the French Broad River, and in the Nolichucky River (a French Broad River tributary) (Parmalee and Bogan 1998). Archeological records (Parmalee 1988) of this species exist from the Little Pigeon River, a lower French Broad River tributary. It now survives in the Clinch and Powell Rivers in Tennessee and Virginia and in the Duck and Elk Rivers in Tennessee (Service 1984b). No downlisting criteria are given in the recovery plan. The delisting objectives for the birdwing pearlymussel (Service 1984b) are to: (1) Restore the viability of the Clinch and Powell River populations; (2) reestablish or discover viable populations in two additional rivers; (3) ensure that the species is protected from present and foreseeable threats to the continued existence of any population; and (4) determine that noticeable improvements in coal-related problems and substrate quality have occurred in the Powell River and that no increase in coal-related sedimentation has occurred in the Clinch River.

The cracking pearlymussel (*Hemistena lata*) (Rafinesque 1820) was listed as an endangered species on September 28, 1989 (54 FR 39850). We finalized a recovery plan for the species in July 1991 (Service 1991a). We also established an NEP for the cracking pearlymussel and 15 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). This species historically occurred in the Ohio, Cumberland, and Tennessee River systems (Bogan and Parmalee 1983; Service 1991a). It is extirpated throughout much of its range. Historical records exist from the Tennessee River near the confluence of the French Broad and Holston Rivers (Parmalee and Bogan 1998). No historical records exist for the species in the French Broad system, but archaeological records (Parmalee 1988) of this species exist from the Little Pigeon River, a lower French Broad River tributary. It now survives at a few shoals in the Clinch and Powell Rivers in Tennessee and Virginia (Bogan and Parmalee 1983; Neves 1991). It possibly survives in the Green River in Kentucky and in the Tennessee River, below Pickwick Dam, in Tennessee (Service 1991a). The downlisting objectives for the cracking pearlymussel (Service 1991a) are to: (1) Reestablish/discover five viable populations; (2) ensure that one naturally produced year class exists within each population; (3) determine if recovery actions have been successful, as determined by an increase in population density and/or an increase in length of river inhabited; and (4) ensure there are no foreseeable threats to the continued existence of any population. The delisting objectives call for the reestablishment/discovery of eight viable populations and two naturally produced year classes within each population.

The Cumberland bean (pearlymussel) (*Villosa trabalis*) (Conrad 1834) was listed as an endangered species on June 14, 1976 (41 FR 24062). We finalized a recovery plan for the species in August 1984 (Service 1984c). We also established an NEP for the Cumberland bean and 15 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). This species historically occurred in 10 river systems in the Cumberland and Tennessee River basins (Service 1984c). No historical records exist in the French Broad River system, but archaeological records (Parmalee 1988) of this species exist from the Little Pigeon River, a lower French Broad River tributary. The Cumberland bean now survives only in the Hiwassee River in Tennessee; in Buck Creek, the Little South Fork of the Cumberland River, and the Rockcastle River system in Kentucky; and in the Big South Fork of the Cumberland River in Tennessee and Kentucky (Service 1984c). No downlisting criteria are given in the recovery plan. The delisting objectives for the Cumberland bean (Service 1984c) are to: (1) Restore the viability of populations in Buck Creek, the Rockcastle River, and the Little South Fork River in Kentucky; (2) reestablish or discover viable populations in two additional rivers; (3) ensure that the species is protected from present and foreseeable threats to the continued existence of any population; and (4) determine that noticeable improvements in coal-related problems and substrate quality have occurred in the upper Cumberland and Tennessee drainages and that no increase in coal-related sedimentation exists in streams containing this species.

The Cumberlandian combshell (*Epioblasma brevidens*) (Lea 1831) was listed as an endangered species on January 10, 1997 (62 FR 1647). Critical habitat was designated for this species on August 31, 2004 (69 FR 53136). We finalized a recovery plan for the species in May 2004 (Service 2004). We also established an NEP for the Cumberlandian combshell and 15 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). This mussel was historically distributed throughout much of the Cumberlandian Region of the Tennessee and Cumberland River drainages in Alabama, Kentucky, Tennessee, and Virginia (Gordon 1991). Currently, populations survive in a few river reaches in both river systems (Gordon 1991). It historically occurred in the lower Holston River and a French Broad River tributary (Nolichucky River) (Parmalee and Bogan 1998). Archaeological records (Parmalee 1988) of this species exist from the Little Pigeon River, a lower French Broad River tributary. The downlisting objectives for the Cumberlandian combshell (Service 2004) call for the reestablishment/discovery of six viable populations and one naturally reproducing year class within each viable population. The delisting objectives are to: (1) Reestablish or discover viable populations in nine distinct streams, including three in the Cumberland River system, four in the upper Tennessee River system, and two in the lower Tennessee River system; (2) ensure that the species is protected from present and foreseeable threats to the continued existence of any population; and (3) ensure two distinct naturally reproducing year classes exist within each of the viable populations.

The Cumberland monkeyface (pearlymussel) (*Quadrula intermedia*) (Conrad 1836) was listed as an endangered species on June 14, 1976 (41 FR 24062). We completed a recovery plan for the species in July 1984 (Service 1984d). We also established an NEP for the Cumberland monkeyface and 15 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). It historically occurred in 11 rivers in the Tennessee River system (Service 1984d). Based on collections from aboriginal shell middens, Parmalee and Bogan (1998) stated that the species once occurred at the confluence of the French Broad and Holston Rivers. The species now survives at a few shoals in the Powell River in Tennessee and Virginia and the Elk and Duck Rivers in Tennessee (Service 1984d). No downlisting criteria are given in the recovery plan. The delisting objectives for the Cumberland

monkeyface (Service 1984d) are to: (1) Restore the viability of the Powell and Elk River populations; (2) reestablish or discover viable populations in two additional rivers; (3) ensure that the species is protected from present and foreseeable threats to the continued existence of any population; and (4) determine that noticeable improvements in coal-related problems and substrate quality have occurred in the Powell River and that no increase in coal-related sedimentation occurs in the Clinch River.

The dromedary pearlymussel (*Dromus dromas*) (Lea 1845) was listed as an endangered species on June 14, 1976 (41 FR 24062). We completed a recovery plan for the species in July 1984 (Service 1984e). We also established an NEP for the dromedary pearlymussel and 15 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). It was historically widespread in the Cumberland and Tennessee River systems (Bogan and Parmalee 1983). Parmalee and Bogan (1998) reported that the species historically occurred in the lower Holston River in Knox and Grainger Counties. Archaeological records of this species exist from the Little Pigeon River, a lower French Broad River tributary (Parmalee 1988). It survives at a few shoals in the Powell and Clinch Rivers in Tennessee and Virginia and possibly in the Cumberland River in Tennessee (Service 1984e; Neves 1991). No downlisting criteria are given in the recovery plan. The delisting objectives for the dromedary pearlymussel (Service 1984e) are to: (1) Restore the viability of the Clinch and Powell River populations; (2) reestablish or discover viable populations in three additional rivers; (3) ensure that the species is protected from present and foreseeable threats to the continued existence of any population; and (4) determine that noticeable improvements in coal-related problems and substrate quality have occurred in the Powell River and that no increase in coal-related sedimentation occurs in the Clinch River.

The fanshell (*Cyprogenia stegaria*) (Rafinesque 1820) was listed as an endangered species on June 21, 1990 (55 FR 25591). We completed a recovery plan for the species in July 1991 (Service 1991b). It historically occurred in the Ohio River and many of its large tributaries in Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Kentucky, Alabama, Virginia, and Tennessee (Service 1991b). Ortmann (1918) reported it from the lower Holston River, and Parmalee and Bogan (1998) reported it from archaeological sites in the lower French Broad River and its tributary, the Little Pigeon River. Presently, the fanshell is believed to be reproducing in three rivers: The Green and Licking Rivers in Kentucky and the Clinch River in Tennessee and Virginia. Additionally, based on the collection of a few old specimens in the 1980s, small, apparently nonreproducing, populations may still persist in the Muskingum and Walhonding Rivers in Ohio, the Kanawha River in West Virginia, the Wabash River system in Illinois and Indiana, the Barren River and Tygarts Creek in Kentucky, and the Tennessee and Cumberland Rivers in Tennessee (Service 1991b). The downlisting objectives for the fanshell (Service 1991b) are to: (1) Protect existing populations, reestablish historical populations, and/or discover new populations so that at least nine distinct viable populations exist; (2) ensure that one naturally reproduced year class exists within each of the nine populations; and (3) ensure that studies of the species' biological and ecological requirements are complete and that any required recovery measures are beginning to succeed. The delisting objectives are to: (1) Protect existing populations, reestablish historical populations, and/or discover new populations so that at least 12 distinct viable populations exist; (2) ensure that two distinct naturally reproduced year classes exist within each viable population; (3) ensure that studies of the species' biological and ecological requirements are complete and that any required recovery measures are successful; (4) ensure that no foreseeable threats exist that would likely impact the species' survival over a significant portion of its range; and (5) ensure that noticeable improvements in water and substratum quality have occurred where habitat has been degraded.

The fine-rayed pigtoe (*Fusconaia cuneolus*) (Lea 1840) was listed as an endangered species on June 14, 1976 (41 FR 24062). We finalized a recovery plan for the species in September 1984 (Service 1984f). We also established an NEP for the fine-rayed pigtoe and 15 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). It historically occurred in 15 Tennessee River tributaries (including the lower Holston River) and is currently known from 7 rivers (including the Nolichucky River, a French Broad River tributary, above the backwaters of Douglas Reservoir) (Service 1984f; Parmalee and Bogan 1998). No downlisting criteria are given in the recovery plan. The delisting objectives for the fine-rayed pigtoe (Service 1984f) are to: (1) Restore viable populations to the Clinch, Powell, and North Fork Holston Rivers, to the Little River and Copper Creek (Clinch River tributaries), and to the Elk River (Tennessee), Sequatchie River (Tennessee), and the Paint Rock River (Alabama); (2) reestablish or discover one viable population in an additional river; (3) ensure that the species is protected from present and foreseeable threats to the continued existence of any population, and (4) determine that noticeable improvements in coal-related problems and substrate quality have occurred in the Powell River and that no increase in coal or other energy-related impacts occurs in the Clinch River.

The orangefoot pimpleback (pearlymussel) (*Plethobasus cooperianus*) (Lea 1834) was listed as an endangered species on June 14, 1976 (41 FR 24062). We completed a recovery plan for the species in August 1984 (Service 1984g). It historically occurred in the Ohio, Cumberland, and Tennessee River systems, including the lower French Broad and Holston Rivers (Parmalee and Bogan 1998). The species persists in the lower Ohio, Tennessee, and Cumberland Rivers (Service 1984g). In 2005, three adults were taken from the Ohio River and moved to the Kentucky Department of Fish and Wildlife Resources' propagation facility in Frankfort, Kentucky (Leroy Koch, USFWS, pers. comm. 2005). No downlisting criteria are given in this recovery plan. The delisting objectives for the orangefoot pimpleback (Service 1984g) are to ensure that: (1) One viable population exists in the Tennessee, Cumberland, and Ohio Rivers and these populations are dispersed throughout each river so that it would be unlikely for any one event to cause the total loss of any population; (2) viable populations are reestablished or discovered in two additional rivers; (3) three year classes, including one year class 10 years old or older, have naturally produced in each population; (4) no foreseeable threats exist that would interfere with the survival of any population; and (5) noticeable improvements in water and substratum quality have occurred where habitat has been degraded.

The oyster mussel (*Epioblasma capsaeformis*) (Lea 1834) was listed as an endangered species on January 10, 1997 (62 FR 1647). Critical habitat was designated for this species on August 31, 2004 (69 FR 53136). We finalized a

recovery plan for the species in May 2004 (Service 2004). We also established an NEP for the oyster mussel and 15 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). This mussel historically occurred throughout much of the Cumberlandian Region of the Tennessee and Cumberland River drainages (Gordon 1991). Small populations now survive in a few river reaches in both river systems (Gordon 1991). It was historically taken in the lower French Broad River near its confluence with the Holston, and a population still survives in the Nolichucky River, a French Broad River tributary, above Douglas Reservoir (Parmalee and Bogan 1998). Archaeological records (Parmalee 1988) of this species exist from the Little Pigeon River, a lower French Broad River tributary. The downlisting objectives for the oyster mussel (Service 2004) call for the reestablishment/discovery of six viable populations and one naturally reproducing year class within each viable population. The delisting objectives are to: (1) Reestablish or discover viable populations in nine distinct streams in the Cumberland River system, upper Tennessee River system, and/or lower Tennessee River system; (2) ensure that the species is protected from present and foreseeable threats to the continued existence of any population; and (3) ensure that two distinct naturally reproducing year classes exist within each of the viable populations.

