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Federal Register
Vol. 71, No. 122
Monday, June 26, 2006

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23319; Directorate Identifier 2005–CE–52–AD; Amendment 39–14663; AD 2006–13–10]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 65, 90, 99, and 100 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) that supersedes AD 92–07–05, which applies to certain Raytheon Aircraft Company (Raytheon) (formerly Beech) 65, 90, 99, and 100 series airplanes. AD 92–07–05 currently requires you to inspect the rudder trim tab for proper moisture drainage provisions, and if the correct drainage provisions do not exist, before further flight, modify the rudder trim tab. This AD results from receiving and evaluating new service information that requires the actions of AD 92–07–05 for the added serial numbers LJ–1281 through LJ–1732 for the Model C90A airplanes. This AD retains all the actions of AD 92–07–05 and adds serial numbers LJ–1281 through LJ–1732 for the Model C90A airplanes in the applicability section. We are issuing this AD to prevent water accumulation in the rudder trim tab, which could result in a change in the mass properties and possibly a lower flutter speed of the airplane. A lower airplane flutter speed could result in failure and loss of control of the airplane.

DATES: This AD becomes effective on August 7, 2006.

As of August 7, 2006, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: For service information identified in this AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2005–23319; Directorate Identifier 2005–CE–52–AD.

FOR FURTHER INFORMATION CONTACT: Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

On January 31, 2006, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon 65, 90, 99, and 100 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 6, 2006 (71 FR 6025). The NPRM proposed to supersede AD 92–07–05, Amendment 39–8201 (57 FR 8721, March 12, 1992) and to add serial numbers LJ–1281 through LJ–1732 for the Model C90A airplanes in the applicability section. This AD will retain all the actions of AD 92–07–05 for inspecting and modifying the rudder trim tab for correct drainage provisions.

Comments

We provided the public the opportunity to participate in developing 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 except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 2,407 airplanes in the U.S. registry.

We estimate the following costs to do the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $80 = $80	Not Applicable	$80	2,407 × $80 = $192,560.

We estimate the following costs to do any necessary modification of the rudder trim tab to provide the correct drainage provisions that would be required based on the results of this inspection. We have no way of determining the number of airplanes that may need this modification:

Labor cost	Parts cost	Total cost per airplane
1 work-hour × $80 = $80	$25	$105

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 AD.

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 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 summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "Docket No. FAA–2005–23319; Directorate Identifier 2005–CE–52–AD" in your request.

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 part 39 of the Federal Aviation Regulations (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. FAA amends § 39.13 by removing Airworthiness Directive (AD) 92–07–05, Amendment 39–8201 (57 FR 8721, March 12, 1992), and by adding the following new airworthiness directive:

2006–13–10 Raytheon Aircraft Company (Formerly Beech): Amendment 39–14663; Docket No. FAA–2005–23319; Directorate Identifier 2005–CE–52–AD.

Effective Date

(a) This AD becomes effective on August 7, 2006.

Affected ADs

(b) This AD supersedes AD 92–07–05; Amendment 39–8201.

Applicability

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

(1) Group 1 (maintains the actions from AD 92–07–05):

Model	Serial Nos.
(i) 65–90, 65–A90, B90, C90, and C90A	LJ–1 through LJ–1280.
(ii) E90	LW–1 through LW–347.
(iii) 99, 99A, A99, A99A, B99, and C99	U–1 through U–136 and U–146 through U–239.
(iv) 100 and A100	B1 through B–94, B–100 through B–204, and B–206 through B247.
(v) B100	BE–1 through BE–137.
(vi) 65–A90–1 (U–21A, JU–21A, RU–21D, RU–21H, RU–21A, U–21G)	LM–1 through LM–141.
(vii) 65–A90–2 (RU–21B)	LS–1, LS–2, and LS–3.
(viii) 65–A90–3 (RU–21C)	LT–1 and LT–2.
(ix) 65–A90–4 (RU–21EA, U–21H, RU–21H)	LU–1 through LU–16.
(x) H90 (T–44A)	LL–1 through LL–61.
(xi) 99A (FACH)	U–137 through U–145.
(xii) A100 (U–21F)	B95 through B–99.

(2) Group 2: Model C90A, serial numbers LJ–1281 through LJ–1732.

Unsafe Condition

(d) This AD results from receiving and evaluating new service information that requires the actions of AD 92–07–05 for the added serial numbers LJ–1281 through LJ–1732 for the Model C90A airplanes. The actions specified in this AD are intended to prevent water accumulation in the rudder trim tab, which could result in a change in the mass properties and possibly a lower flutter speed of the airplane. A lower airplane flutter speed could result in failure and loss of control of the airplane.

Compliance

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) For Group 1 Airplanes: Inspect the rudder trim tab for proper moisture drainage provisions.	Within 150 hours time-in-service (TIS) after April 30, 1992 (the effective date of AD 92–07–05), unless already done.	Follow Beech Service Bulletin No. 2365, Revision 1, dated December 1991.
(2) For Group 1 Airplanes: If the correct drainage provisions do not exist, modify the rudder trim tab.	Before further flight after the inspection required by paragraph (e)(1) of this AD.	Follow Beech Service Bulletin No. 2365, Revision 1, dated December 1991.
(3) For Group 2 Airplanes: Inspect the rudder trim tab for proper moisture drainage provisions.	Within 150 hours TIS after August 7, 2006 (the effective date of this AD), unless already done.	Follow Raytheon Aircraft Company Service Bulletin No. SB 55–2365, Revision 2, Issued: January 1991, Revised: October 2005.

Actions	Compliance	Procedures
(4) For Group 2 Airplanes: If the correct drainage provisions do not exist, modify the rudder trim tab.	Before further flight after the inspection required by paragraph (e)(3) of this AD.	Follow Raytheon Aircraft Company Service Bulletin No. SB 55–2365, Revision 2, Issued: January 1991, Revised: October 2005.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office (ACO), FAA, ATTN: Steven E. Potter, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4107, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(g) AMOCs approved for AD 92–07–05 are not approved for this AD.

Material Incorporated by Reference

(h) You must do the actions required by this AD following the instructions in Beechcraft Mandatory Service Bulletin No. 2365, Revision 1, dated December 1991, and Raytheon Aircraft Company Service Bulletin No. SB 55–2365, Revision 2, Issued: January 1991, Revised: October 2005. The Director of the Federal Register approved the incorporation by reference of these service bulletins in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/6federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2005–23319; Directorate Identifier 2005–CE–52–AD.

Issued in Kansas City, Missouri, on June 13, 2006.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–5586 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25098; Directorate Identifier 2006–SW–12–AD; Amendment 39–14667; AD 2006–13–14]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, 230, and 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Bell Helicopter Textron Canada (BHTC) model helicopters. This action requires initial and repetitive inspections of each tail rotor counterweight bellcrank (bellcrank) with a specified part number and serial number. If external damage, a crack, roughness, or looseness between the bearing set and bellcrank is found or if bearing set axial play exceeds 0.015 inch, this action requires replacing the bellcrank with an airworthy bellcrank with two prefix letters in the serial number. This amendment is prompted by reports of failure and subsequent loss of a weighted portion of the bellcrank and reports of certain replacement bellcranks having design flaws. The actions specified in this AD are intended to prevent bellcrank failure, loss of a weighted portion of the bellcrank, and subsequent loss of control of the helicopter.

DATES: Effective July 11, 2006.

Comments for inclusion in the Rules Docket must be received on or before August 25, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this 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; or
- *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.

You may get the service information identified in this AD from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272.

Examining the Docket

You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://dms.dot.gov*, or in person at the Docket Management System (DMS) Docket Offices 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 the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for the specified BHTC model helicopters. This action requires initial and repetitive inspections of certain bellcranks for external damage, a crack, looseness, or bearing set roughness by rotating each bellcrank while applying a load to the bearing set in both axial and radial directions. If external damage, a crack, roughness, or looseness between the bearing set and bellcrank is found or if the bearing axial play exceeds 0.015 inch, this action requires replacing the part with an airworthy bellcrank with two prefix letters in the serial number. This amendment is prompted by reports of failure and subsequent loss of a weighted portion of the ballcrank due to gas porosity in the casting or external damage. Also, this amendment is prompted by reports that certain replacement bellcranks have an oversize

bearing bore as well as incorrectly applied cadmium plating. These conditions, if not corrected, could result in failure of the bellcrank, loss of a weighted portion of the bellcrank, and subsequent loss of control of the helicopter.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on the specified BHTC model helicopters. Transport Canada advises that bellcrank, part number (P/N) 222–012–727–003 and 222–012–727–105, may have manufacturing discrepancies, which can result in their failure in flight. Transport Canada also advises that BHTC has identified correctly manufactured bellcrank, P/N 222–012–727–105, by adding two prefix letters to the part serial number.

BHTC has issued Alert Service Bulletin (ASB) Nos. 222–04–99, 222U–04–70, 230–04–30, and 430–04–30, all Revision C, all dated February 16, 2006. These ASBs specify replacing each bellcrank, P/N 222–012–727–003, with a bellcrank, P/N 222–012–727–105, with two prefix letters added to the part serial number by the manufacturer, by December 31, 2006. These ASBs also specify the correct bearing set, P/N 222–312–718–001, to be used when replacing the bellcrank.

After issuing the August 9, 2004 version of the previously described ASBs, BHTC received reports that replacement bellcrank, P/N 222–012–727–105, has an oversized bearing bore as well as incorrectly applied cadmium plating. BHTC then issued ASB 222–04–101, 222U–04–72, 230–04–32, and 430–04–32, all Revision B, all dated March 15, 2006. These ASBs specify replacing each bellcrank, P/N 222–012–727–105, without prefix letters, with an airworthy bellcrank, P/N 222–012–727–105, with two prefix letters added to the part serial number, by December 31, 2006. These ASBs specify certain inspections of each bellcrank, P/N 222–012–727–105, with no prefix letter added to the part serial number, until replaced with a bellcrank, P/N 222–012–717–105, with two prefix letters added to the part serial number.