The ring pink (mussel) (*Obovaria retusa*) (Lamark 1819) was listed as an endangered species on September 29, 1989 (54 FR 40109). We completed a recovery plan for the species in March 1991 (Service 1991c). It historically occurred in the Ohio River and many of its large tributaries in Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Kentucky, Alabama, and Tennessee (Service 1991c). Ortmann (1918) and Parmalee and Bogan (1998) reported it from the lower Holston River, and it has been taken from an archeological site on the lower French Broad River (Steve Ahlstedt, USGS, pers. comm. 1998). It likely still survives in very low numbers in the Green River in Kentucky, the Tennessee River in Tennessee and Kentucky, and the Cumberland River in Tennessee (Service 1991c; Parmalee and Bogan 1998). In 2004 and 2005, three juveniles and one adult male were found in the Green River (Leroy Koch, USFWS, pers. comm. 2005). The adult male was taken to the Kentucky Department of Fish and Wildlife Resources' (KDFWR) propagation facility in Frankfort, Kentucky. KDFWR plans to progagate this species to augment existing populations and develop new ones, such as the lower French Broad and lower Holston Rivers. The downlisting objectives for the ring pink (Service 1991c) are to: (1) Protect existing populations, reestablish historical populations, and/or discover new populations so that at least six distinct populations exist; and (2) ensure that studies of the species' biological and ecological requirements are complete and that any required recovery measures developed and implemented from these studies are beginning to succeed. The delisting objectives are to: (1) Protect existing populations, reestablish historical populations, and/or discover new populations so that at least nine distinct populations exist; (2) ensure that studies of the species' biological and ecological requirements are complete and that any required recovery measures developed and implemented from these studies are successful; (3) ensure that no foreseeable threats exist which would likely impact the species' survival over a significant portion of its range; and (4) ensure that noticeable improvements in water and substratum quality have occurred where habitat has been degraded.

The rough pigtoe (*Pleurobema plenum*) (Lea 1840) was listed as an endangered species on June 14, 1976 (41 FR 24062). We completed a recovery plan for the species in August 1984 (Service 1984h). This widespread species was historically known from 22 rivers in the Mississippi and Ohio River systems (Service 1984h), including the lower French Broad and Holston Rivers (Parmalee and Bogan 1998). Archaeological records (Parmalee 1988) of this species exist from the Little Pigeon River (a lower French Broad River tributary). It is currently known from the Green, Barren, Cumberland, Tennessee, and Clinch Rivers (Parmalee and Bogan 1998; Service 1984h). No downlisting criteria are given in this recovery plan. The delisting objectives for the rough pigtoe (Service 1984h) are to: (1) Protect existing populations, reestablish historical populations, and/or discover new populations so that at least six distinct populations exist; (2) ensure that these populations are dispersed throughout each river so it would be unlikely for any one event to cause the total loss of any population; (3) ensure that three year classes, including one year class 10 years old or older, have naturally produced in each population; (4) ensure that no foreseeable threats exist which would interfere with the survival of any population; and (5) ensure that noticeable improvements in water and substratum quality have occurred where habitat has been degraded.

The shiny pigtoe (*Fusconaia cor*) (Conrad 1834) was listed as an endangered species on June 14, 1976 (41 FR 24062). We completed a recovery plan for the species in July 1984 (Service 1984i). We also established an NEP for the shiny pigtoe and 15 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). It historically occurred in the Tennessee River and 10 of its tributaries. It is currently known from five river systems: the Clinch, Powell, North Fork Holston, Elk, and Paint Rock (Service 1984i). It was historically reported from the Tennessee River around the mouth of the Holston and French Broad Rivers, and it still occurs in the North Fork Holston River (a Holston River tributary) above Cherokee Reservoir (Service 1984i; Parmalee and Bogan 1998). No downlisting criteria are given in the recovery plan. The delisting objectives for the shiny pigtoe (Service 1984i) are to: (1) Restore viable populations to the Clinch, Elk, Powell, North Fork Holston, and Paint Rock Rivers and to Copper Creek; (2) reestablish or discover one viable population in one additional river or two river corridors; (3) ensure that the species is protected from present and foreseeable threats to the continued existence of any population; and (4) determine that noticeable improvements in coal-related problems and substrate quality have occurred in the Powell River and that no increase in coal or other energy-related impacts occurs in the Clinch River.

The white wartyback (pearlymussel) (*Plethobasus cicatricosus*) (Say 1829) was listed as an endangered species on June 14, 1976 (41 FR 24062). We completed a recovery plan for the species in September 1984 (Service 1984j). It occurred in the Ohio, Cumberland, and Tennessee River systems, including the lower Holston River (Parmalee and Bogan 1998). It still persists in the middle reaches of the Tennessee River (Service 1984j). No downlisting criteria are given in this recovery plan. The delisting objectives for the white wartyback (Service 1984j) are to ensure that: (1) A viable population exists in the Tennessee River; (2) viable populations are discovered or reestablished in two additional rivers; (3) these populations

are dispersed so it is unlikely for any one event to cause the total loss of the species from that river system; (4) three year classes, including one year class 10 years old or older, have been produced in each reestablished population; and (5) no foreseeable threats exist that would interfere with the survival of any population.

Anthony's riversnail (*Athearnia anthonyi*) (Budd in Redfield 1854) was listed as an endangered species on April 15, 1994 (59 FR 17994). We completed a recovery plan for the species in August 1997 (Service 1997). We also established an NEP for Anthony's riversnail and 16 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). This snail was historically found in the Tennessee River and the lower reaches of some of its tributaries from Muscle Shoals, Colbert and Lauderdale Counties, Alabama, upstream into the lower French Broad River (Bogan and Parmalee 1983; Service 1997). Currently, two populations are known: one in Limestone Creek in Limestone County, Alabama, and one in the Tennessee River and the lower portion of the Sequatchie River (a tributary to this reach of the Tennessee River) in Tennessee and Alabama (Service 1997). The downlisting objectives for Anthony's riversnail (Service 1997) are to ensure that: (1) Four viable populations exist; (2) two naturally produced year classes exist in all four populations; (3) biological studies on the species are completed and recovery measures are beginning to succeed; (4) noticeable improvements in water and substratum quality have occurred where habitat is degraded; (5) each population is protected from present and foreseeable threats; and (6) all four populations remain stable or increase over a 10-year period. The delisting objectives call for the establishment of six viable populations in addition to criteria (2) through (5) above. Additionally, all six populations should remain stable or increase over a 15-year period.

The duskytail darter (*Etheostoma percnurum*) (Jenkins 1994) was listed as an endangered species on April 27, 1993 (58 FR 25758). We completed a recovery plan for the species in March 1994 (Service 1994a). We also established an NEP for the duskytail darter and three other federally listed fishes for a section of the Tellico River in Monroe County, Tennessee, on August 12, 2002 (67 FR 52420). Although likely once more widespread in the upper Tennessee and middle Cumberland River systems, duskytail darters were historically known from six populations: Little River and Abrams Creek, Blount County, Tennessee; Citico Creek, Monroe County, Tennessee; Big South Fork Cumberland River, Scott County, Tennessee and McCreary County, Kentucky; Copper Creek and the Clinch River (this is one population), Scott County, Virginia; and the South Fork Holston River, Sullivan County, Virginia (Service 1994a). The South Fork Holston River population is apparently extirpated. The Little River, Copper Creek/Clinch River, and Big South Fork Cumberland River populations are extant but small and their viability is uncertain. The Citgo Creek population is healthy and viable. CFI has reintroduced the species into Abrams Creek in Tennessee, and there are indications that it is becoming reestablished (Rakes and Shute 2004a). No historical records exist for the fish in the lower French Broad or lower Holston Rivers. However, we and others believe it is likely that the species once inhabited these waters (Rakes and Shute 1999). Our conclusion is based on the following facts: (1) The species was once likely much more widespread in the Tennessee River system; (2) the French Broad and Holston Rivers are tributaries to the Tennessee River between existing and historical populations; (3) both river reaches appear to contain suitable habitat for the species; and (4) there were no physical barriers that would have prevented the species from inhabiting these waters. The downlisting objectives for the duskytail darter (Service 1994a) are to: (1) Protect and enhance existing populations and reestablish a population so at least three distinct viable duskytail darter populations exist; (2) ensure that studies of the species' biological and ecological requirements are complete and that any required recovery measures developed and implemented from these studies are beginning to succeed; and (3) ensure that no foreseeable threats exist that would likely threaten the continued existence of the three aforementioned viable populations. The delisting objectives are to: (1) Protect and enhance existing populations and reestablish populations so at least five distinct viable duskytail darter populations exist; (2) ensure that studies of the species' biological and ecological requirements are complete and that any required recovery measures developed and implemented from these studies are successful; and (3) ensure that no foreseeable threats exist that would likely impact the survival of the five aforementioned viable populations.

The pygmy madtom (*Noturus stanauli*) (Etnier and Jenkins 1980) was listed as an endangered species on April 27, 1993 (58 FR 25758). We completed a recovery plan for the species in September 1994 (Service 1994b). The pygmy madtom, which was likely more widespread in the Tennessee River system, has been found, and still exists, in only two short reaches of the Duck and Clinch Rivers in Tennessee. These river reaches are about 600 river miles apart. No historical records exist for the fish in the lower French Broad or lower Holston Rivers. However, we and others believe it is likely that it once inhabited these waters (Rakes and Shute 1999). Our conclusion is based on the same facts outlined above for the duskytail darter. The downlisting objectives for the pygmy madtom (Service 1994b) are to: (1) Protect and enhance existing populations so that at least two distinct viable populations exist; (2) ensure that studies of the species' biological and ecological requirements are complete and that any required recovery measures developed and implemented from these studies are beginning to succeed; and (3) ensure that no foreseeable threats exist that would likely impact the survival of the two aforementioned viable populations. No delisting criteria are given in this recovery plan.

The slender chub (*Erimystax cahni*) (Hubbs and Crowe 1956) was listed as a threatened species on September 9, 1977, with critical habitat and a special rule (42 FR 45526). The critical habitat map was corrected on September 22, 1977 (42 FR 47840). We completed a recovery plan for the species in July 1983 (Service 1983a). It was historically known from the Clinch, Powell, and Holston Rivers (Service 1983a). The Holston River site is now under the Cherokee Reservoir. The species has not been found recently in the Powell River, and its continued existence in the Clinch River is represented by only one specimen taken in recent years (P. Rakes, pers. comm. 2002). However, collections made over the years have generally shown that specimens can often be taken only sporadically and in very small numbers. There has not been a concerted effort to survey for the slender chub in recent years. We believe that once a slender chub survey is funded, enough fish will exist to start a propagation program. Although the species has never been collected from the lower French Broad system, we and others believe the species once likely inhabited these waters (Rakes and Shute 1999). Our conclusion is based on the same facts outlined above for the

duskytail darter. The delisting objectives for the slender chub (Service 1983a) are to: (1) Protect and enhance existing populations and/or reestablish populations so that viable populations exist in the Clinch and Powell Rivers; (2) ensure, through reintroductions and/or the discovery of new populations, that one other viable population exists; (3) ensure that noticeable improvements in coal-related problems and substrate quality have occurred in the Powell River and that there is no increase in coal-related sedimentation in the Clinch River; and (4) protect the species from threats that may adversely affect the survival of the populations.

The spotfin chub (*Erimonax monachus*) (Cope 1868) was listed as a threatened species on September 9, 1977, with critical habitat and a special rule (42 FR 45526). The critical habitat map was corrected on September 22, 1977 (42 FR 47840). We completed a recovery plan for the species in November 1983 (Service 1983b). Two NEPs have been established for the spotfin chub. The first was established for the spotfin chub and three other federally listed fishes for a section of the Tellico River in Monroe County, Tennessee, on August 12, 2002 (67 FR 52420). The second was established for the spotfin chub and the boulder darter (*Etheostoma wapiti*) for a section of Shoal Creek (a tributary to the Tennessee River), Lauderdale County, Alabama, and Lawrence County, Tennessee on April 8, 2005 (70 FR 17916). This once widespread species was historically known from 24 streams in the upper and middle Tennessee River system. Currently, it is extant in only four rivers/river systems (Service 1983b; P. Shute, TVA, pers. comm. 2004). CFI has reintroduced the species into Abrams Creek in Tennessee, and there are indications that it has become reestablished (Pat Rakes, CFI, pers. comm. 2004). Historical records exist for the species in the upper French Broad and upper Holston River systems, and the species still exists in the Holston River system above the Cherokee Reservoir (Service 1983b). We and our partners believe the species once likely inhabited the waters of the lower French Broad and lower Holston Rivers. Our conclusion is based on the same facts outlined above for the duskytail darter. The delisting objectives for the spotfin chub (Service 1983b) are to: (1) Protect and enhance existing populations and/or reestablish populations so that viable populations exist in the Buffalo River system, upper Little Tennessee River, Emory River system, and lower North Fork Holston River; (2) ensure, through reintroduction and/or the discovery of two new populations, that viable populations exist in two other rivers; and (3) ensure that no present or foreseeable threats exist that would likely impact the survival of any populations.