Transport Canada classified these ASBs as mandatory and issued AD No. CF–2005–27R1, dated March 15, 2006, to ensure the continued airworthiness of these helicopters in Canada.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of these same type designs. Therefore, this AD is being issued to prevent a bellcrank failure, loss of a weighted portion of the bellcrank, and subsequent loss of control of the helicopter. This AD requires, within the next 10 hours time-in-service (TIS) and at intervals not to exceed 50 hours TIS, inspecting each bellcrank, P/N 222–012–727–003 and 222–012–727–105, without two prefix letters in the part serial number. This AD requires inspecting the bellcranks for external damage, cracking, looseness, or bearing set roughness by rotating the bellcrank while applying a load to the bearing set in both axial and radial directions. If you find external damage, cracking, looseness, roughness, or bearing set axial play exceeding 0.015 inch, this AD requires, before further flight, replacing the bellcrank with an airworthy bellcrank, P/N 222–012–727–105, with two prefix letters in the part serial number.

Replacing each bellcrank, P/N 222–012–727–003 and P/N 222–012–727–105, without two prefix letters in the part serial number, with bellcrank, P/N 222–012–727–105, with two prefix letters in the part serial number, is terminating action for the inspection requirements of this AD. We anticipate following this final rule; request for comments with a notice of proposed rulemaking to propose mandatory replacement of the specified bellcranks.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability or structural integrity of the helicopter. Inspecting each specified bellcrank within 10 hours TIS and at intervals not to exceed 50 hours TIS is required. Also, if you find external damage, cracking, roughness, looseness between bearing set and bellcrank or bearing set axial play exceeding 0.015 inch, replacing each unairworthy bellcrank with an airworthy bellcrank is required before further flight. Therefore, this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

We estimate that this AD will affect 167 helicopters and will take about 1 work hour to inspect the bellcrank and require 13 inspections per year at an average labor rate of $80 per work hour. Required parts will cost about $1,784 per helicopter. This AD does not mandate replacing the bellcrank. However, the manufacturer states that it is offering 100 percent warranty for replacing the bellcrank and bearing set by December 31, 2006, if certain requirements are met. Based on these figures, the estimated total cost impact of the AD on U.S. operators is $471,608, assuming all helicopters require inspections and all affected parts are replaced at the end of first year.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2006–25098; Directorate Identifier 2006–SW–12–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the 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 AD. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. 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*.

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2006–13–14 Bell Helicopter Textron Canada: Amendment 39–14667. Docket No. FAA–2006–25098; Directorate Identifier 2006–SW–12–AD.

Applicability

Models 222, serial number (S/N) 47006 through 47089; 222B, S/N 47131 through 47156; 222U, S/N 47501 through 47574; 230, S/N 23001 through 23038; and 430, S/N 49001 through 49105, with tail rotor counterweight bellcrank (bellcrank), part number (P/N) 222–012–727–003 or 222–012–727–105, without two prefix letters in the serial number, installed, certificated in any category.

Compliance

Required as indicated.

To prevent bellcrank failure, loss of a weighted portion of the bellcrank, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS), unless done previously, and at intervals not to exceed 50 hours TIS:

(1) Inspect each bellcrank for external damage, cracking, looseness, or bearing set roughness by rotating the bellcrank while applying a load to the bearing set in both axial and radial directions.

(2) If a bellcrank has external damage, cracking, roughness, looseness between the bearing set and bellcrank or bearing set axial play exceeding 0.015 inch, before further flight, replace it with bellcrank, P/N 222–012–727–105, with two prefix letters in the part serial number.

Note 1: The following Bell Helicopter Textron Canada Alert Service Bulletins pertain to the subject of this AD: Nos. 222–04–99, 222U–04–70, 230–04–30, and 430–04–30, all Revision C, all dated February 16, 2006; and Nos. 222–04–101, 222U–04–72, 230–04–32, and 430–04–32, all Revision B, all dated March 15, 2006.

(b) Replacing each bellcrank, P/N 222–012–727–003 and P/N 222–012–727–105, without two prefix letters in the part serial number, with a bellcrank, P/N 222–012–727–105, with two prefix letters in the part serial number, is terminating action for the inspection requirements of this AD.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Rotorcraft Directorate, Regulations and Guidance Group, FAA, ATTN: Sharon Miles, Aviation Safety Engineer, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(d) This amendment becomes effective on July 11, 2006.

Note 2: The subject of this AD is addressed in Transport Canada (Canada) AD CF–2005–27R1, dated March 15, 2006.

Issued in Fort Worth, Texas, on June 16, 2006.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 06–5651 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25009; Airspace Docket No. 06–ACE–7]

Modification of Class E Airspace; Keokuk Municipal Airport, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying the Class E airspace area at Keokuk Municipal Airport, IA. The establishment of Area Navigation (RNAV) Global Positioning System (GPS) Instrument Approach Procedures (IAP) to Runways (RWY) 8, 14, 26 and 32 and amendments to existing Non-directional Beacon (NDB) IAPs to RWY 14 and 26 requires the modification of the Class E airspace area beginning at 700 feet above ground level (AGL). This airspace area and the legal description are modification to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, September 28, 2006. Comments for inclusion in the Rules Docket must be received on or before August 1, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–25009/ Airspace Docket No. 06–ACE–7, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet AGL (E5) at Keokuk

Municipal Airport, IA. The establishment of RNAV (GPS) IAPs to RWYs 8, 14, 26, 32 and amendments to existing NDB IAPs to RWY 14 and 26 requires the modification of the Class E airspace area beginning at 700 feet AGL (E5). The area is expanded from a 6.6-mile radius to a 6.9-mile radius of the airport. The northwest extension is reduced from 2.6 miles each side to 2.5 miles each side of the 310° bearing from the Keokuk NDB. The area is expanded to within 2.5 miles each side of the 099° bearing from the Keokuk NDB extending from the 6.9-mile radius to 7 miles east of the airport. This modification brings the legal description of the Keokuk Municipal Airport, IA Class E5 airspace area into compliance with FAA Orders 7400.2F and 8260.19C. Class E airspace area extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2006–25009/Airspace Docket No. 06–ACE–7." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is a not a "significant rule " under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Keokuk Municipal Airport, IA.

List of Subjects 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Keokuk, IA

Keokuk Municipal Airport, IA
(Lat. 40°27′36″ N., long 91°25′43″ W.)
Keokuk NDB
(Lat. 40°27′53″ N., long 91°26′01″ W.)

The airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Keokuk Municipal Airport and within 2.5 miles each side of the 310° bearing from the Keokuk NDB extending from the 6.9-mile radius to 7 miles northwest of the airport and within 2.5 miles each side of the 099° bearing from the Keokuk NDB extending from the 6.9-mile radius to 7 miles east of the airport.

* * * * *

Issued in Kansas City, MO, on June 13, 2006.

Donna R. McCord,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 06–5673 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25007; Airspace Docket No. 06–ACE–5]

Modification of Class E Airspace; Scottsbluff, Western Nebraska Regional Airport/William B. Heilig Field, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14

CFR part 71) by revising Class E airspace areas at Scottsbluff, Western Nebraska Regional Airport/William B. Heilig Field, NE. The establishment of a Localizer/Distance Measuring Equipment (LOC/DME) Instrument Approach Procedure (IAP) to Runway (RWY) 12 requires the modification of the Class E airspace area beginning at 700 feet above ground level (AGL). This airspace area and the legal description are modified to conform to the criteria in the FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, September 28, 2006. Comments for inclusion in the Rules Docket must be received on or before August 1, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–25007/ Airspace Docket No. 06–ACE–5, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet AGL (E5) at Scottsbluff, Western Nebraska Regional Airport/ William B. Heilig Field, NE. The establishment of a Localizer/Distance Measuring Equipment (LOC/DME) Instrument Approach Procedure (IAP) to Runway (RWY) 12 requires the modification by replacing the reference to the Gering Non-Directional Beacon (NDB) with the following: Within 3.1 miles each side of the 316° bearing from the airport extending from the 7.8-mile radius of the airport to 10.4 miles northwest of the airport. This modification brings the legal description of the Scottsbluff, Western Nebraska Regional Airport./William B. Heilig Field, NE Class E5 airspace area into compliance with FAA Orders 7400.2F and 8260.19C. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9N, Airpsace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2006–25007/Airspace Docket No. 06–ACE–5." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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.

The rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Scottsbluff, Western Nebraska Regional Airport/William B. Heilig Field, NE.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9N, dated September 1, 2005, and effective

September 16, 2005, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Scottsbluff, NE

Scottsbluff, Western Nebraska Regional Airport/William B. Heilig Field, NE
(Lat. 41°52′27″ N., long. 103°35′44″ W.)
Scottsbluff VORTAC
(Lat. 41°53′39″ N., long. 103°28′55″ W.)

That airspace extending upward from 700 feet above the surface within a 7.8 radius of Western Nebraska Regional Airport/William B. Heilig Field and within 2.5 miles each side of the Scottsbluff VORTAC 078° radial extending from the 7.8-mile radius of the airport to 7 miles east of VORTAC and within 2.5 miles each side of the VORTAC 256° radial extending from the 7.8-mile radius of the airport to 17.2 miles west of VORTAC and within 3.1 miles each side of the 316° bearing from the airport extending from the 7.8-mile radius of the airport to 10.4 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO on June 13, 2006.

Donna R. McCord,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 06–5671 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Docket No. OAG 111; AG Order No. 2825–2006]

Office of the Attorney General; Establishment of the Office of the Federal Detention Trustee

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Justice (the Department) organizational regulations to reflect the establishment within the Department of Justice of the Office of the Federal Detention Trustee (OFDT), and to set forth the general authorities of the Detention Trustee.

DATES: This rule is effective June 26, 2006.

FOR FURTHER INFORMATION CONTACT: Katherine A. Day, General Counsel, Office of the Federal Detention Trustee, U.S. Department of Justice, 4601 N. Fairfax Drive, 9th Floor, Washington, DC 20530; Telephone (202) 353–4601; FAX (202) 353–4611.

SUPPLEMENTARY INFORMATION: The Office of the Federal Detention Trustee (OFDT) was established in September 2001, pursuant to Public Law 106–553, app. B, 114 Stat. 2762A–52 (2000), to centralize the management of the detention function relating to Federal prisoners in non-Federal institutions or otherwise in the custody of the United States Marshals Service (USMS) and aliens in the custody of the Immigration and Naturalization Service (INS), in order to better manage and plan for needed detention resources without unnecessary duplication of effort. In accordance with the 21st Century Department of Justice Appropriations Authorization Act (Pub. L. 107–273, Div. A, Title II, section 201(a), Nov. 2, 2002, 116 Stat. 1770), codified at 28 U.S.C. 530C, the Congressional mandate for the management of the detention function by OFDT was made permanent. This rule adds the OFDT to Department organizational regulations and sets forth the general authorities of the Detention Trustee.

Although OFDT's originating statute (Pub. L. 106–553, app. B, 114 Stat. 2762A–52 (2000) and authorizing statute (Pub. L. 107–273, Div. A, Title II, Section 201(a)) provided OFDT with authority over immigration detainees in INS custody, these statutes were enacted prior to the Homeland Security Act, Public Law 107–296, Section 441, which transferred the duties of the INS to the Department of Homeland Security (DHS). Accordingly, this rule omits the language in our originating and authorizing statutes regarding INS detainees.

Notwithstanding the transfer of the former INS to DHS, the October 2003 Conference Report on the Fiscal Year 2004 appropriations nevertheless directed the Justice Department "to develop Memoranda of Understanding with the Department of Homeland Security and other appropriate Federal agencies regarding the continued integration of fingerprint systems, automated booking capabilities, detention bed space needs, and transportation of prisoners." H.R. Rep. No. 108–401, 108th Cong., 1st Sess., 516 (2003). On January 28, 2004, OFDT entered into an interagency agreement with U.S. Immigration and Customs Enforcement (ICE) to allow ICE "to obtain the specific services of the OFDT as a provider of procurement and contract/agreement management support for the ICE nonfederal detention program," particularly as regards ICE requirements for detention space.

Beginning in 2003 with the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7, Div. B, Title I, Feb. 20, 2003, 117 Stat. 51), and continuing with each appropriations act since 2003 (Consolidated Appropriations Act, 2004, Public Law 108–199, Div. B, Title I, Jan. 23, 2004, 118 Stat. 47; Consolidated Appropriations Act, 2005, Pub. L. 108–447, Div. B, Title I, Dec. 8, 2004, 118 Stat. 2854; Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, Pub. L. 109–108, Title I, Nov. 22, 2005, 119 Stat. 2291), Congress has charged OFDT with the responsibility for managing the Justice Prisoner and Alien Transportation System (JPATS). Accordingly, this rule adds a provision regarding OFDT's management of JPATS.

The rule is a rule of agency organization, procedure, and practice and is limited to matters of agency management and personnel. Accordingly: (1) This rule is exempt from the notice requirement of 5 U.S.C. 553(b) and is made effective upon issuance; (2) the Department certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities and further that no Regulatory Flexibility Analysis was required to be prepared for this final rule since the Department was not required to publish a general notice of proposed rulemaking; (3) this action is not a "regulation" or "rule" as defined by section 3(d)(3) of Executive Order 12866 ("Regulatory Planning and Review") and, therefore, this action has not been reviewed by the Office of Management and Budget.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 ("Federalism"), it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 ("Civil Justice Reform"). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995. This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not

a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

■ Accordingly, for the reasons set forth in the preamble, part 0 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—AMENDED

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

■ 2. Part 0, subpart A, § 0.1 is amended by adding a new entry at the end of the list under "Offices" to read as follows:

§ 0.1 Organizational units.

* * * * *

Office of the Federal Detention Trustee

■ 3. Part 0 is amended by adding a new subpart U–3 to read as follows:

Subpart U–3—Office of the Federal Detention Trustee

§ 0.123 Federal Detention Trustee.

(a) The Office of the Federal Detention Trustee shall be headed by a Detention Trustee appointed by the Attorney General. The Detention Trustee shall exercise all powers and functions authorized by law related to the detention of Federal prisoners in non-Federal institutions or otherwise in the custody of the United States Marshals Service in accordance with 28 U.S.C. 530C(b)(7).

(b) The Detention Trustee shall:

(1) Manage funds appropriated to the Department in the exercise of such detention functions.

(2) Oversee the construction of detention facilities or housing related to such detention.

(3) Set policy regarding such detention, and perform such functions as may be necessary for the effective policy-level coordination of detention operations.

(4) Oversee contracts for detention services, including, when the Detention Trustee deems appropriate, negotiating purchases and entering into contracts and intergovernmental agreements for detention services, and making required determinations and findings for the acquisition of services.

(5) Manage the Justice Prisoner and Alien Transportation System.

(c) This regulation sets forth the general functions of the Detention Trustee solely for the purpose of internal Department of Justice guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, that are enforceable at law by any party in any matter, civil or criminal.

Dated: June 19, 2006.

Alberto R. Gonzales,

Attorney General.

[FR Doc. E6–9987 Filed 6–23–06; 8:45 am]

BILLING CODE 4410–HM–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS MITSCHER (DDG 57) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: *Effective Date:* May 26, 2006.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS MITSCHER (DDG 57) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights; Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights; and Rule 21(a), pertaining to the arc of visibility of the forward masthead light. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements. All other previously certified deviations from the 72 COLREGS not affected by this amendment remain in effect.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. In Table Four of § 706.2 amend Paragraph 16 by revising the entry for USS MITSCHER (DDG 57) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * * * *		
USS MITSCHER	DDG 57	109.66° thru 112.50°.
* * * * * * *		

■ 3. In Table Five of § 706.2 revise the entry for USS MITSCHER (DDG 57) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* *	*	*	*	*	*
USS MITSCHER	DDG 57	.....	X	X	12.4
* *	*	*	*	*	*

Approved: May 26, 2006.

Gregg A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General Admiralty and Maritime Law.

[FR Doc. E6–10033 Filed 6–23–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–06–047]

RIN 1625–AA09

Drawbridge Operation Regulation: Beaufort (Gallants) Channel, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulations that govern the operation of the U.S. 70 Bridge across Beaufort (Gallants) Channel, mile 0.1, at Beaufort, NC. The rule allows the bridge to remain in the closed-to-navigation position from midnight on June 30, 2006, until and including 9 p.m. on July 5, 2006, to facilitate the Pepsi America Sail 2006 event.

DATES: This rule is effective from midnight on June 30, 2006 to 9 p.m. on July 5, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket, is part of docket CGD05–06–047 and are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6587. Fifth District maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at (757) 398–6587.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This rule is necessary due to the high volume of pedestrians (approximately 400,000) that are expected to attend this event and as such it has been coordinated with local marinas and the North Carolina Department of Transportation (NCDOT). We believe that it is not necessary to draft or publish an NPRM in advance of the requested start date for this bridge closure due to the availability of an alternate maritime route. The bridge closure is also a necessary measure to ensure public safety by allowing for the orderly movement of vehicular traffic before, during and after the Pepsi America Sail 2006 event.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 533(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. A 30-day delayed effective date is unnecessary due to the availability of an alternate local route for mariners, through Morehead City on the Atlantic Intracoastal Waterway, which is the result of coordination with local marine facilities. Good cause also exists for making this rule effective in less than thirty days to ensure the public interest. The event is scheduled for June 30, 2006, until and including July 5, 2006 and immediate action is necessary to ensure public safety and provide for the orderly movement of participants and vehicular traffic during the Pepsi America Sail 2006 event.

Background and Purpose

In the closed-to-navigation position, the U.S. 70 Bridge, at mile 0.1, across Beaufort (Gallants) Channel, has a vertical clearance of approximately 13 feet above mean high water. The existing regulations are outlined at 33 CFR 117.822.

On behalf of NCDOT, who owns and operates the U.S. 70 Bridge, organizers of the Pepsi America Sail 2006 requested a temporary change to the operating regulations for the U.S. 70 Bridge to facilitate the event.

Approximately 10–12 tall ships will moor in the area and provide opportunities for visitors to tour the vessels. The Pepsi Sail event is expected to draw approximately 400,000 pedestrians with vehicles to the region for this 4th of July holiday weekend. The bridge serves as a primary traffic route for vehicles attending the event. Disruption of this route to accommodate routine maritime traffic along this waterway would significantly impact public safety by not allowing for the orderly movement of participants and vehicular traffic before, during and after the event.

According to the bridge logs provided by NCDOT, the information showed that in 2005 from June 30 until July 5, the drawbridge opened on average approximately 28 times daily for recreational waterway traffic. Vessel openings will be arranged by NCDOT for tall ships with mast heights greater than 65 feet. Vessels with mast height greater than 13 feet but less than 64 feet will be directed to transit the alternate route along the Intracoastal Waterway (ICW) in Morehead City. The U.S. 70 (fixed) Bridge, along the alternate route, at ICW mile 203.8, which spans Newport River, in Morehead City, has a vertical clearance of approximately 65 feet above mean high water.

The Coast Guard has informed vessel operators, through local marinas, of the closure period for the U.S. 70 Bridge across Beaufort (Gallants) Channel, and openings will be arranged by NCDOT for tall ships with mast heights greater than 65 feet. Vessels with mast heights greater than 13 feet but less than 64 feet will be directed to use the alternate route along the Intracoastal Waterway (ICW) in Morehead City to minimize the impact to public safety by allowing for the orderly movement of participants and vehicular traffic before, during and after the event. Vessels with mast heights lower than 13 feet can still transit through the drawbridge and waterway during this event, since the waterway will remain open.

Regulatory Evaluation

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

We expect the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This conclusion was based on the fact that this rule will have minimal impact on maritime traffic transiting this area. Since Beaufort (Gallants) Channel will remain open to navigation during this event, mariners with mast height less than 13 feet may still transit through the bridge. Vessel openings will be arranged by NCDOT for tall ships with mast heights greater than 65 feet to transit the U.S. 70 Bridge across Beaufort (Gallants) Channel. Vessels with mast heights greater than 13 feet but less than 64 feet can transit through the local alternate route, through the U.S. 70 (fixed) Bridge, at ICW mile 203.8, which spans Newport River, in Morehead City.