The yellowfin madtom (*Noturus flavipinnis*) (Taylor 1969) was listed as a threatened species on September 9, 1977, with critical habitat and a special rule (42 FR 45526). The critical habitat map was corrected on September 22, 1977 (42 FR 47840). We completed a recovery plan for the species in June 1983 (Service 1983c). Two NEPs have been established for the yellowfin madtom. The first NEP was established for a section of the North Fork Holston River in Washington County, Virginia, on August 4, 1988 (53 FR 29335). The second NEP was established for the yellowfin madtom and three other federally listed fishes for a section of the Tellico River in Monroe County, Tennessee, on August 12, 2002 (67 FR 52420). It was historically known from only seven streams (Service 1983c). Three small extant populations still exist, one each in Citco Creek, Copper Creek and the Powell River. The species was reintroduced into Abrams Creek, and the population is becoming reestablished (Pat Rakes, CFI, pers. comm. 2004). Reintroductions into the NEP section of the Tellico River are ongoing, and early results are promising. Although there are no historical records from the lower Holston River or French Broad River system, we and others believe that the species once likely inhabited these river reaches (Rakes and Shute 1999). Our conclusion is based on the same facts outlined above for the duskytail darter. The delisting objectives for the yellowfin madtom (Service 1983c) are to: (1) Protect and enhance existing populations and/or reestablish populations so that viable populations exist in Copper Creek, Citico Creek, and the Powell River; (2) reestablish or discover viable populations in two additional rivers; (3) ensure that noticeable improvements in coal-related problems and substrate quality have occurred in the Powell River; and (4) ensure that each population is protected from present and foreseeable threats.

The recovery objectives in the recovery plans for all of the 21 species generally agree that, to reach recovery: (1) Existing populations should be restored to viable levels; (2) the species should be protected from threats to their continued existence; and (3) viable populations should be reestablished in historical habitat. The number of secure, viable populations needed to achieve recovery (existing and restored) varies from species to species, depending on the extent of the species' probable former range (i.e., historically widespread species require a greater number of populations for recovery than species with historically more restricted distributions). However, the reestablishment of historical populations is a critical component in the recovery of all these species.

4. *Reintroduction Site:* At the request of the TVA and the TWRA, biologists from the Service, TVA, USGS, TWRA, and Alabama Game and Fish Division evaluated Tennessee River basin rivers for mollusk recovery potential. The biologists rated the French Broad River downstream of Douglas Dam as having a high potential for mollusk recovery and the Holston River below Cherokee Dam as having a medium potential primarily due to water quality and flow improvements to the tailwaters. In letters dated May 28, 1998, and June 29, 1998, the TWRA's Executive Director recommended that we consider reintroducing endangered mussels into the French Broad River below Douglas Dam and the Holston River below Cherokee Dam under NEP status. In an October 30, 1998, letter, the TWRA provided us with a list of mussel species (compiled by Tennessee mussel experts) that historically or probably occurred in these river reaches. In a December 9, 1998, letter to us, the TVA (the managers of the dams above the proposed NEP for hydroelectric power, flood control, and recreation) expressed support for mussel recovery efforts in the Tennessee River valley streams and tailwaters.

Based on successes in Abrams Creek and the North Fork Holston River (Washington County, Virginia) and CFI's intimate knowledge of nongame fishes and their habitat needs, we contracted with them to survey the lower French Broad River and determine if we could expand our listed fish recovery efforts into this major Tennessee River tributary. CFI determined that the lower French Broad River contains potential suitable habitat for the reintroduction of the duskytail darter, pygmy madtom, spotfin chub, and yellowfin madtom (Rakes and Shute 1999). Additionally, Rakes and Shute (CFI, pers. comm. 2004) stated that the lower Holston River below Cherokee Dam could potentially support a reintroduced population of these fishes and that both river reaches contain potential habitat for slender chub reintroductions.

In a May 17, 1999, letter to us, the TWRA's Executive Director stated that he concurred with the conclusions in the report prepared by Rakes and Shute

(1999). He recommended that we consider designating NEP status in the lower French Broad and Holston Rivers for the eventual reintroduction of these five fish species.

We previously established NEPs for the birdwing pearlymussel, cracking pearlymussel, Cumberland bean, Cumberlandian combshell, Cumberland monkeyface, fine-rayed pigtoe, oyster mussel, shiny pigtoe, and Anthony's riversnail in the free-flowing reach of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama (66 FR 32250). In October 2003, 80 each of birdwing pearlymussels, oyster mussels, and dromedary mussels (dromedary mussels are not part of the proposed Lower French Broad/Lower Holston NEP) were placed in the NEP area below Wilson Dam. The status of these reintroduced mussels was checked during the summer of 2004. While it is too early to determine whether or not the reintroduced individuals will become an established population, a significant number of them have survived thus far, indicating that the reintroduction has a good chance of being successful. A total of 2,370 Anthony's riversnails have also been placed in the NEP area and will be monitored this spring. Establishment of viable populations of these species in both the Tennessee River below the Wilson Dam under the existing regulation and in the lower French Broad and lower Holston Rivers, if this proposed regulation is finalized, is an objective in the recovery of these species. However, it will take several years of monitoring to fully evaluate if populations of these species (and the other species) have become established and remain viable in these historic river reaches.

Based on the presence of suitable physical habitat, the positive response of endemic aquatic species to habitat improvements, improved quality of the water being released from the dams, the recommendations of the TWRA's Executive Director, and the evaluation of biologists familiar with the lower French Broad and Holston Rivers, we believe the French Broad River (downstream of Douglas Dam) and the Holston River (downstream of Cherokee Dam) are suitable for the reintroduction of these 21 species with NEP status.

We propose to reintroduce these 21 species into historical habitat of the free-flowing reach of the French Broad River from RM 22.3 (35.7 km) (approximately 10 RM (16 km) below Douglas Dam), Knox and Sevier Counties, Tennessee, to the backwaters of Fort Loudoun Reservoir, upstream of, but near the confluence with the Holston River, Knox County, Tennessee, and in the free-flowing reach of the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, from above the backwaters of Fort Loudoun Reservoir just upstream of its confluence with the French Broad River, upstream to RM 42.3 (67.7 km) (approximately 10 RM (16 km) below Cherokee Dam). These river reaches contain the most suitable habitat for the reintroductions. None of these 21 species are known to currently exist in these river reaches, in tributaries to these reaches, or have free access to these reaches.

5. *Reintroduction Procedures:* The dates for these proposed reintroductions, the actual number of individuals to be released, and the specific release sites cannot be determined at this time.

Mussel propagation and juvenile rearing technology are currently being refined, and juvenile mussels of some species could be available for reintroduction soon after a NEP rule is finalized. Individual endangered mussels that would be used for these proposed reintroductions will be primarily artificially propagated juveniles. However, it is possible that wild adult stock of some mussels could also be released into the area. The parent stock for mussel propagation will come from existing wild populations in the Tennessee, Cumberland, and Ohio Rivers, and in most cases, adults will be returned to the capture site. Under some circumstances, adult endangered mussels could be permanently relocated (i.e., kept in captivity for their entire life) to propagation facilities or moved directly into the NEP area after being used for propagation purposes. A permit under section 10 of the ESA would be needed for handling and maintaining threatened and endangered species in captivity.

Anthony's riversnails will be collected for the proposed reintroductions from a large naturally reproducing population located in the Tennessee River, Jackson County, Alabama, and Marion County, Tennessee, and relocated directly into the NEP.

Individual fishes that would be used for these proposed reintroductions will be primarily artificially propagated juveniles. However, it is possible that wild adult stock of some fishes could also be released into the NEP area. Propagation and juvenile rearing technology is available for the spotfin chub, slender chub, and duskytail darter. Limited numbers of yellowfin madtom juveniles can be reared using eggs and larvae taken from the wild, and some pygmy madtoms can be propagated. However, madtom propagation technology, which is needed to produce large numbers of juvenile madtoms, needs further development. The parental stock for fish propagation and reintroductions will come from wild populations. Duskytail darters will likely come from Little River in Tennessee. Yellowfin madtoms will likely come from the Powell River in Tennessee. Spotfin chubs will likely come from upstream in the Holston River system above Cherokee Dam in Tennessee. Pygmy madtoms will come from the Clinch River in Tennessee. Slender chubs will come from the upper Tennessee River basin in Tennessee and Virginia. In some cases, the parents will be returned to the wild population from which they were taken. However, in most cases, adult fishes will be permanently relocated to propagation facilities.

To help ensure the genetic integrity of the reintroduced species and to match as closely as possible the genetic composition of the historical populations, we will observe the following guidelines: (1) To reduce homozygosity, at least 10 gravid female mussels, 10 fishes, and 10 snails, whenever possible, will be used as parental stock over the life of the reintroduction project (if this number cannot be obtained for very rare species, we will use whatever number is available); and (2) to match as closely as possible the genetic composition of the species that once existed in the lower French Broad and Holston Rivers, the adults and brood stock for the proposed reintroductions will be collected using the following criteria (in order of decreasing importance): (a) Donor animals will be collected from populations in adjacent stream/tributary systems in the same physiographic province, (b) donor animals will be collected from populations in adjacent stream/tributary systems in an adjacent physiographic province, and (c) donor animals will be collected from the only population with a sufficient number of adults to produce progeny.

The permanent removal of adults (mollusks and fishes) from the wild for their use in proposed reintroduction efforts is allowable when the following conditions exist: (1) Sufficient numbers of adults are available within a donor population to sustain the loss without jeopardizing the species; (2) the species must be removed from an area because of an imminent threat that is likely to eliminate the population or specific individuals present in an area; or (3) the population is not reproducing (see 50 CFR 17.22). For these 21 species, it is

most likely that adults will be permanently removed because of the first condition. However, fewer adults will be needed for propagation than for actually moving individuals from a donor population to the NEP. An enhancement of propagation or survival permit under section 10(a)(1)(A) of the Act must be issued before any take occurs. We will coordinate these proposed actions with the Service's appropriate lead regions and State natural resources agencies.

6. *Status of Reintroduced Populations:* Previous translocations, propagations, and reintroductions of many of these species have not affected their wild populations. The use of artificially propagated juveniles will further reduce the potential effects on wild populations since fewer adults would be needed from the donor population. If any of the reintroduced populations become established and are subsequently lost, the likelihood of the species' survival in the wild would not be appreciably reduced because either the reintroduced individuals will be from propagated stock or the donor population will be of sufficient size to handle movement of adults. Therefore, we have determined that the reintroduced populations of these 21 species in the lower French Broad and Holston Rivers are not essential to the continued existence of these species. We will ensure, through our section 10 permit authority and the section 7 consultation process, that the use of animals from any donor population for these proposed reintroductions is not likely to jeopardize the continued existence of the species.

7. *Location of Reintroduced Population:* The NEP area, which encompasses all the sites for the proposed reintroductions, will extend from the base of Douglas Dam down the French Broad River, Knox and Sevier Counties, Tennessee, to its confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam; and the lower 5 RM (8 km) of all tributaries that enter these river reaches.

Section 10(j) of the Act requires that an experimental population be geographically separate from other wild populations of the same species. The proposed NEP area is totally isolated from existing populations of these species by large reservoirs, and none of these species are known to occur in, or are likely to move through, large reservoir habitat. Therefore, these reservoirs will act as barriers to the expansion of these species into other sections of the Tennessee River basin and will ensure that the proposed NEPs remain geographically isolated and easily distinguishable from existing wild populations. Based on the habitat requirements of these mollusks and fishes, we do not expect them to become established outside the proposed NEP area. However, if any of the reintroduced species move outside the designated NEP area, then the animals would be considered to have come from the NEP area. In that case, we may propose to amend this rule to enlarge the boundaries of the NEP area to include the entire range of the expanded population(s).

The designated NEP area for the duskytail darter, spotfin chub, and yellowfin madtom in the Tellico River (67 FR 52420) does not overlap or interfere with this proposed NEP area for the lower French Broad and lower Holston Rivers in Tennessee because they are geographically separated river reaches. The designated NEP for the spotfin chub in Shoal Creek, Tennessee, (67 FR 17916) does not overlap or interfere with this proposed NEP area for the lower French Broad and lower Holston rivers in Tennessee because they are geographically separated river reaches. The designated NEP for the spotfin chub in Shoal Creek, Tennessee, (67 FR 17916) does not overlap or interfere with this proposed NEP area for the lower French Broad and lower Holston rivers in Tennessee because they are geographically separated river reaches.

Similarly, the NEP for the yellowfin madtom in the North Fork Holston River (53 FR 29335) is separated by reservoirs and long stretches of river that do not contain yellowfin madtoms or their habitat and acts as effective barriers between madtom populations in the North Fork Holston River and the proposed NEP in the lower Holston River.

The designated NEP area for the birdwing pearlymussel, cracking pearlymussel, Cumberland bean, Cumberlandian combshell, Cumberland monkeyface, dromedary pearlymussel, fine-rayed pigtoe, oyster mussel, shiny pigtoe, tubercled blossom, and Anthony's riversnail in the Tennessee River below the Wilson Dam (66 FR 32250) in Alabama does not overlap or interfere with this proposed NEP area for the lower French Broad and lower Holston Rivers in Tennessee because they are geographically separated river reaches with several reservoirs between them.

Critical habitat has been designed for Cumberlandian combshell (69 FR 53136), oyster mussel (69 FR 53136), slender chub (42 FR 45526), spotfin chub (42 FR 45526), and yellowfin madtom (42 FR 45526); however, none of these designations include the proposed NEP area. Critical habitat has not been designated for the 16 other species identified in this rule. Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we have already established, by regulation, a nonessential experimental population.