Small Entities

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

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

This rule will not have a significant economic impact on a substantial number of small entities because even though the rule closes the U.S. 70 Bridge to mariners, openings will be arranged by NCDOT for tall ships with mast heights greater than 65 feet. Mariners whose mast heights are greater than 13 feet but less than 64 feet will be able to transit U.S. 70 (fixed) Bridge, at ICW mile 203.8, which spans Newport River, in Morehead City. Those with mast heights less than 13 feet will still be able to transit through the bridge during the closed hours.

Assistance for Small Entities

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

Small businesses may send comments on this action of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATION

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); (117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From midnight on June 30, 2006, to 9 p.m. on July 5, 2006 in (117.822, suspend paragraphs (a) and (b) and add a new paragraph (c) to read as follows:

§ 117.822 Beaufort Channel.

* * * * *

(c) From midnight on June 30, 2006, to 9 p.m. on July 5, 2006, the U.S. 70 Bridge, mile 0.1, at Beaufort NC, may remain closed to navigation.

Dated: June 15, 2006.

Larry L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E6–10051 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–06–052]

RIN 1625–AA00

Safety Zone; Village Fireworks, Sodus Point, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the navigable waters of Sodus Bay on July 3, 2006. This safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with fireworks displays. This safety zone is intended to restrict vessel traffic from a portion of Sodus Bay, Sodus Point, NY.

DATES: This rule is effective from 10 p.m. (local) until 10:30 p.m. (local) on July 3, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD09–06–052] and are available for inspection or copying at: U.S. Coast Guard Sector Buffalo, 1 Fuhrmann Blvd., Buffalo, New York 14203, between 8 a.m. (local) and 4 p.m. (local), Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Tracy Wirth, U.S. Coast Guard Sector Buffalo, at (716) 843–9573.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Buffalo has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

Discussion of Rule

The safety zone will encompass all navigable waters of Sodus Bay in a 500-foot radius around a point at approximate position 43°16′27″ N, 076°58′27″ W. The channel will be secured for the duration of the event. All Geographic coordinates are North American Datum of 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

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

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. This determination is based on the minimal time that vessels will be restricted from the zone, with minor if any impact to Mariners.

Small Entities

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

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

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: This safety zone is only in effect from 10 p.m. (local) until 10:30 p.m. (local) on the day of the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Sector Buffalo (see **ADDRESSES**).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone therefore paragraph (34)(g) of the Instruction applies.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T09–052 is added to read as follows:

§ 165.T09–052 Safety Zone; Village Fireworks Display, Sodus Point, NY.

(a) *Location.* The following area is a temporary safety zone: All navigable waters of Sodus Bay in a 500-foot radius around a point at approximate position: 43°16′27″ N, 076°58′27″ W (NAD 1983) in Sodus Point, NY.

(b) *Definitions.* The following definitions apply to this section: Designated on-scene representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP), Buffalo, New York, in the enforcement of regulated navigation areas and safety and security zones.

(c) *Effective period.* This section is effective from 10 p.m. (local) until 10:30 p.m. (local) on July 3, 2006.

(d) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

Dated: June 13, 2006.

S.J. Furguson,

Captain, U.S. Coast Guard, Captain of the Port, Buffalo.

[FR Doc. E6–10045 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–06–051]

RIN 1625–AA00

Safety Zone; Brewerton Fireworks, Brewerton, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the navigable waters of Oneida Lake in Brewerton, NY on July 3, 2006. This safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with firework displays. This safety zone restricts vessel traffic from a portion of Oneida Lake in Brewerton, NY.

DATES: This rule is in effect from 9:30 p.m. (local) until 10 p.m. (local) on July 3, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of the docket [CGD09–06–051], and are available for inspection or copying at U.S. Coast Guard Sector Buffalo, 1 Fuhrmann Blvd., Buffalo, New York 14203 between 8 a.m. and 4 p.m. (local), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Tracy Wirth, U.S. Coast Guard Sector Buffalo, at (716) 843–9573.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This safety zone is temporary in nature and limited time existed for an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impracticable and contrary to public interest since immediate action is needed to minimize potential danger to the public during the fireworks demonstration.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with firework displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Buffalo has determined firework launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone consists of all navigable waters of Oneida Lake in a 500-foot radius around a point at approximate position: 43°14′15″ N, 76°08′03″ W (NAD 1983) in Brewerton, NY. The size of this zone was determined using the National Fire Prevention Association guidelines and

local knowledge concerning wind, waves, and currents.

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

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

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

Small Entities

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

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

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: This safety zone is only in effect from 9:30 p.m. (local) until 10 p.m. (local) on July 3, 2006. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact U.S. Coast Guard Sector Buffalo (see **ADDRESSES**).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone; therefore, paragraph (34)(g) of the Instruction applies.

A final "Environmental Analysis Checklist" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new temporary § 165.T09–051 to read as follows:

§ 165.T09–051 Safety Zone; Brewerton Fireworks, Brewerton, NY.

(a) *Location.* The following area is a temporary safety zone: all navigable waters of Oneida Lake in a 500-foot radius around a point at approximate position: 43°14′15″ N, 076°08′03″ W (NAD 1983) in Brewerton, NY. All Geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Definitions.* The following definitions apply to this section:

Designated on-scene representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP), Buffalo, New York, in the enforcement of regulated navigation areas and safety and security zones.

(c) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Buffalo.

(2) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port, Buffalo, or his designated on-scene representative.

(d) *Effective time and date.* This section is effective from 9:30 p.m. (local) until 10 p.m. (local) on July 3, 2006.

Dated: June 13, 2006.

S.J. Furguson,

Commander, U.S. Coast Guard, Captain of the Port, Buffalo.

[FR Doc. E6–10052 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–06–050]

RIN 1625–AA00

Safety Zone; 2006 Fireworks, St. Lawrence River, Clayton, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the navigable waters of the St. Lawrence River around Calumet Island offshore of Clayton, NY on July 2, 2006. This safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with firework displays. This safety zone restricts vessel traffic from a portion of the St. Lawrence River around Calumet Island offshore of Clayton, NY.

DATES: This rule is in effect from 9:30 p.m. (local) until 10:30 p.m. (local) on July 2, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of the docket [CGD09–06–050], and are available for inspection or copying at U.S. Coast Guard Sector Buffalo, 1 Fuhrmann Blvd., Buffalo, New York 14203 between 8 a.m. and 4 p.m. (local), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Tracy Wirth, U.S. Coast Guard Sector Buffalo, at (716) 843–9573.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This safety zone is temporary in nature and limited time existed for an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impracticable and contrary to public interest since immediate action is needed to minimize potential danger to the public during the fireworks demonstration.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with firework displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Buffalo has determined firework launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone consists of all navigable waters of the St. Lawrence River in a 500-foot radius around a point in approximate position: 44°15′5″ N, 76°05′35″ W (NAD 1983), on Calumet Island, NY. The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated on-scene representative. The designated on-scene representative will be the patrol commander. Entry into, transiting, or

anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

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

Small Entities

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

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

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: This safety zone is only in effect from 9:30 p.m. (local) until 10:30 p.m. (local) on the day of the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact U.S. Coast Guard Sector Buffalo (see **ADDRESSES**).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone; therefore, paragraph (34)(g) of the Instruction applies.

A final "Environmental Analysis Checklist" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new temporary § 165.T09–050 to read as follows:

§ 165.T09–050 Safety Zone; 2006 Fireworks, St. Lawrence River, Clayton, NY

(a) *Location.* The following area is a temporary safety zone: all navigable waters of the St. Lawrencé River in a 500-foot radius around a point in approximate position: 44°15′05″ N, 076°05′35″ W (NAD 1983), around Calumet Island, NY. All Geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Definitions.* The following definitions apply to this section: *Designated on-scene representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP), Buffalo, New York, in the enforcement of regulated navigation areas and safety and security zones.

(c) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Buffalo.

(2) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port, Buffalo, or his designated on-scene representative.

(d) *Effective time and date.* This section is effective from 9:30 p.m. (local) until 10:30 p.m. (local) on July 2, 2006.

Dated: June 13, 2006.

S.J. Furguson,

Commander, U.S. Coast Guard, Captain of the Port, Buffalo.

[FR Doc. E6–10042 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–06–060]

RIN 1625–AA00

Safety Zone; Mentor Power Boat Race, Lake Erie, Mentor, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Mentor Power Boat Race located in the Captain of the Port Buffalo Zone. This safety zone is necessary to provide for the safety of life on navigable waters during this event. This action is intended to restrict vessel traffic within the immediate vicinity of the event in a portion of Lake Erie.

DATES: This rule is effective from 12 noon (local) through 4 p.m. (local) on July 9, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [CGD09–06–060] and are available for inspection or copying at the U.S. Coast Guard Marine Safety Unit Cleveland, 1055 East Ninth Street, Cleveland, Ohio 44114, between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: LT Nicole Starr, U.S. Coast Guard Marine Safety Unit Cleveland, at (216) 937–0128.

SUPPLEMENTARY INFORMATION:

Regulatory Information:

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The timing of this event does not allow sufficient time for the publication of an NPRM followed by an effective date before the event. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of work crews, vessels and the general public during this event, and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments with regard to this process.

Background and Purpose

This safety zone is necessary and intended to manage vessel traffic in order to provide for the safety of life and property on navigated waters of Lake Erie. The Captain of the Port has determined that this evolution poses a threat to vessel operators due to the navigational risks associated with this type of event.

Discussion of Rule

The following area is a safety zone: All waters of the south shore of Lake Erie within a box drawn from 41°43.70′ N 081°21.20′ W to 41°44.45′ N 081°22.00′ W to 41°46.40′ N 081°18.15′ W to 41°45.40′ N 081°17.50′ W thence following the shore line to origin. These coordinates are based upon North American Datum 1983 (NAD).

Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Coast Guard may be contacted via VHF Channel 16 during this event.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the limited time that the safety zone will be in effect, and that advance notice will be made to the maritime community via Local Notice to Mariners, facsimile, and marine safety information broadcasts. This regulation is tailored to impose a minimal impact on maritime interests without compromising safety.

Small Entities

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

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

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of the activated safety zone.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zone is only in effect for a few hours and restricts only a limited area of navigable water of Lake Erie. Before the activation of the safety zone, the Coast Guard will issue maritime advisories available to users who may be impacted through Local Notice to Mariners, facsimile, and marine safety information broadcasts. Additionally, the Coast Guard has not received any reports from small entities that will be negatively affected.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Cleveland (see **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone therefore paragraph (34)(g) of the Instruction applies.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T09–060 is added read as follows:

§ 165.T09–060 Safety Zone; Lake Erie, Mentor, Ohio, Mentor Power Boat Race.

(a) *Location.* The following area is a safety zone: All waters of the south shore of Lake Erie within a box drawn from 41°43.70′ N 081°21.20′ W to 41°44.45′ N 081°22.00′ W to 41°46.40′ N 081°18.15′ W to 41°45.40′ N 081°17.50′ W thence following the shore line to origin. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Definitions.* The following definitions apply to this section: *Designated on-scene representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the Captain of the Port (COTP), Buffalo, New York, in the enforcement of regulated navigation areas and safety and security zones.

(c) *Effective Period.* This rule is effective from 12 noon (local) through 4 p.m. (local) on July 9th, 2006.

(d) *Regulations.* Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Coast Guard may be contacted via VHF Channel 16 during this event.

Dated: June 15, 2006.

S.J. Furguson,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. E6–10046 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP St. Petersburg 06–104]

RIN 1625–AA00

Safety Zone; Clearwater Harbor, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Clearwater Harbor, Florida. This rule is necessary to protect participants and spectators from the hazards associated with the launching of fireworks over the navigable waters of the United States.

DATES: This rule is effective from 8:30 p.m. through 10 p.m. on July 4, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP 06–104] and are available for inspection or copying at Coast Guard Sector St. Petersburg, Prevention Department, 155 Columbia Drive, Tampa, Florida 33606–3598 between 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: The Waterways Management Division at Coast Guard Sector St. Petersburg, (813) 228–2191 Ext 8307.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Information regarding the event was not provided with sufficient time to publish an NPRM. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to minimize potential danger to the public during the fireworks demonstration. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction.

Background and Purpose

The City of Clearwater, Florida is sponsoring a fireworks display on July 4, 2006 from the Clearwater Memorial Causeway on the west side of the Clearwater Memorial Bride. Although the fireworks will be launched from land, the fallout area extends over the Intracoastal Waterway and a large portion of Clearwater Harbor. This rule is needed to protect spectator craft in the vicinity of the fireworks presentation from the hazards associated with the launching of fireworks. This safety zone is being established to ensure safety of life during the fireworks display.

Discussion of Rule

The safety zone encompasses the following: All waters from surface to bottom, within a 300-yard radius of the west side of the Clearwater Memorial Bridge, approximate position: 27°58′01″ N, 082°48′15″ W. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port St. Petersburg or his designated representative. The zone will be enforced from 8:30 p.m. until 10 p.m. on July 4, 2006.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The rule will only

be enforced for one-and-one-half hours in an area and during a time when vessel traffic is minimal. Moreover, vessels may still enter the safety zone with the express permission of the Captain of the Port St. Petersburg or his designated representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit Clearwater Harbor in the vicinity of the Clearwater Memorial Causeway. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced in a location where traffic is minimal and for a limited time; and traffic will be allowed to enter the zone with the permission of the Captain of the Port St. Petersburg or his designated representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the office listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Division 5100.0, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T07–104 is added to read as follows:

§ 165.T07–104 Safety Zone; Clearwater Harbor, Florida.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone on the waters of Clearwater Harbor, Florida, that includes all the waters from surface to bottom, within a 300 yard radius of the west side of the Clearwater Memorial Bridge, centered at the following coordinates: 27°58′01″ N, 082°48′15″ W. All coordinates referenced use datum: NAD 83.

(b) *Definitions.* The following definitions apply to this section:

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the Captain of the Port, St. Petersburg, in the enforcement of regulated navigation areas and safety and security zones.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may anchor, moor, or transit the Regulated Area without permission of the Captain of the Port St Petersburg, Florida, or his designated representative.

(d) *Dates.* This rule will be enforced from 8:30 p.m. until 10 p.m. on July 4, 2006.

Dated: June 9, 2006.

E.A. Pepper,

Commander, U.S. Coast Guard, Captain of the Port St. Petersburg, Florida, Acting.

[FR Doc. E6–10047 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–06–049]

RIN 1625–AA00

Safety Zone; Island Festival Fireworks Display, Baldwinsville, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the navigable waters of the Seneca River at the Budweiser Amphitheater near Lock 24 in Baldwinsville, NY. This safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with fireworks displays. This safety zone restricts vessel traffic from a portion of the Seneca River at the Budweiser Amphitheater near Lock 24 in Baldwinsville, NY.

DATES: This rule is in effect from 10 p.m. (local) until 10:30 p.m. (local) on July 1, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of the docket [CGD09–06–049], and are available for inspection or copying at U.S. Coast Guard Sector Buffalo, 1 Fuhrmann Blvd, Buffalo, New York 14203 between 7 a.m. and 4 p.m. (local), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Tracy Wirth, U.S. Coast Guard Sector Buffalo, at (716) 843–9573.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This safety zone is temporary in nature and limited time existed for an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impracticable and contrary to public interest since immediate action is needed to minimize potential danger to the public during the fireworks demonstration.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Buffalo has determined fireworks displays pose significant risks to public safety and property.

The likely combination of large numbers of recreational vessels, congested waterways, and alcohol use, could easily result in serious injuries or fatalities.

Discussion of Rule

The proposed safety zone consists of all navigable waters of the Seneca River in a 500-foot radius around a point at approximate position: 43°09′25″ N, 076°20′21″ W (NAD 1983) in Baldwinsville, NY. All Geographic coordinates are North American Datum of 1983 (NAD 83). The size of this proposed zone was determined using the National Fire Prevention Association guidelines.

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

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

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

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant impact on a substantial number of small entities. The term "small entities"

comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This rule may affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 10 p.m. (local) until 10:30 p.m. (local) on the day of the event. Vessel traffic can safely pass outside the safety zone during the event. In cases where traffic congestion is greater than expected or blocks shipping channels, traffic may be allowed to pass through the safety zone under Coast Guard or assisting agency escort with the permission of the Captain of the Port Buffalo. Additionally, the Coast Guard has not received any negative reports from small entities affected during these displays in previous years.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast guard, call 1–800–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone; therefore, paragraph (34)(g) of the Instruction applies.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new temporary § 165.T09–049 to read as follows:

§ 165.T09–049 Safety Zone; Island Festival Fireworks Display, Baldwinsville, NY.

(a) *Location.* The following area is a temporary safety zone: all navigable waters of the Seneca River in a 500-foot radius around a point at approximate position: 43°09′25″ N, 076°20′21″ W (NAD 1983) in Baldwinsville, NY. All Geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Definitions.* The following definitions apply to this section:

Designated on-scene representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP), Buffalo, New York, in the enforcement of regulated navigation areas and safety and security zones.

(c) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Buffalo.

(2) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

(d) *Effective time and date.* This section is effective from 10 p.m. (local) until 10:30 p.m. (local) on July 1, 2006.

Dated: June 13, 2006.

S.J. Furguson,

Commander, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. E6–10049 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–06–053]

RIN 1625–AA00

Safety Zone; Fourth of July Fireworks, Heart Island, Alexandria Bay, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the navigable waters of St. Lawrence River near Heart Island on July 4, 2006. This safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with fireworks displays. This safety zone is intended to restrict vessel traffic from a portion of St. Lawrence River, Heart Island, New York.

DATES: This rule is effective from 9 p.m. (local) until 10 p.m. (local) on July 4, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD09–06–053] and are available for inspection or copying at: U.S. Coast Guard Sector Buffalo, 1 Fuhrmann Blvd., Buffalo, New York 14203, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Tracy Wirth, U.S. Coast Guard Sector Buffalo, at (716) 843–9573.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date.

Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event, and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Buffalo has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone consists of all navigable waters of the St. Lawrence River in a 500-foot radius around a point at approximate position 44°20′39″ N, 075°55′16″ W. All Geographic coordinates are North American Datum of 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

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

Regulatory Evaluation

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

This determination is based on the minimal time that vessels will be restricted from the zone, and would have minor, if any, impact to Mariners.

Small Entities

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

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

This rule would affect the following entities, some of which might be small

entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: This safety zone is only in effect from 9 p.m. (local) until 10 p.m. (local) on the day of the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact U.S. Coast Guard Sector Buffalo (see **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone therefore paragraph (34)(g) of the Instruction applies.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T09–053 is added to read as follows:

§ 165.T09–053 Safety Zone; Heart Island, Alexandria Bay, NY.

(a) *Location.* The following area is a temporary safety zone: all navigable waters of the St. Lawrence River in a 500-foot radius around a point at approximate position 44°20′39″ N, 075°55′16″ W. All Geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Definitions.* The following definitions apply to this section:

Designated on-scene representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP), Buffalo, New York, in the enforcement of regulated navigation areas and safety and security zones.

(c) *Effective time and date.* This section is effective from 9 p.m. (local) until 10 p.m. (local) on July 4th, 2006.

(d) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

Dated: June 13, 2006.

S.J. Furguson,

Captain, U.S. Coast Guard, Captain of the Port, Buffalo.

[FR Doc. E6–10050 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2006–0286; FRL–8188–6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are taking final action to approve a revision to the maintenance plan prepared by Missouri to maintain the national ambient air quality standard for ozone in the Missouri portion of the Kansas City maintenance area. This plan is applicable to Clay, Jackson and Platte Counties. The effect of this approval is to ensure Federal enforceability of the state air program plan and to maintain consistency between the state-adopted plan and the approved SIP.