8. *Management:* The aquatic resources in the proposed reintroduction area are managed by the TWRA and the TVA. Multiple-use management of these waters will not change as a result of the NEP designation. The NEP designation will not require the TWRA or the TVA to specifically manage for reintroduced species in the NEP area. Private landowners within the NEP area will still be allowed to continue all legal agricultural and recreational activities. Because of the substantial regulatory relief provided by NEP designations, we do not believe these proposed reintroductions will conflict with existing human activities or hinder public use of the NEP area.

The Service, State, TVA, and CFI staff will all be involved in the management of the reintroductions. They will closely coordinate on reintroductions, monitoring, coordination with landowners and land managers, and public awareness, among other tasks necessary to ensure successful reintroductions of these species.

(a) *Mortality:* The regulations implementing the Act define "incidental take" as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity (50 CFR 17.3) such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. A person may take a listed species within the experimental population area provided that the take is unintentional and is not due to negligent conduct. However, when we have evidence of knowing (i.e., intentional) take of the listed species within the NEP, we will refer matters to the authorities for appropriate action. We expect levels of incidental take to be low since the reintroduction is compatible with existing human use activities and practices for the area.

(b) *Special handling:* Service employees and authorized agents acting on their behalf may handle these 21 species for scientific purposes; to relocate them to avoid conflict with

human activities; for recovery purposes; to relocate them to other reintroduction sites; to aid sick or injured individuals; and to salvage dead individuals.

(c) *Coordination with landowners and land managers:* The Service and cooperators identified issues and concerns associated with the proposed reintroduction of these 21 species before preparing this proposed rule. The proposed reintroduction also has been discussed with potentially affected State agencies, businesses, and landowners within the proposed release area. Affected State agencies, businesses, landowners, and land managers, including the TWRA and TVA, have indicated support for the reintroduction if the species released in the proposed experimental population area are established as an NEP and if aquatic resource activities in the proposed experimental population area are not constrained.

(d) *Potential for conflict with human activities:* We do not believe these proposed reintroductions will conflict with existing or proposed human activities or hinder public use of the NEP area within the French Broad and Holston Rivers. Experimental population special rules contain all the prohibitions and exceptions regarding the taking of individual animals. These special rules are compatible with routine human activities in the reintroduction area.

(e) *Monitoring:* After the initial stocking of these species, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by contracting with the appropriate species experts. Annual reports will be produced detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(f) *Public awareness and cooperation:* On January 12, 1999, we mailed letters to 47 potentially affected Congressional offices, Federal and State agencies, local governments, and interested parties to notify them that we were considering proposing NEP status in the lower French Broad and Holston Rivers for the 16 mollusks (at the time of this letter, we had not yet decided to propose the fish reintroductions). We received one written response. The Tennessee Department of Environment and Conservation supported the reintroduction of the mollusks under NEP status. It stated that NEP status represents an appropriate step toward promoting the species' recovery while protecting the rights and privileges of Tennessee's citizens.

We did not circulate a similar notice regarding the potential of proposing NEP status for the five fishes. The report on the area's suitability for fish reintroductions (Rakes and Shute 1999) was not available when the mollusk notice was circulated. However, since we received only one comment on the mollusk notice, the TWRA and the TVA both support the mollusk and fish reintroductions under NEP status, and the inclusion of these fishes in the proposal would not result in any additional impact to public or government agency use of the river, we did not believe it was necessary to circulate a separate notice regarding these fishes. In any case, through this proposal, the public can comment on the proposed NEP designation for these fishes.

Through this notice, we are informing the general public of the importance of this reintroduction project in the overall recovery of these 21 species. The designation of the NEP for these reaches of the French Broad and Holston Rivers would provide greater flexibility in the management of these reintroduced species. The NEP designation is necessary to secure needed cooperation of the States, Tribes, landowners, agencies, and other interests in the affected area.

Finding

Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), the Service finds that releasing the Appalachian monkeyface, birdwing pearlymussel, cracking pearlymussel, Cumberland bean, Cumberlandian combshell, Cumberland monkeyface, dromedary pearlymussel, fanshell, fine-rayed pigtoe, orangefoot pimpleback, oyster mussel, ring pink, rough pigtoe, shiny pigtoe, white wartyback, Anthony's riversnail, duskytail darter, pygmy madtom, slender chub, spotfin chub, and yellowfin madtom into the lower French Broad and lower Holston Rivers Experimental Population Area under a Nonessential Experimental Population designation will further the conservation of these species.

Other Changes to the Regulations

In addition, we are making a minor technical correction to the existing regulation regarding the birdwing pearlymussel. The birdwing pearly mussel was listed on June 14, 1976 (41 FR 24062), under the scientific name of *Conradilla caelata*. The current list of endangered and threatened species at 50 CFR 17.11(h) uses the scientific name of Conradilla caelata for the birdwing pearlymussel. In the latest edition of the *Common and Scientific Names of Aquatic Invertebrates from the United States and Canada* published by the American Fisheries Society, the scientific name has been changed to *Lemiox rimosus* (Turgeon *et al.* 1998). This name change has occurred in a peer-reviewed publication and has acceptance in the scientific community. Therefore, we are correcting the text for the current list of endangered and species at 50 CFR 17.11(h) and the existing experimental population in the free-flowing reach of the Tennessee River below Wilson Dam in Alabama at 50 CFR 17.85 by changing the scientific name for the birdwing pearlymussel from *Conradilla caelata* to *Lemiox rimosus* (see Regulation Promulgation section below).

We are also making editorial changes to 50 CFR 17.84(m) and 17.84(o). These paragraphs currently provide NEP information for multiple species; § 17.84(m) sets forth the Tellico River NEP area for spotfin chub, duskytail darter, and smoky madtom, while § 17.84(o) sets forth the Shoal Creek NEP area for spotfin chub and boulder darter. In this proposal, we reformat this information into species-specific paragraphs, so that each fish species has its own NEP paragraph. These changes are nonsubstantive; no existing NEP areas would change as a result of the reformatting. The changes are simply for clarity and consistency, and to make information easier for the public to find.

Finally, we are also making editorial changes to replace the introductory text at 50 CFR 17.85(a) with a table for clarity. Again, this is a nonsubstantive change; no existing NEP areas would change as a result of the reformatting.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning this proposed rule. If you wish to comment on this proposed rule, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). All submissions received must include the agency name and RIN for this rulemaking. Please include your name

and return address in the body of your message.

Comments submitted electronically should be in the body of the e-mail message itself or attached as a text file (ASCII), and should not use special characters or encryption. Please also include "Attn: French Broad/Holston Rivers NEP," your full name, and your return address in your e-mail message. In the event that our Internet connection is not functional, please contact the Service by the alternative methods mentioned in the **ADDRESSES** section. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Tennessee Field Office (see **ADDRESSES**). Copies of this proposed rule are available on the Internet at *http://cookeville.fws.gov*.

Peer Review

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our NEP designation is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed NEP.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

You may request a public hearing on this proposal. Requests must be made in writing at least 15 days prior to the close of the public comment period and sent to the Field Supervisor for the U.S. Fish and Wildlife Service in Tennessee (see **ADDRESSES** and **DATES** sections).

Required Determinations

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, this proposed rule to designate NEP status for and reintroduce 15 endangered mussels, 1 endangered aquatic snail, 2 endangered fishes, and 3 threatened fishes in the free-flowing reach of the French Broad River below Douglas Dam to its confluence with the Holston River, Knox County, Tennessee, and in the free-flowing reach of the Holston River below Cherokee Dam to its confluence with the French Broad River is not a significant regulatory action subject to Office of Management and Budget review. This rule will not have an annual economic effect of $100 million or more on the economy and will not have an adverse effect on any economic sector, productivity, competition, jobs, the environment, or other units of government. The area affected by this rule consists of a very limited and discrete geographic segment of the lower French Broad River (about 32 RM (51 km)) and the lower Holston River (about 52 RM (83 km)) in eastern Tennessee. Therefore, a cost-benefit and economic analysis will not be required.

We do not expect this rule to have significant impacts to existing human activities (e.g., hydroelectric power generation, flood control, agricultural activities, fishing, boating, wading, swimming, trapping) in the watershed. These rivers already have populations of the federally listed threatened snail darter (*Percina tanasi*) and endangered pink mucket mussel (*Lampsilis abrupta*), both of which require Federal agencies to consult with us under section 7 of the Act if their activities may are adversely affect these species. The reintroduction of these federally listed species, which will be accomplished under NEP status with its associated regulatory relief, is not expected to impact Federal agency actions. Because of the substantial regulatory relief, we do not believe the proposed reintroduction of these species will conflict with existing or proposed human activities or hinder public use of the French Broad or Holston Rivers.

This rule will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. Federal agencies most interested in this rulemaking are primarily the Environmental Protection Agency and TVA.

This rule will not materially affect entitlements, grants, user fees, or loan programs, or the rights and obligations of their recipients. Because there are no expected impacts or restrictions to existing human uses of the French Broad and Holston Rivers as a result of this rule, no entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients are expected to occur.

This rule does not raise novel legal or policy issues. Since 1984, we have promulgated section 10(j) rules for many other listed species in various localities. Such rules are designed to reduce the regulatory burden that would otherwise exist when reintroducing listed species to the wild.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Although most of the identified entities are small businesses engaged in activities along the affected reaches of these rivers, this rulemaking is not expected to have any significant impact on private activities in the affected area. The designation of a NEP in this rule will significantly reduce the regulatory requirements regarding the reintroduction of these species, will not create inconsistencies with other agencies' actions, and will not conflict with existing or proposed human activity, or Federal, State, or public use of the land or aquatic resources.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more. It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. The intent of this special rule is to facilitate and continue the existing commercial activity while providing for the conservation of

species through reintroduction into suitable habitat.

Unfunded Mandates Reform Act

The proposed NEP designation will not place any additional requirements on any city, county, or other local municipality. The TWRA, which manages the fishes and mollusks in the French Broad and Holston Rivers, requested that we consider these proposed reintroductions under a NEP designation. However, they will not be required to specifically manage for any reintroduced species. Accordingly, this proposed rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required since this rulemaking does not require any action to be taken by local or State government or private entities. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities (i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act).

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. When reintroduced populations of federally listed species are designated as NEPs, the Act's regulatory requirements regarding the reintroduced listed species within the NEP are significantly reduced. Section 10(j) of the Act can provide regulatory relief with regard to the taking of reintroduced species within an NEP area. For example, this rule allows for the taking of these reintroduced mollusks and fishes when such take is incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations. Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of these species will conflict with existing or proposed human activities or hinder public use of the French Broad and Holston River systems.

A takings implication assessment is not required because this rule (1) will not effectively compel a property owner to suffer a physical invasion of property and (2) will not deny all economically beneficial or productive use of the land or aquatic resources. This rule will substantially advance a legitimate government interest (conservation and recovery of listed freshwater mussel, snail, and fish species) and will not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have significant federalism effects to warrant the preparation of a federalism assessment. This rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have coordinated extensively with the State of Tennessee on the proposed reintroduction of these species into the French Broad and Holston River systems. The State wildlife agency in Tennessee (TWRA) requested that we undertake this rulemaking in order to assist the State in the restoration and recovery of its native aquatic fauna. Achieving the recovery goals for these species will contribute to their eventual delisting and their return to State management. No intrusion on State policy or administration is expected; roles and responsibilities of Federal or State governments will not change; and fiscal capacity will not be substantially directly affected. This special rule operates to maintain the existing relationship between the States and the Federal Government and is being undertaken at the request of a State agency (TWRA). We have cooperated with the TWRA in the preparation of this proposed rule. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a federalism assessment pursuant to the provisions of Executive Order 13132.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and that it meets the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This proposed rule does not include any new collections of information that require approval by OMB under the Paperwork Reduction Act.

National Environmental Policy Act (NEPA)

We have determined that the issuance of this proposed rule is categorically excluded from National Environmental Policy Act requirements (516 DM 6, Appendix 1.4 B(6)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 229511), Executive Order 13175, and the Department of the Interior Manual Chapter 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Clarity of This Regulation (E.O. 12866)

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand?

Send your comments concerning how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior,

Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail your comments to: *Exsec@ios.doi.gov.*

References Cited

A complete list of all references cited herein is available, upon request, from the Cookeville, TN Field Office (see **ADDRESSES** section).