DATES: This direct final rule will be effective August 25, 2006, without further notice, unless EPA receives adverse comment by July 26, 2006. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2006–0286, by one of the following methods:

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

2. E-mail: *algoe-eakin.amy@epa.gov.*

3. Mail: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. Hand Delivery or Courier. Deliver your comments to Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2006–0286. 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 through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. 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 at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin at (913) 551–7942, or by e-mail at *algoe-eakin.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards (NAAQS) established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Are the Criteria for Approval of a Maintenance Plan?

The requirements for the approval and revision of a maintenance plan are found in section 175A of the CAA. In general, a maintenance plan must provide a demonstration of continued attainment including the control measures relied upon, provide contingency measures for the prompt correction of any violation of the standard, provide for continued operation of the ambient air quality monitoring network, provide a means of tracking the progress of the plan, and include the attainment emissions inventory and new budgets for motor vehicle emissions. The requirement for a motor vehicle emissions budget is no longer applicable to the Kansas City area as explained below.

What Is Being Addressed in this Document?

By letter dated September 6, 2005, Missouri submitted a SIP revision that revised the prior plan for maintaining the 1-hour ozone standard in Kansas City. The maintenance plan includes Clay, Jackson and Platte Counties in Missouri. The Kansas City area is designated attainment for the 8-hour ozone standard and is a "maintenance" area for the 1-hour standard (an area which has been redesignated from nonattainment to attainment with an approved maintenance plan). The revision makes five changes to the maintenance plan. The plan was revised to provide information about the 8-hour ozone standard, provide updated information about the scope of the monitoring network, and provide 8-hour ozone air quality data. A statement is included that transportation conformity ended when the 1-hour standard was revoked on June 15, 2005. It is appropriate to remove all language relating to transportation conformity as the 1-hour ozone standard was revoked and the area was designated as an attainment area for the 8-hour standard. The only substantive revision made was the addition of contingency measure triggers relating to the 8-hour ozone standard. The contingency measures and schedule for implementing them were not changed.

Thus, four of the five principal components of the maintenance plan, noted above, have not changed; and, therefore, the approvability of those sections is not addressed here. EPA took final action on these components on January 13, 2004 (69 FR 1921). The changes made to the contingency measures portion of the plan are addressed below.

What Is in the Contingency Measure Portion of the Maintenance Plan and Is It Approvable?

The contingency measures listed have not changed, and the schedule for implementing measures has not changed (adoption of measures within 18 months and full implementation within 24 months). Revision to the maintenance plan also retains triggers previously approved and adds triggers for the 8-hour ozone standard.

We believe it is appropriate to include a trigger relating to the 8-hour ozone standard, since that is the relevant standard which applies to Kansas City. However, because Missouri has not yet adopted, and EPA has not yet approved a maintenance plan for the area as required by section 110(a) of the CAA (the submission is due in June 2007), Missouri must also retain the 1-hour ozone standard triggers previously approved in the maintenance plan. (See, 40 CFR 51.905(e)(2)). Therefore, Missouri has included both 1-hour and 8-hour contingency measure triggers in its SIP.

Does the 8-Hour Ozone Implementation Rule Have Any Bearing on This Revision?

The Phase-1 Implementation Rule for the 8-hour ozone standard promulgated in April 2004 requires that former 1-hour maintenance areas, areas such as Kansas City, prepare and submit no later than June 15, 2007, a plan under section 110 of the CAA to maintain the 8-hour ozone standard for a ten-year period from the date of designation. The revisions submitted by Missouri are revisions to the existing 1-hour maintenance plan to provide interim protection for violations of the 8-hour standard. These revisions do not address requirements in the implementation rule for the 8-hour ozone standard. We anticipate that Missouri will address the latter requirements in a subsequent submittal.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA.

The requirements for maintenance plans are established in section 175A of the CAA. With the maintenance plan revisions identified above, the plan continues to meet these requirements.

What Action Is EPA Taking?

Our review of the material submitted indicates that the state has revised the maintenance plan in accordance with the requirements of the CAA. We are fully approving Missouri's revised

maintenance plan for the Missouri portion of the Kansas City maintenance area.

We are processing this action as a direct final action because the revisions make routine changes to the existing SIP which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

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 CAA. 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 CAA. 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 CAA. 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.*).

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 25, 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 15, 2006.

James B. Gulliford,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations 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 AA—Missouri

■ 2. In § 52.1320(e) the table is amended by adding an entry in numerical order to read as follows:

§ 52.1320 Identification of Plan.

* * * * *

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(50) Revision to Maintenance Plan for the 1-hour ozone standard in the Missouri portion of the Kansas City maintenance area for the second the ten-year period.	Kansas City	10/28/05	6/26/06 [insert FR page number where the document begins].	

[FR Doc. 06–5625 Filed 6–23–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2006–0365; FRL–8188–4]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are taking final action to approve a revision to the maintenance plan prepared by Kansas to maintain the national ambient air quality standard (NAAQS) for ozone in the Kansas portion of the Kansas City maintenance area. This plan is applicable to Johnson and Wyandotte counties in Kansas. The effect of this approval is to ensure Federal enforceability of the state air program plan and to maintain consistency between the state-adopted plan and the approved SIP.

DATES: This direct final rule will be effective August 25, 2006, without further notice, unless EPA receives adverse comment by July 26, 2006. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2006–0365, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. E-mail: *kneib.gina@epa.gov.*
3. Mail: Gina Kneib, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. Hand Delivery or Courier. Deliver your comments to Gina Kneib, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2006–0365. 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 through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. 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 at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Gina Kneib at (913) 551–7078, or by e-mail at *kneib.gina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not

reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Are the Criteria for Approval of a Maintenance Plan?

The requirements for the approval and revision of a maintenance plan are found in section 175A of the CAA. In general, a maintenance plan must provide a demonstration of continued attainment including the control measures relied upon, provide contingency measures for the prompt correction of any violation of the standard, provide for continued operation of the ambient air quality monitoring network, provide a means of tracking the progress of the plan, and include the attainment emissions inventory and new budgets for motor vehicle emissions. The requirement for a motor vehicle emissions budget is no longer applicable to the Kansas City area as explained below.

What Is Being Addressed in This Document?

By letter dated February 2, 2005, Kansas submitted a SIP revision that revised the prior plan for maintaining the 1-hour ozone standard in Kansas City. The maintenance plan includes Johnson and Wyandotte Counties in Kansas. The Kansas City area is designated as an attainment area for the 8-hour ozone standard, and was a "maintenance" area for the 1-hour ozone standard (an area redesignated from nonattainment to attainment with an approved maintenance plan).

The revision makes three substantive changes to the maintenance plan. It will add contingency measure triggers relating to the 8-hour ozone standard; remove language relating to the motor vehicle emissions budgets; and remove the enhanced Inspection and Maintenance (I/M) program from the list of potential contingency measures.

With respect to removal of the I/M program, the CAA requires the inclusion of contingency measures that will promptly correct air quality problems, it does not mandate what measures must be included. In this case, KDHE's analysis showed that the I/M program cannot be promptly implemented, and that other measures identified in the plan address air quality violations more quickly. Since I/M has never been a mandatory requirement in the Kansas City area, and the plan includes other measures to promptly correct any violations of the ozone standard, it is appropriate to remove it from the list of contingency measures.

With respect to the removal of the language relating to motor vehicle emissions budgets for maintenance of the 1-hour ozone standard, we note that Kansas City is an attainment area for 8-hour ozone, and the 1-hour standard no longer applies. Therefore, the conformity requirement in section 176 no longer applies, and it is appropriate to remove language relating to conformity.

The plan also contains information about the 8-hour ozone standard. It provides updated information about the scope of the monitoring network and provides 8-hour ozone air quality data. The remaining substantive revision is the addition of contingency measure triggers relating to the 8-hour ozone standard. The changes made to the contingency measure triggers are addressed below.

What Is in the Contingency Measure Portion of the Maintenance Plan and Is It Approvable?

The triggers for implementation of contingency measures in the previously approved maintenance plan were based on the 1-hour ozone standard. Triggers for the contingency measures in the revised plan include a violation of the 8-hour ozone standard in addition to violation of the 1-hour standard. Except for the I/M program discussed previously, the contingency measures are the same as in the currently approved plan. In addition, the schedule for implementation of contingency measures (within 24-months of a violation of the 1-hour or 8-hour standard) remains the same.

We believe it is appropriate to include a trigger relating to the 8-hour ozone standard, since it is the relevant standard which applies to Kansas City. However, because Kansas has not yet adopted, and EPA has not yet approved a maintenance plan for the area as required by section 110(a) of the CAA (the submission is due in June 2007), Kansas must also retain the 1-hour violation trigger included in the previously approved maintenance plan (see 40 CFR 51.905 (e)(2)). Therefore, Kansas has included both 1-hour and 8-hour contingency measure triggers in its SIP.

Does the Phase-1 Rule for the 8-Hour Ozone Standard Have Any Bearing on This Revision?

This revision updates the 1-hour ozone maintenance plan in order to provide interim protection until a new plan for the 8-hour ozone standard is implemented. The Phase-1 Implementation Rule for the 8-hour ozone standard promulgated in April 2004 requires that former 1-hour maintenance areas, areas such as Kansas City, prepare and submit no later than June 15, 2007, a plan under section 110 of the CAA to maintain the 8-hour ozone standard for a ten-year period from the date of designation. We expect that Kansas will submit a new plan meeting the above requirements by the June 15, 2007, deadline. The revisions addressed in this final rule are revisions to the existing 1-hour maintenance plan and do not address the requirements in the implementation rule for the 8-hour ozone standard.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA.

The requirements for maintenance plans are established in section 175A of the CAA. With the Maintenance plan revisions identified above, the plan continues to meet these requirements.

What Action Is EPA Taking?

Our review of the material submitted indicates that the state has revised the maintenance plan in accordance with the requirements of the CAA. We are fully approving Kansas's revised 1-hour maintenance plan for the Kansas portion of the Kansas City maintenance area.

We are processing this action as a direct final action because the revisions make routine changes to the existing SIP which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

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 CAA. 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 CAA. 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 CAA. 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.*).

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 25, 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 15, 2006.