Author

The principal author of this proposed rule is Timothy Merritt, Cookeville Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, as follows:

a. Under the heading "FISHES," by revising the entries for "Chub, slender"; "Chub, spotfin"; "Darter, duskytail"; "Madtom, pygmy"; "Madtom, smoky"; and "Madtom, yellowfin" to read as set forth below;

b. Under the heading "CLAMS," by revising the entries for "Bean, Cumberland (pearlymussel)"; "Combshell, Cumberlandian"; "Fanshell"; "Monkeyface, Appalachian (pearlymussel)"; "Monkeyface, Cumberland (pearlymussel)"; "Mussel, oyster"; "Pearlymussel, birdwing"; "Pearlymussel, cracking"; "Pearlymussel, dromedary"; "Pigtoe, fine-rayed"; "Pigtoe, rough"; "Pigtoe, shiny"; "Pimpleback, orangefoot (pearlymussel)"; "Pink, ring (mussel)"; and "Wartyback, white (pearlymussel)" to read as set forth below; and

c. Under the heading "SNAILS," by revising the entry for "Riversnail, Anthony's" to read as set forth below.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Chub, slender	*Erimystax cahni*	U.S.A. (TN, VA)	Entire, except where listed as an experimental population.	T	28	17.95(e)	17.44(c)
Do	...do	...do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN		NA	17.84(r)
*	*	*	*	*	*		*
Chub, spotfin (=turquoise shiner).	*Erimonax monachus*	U.S.A. (AL, GA, NC, TN, VA).	Entire, except where listed as an experimental population.	T	28	17.95(e)	17.44(c)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	....do	....do	U.S.A. (TN—The Tellico River from the backwaters of theTellico Reservoir (about Tellico River mile 19 (30.4 km)) upstream to Tellico River mile 33 (52.8 km) in Monroe County.).	XN	732	NA	17.84(m)
Do	....do	....do	U.S.A. (AL, TN—Shoal Creek, from Shoal Creek mile 41.7 (66.7 km) at the mouth of Long Branch, Lawrence County, TN, downstream to the backwaters of Wilson Reservoir (Shoal Creekmile 14 (22 km)) at Goose Shoals, Lauderdale County, AL, including the lower 5 miles (8 km) of all tributaries that enter this reach.).	XN	747	NA	17.84(m)
Do	....do	....do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN	....	NA	17.84(m)
*	*	*	*	*	*	*	*
Darter, duskytail	*Etheostoma percnurum.*	U.S.A. (TN, VA)	Entire, except where listed as an experimental population.	E	502	NA	NA
Do	....do	....do	U.S.A. (TN—The Tellico River from the backwaters of the Tellico Reservoir (about Tellico River mile 19 (30.4 km)) upstream to Tellico River mile 33 (52.8 km) in Monroe County.).	XN	732	NA	17.84(p)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	...do	...do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN		NA	17.84(p)
*	*	*	*	*	*	*	*
Madtom, pygmy	*Noturus stanauli*	U.S.A. (TN)	Entire, except where listed as an experimental population.	E	502	NA	NA
Do	...do	...do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN		NA	17.84(s)
*	*	*	*	*	*	*	*
Madtom, smoky	*Noturus baileyi*	U.S.A. (TN)	Entire, except where listed as an experimental population.	E	163	17.95(e)	NA
Do	...do	...do	U.S.A. (TN—TheTellico River from the backwaters of the Tellico Reservoir (about Tellico River mile 19 (30.4 km)) upstream to Tellico River mile 33 (52.8 km) in Monroe County.).	XN	732	NA	17.84(q)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Madtom, yellowfin	*Noturus flavipinnis* ..	U.S.A. (TN, VA)	Entire, except where listed as an experimental population.	T	28	17.95(e)	17.44(c)
Do	.....do	.....do	U.S.A. (TN, VA—N. Fork Holston River Watershed, VA, TN; S. Fork Holston River, upstream to Ft. Patrick Henry Dam, TN; Holston River, downstream to John Sevier Detention Lake Dam, TN; and all tributaries thereto.).	XN	317	NA	17.84(e)
Do	.....do	.....do	U.S.A. (TN—The Tellico River from the backwaters of the Tellico Reservoir (about Tellico River mile 19 (30.4 km)) upstream to Tellico River mile 33 (52.8 km) in Monroe County.).	XN	732	NA	17.84(e)
Do	.....do	.....do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN	.....	NA	17.84(e)
*	*	*	*	*	*	*	
CLAMS							
*	*	*	*	*	*	*	
Bean, Cumberland (pearlymussel).	*Villosa trabalis*	U.S.A. (AL, KY, TN, VA).	NA	E	15	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	....do	....do	U.S.A. (AL—The free-flowing reach of the Tennessee River from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir (about 12 river mile (RM) (19 km)), and the lower 5 RM (8 km) of all tributaries to this reach in Colbert and Lauderdale Counties.).	XN	709	NA	17.85(a)
Do	....do	....do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN	....	NA	17.85(b)
*	*	*	*	*	*	*	*
Combshell, Cumberlandian.	*Epioblasma brevidens.*	U.S.A. (AL, KY, MS, TN, VA).	NA	E	602	17.95(f)	NA
Do	....do	....do	U.S.A. (AL—The free-flowing reach of the Tennessee River from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir (about 12 river mile (RM) (19 km)), and the lower 5 RM (8 km) of all tributaries to this reach in Colbert and Lauderdale Counties.).	XN	709	NA	17.85(a)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	....do	....do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN		NA	17.85(b)
*	*	*	*	*	*		*
Fanshell	*Cyprogenia stegaria*(=*irrorata*).	U.S.A. (AL, IL, IN, KY, OH, PA, TN, VA, WV).	NA	E	391	NA	NA
Do	....do	....do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN		NA	17.85(b)
*	*	*	*	*	*		*
Monkeyface, Appalachian (pearlymussel).	*Quadrula sparsa*	U.S.A. (TN, VA)	NA	E	15	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	....do	....do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN		NA	17.85(b)
Monkeyface, Cumberland (pearlymussel).	*Quadrula intermedia*	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA
Do	....do	....do	U.S.A. (AL—The free-flowing reach of the Tennessee River from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir (about 12 river mile (RM)(19 km)), and the lower 5 RM (8 km) of all tributaries to this reach in Colbert and Lauderdale Counties.).	XN	709	NA	17.85(a)
Do	....do	....do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN		NA	17.85(b)
*	*	*	*	*	*	*	*
Mussel, oyster	*Epioblasma capsaeformis.*	U.S.A. (AL, GA, KY, MS, NC, TN, VA).	NA	E	602	17.95(f)	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	....do	....do	U.S.A. (AL—The free-flowing reach of the Tennessee River from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir (about 12 river mile (RM)(19 km)), and the lower 5 RM (8 km) of all tributaries to this reach in Colbert and Lauderdale Counties.).	XN	709	NA	17.85(a)
Do	....do	....do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN	.....	NA	17.85(b)
*	*	*	*	*	*	*	*
Pearlymussel, birdwing.	*Lemiox rimosus*	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA
Do	....do	....do	U.S.A. (AL—The free-flowing reach of the Tennessee River from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir (about 12 river mile (RM)(19 km)), and the lower 5 RM (8 km) of all tributaries to this reach in Colbert and Lauderdale Counties.).	XN	709	NA	17.85(a)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	....do	....do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN		NA	17.85(b)
Pearlymussel, cracking.	*Hemistena lata*	U.S.A. (AL, IL, IN, KY, OH, TN, VA).	NA	E	366	NA	NA
Do	....do	....do	U.S.A. (AL—The free-flowing reach of the Tennessee River from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir (about 12 river mile (RM) (19 km)), and the lower 5 RM (8 km) of all tributaries to this reach in Colbert and Lauderdale Counties.).	XN	709	NA	17.85(a)
Do	....do	....do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN		NA	17.85(b)
*	*	*	*	*	*	*	*
Pearlymussel, dromedary.	*Dromus dromas*	U.S.A. (AL, KY, TN, VA).	NA	E	15	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	....do	....do	U.S.A. (AL—The free-flowing reach of the Tennessee River from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir (about 12 river mile (RM) (19 km)), and the lower 5 RM (8 km) of all tributaries to this reach in Colbert and Lauderdale Counties.).	XN	709	NA	17.85(a)
Do	....do	....do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN	.....	NA	17.85(b)
*	*	*	*	*	*	*	*
Pigtoe, fine-rayed	*Fusconaia cuneolus*	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA
Do	....do	....do	U.S.A. (AL—The free-flowing reach of the Tennessee River from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir (about 12 river mile (RM) (19 km)), and the lower 5 RM (8 km) of all tributaries to this reach in Colbert and Lauderdale Counties.).	XN	709	NA	17.85(a)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	...do	...do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN		NA	17.85(b)
*	*	*	*	*	*	*	*
Pigtoe, rough	*Pleurobema plenum*	U.S.A. (AL, IN, KY, PA, TN, VA).	NA	E	15	NA	NA
Do	...do	...do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN		NA	17.85(b)
Pigtoe, shiny	*Fusconaia cor*	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA
Do	...do	...do	U.S.A. (AL—The free-flowing reach of the Tennessee River from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir (about 12 river mile (RM)(19 km)), and the lower 5 RM (8 km) of all tributaries to this reach in Colbert and Lauderdale Counties.).	XN	709	NA	17.85(a)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	....do	....do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN		NA	17.85(b)
*	*	*	*	*	*	*	*
Pimpleback, orangefoot (pearlymussel).	*Plethobasus cooperianus.*	U.S.A. (AL, IA, IL, IN, KY, OH, PA, TN).	NA	E	15	NA	NA
Do	....do	....do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN		NA	17.85(b)
*	*	*	*	*	*	*	*
Pink, ring (mussel)	*Obovaria retusa*	U.S.A. (AL, IL, IN, KY, OH, PA, TN, WV).	NA	E	369	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	....do	....do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN	....	NA	17.85 (b)
*	*	*	*	*	*	*	*
Wartyback, white (pearlymussel).	*Plethobasus cicatricosus.*	U.S.A. (AL, IL, IN, KY, TN).	NA	E	15	NA	NA
Do	....do	....do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN	....	NA	17.85(b)
*	*	*	*	*	*	*	*
SNAILS							
*	*	*	*	*	*	*	*
Riversnail, Anthony's	*Athearnia anthonyi*	U.S.A. (AL, GA, TN)	NA	E	538	NA	NA
Do	....do	....do	U.S.A. (AL—The free-flowing reach of the Tennessee River from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir (about 12 river mile (RM) (19 km)), and the lower 5 RM (8 km) of all tributaries to this reach in Colbert and Lauderdale Counties.).	XN	709	NA	17.85(a)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	....do	....do	U.S.A. (TN—French Broad River, Knox and Sevier Counties, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries to these reaches.).	XN	....	NA	17.85(b)
*	*	*	*	*	*	*	*

3. Amend § 17.84 as follows:

a. Revise paragraphs (e), (m), and (o) to read as set forth below; and

b. Add new paragraphs (p), (q), (r), and (s) to read as set forth below.

§ 17.84 Special rules—vertebrates.

* * * * *

(e) Yellowfin madtom (Noturus flavipinnis). (1) *Where is the yellowfin madtom designated as a nonessential experimental population (NEP)?* We have designated three populations of this species as NEPs: The North Fork Holston River Watershed NEP, the Tellico River NEP, and the French Broad River and Holston River NEP.

(i) The North Fork Holston River Watershed NEP area is within the species' historic range and is defined as follows: The North Fork Holston River watershed, Washington, Smyth, and Scott Counties, Virginia; South Fork Holston River watershed upstream to Ft. Patrick Henry Dam, Sullivan County, Tennessee; and the Holston River from the confluence of the North and South Forks downstream to the John Sevier Detention Lake Dam, Hawkins County, Tennessee. This site is totally isolated from existing populations of this species by large Tennessee River tributaries and reservoirs. As the species is not known to inhabit reservoirs and because individuals of the species are not likely to move 100 river miles through these large reservoirs, the possibility that this population could come in contact with extant wild populations is unlikely.

(ii) The Tellico River NEP area is within the species' historic range and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile 19 (30.4 kilometers) and Tellico River mile 33 (52.8 kilometers), near the Tellico Ranger Station, Monroe County, Tennessee. This species is not currently known to exist in the Tellico River or its tributaries. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) The French Broad River and Holston River NEP area is within the species' historic range and is defined as follows: The French Broad River, Knox and Sevier Counties, Tennessee, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries that enter these river reaches. This species is not known to exist in any of the tributaries to the free-flowing reaches of the French Broad River below Douglas Dam, Knox and Sevier Counties, Tennessee, or of the Holston River below the Cherokee Dam, Knox, Grainger, and Jefferson Counties, Tennessee. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iv) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP areas. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP areas?* (i) Except as expressly allowed in paragraph (e)(3) of this section, all the prohibitions of § 17.31 (a) and (b) apply to the yellowfin madtom.

(ii) Any manner of take not described under paragraph (e)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of this species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (e)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (e)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* After the initial stocking of fish, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year fish that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by contracting with the appropriate species experts. We will produce annual reports detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) **Note:** Map of the NEP area for the yellowfin madtom in the Tellico River, Tennessee, appears immediately following paragraph (m)(5) of this section.

(6) **Note:** Map of the NEP area for the yellowfin madtom in the French Broad River and Holston River, Tennessee, appears immediately following paragraph (m)(7) of this section.

* * * * *

(m) Spotfin chub (=turquoise shiner) (Erimonax monachus).

(1) *Where is the spotfin chub designated as a nonessential experimental population (NEP)?* We have designated three populations of this species as NEPs: The Tellico River NEP, the Shoal Creek NEP, and the French Broad River and Holston River NEP.

(i) The Tellico River NEP area is within the species' probable historic range and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile 19 (30.4 kilometers (km)) and Tellico River mile 33 (52.8 km), near the Tellico Ranger Station, Monroe County, Tennessee. This species is not currently known to exist in the Tellico River or its tributaries. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(ii) The Shoal Creek NEP area is within the species' historic range and is defined as follows: Shoal Creek (from Shoal Creek mile 41.7 (66.7 km)) at the mouth of Long Branch, Lawrence County, TN, downstream to the backwaters of Wilson Reservoir (Shoal Creek mile 14 (22 km)) at Goose Shoals, Lauderdale County, AL, including the lower 5 miles (8 km) of all tributaries that enter this reach. This species is not currently known to exist in the Shoal Creek or its tributaries. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) The French Broad River and Holston River NEP area is within the species' historic range and is defined as follows: the French Broad River, Knox and Sevier Counties, Tennessee, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries that enter these river reaches. This species is not known to exist in any of the tributaries to the free-flowing reaches of the French Broad River below Douglas Dam, Knox and Sevier Counties, Tennessee, or of the Holston River below the Cherokee Dam, Knox, Grainger, and Jefferson Counties, Tennessee. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iv) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (m)(3) of this section, all the provisions of § 17.31(a) and (b) apply to the spotfin chub.

(ii) Any manner of take not described under paragraph (m)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of this species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (m)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (m)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

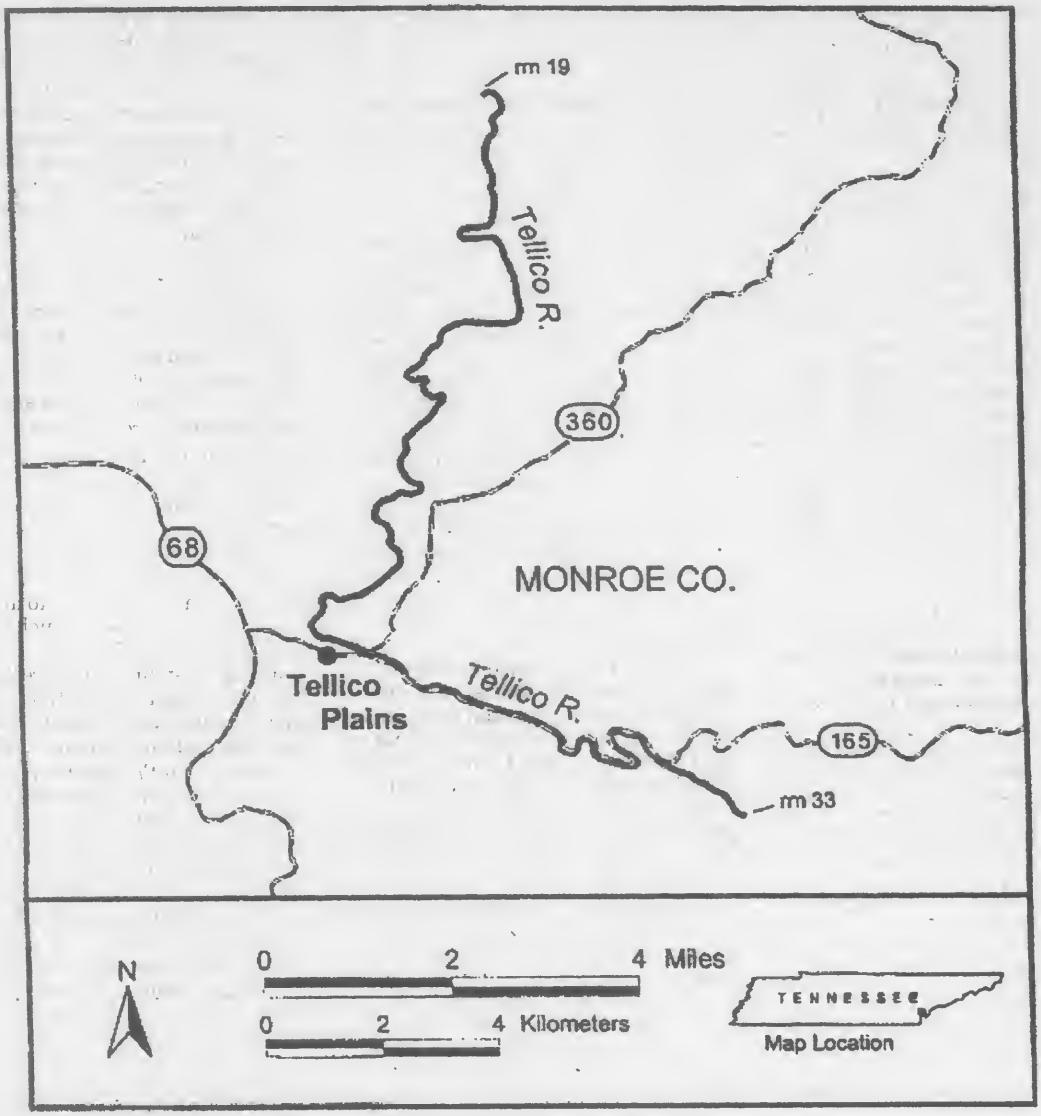
(4) *How will the effectiveness of these reintroductions be monitored?* (i) In the Tellico River NEP area, we will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(ii) In the Shoal Creek NEP area and the French Broad River and Holston River NEP area, after the initial stocking of fish, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year fish that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by contracting with the appropriate species experts. We will produce annual reports detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) **Note:** Map of the Tellico River NEP area for spotfin chub, dusky darter, smoky madtom, and yellowfin madtom in Tennessee follows:

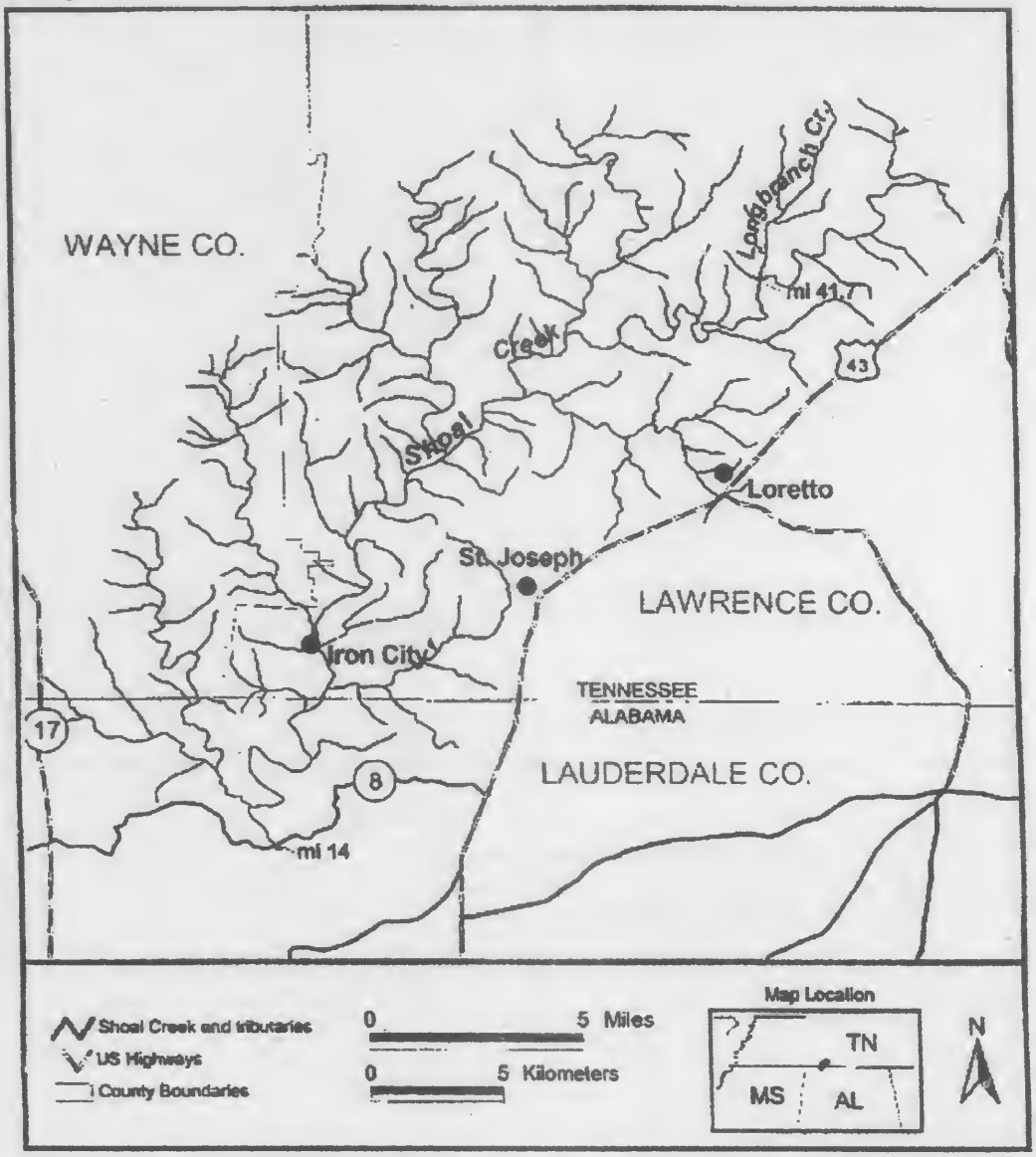
BILLING CODE 4310-55-P

Portion of the Tellico River Covered by the Spotfin Chub, Duskytail Darter, Smoky Madtom and Yellowfin Madtom Nonessential Experimental Population Designation



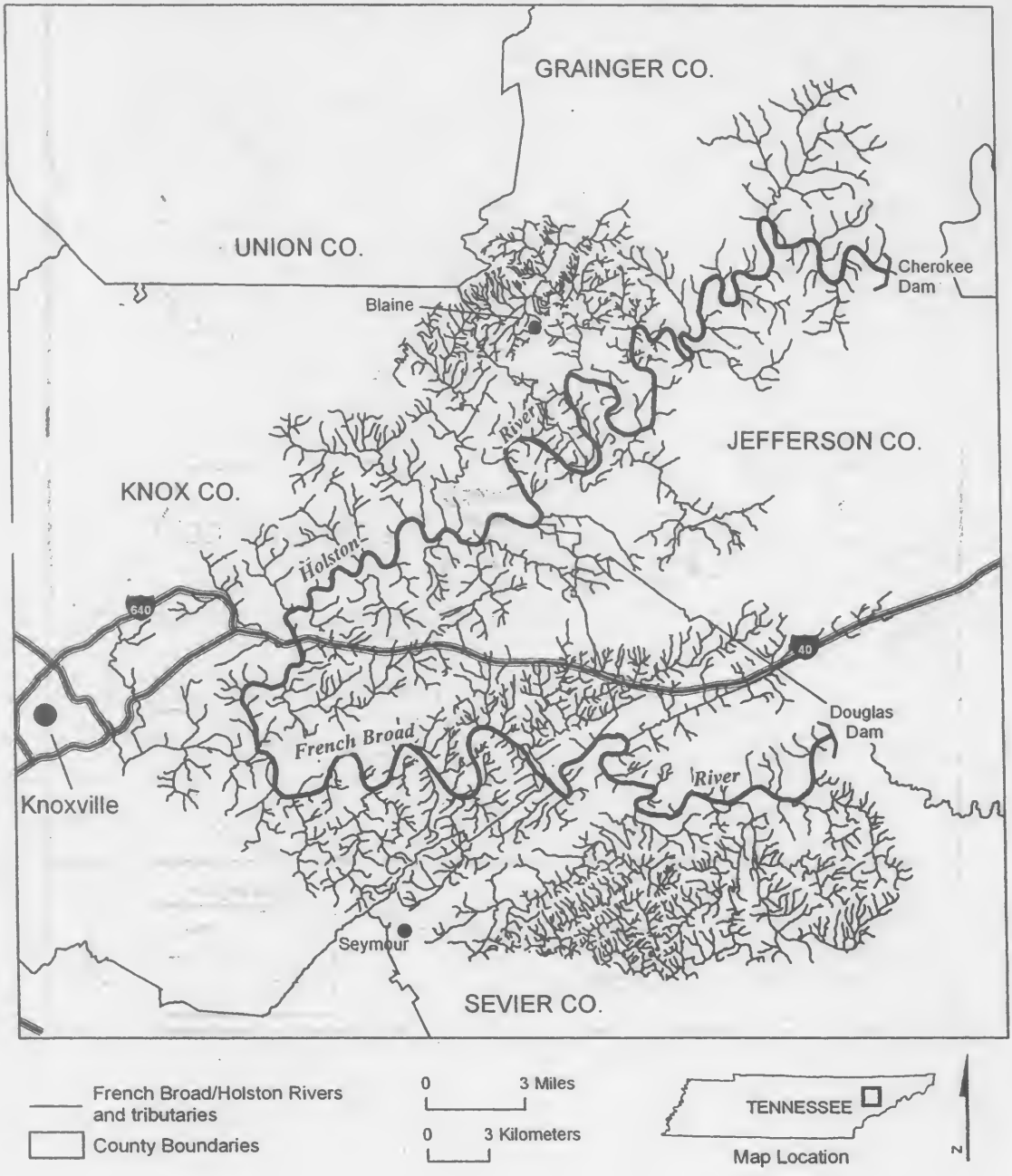
(6) **Note:** Map of the Shoal Creek NEP area for spotfin chub and boulder darter in Tennessee and Alabama follows:

Portion of Shoal Creek Watershed Covered by the Spotfin Chub and Boulder Darter Nonessential Experimental Population Designation



(7) **Note:** Map of the French Broad River and Holston River NEP area for spotfin chub, slender chub, duskytail darter, pygmy madtom, and yellowtail madtom in Tennessee follows:

Portion of the Lower French Broad River Watershed and the Lower Holston River Watershed Covered by the 2 Federally Listed Endangered Fishes: Duskytail Darter and Pygmy Madtom; and 3 Federally Listed Threatened Fishes: Slender Chub, Spotfin Chub, and Yellowfin Madtom Nonessential Experimental Population Designation.