James B. Gulliford,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations 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 R—Kansas

■ 2. In § 52.870(e) the table is amended by adding an entry in numerical order to read as follows:

§ 52.870 Identification of Plan.

* * * * *

(e) * * *

EPA-APPROVED KANSAS NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(29) Revision to Maintenance Plan for the 1-hour ozone standard in the Kansas portion of the Kansas City maintenance area for the second ten-year period.	Kansas City	02/10/06	06/26/06 (insert FR page number where the document begins].	

[FR Doc. 06–5623 Filed 6–23–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R10–RCRA–2006–0064; FRL–8188–8]

Oregon: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 14, 2005, Oregon applied to EPA for authorization of changes to its hazardous waste management program under the Resource Conservation and Recovery Act (RCRA). EPA reviewed Oregon's application and published a proposed rule on April 14, 2006 (71 FR 19471) seeking public comment on EPA's preliminary determination to grant authorization of the changes. Since EPA received no comments on the proposed rule, EPA is granting final authorization of the state's changes in this final rule.

DATES: Final authorization for the revisions to the hazardous waste program in Oregon shall be effective at 1 p.m. E.S.T. on June 26, 2006.

ADDRESSES: EPA established a docket for this action under Docket ID No. EPA–R10–RCRA–2006–0064. All documents in the docket are available electronically on the Web site *http://www.regulations.gov*. A hard copy of the authorization application is also available for viewing during normal business hours at the U.S. Environmental Protection Agency Region 10, Office of Air, Waste & Toxics, 1200 Sixth Ave., Seattle, Washington, contact: Jeff Hunt, phone number: (206) 553–0256; or Oregon Department of Environmental Quality, 811 SW Sixth, Portland, Oregon, contact: Scott Latham, phone number (503) 229–5953.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, U.S. Environmental Protection Agency Region 10, Office of Air, Waste & Toxics (AWT–122), 1200 Sixth Ave., Seattle, Washington 98101, phone number: (206) 553–0256, e-mail: *hunt.jeff@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

EPA has determined that Oregon's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are granting Oregon final authorization to operate its hazardous waste program with the changes described in the authorization application. Oregon will have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian country (18 U.S.C. 1151) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before the states are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Oregon, including issuing permits, until the State is granted authorization to do so.

C. What Will Be the Effect of This Action?

A facility in Oregon subject to RCRA will have to comply with the authorized State requirements in lieu of the corresponding federal requirements in order to comply with RCRA. Additionally, such persons will have to comply with any applicable federally-issued requirements, such as, for example, HSWA regulations issued by EPA for which the State has not received authorization, and RCRA requirements that are not supplanted by authorized State-issued requirements. Oregon continues to have enforcement responsibilities under its state hazardous waste management program for violations of its program, but EPA continues to have enforcement authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, among others, the authority to:

- Perform inspections; require monitoring, tests, analyses or reports;
- Enforce RCRA requirements; suspend or revoke permits; and
- Take enforcement actions regardless of whether Oregon has taken its own actions.

The action to approve these revisions does not impose additional requirements on the regulated community because the changes to Oregon's authorized hazardous waste program are already effective under State law and are not changed by this action.

D. What Were the Comments to EPA's Proposed Rule?

EPA received no comments during the public comment period which ended May 15, 2006.

E. What Has Oregon Previously Been Authorized for?

Oregon initially received final authorization on January 30, 1986, effective January 31, 1986 (51 FR 3779), to implement the RCRA hazardous waste management program. EPA granted authorization for changes to their program on March 30, 1990, effective on May 29, 1990 (55 FR 11909); August 5, 1994, effective October 4, 1994 (59 FR 39967); June 16, 1995, effective August 15, 1995 (60 FR 31642); October 10, 1995, effective December 7, 1995 (60 FR 52629); and September 10, 2002, effective September 10, 2002 (67 FR 57337).

F. What Changes Are We Authorizing With This Action?

EPA is authorizing revisions to the hazardous waste program described in Oregon's official program revision application, submitted to EPA on December 14, 2005, and deemed complete by EPA on December 22, 2005.

The following table, Table 1, identifies equivalent State regulatory analogues to the Federal regulations which are authorized by this action. All of the referenced analogous State authorities were legally adopted and effective as of October 24, 2003.

TABLE 1.—EQUIVALENT ANALOGUES TO THE FEDERAL REGULATIONS

Description federal requirements CL No. [1]	Federal Register	Analogous state authority (OAR 340–* * *)
Requirements for Preparation, Adoption, and Submittal of Implementation Plans, CL 125.	58 FR 38816, 7/20/1993	–100–0002
LDR Restrictions Phase III, Emergency Extension of the K088 Capacity Variance, CL 155.	62 FR 1992, 1/14/97	–100–0002
LDR Restrictions Phase III, Emergency Extension of the K088 Capacity Variance, CL 160.	62 FR 37694, 7/14/97	–100–0002
Petroleum Refining Process Wastes—Clarification, CL 187	65 FR 36365, 6/8/2000	–100–0002
Hazardous Air Pollutant Standards, Technical Corrections, CL 188	65 FR 42292, 7/10/2000	–100–0002, –101–0001, –104–0001, –105–0001
Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes, CL 189	65 FR 67068, 11/8/2000	–100–0002, –101–0001
LDRs Phase IV—Deferral for PCBs in Soil, CL 190	65 FR 81373, 12/26/2000 ..	–100–0002
Mixed Waste rule, CL 191	66 FR 27218, 5/16/2001	–100–0002
Mixture and Derived-From Rules Revisions, CL 192A	66 FR 27266, 5/16/2001	–100–0002,–101–0001
LDR Restrictions Correction, CL 192B	66 FR 27266, 5/16/2001	–100–0002
Change of Official EPA Mailing Address, CL 193	66 FR 34374, 6/28/2001	–100–0002
Mixture and Derived-From Rules Revision II, CL 194	66 FR 50332, 10/3/2001	–100–0002, –101–0001
Inorganic Chemical Manufacturing Wastes Identification & Listing, CL 195	66 FR 58258, 11/20/2001; 67 FR 17119, 4/9/2002.	–100–0002, –101–0001
CAMU Amendments, CL 196	67 FR 2962, 1/22/2002	–100–0002
Hazardous Air Pollutant Standards for Combustors; Interim Standards, CL 197	67 FR 6792, 2/13/2002	–100–0002, –104–0001, –105–0001
Hazardous Air Pollutant Standards for Combustors; Corrections, CL 198	67 FR 6968, 2/14/2002	–100–0002, 105–0001
Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes & TCLP Use with MGP Waste, CL 199.	67 FR 11251, 3/13/2002	100–0002, 101–0001, 102–0010
Zinc Fertilizer Rule, CL 200	67 FR 48393, 7/24/2002	100–0002; 101–0004; –102–0010

[1] CL No. (Checklist) generally reflects changes made to the Federal regulations pursuant to a particular **Federal Register** notice. EPA publishes these checklists as aids for States to use for the development of their authorization applications. See EPA's RCRA State Authorization web page at *http://www.epa.gov/epaoswer/hazwaste/state/.*

G. What Other Revisions Are We Authorizing in This Action?

During a review of Oregon's regulations, we identified a variety of changes that Oregon had made to previously authorized hazardous waste provisions. EPA brought these changes to the attention of Oregon and confirmed with the State that the State-initiated changes generally correct typographical errors and printing errors, clarify and make the State's regulations more internally consistent, or bring the State regulations closer to the Federal language. In this rulemaking we are also correcting errors made by EPA in previous authorization **Federal Register** notices for Oregon. The State's authorized hazardous waste program, as amended by these provisions, remains equivalent to, consistent with, and no less stringent than the Federal RCRA program. The table below, Table 2, shows both the state initiated and the EPA-initiated changes authorized by this action. All of the referenced analogous State authorities were legally adopted and already in effect as of December 22, 2005, when EPA determined that the authorization application was complete.

TABLE 2.—REVISIONS TO PREVIOUSLY AUTHORIZED RULES [1]

Description of Federal Requirements, CL No. [2]	Federal Register	Analogous State authority (OAR 340–* * *)
Availability of Information	.....	–100–0003, –100–00005(1)–(5); –105–0012.
Generator Requirements, CL II	.....	–100–0002; 102–0011(2), –0012, –0040, –0041, –0050.
Permitting Requirements, CL V	.....	–100–0002; –105–0010, –0012, –0030, –0061; –106–0002.
Small Quantity Generators, CL 23	51 FR 10174, 3/24/86	–100–0002; 101–0033;102–0034, –0041, –0044; –105–0010.
LDRs (Solvents and Dioxins), CL 34	51 FR 40572, 11/7/86	–100–0002, –100–0010, –102–0011(2)(d) & (e), –105–0014.
Changes to Interim Status Facilities for Hazardous Waste Management Permits; Procedures for Post-Closure Permitting, CL 61.	54 FR 9596, 3/7/89	–100 –0002; –105–0001(3) & (4), –0010; –106–0002.
Burning of Hazardous Waste in Boilers and Industrial Furnaces, Corrections & Technical Amendments, CL 94.	56 FR 32688, 7/17/91	–100–0002 –100–0004; –105–0010.
Recycled Used Oil Management Standards, CL 112	57 FR 41566, 9/10/92	–100–0002(2); –111–0000.