* * * * *

(o) Boulder darter (Etheostoma wapiti).

(1) *Where is the boulder darter designated as a nonessential experimental population (NEP)?* (i) The NEP area for the boulder darter is within the species' historic range and is defined as follows: Shoal Creek (from Shoal Creek mile 41.7 (66.7 km)) at the mouth of Long Branch, Lawrence County, TN, downstream to the backwaters of Wilson Reservoir (Shoal Creek mile 14 (22 km)) at Goose Shoals, Lauderdale County, AL, including the lower 5 miles (8 km) of all tributaries that enter this reach.

(ii) The boulder darter is not currently known to exist in Shoal Creek or its tributaries. Based on the habitat requirements of this fish, we do not expect it to become established outside the NEP area. However, if any individuals of the species move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend paragraph (o)(1)(i) of this section to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (o)(3) of this section, all the provisions of § 17.31(a) and (b) apply to the boulder darter.

(ii) Any manner of take not described under paragraph (o)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of these species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (o)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (o)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* After the initial stocking of fish, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year fish that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by contracting with the appropriate species experts. We will produce annual reports detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) **Note:** Map of the NEP area for the boulder darter in the Shoal Creek, Tennessee and Alabama, appears immediately following paragraph (m)(6) of this section.

(p) Duskytail darter (Etheostoma percnurum).

(1) *Where is the duskytail darter designated as a nonessential experimental population (NEP)?* We have designated two populations of this species as NEPs: The Tellico River NEP and the French Broad River and Holston River NEP.

(i) The Tellico River NEP area is within the species' historic range and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile 19 (30.4 kilometers) and Tellico River mile 33 (52.8 kilometers), near the Tellico Ranger Station, Monroe County, Tennessee. This species is not currently known to exist in the Tellico River or its tributaries. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(ii) The French Broad River and Holston River NEP area is within the species' historic range and is defined as follows: the French Broad River, Knox and Sevier Counties, Tennessee, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries that enter these river reaches. This species is not known to exist in any of the tributaries to the free-flowing reaches of the French Broad River below Douglas Dam, Knox and Sevier Counties, Tennessee, or of the Holston River below the Cherokee Dam, Knox, Grainger, and Jefferson Counties, Tennessee. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (q)(3) of this section, all the prohibitions of § 17.31(a) and (b) apply to the duskytail darter.

(ii) Any manner of take not described under paragraph (q)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of this species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (q)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (q)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* After the initial stocking of fish, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year fish that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by

contracting with the appropriate species experts. We will produce annual reports detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) **Note:** Map of the NEP area for the duskytail darter in the Tellico River, Tennessee, appears immediately following paragraph (m)(5) of this section.

(6) **Note:** Map of the NEP area for the duskytail darter in the French Broad River and Holston River, Tennessee, appears immediately following paragraph (m)(7) of this section.

(q) Smoky madtom (*Noturus baileyi*).

(1) *Where is the smoky madtom designated as a nonessential experimental population (NEP)?* (i) The NEP area for the smoky madtom is within the species' probable historic range and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile 19 (30.4 kilometers) and Tellico River mile 33 (52.8 kilometers), near the Tellico Ranger Station, Monroe County, Tennessee.

(ii) The smoky madtom is not currently known to exist in the Tellico River or its tributaries. Based on the habitat requirements of this fish, we do not expect it to become established outside the NEP area. However, if any individuals of the species move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend paragraph (r)(1)(i) of this section to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP area. Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (r)(3) of this section, all the prohibitions of § 17.31 (a) and (b) apply to the smoky madtom.

(ii) Any manner of take not described under paragraph (r)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of this species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (r)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (r)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* After the initial stocking of fish, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year fish that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by contracting with the appropriate species experts. We will produce annual reports detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) **Note:** Map of the NEP area for the smoky madtom in the Tellico River, Tennessee, appears immediately following paragraph (m)(5) of this section.

(r) Slender chub (*Erimystax cahni*).

(1) *Where is the slender chub designated as a nonessential experimental population (NEP)?* (i) The NEP area for the slender chub is within the species' historic range and is defined as follows: The French Broad River, Knox and Sevier Counties, Tennessee, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries that enter these river reaches.

(ii) The slender chub is not known to exist in any of the tributaries to the free-flowing reaches of the French Broad River below Douglas Dam, Knox and Sevier Counties, Tennessee, or of the Holston River below the Cherokee Dam, Knox, Grainger, and Jefferson Counties, Tennessee. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP area. Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (s)(3) of this section, all the prohibitions of § 17.31 (a) and (b) apply to the slender chub.

(ii) Any manner of take not described under paragraph (s)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of this species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (s)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (s)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* After the initial stocking of fish, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year fish that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by contracting with the appropriate species experts. We will produce annual reports detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) **Note:** Map of the NEP area for the slender chub in the French Broad River and Holston River, Tennessee, appears

immediately following paragraph (m)(7) of this section.

(s) Pygmy madtom (*Noturus stanauli*).

(1) *Where is the pygmy madtom designated as a nonessential experimental population (NEP)?* (i) The NEP area for the pygmy madtom is within the species' historic range and is defined as follows: The French Broad River, Knox and Sevier Counties, Tennessee, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries that enter these river reaches.

(ii) The pygmy madtom is not known to exist in any of the tributaries to the free-flowing reaches of the French Broad River below Douglas Dam, Knox and Sevier Counties, Tennessee, or of the Holston River below the Cherokee Dam, Knox, Grainger, and Jefferson Counties, Tennessee. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP area. Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (t)(3) of this section, all the prohibitions of § 17.31 (a) and (b) apply to the pygmy madtom.

(ii) Any manner of take not described under paragraph (t)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of this species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (t)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (t)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* After the initial stocking of fish, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year fish that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by contracting with the appropriate species experts. We will produce annual reports detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) **Note:** Map of the NEP area for the pygmy madtom in the French Broad River and Holston River, Tennessee, appears immediately following paragraph (m)(7) of this section.

4. Amend § 17.85 by revising paragraph (a) introductory text and the heading of paragraph (a)(1), and adding a new paragraph (b) to read as follows:

§ 17.85 Special rules—invertebrates.

(a) *Seventeen mollusks in the Tennessee River.* The species in the following table comprise nonessential experimental populations (NEPs):

Common name	Scientific name
Alabama lampmussel	*Lampsilis virescens.*
birdwing pearlymussel	*Lemiox rimosus.*
Catspaw (purple cat's paw pearlymussel)	*Epioblasma obliquata obliquata.*
clubshell	*Pleurobema clava.*
cracking pearlymussel	*Hemistena lata.*
Cumberland bean (pearlymussel)	*Villosa trabalis.*
Cumberlandian combshell	*Epioblasma brevidens.*
Cumberland monkeyface (pearlymussel)	*Quadrula intermedia.*
dromedary pearlymussel	*Dromus dromas.*
fine-rayed pigtoe	*Fusconaia cuneolus.*
oyster mussel	*Epioblasma capsaeformis.*
shiny pigtoe	*Fusconaia cor.*
tubercled blossom (pearlymussel)	*Epioblasma torulosa torulosa.*
turgid blossom (pearlymussel)	*Epioblasma turgidula.*
Winged mapleleaf (mussel)	*Quadrula fragosa.*
yellow blossom (pearlymussel)	*Epioblasma florentina florentina.*
Anthony's riversnail	*Athearnia anthonyi.*

(1) *Where are these mollusks designated as NEPs?* * * *

* * * * *

(b) *Sixteen mollusks in the French Broad and Holston Rivers.* The species in the following table comprise nonessential experimental populations (NEPs):

Common name	Scientific name
Appalachian monkeyface (pearlymussel)	*Quadrula sparsa.*
birdwing pearlymussel	*Lemiox rimosus.*
cracking pearlymussel	*Hemistena lata.*
Cumberland bean (pearlymussel)	*Villosa trabalis.*
Cumberlandian combshell	*Epioblasma brevidens.*

Common name	Scientific name
Cumberland monkeyface (pearlymussel)	*Quadrula intermedia.*
dromedary pearlymussel	*Dromus dromas.*
fanshell	*Cyprogenia stegaria.*
fine-rayed pigtoe	*Fusconaia cuneolus.*
orangefoot pimpleback (pearlymussel)	*Plethobasus cooperianus.*
oyster mussel	*Epioblasma capsaeformis.*
ring pink (mussel)	*Obovaria retusa.*
rough pigtoe	*Pleurobema plenum.*
shiny pigtoe	*Fusconaia cor.*
white wartyback (pearlymussel)	*Plethobasus cicatricosus.*
Anthony's riversnail	*Athearnia anthonyi.*

(1) *Where are these mollusks designated as NEPs?* (i) The NEP area for these mollusks is within the species' historical range and is defined as follows: The French Broad River, Knox and Sevier Counties, Tennessee, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 kilometers (km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries that enter these river reaches. None of the species identified in paragraph (b) are known to exist in any of the tributaries to the free-flowing reaches of the French Broad River below Douglas Dam, Knox and Sevier Counties, Tennessee, or of the Holston River below the Cherokee Dam, Knox, Grainger, and Jefferson Counties, Tennessee. Based on their habitat requirements, we do not expect these species to become established outside this NEP area. However, if any individuals are found upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced populations. We would then amend paragraph (b)(1)(i) of this section to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(ii) Another NEP area for 10 of these mollusks (Cumberland bean, Cumberlandian combshell, Cumberland monkeyface, oyster mussel, birdwing pearlymussel, cracking pearlymussel, dromedary pearlymussel, fine-rayed pigtoe, shiny pigtoe, and Anthony's riversnail) is provided in paragraph (a) of this section.

(iii) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (b)(3) of this section, all the prohibitions of § 17.31(a) and (b) apply to the mollusks identified in paragraph (b) of this section.

(ii) Any manner of take not described under paragraph (b)(3) of this section will not be allowed in the NEP area. We may refer the unauthorized take of these species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified mollusks, or parts thereof, that are taken or possessed in violation of paragraph (b)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (b)(2) of this section.

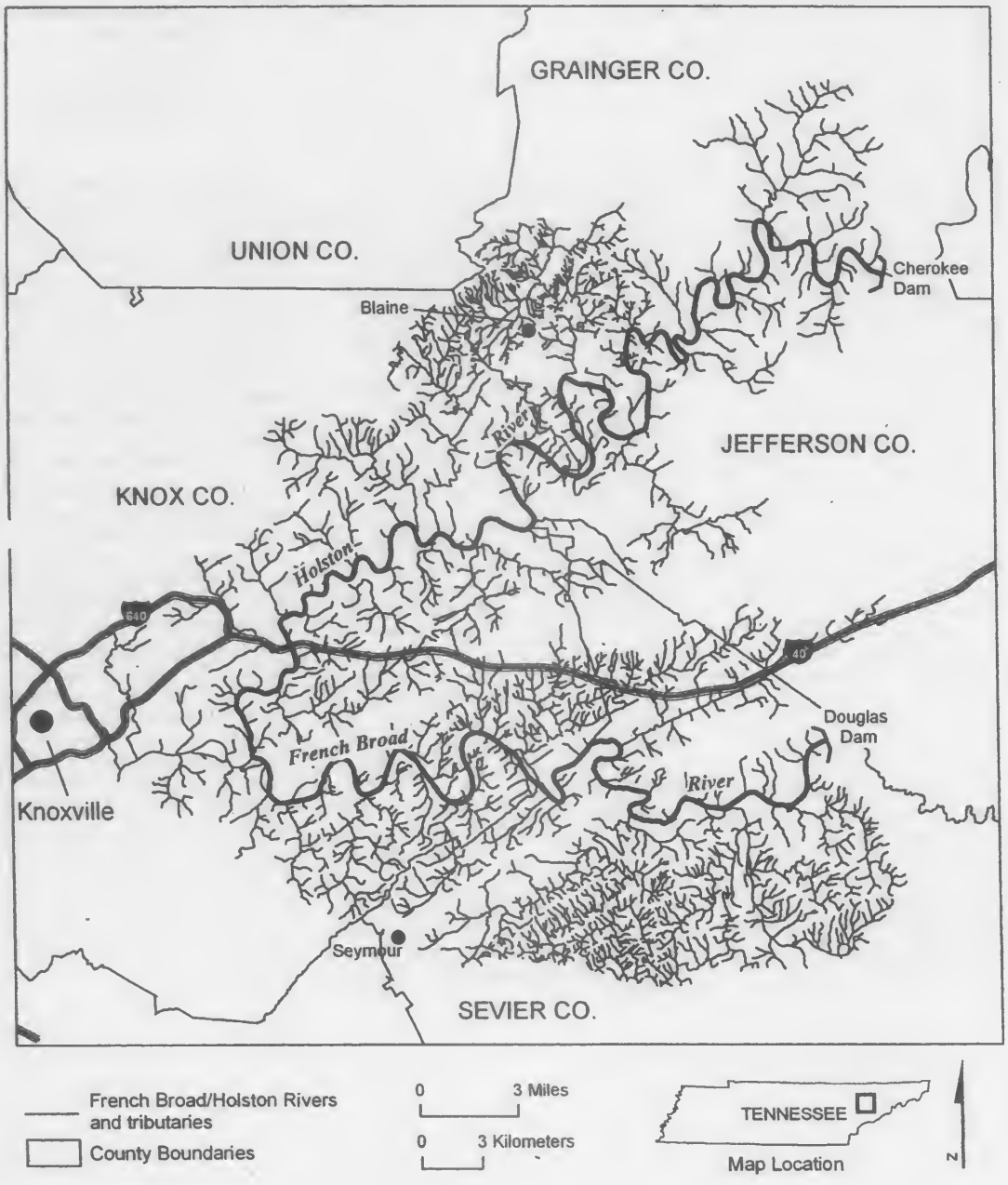
(3) *What take is allowed in the NEP area?* Take of these species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will effectiverness of these reintroductions be monitored?* After the initial stocking of these species, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year individuals that might be present. This monitoring will be conducted primarily by snorkeling and will be accomplished by contracting with the appropriate species experts. We will produce annual reports detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) **Note:** Map of the NEP area in Tennessee for the 16 mollusks listed in paragraph (b) of this section follows:

BILLING CODE 4310–55–P

Portion of the Lower French Broad River Watershed and the Lower Holston River Watershed Covered by the 15 freshwater mussels: Appalachian Monkeyface Pearlymussel, Birdwing Pearlymussel, Cracking Pearlymussel, Cumberland Bean Pearlymussel, Cumberlandian Combshell, Cumberland Monkeyface Pearlymussel, Dromedary Pearlymussel, Fanshell, Fine-rayed Pigtoe, Orange-foot Pimpleback Pearlymussel, Oyster Mussel, Ring Pink, Rough Pigtoe, Shiny Pigtoe, and White Wartyback Pearlymussel; and 1 Federally Listed Endangered Aquatic Snail: Anthonys Riversnail Nonessential Experimental Population Designation.



Dated: May 19, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–5233 Filed 6–12–06; 8:45 am]

BILLING CODE 4310–55–C

Reader Aids

Federal Register

Vol. 71, No. 113

Tuesday, June 13, 2006

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives. gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

31069–31914..... 1
31915–32264..... 2
32265–32414..... 5
32415–32800..... 6
32801–33146..... 7
33147–33374..... 8
33375–33592..... 9
33593–33988.....12
33989–34230.....13

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8026.....32799
8027.....32801
8028.....33373
8029.....33589
8030.....33591

Executive Orders:
13222 (See Memorandum of May 12, 2006).....31909
13404.....33593

Administrative Orders:
Memorandums:
Memorandum of May 12, 2006.....31909

5 CFR

211.....33375

6 CFR

25.....33147

7 CFR

205.....32803
272.....33376
273.....33376
301.....33168
319.....33172
979.....33178
1410.....31915
1421.....32415
1427.....32415
1980.....33181
4279.....33181

Proposed Rules:
250.....33344
3411.....32479

9 CFR

93.....31069
94.....31069

Proposed Rules:
160.....31109
161.....31109
162.....31109

10 CFR

73.....33989
170.....33190
171.....33190

Proposed Rules:
20.....34024
32.....34024

11 CFR

109.....33190

12 CFR

229.....32265

Proposed Rules:
1732.....31121

14 CFR

39.....31070, 31918, 32266, 32268, 32427, 32434, 32807, 32811, 32815, 32818, 33595, 33598, 33600, 33602, 33604, 33606, 33608, 33611, 33614, 33992, 33994, 34000, 34003, 34004, 34006
71.....31919, 31920, 32270, 32271, 32822, 32823, 32824, 32825, 32826
121.....31921

Proposed Rules:
39.....31978, 31980, 32484, 32487, 32489, 32491, 32492, 32873, 33260, 33262, 33264, 33267, 33270, 33412, 33658, 33661, 33663, 34025, 34026
71.....31983, 32876, 33665, 33666, 33667
77.....34028
91.....32877
121.....32877
125.....32877
135.....32877

15 CFR

4.....31073
736.....32272, 33211
738.....33614
742.....33614
744.....32272, 33211
745.....33614
756.....34008
774.....33614
902.....33211

16 CFR

Proposed Rules:
Ch. II.....32882
18.....34045
437.....31124

17 CFR

200.....33384

18 CFR

Proposed Rules:
35.....32636, 33102
37.....32636
366.....31125
367.....31125
368.....31125
369.....31125
375.....31125

19 CFR

101.....33235
141.....31921
142.....31921

Proposed Rules:
12.....31125

20 CFR

Proposed Rules:
401.....32494
402.....32494

21 CFR

50.....32827
73.....31927
520.....33236, 33237
522.....32436
558.....31073
874.....32832

22 CFR

62.....33237

23 CFR

Proposed Rules:
450.....33510
500.....33510

24 CFR

115.....33138
203.....33138
320.....32388

Proposed Rules:
81.....33144
203.....32392
291.....32392

25 CFR

Proposed Rules:
502.....33668
546.....33668

26 CFR

1.....31074, 31268, 32437, 33239, 34009
602.....31268, 34009

Proposed Rules:
1.....31128, 31985, 32495, 33273, 34046, 34047

27 CFR

9.....33239

29 CFR

458.....31929
4000.....31077
4006.....31077
4007.....31077

30 CFR

57.....33387
925.....33243
944.....33249

Proposed Rules:
924.....33273
948.....31996

32 CFR

199.....31942, 31943
216.....31082

33 CFR

100.....32836
165.....31085, 31088, 31945, 32838, 32839, 33622

Proposed Rules:
117.....32883
165.....31999, 32002, 32004

34 CFR

304.....32396

36 CFR

1151.....33254

37 CFR

201.....31089
202.....31089
212.....31089

Proposed Rules:
1.....32285
41.....32285

40 CFR

51.....31092
52.....31093, 31097, 32274, 32448, 33622, 33625, 34011, 34014
60.....31100, 33388
61.....32276
69.....32450
80.....31947
82.....32840
93.....31092
122.....33628
180.....31102, 32841, 32846, 32849
372.....32464
704.....33640
707.....33640
717.....33640
720.....33640
721.....33640, 34015
723.....33640
761.....33630
790.....33640
799.....33640

Proposed Rules:
52.....31129, 32291, 33413, 33668, 33669, 34050
60.....32885, 33804
63.....33804
70.....32006
71.....32006
80.....32015
85.....33804
90.....33804
122.....32887
180.....32895, 32899, 33416
1048.....33804
1065.....33804
1068.....33804

42 CFR

Proposed Rules:
100.....33420

44 CFR

64.....33642
65.....33644
67.....33645, 33646

Proposed Rules:
67.....33672, 33702

47 CFR

73.....32853, 32854

Proposed Rules:
64.....31131
73.....32909

48 CFR

1532.....32282
1552.....32282

49 CFR

107.....33858
171.....32244, 33858
172.....32244, 33858
173.....32244, 33858
175.....32244
178.....33858
180.....33858
192.....33402
193.....33402
195.....33402
571.....32855
1544.....31964
1546.....31964
1548.....31964, 33254

Proposed Rules:
173.....32909
604.....32496
613.....33510
655.....32298

50 CFR

36.....33255
223.....31965
648.....33211
660.....31104
679.....31105, 34021, 34022
680.....32862

Proposed Rules:
17.....31137, 32496, 32746, 33703, 34196
622.....33423
648.....33721
660.....33432
665.....32911
679.....33040

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 13, 2006

COMMERCE DEPARTMENT

Industry and Security Bureau

Export Administration Regulations:

appeals coordinator; appointment authorization; published 6-13-06

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:

Washington; published 4-14-06

NUCLEAR REGULATORY COMMISSION

Plants and materials; physical protection:

Fingerprinting and criminal history records check; relief for designated categories of individual; published 6-13-06

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Honeywell; published 5-9-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Export programs:

Commodities procurement for foreign donation; Open for comments until further notice; published 12-16-05 [FR E5-07460]

AGRICULTURE DEPARTMENT

Cooperative State Research, Education, and Extension Service

Small Business Innovation Research Grants Program; policy directive compliance; comments due by 6-19-06; published 5-18-06 [FR 06-04649]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Certain European Union member states; sanctions removed; comments due by 6-19-06; published 4-19-06 [FR 06-03684]

Combating trafficking in persons; comments due by 6-19-06; published 4-19-06 [FR 06-03681]

Free trade agreements—

Morocco; comments due by 6-19-06; published 4-19-06 [FR 06-03685]

Personnel, military and civilian:

Regular and reserve retired military members; management and mobilization; comments due by 6-19-06; published 4-18-06 [FR 06-03658]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:

Classifying products as covered products; household definition; comments due by 6-19-06; published 5-4-06 [FR 06-04195]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Printing and publishing industry; comments due by 6-23-06; published 5-24-06 [FR 06-04822]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Kentucky; comments due by 6-23-06; published 5-24-06 [FR 06-04820]

Air quality implementation plans; approval and promulgation; various States:

Indiana; comments due by 6-22-06; published 5-23-06 [FR 06-04764]

Hazardous waste management system:

Hazardous waste manifest system; modification; comments due by 6-19-06; published 4-18-06 [FR E6-05745]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Mono- and bis-(1H, 1H, 2H, 2H- perfluoroalkyl) phosphates; comments due by 6-19-06; published 4-19-06 [FR E6-05883]

Wheat bran; comments due by 6-19-06; published 4-19-06 [FR E6-05877]

Solid wastes:

Granular mine tailings in asphalt concrete and Portland cement concrete in transportation construction projects; management criteria; comments due by 6-19-06; published 5-19-06 [FR E6-07653]

Superfund program:

National oil and hazardous substances contingency plan priorities list; comments due by 6-19-06; published 4-19-06 [FR 06-03667]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Certain European Union member states; sanctions removed; comments due by 6-19-06; published 4-19-06 [FR 06-03684]

Combating trafficking in persons; comments due by 6-19-06; published 4-19-06 [FR 06-03681]

Free trade agreements—

Morocco; comments due by 6-19-06; published 4-19-06 [FR 06-03685]

HOMELAND SECURITY DEPARTMENT

Customs and Border Protection Bureau

Merchandise, special classes:

Cement products from Mexico requiring Commerce Department import license; comments due by 6-21-06; published 6-1-06 [FR E6-08500]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

Washington; comments due by 6-23-06; published 5-24-06 [FR E6-07868]

Pollution:

Ballast water treatment technology and analysis methods; research and development status; comments due by 6-23-06; published 5-2-06 [FR E6-06628]

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Charleston, SC; Wando River, Cooper River, and Charleston Harbor; comments due by 6-19-06; published 5-18-06 [FR 06-04628]

Great Lakes, OH, MI, WI, and IL; tall ships celebration; comments due by 6-22-06; published 6-2-06 [FR E6-08610]

Mackinac Bridge and Straits of Mackinac, MI; comments due by 6-23-06; published 5-24-06 [FR E6-07862]

Regattas and marine parades:

Chesapeake Bay, Cape Charles, VA; marine events; comments due by 6-19-06; published 5-19-06 [FR E6-07618]

Sacramento River Bridge-to-Bridge Waterfront Festival, CA; comments due by 6-19-06; published 5-19-06 [FR E6-07610]

HOMELAND SECURITY DEPARTMENT

U.S. Citizenship and Immigration Services

Immigration:

Genealogy Program; genealogical and historical records service; establishment; comments due by 6-19-06; published 4-20-06 [FR E6-05947]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Bald eagle; comments due by 6-19-06; published 5-16-06 [FR 06-04606]

Western snowy plover; Pacific Coast distinct population segment; comments due by 6-20-06; published 4-21-06 [FR 06-03793]

Endangered Species Convention:

Regulations revised; comments due by 6-19-06; published 4-19-06 [FR 06-03444]

Importation, exportation, and transportation of wildlife:

Bald eagles protection; definition; comments due by 6-19-06; published 5-16-06 [FR 06-04607]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Mississippi; comments due by 6-23-06; published 5-24-06 [FR E6-07917]

Pennsylvania; comments due by 6-22-06; published 5-23-06 [FR E6-07815]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

S. 1736/P.L. 109–229

To provide for the participation of employees in the judicial branch in the Federal leave transfer program for disasters and emergencies. (May 31, 2006; 120 Stat. 390)

Last List May 31, 2006

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Public Laws

109th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 109th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.gpoaccess.gov/plaws/index.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
* 6216

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 109th Congress for $317 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 6/05

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Printed on recycled paper