TABLE 2.—REVISIONS TO PREVIOUSLY AUTHORIZED RULES [1]—Continued

Description of Federal Requirements, CL No. [2]	Federal Register	Analogous State authority (OAR 340–* * *)
Recycled Used Oil Management Standards; Technical Amendments and Corrections, CL 122.	58 FR 33341, 5/3/93; 58 FR 33341, 6/17/93.	–100–0002(2); –111–0000, –0010, –0020, –0032, –0035, –0040, –0050, –0060, –0070.
Recycled Used Oil Management Standards; Technical Amendments and Corrections II, CL 130.	59 FR 10550, 3/4/94	–100–0002; –111–0000; –111–0010.
Universal Waste Rule: General Provisions, CL 142A	60 FR 26942, 5/11/95	–100–0002; –102–0011(e); –113–0000, –0020, –0020(1)–(4), –0030, –0040, –0050.
LDRs Phase III—Decharacterized Wastewaters Carbamate Wastes, and Spent Potliners, CL 151.	61 FR 15566, 4/8/96	–100–0002.
Recycled Used Oil Management Standards; Technical Correction and Clarification, CL 166.	63 FR 24963, 5/6/98	–100–0002; –111–0000, –0032, –0050.
Belvill Exclusion Revisions and Clarification, CL 167E	63 FR 28556, 5/26/98	–100–0002; –101–0001, –0004.
Hazardous Remediation Waste Management Requirement (HWIR-Media), CL 175	63 FR 65874, 11/30/98	–100–0002; –100–0010; –105–0003, –105–0115.
Hazardous Air Pollutant Standards for Combustors, CL 182	64 FR 62828, 9/30/99	–100–0002; –101–0001; –104–0001, –0340; –105–0001.
Universal Waste Rule as of 12/31/02, Special Consolidated Checklist	60 FR 25492, 5/11/95; 63 FR 71225, 12/24/98; 64 FR 36466, 7/6/99.	100–0002, –0010(3)(j); –102–0011(e); –113–0000, –0010, –0020, –0030, –0040, –0050, –0060, –0070.

[1] For further discussion on where the revised State rules differ from the Federal Rules refer to the authorization revision application and the administrative record for this rule.

[2] CL No. (Checklist) generally reflects changes made to the Federal regulations pursuant to a particular **Federal Register** notice. EPA publishes these checklists as aids for States to use for the development of their authorization applications. See EPA's RCRA State Authorization web page at *http://www.epa.gov/epaoswer/hazwaste/state/.*

H. Who Handles Permits After This Authorization Takes Effect?

Oregon will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. For permits issued by EPA prior to this authorization, these permits would continue in force until the effective date of the State's issuance or denial of a State hazardous waste permit, at which time EPA would modify the existing EPA permit to expire at an earlier date, terminate the existing EPA permit for cause, or allow the existing EPA permit to otherwise expire by its term, except for those facilities located in Indian Country. EPA will not issue new permits or new portions of permits for provisions for which Oregon is now authorized. EPA will continue to implement and issue permits for HSWA requirements for which Oregon is not yet authorized.

I. What Is Codification and Is EPA Codifying Oregon's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. This is done by referencing the authorized State rules in 40 CFR Part 272. EPA is reserving the amendment of 40 CFR Part 272, Subpart MM for codification of this current revision to Oregon's program at a later date.

J. How Does This Authorization Action Affect Indian Country (18 U.S.C. 1151) in Oregon?

Oregon is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. Indian country includes:

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Oregon;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation that qualifies as Indian country.

Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

K. Statutory and Executive Order Reviews

This rule revises the State of Oregon's authorized hazardous waste program pursuant to section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. This rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4,1993), the Agency must determine whether the regulatory action is "significant," and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this rule is not a "significant regulatory action" under the terms of Executive

Order 12866 and is therefore not subject to OMB review.

2. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, because this rule does not establish or modify any information or recordkeeping requirements for the regulated community and only seeks to authorize the pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

3. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601, *et seq.*, generally requires federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administrations' Size Regulations at 13 CFR part 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant economic impact on small entities because the rule will only have the effect of authorizing pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law. After considering the economic impacts of this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, this rule is not subject to the requirements of sections 202 and 203 of the UMRA.

5. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government." This rule does not have Federalism implications. It will 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 various levels of government, as specified in Executive Order 13132. This rule seeks authorization of pre-existing State rules. Thus, Executive Order 13132 does not apply to this rule.

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency

must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a "significant regulatory action" as defined under Executive Order 12866.

9. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve "technical standards" as defined by the NTTAA. Therefore, EPA is not considering the use of any voluntary consensus standards.

10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this rule authorizes pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

11. 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 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 7, 2006.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. E6–10021 Filed 6–23–06; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 71, No. 122
Monday, June 26, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. APHIS–2006–0025]

Importation of Table Grapes From Namibia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation into the United States of fresh table grapes from Namibia under certain conditions. As a condition of entry, the grapes would have to undergo cold treatment and fumigation with methyl bromide and would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the commodity has been inspected and found free of the specified pests. In addition, the grapes would also be subject to inspection at the port of first arrival. This action would allow for the importation of grapes from Namibia into the United States while continuing to provide protection against the introduction of quarantine pests.

DATES: We will consider all comments that we receive on or before August 25, 2006.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and, in the lower "Search Open Regulations and Federal Actions" box, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select APHIS–2006–0025 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0025, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0025.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Porsche, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of Namibia has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh table grapes from Namibia to be imported into the United States. As part of our evaluation of Namibia's request, we prepared a pest risk assessment (PRA) and a risk management document. Copies of the PRA and risk management document may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instruction for accessing Regulations.gov).

The PRA, titled "Qualitative Pathway—Initiated Risk Assessment of the Importation of Fresh Table Grapes *Vitis vinifera* L. from Namibia into the United States" (November 2005), evaluates the risks associated with the importation of table grapes into the United States from Namibia. The PRA and supporting documents identified 30 pests of quarantine significance present in Namibia or in nearby countries [1] that could be introduced into the United States via table grapes. These pests include 28 insect pests and 2 mollusks. Four of the insect pests are internal feeders: The moths *Cryptophlebia leucotreta* and *Epichoristodes acerbella* and the fruit flies *Ceratitis capitata* and *Ceratitis rosa*. The other 24 insect pests are external feeders: The whitefly *Aleurocanthus spiniferus;* the twig borer *Apate monachus;* the weevils *Bustomus setulosus* and *Phlyctinus callosus;* the scales *Ceroplastes rusci* and *Icerya seychellarum;* the moth *Cryptoblabes gnidiella;* the beetles *Dischista cincta, Eremnus atratus, Eremnus cerealis, Eremnus setulosus,* and *Pachnoda sinuata;* the cotton jassid *Empoasca lybica;* the mite *Eutetranychus orientalis;* the bollworm *Helicoverpa armigera;* the chinch bug *Macchiademus diplopterus;* the mealybugs *Maconellicoccus hirsutus, Nipaecoccus vastator,* and *Rastrococcus iceryoides;* the cottonseed bug *Oxycarenus hyalinipennis;* the thrips *Scirtothrips aurantii* and *Scirtothrips dorsalis;* the leafworm *Spodoptera littoralis;* and the bud nibbler *Tanyrhynchus carinatus*. The two mollusks, *Cochlicella ventricosa* and *Theba pisana,* are also external feeders.

APHIS has determined that measures beyond standard port of entry inspection are required to mitigate the risks posed by these plant pests. Therefore, we propose to require that the grapes be subjected to a combined treatment of cold treatment in accordance with schedule T107–e and

[1] Due to Namibia being a part of South Africa until 1990 and grape production in Namibia as a commercial export being relatively new, the PRA takes into account pest data from grape growing regions in neighboring regions of southern Africa as well as Namibia.

methyl bromide fumigation in accordance with schedule T104–a–1.

Cold treatment schedule T107–e is described in § 305.16 of the phytosanitary treatments regulations in 7 CFR part 305. Under that schedule, the grapes would have to be held at a temperature of 31 °F (−0.55 °C) or colder for a period of 22 days. The 22-day treatment period would begin only after all temperature sensors indicate the grapes have been precooled to 31 °F or below. If the temperature exceeds 31.5 °F, the treatment period would have to be extended by one-third of a day for each day or part of a day that the temperature is above 31.5 °F. If the exposure period is extended, the temperature during the extension period must be 34 °F or below. If the temperature exceeds 34 °F at any time, the treatment is nullified. This cold treatment schedule has been proven effective in treating false codling moth (*Cryptophlebia leucotreta*) on grapes from South Africa. This treatment would also mitigate the risks associated with the fruit flies *Ceratitis capitata* and *Ceratitis rosa* and the moth *Epichoristodes acerbella*, which are less adaptable to colder temperatures than false codling moth.

In addition, we would require that the grapes be fumigated with methyl bromide fumigation in accordance with schedule T104–a–1, which is described in § 305.6(a) of the phytosanitary treatments regulations.

Treatment schedule	Pressure	Temperature (°F)	Dosage rate (lb/1,000 cubic feet)	Exposure period (hours)
T104–a–1	NAP[1]	80 or above	1.5	2
		70–79	2	2
		60–69	2.5	2
		50–59	3	2
		40–49	4	2

[1] Normal atmospheric pressure.

This methyl bromide fumigation treatment schedule has been proven effective in treating external pests on imported fruits and vegetables from around the world, except for mealybugs. Therefore this treatment will effectively mitigate the risks associated with *Aleurocanthus spiniferus, Apate monachus, Bustomus setulosus, Ceroplastes rusci, Cryptoblabes gnidiella, Dischista cincta, Empoasca lybica, Eremnus atratus, Eremnus cerealis, Eremnus setulosus, Eutetranychus orientalis, Helicoverpa armigera, Icerya seychellarum, Macchiademus diplopterus, Oxycarenus hyalinipennis, Pachnoda sinuata, Phlyctinus callosus, Scirtothrips aurantii, Spodoptera littoralis*, and *Tanyrhynchus carinatus*.

Because the cold and methyl bromide treatments we would require do not effectively mitigate the pest risk posed by the mealybugs, *Maconellicoccus hirsutus, Nipaecoccus vastator, Rastrococcus iceryoides*, or the mollusks, *Cochlicella ventricosa* and *Theba pisana*, the NPPO of Namibia would be required to conduct phytosanitary inspections for those pests. Each shipment of grapes would have to be accompanied by a phytosanitary certificate bearing the additional declaration: "The grapes in this shipment have been inspected and found free of *Maconellicoccus hirsutus, Nipaecoccus vastator, Rastrococcus iceryoides, Cochlicella ventricosa* and *Theba pisana*." Specifically listing the pests on the additional declaration alerts U.S. inspectors to the specific pests of concern.

In addition, we would restrict the importation of fresh table grapes from Namibia to commercial shipments only. Produce grown commercially is less likely to be infested with plant pests than noncommercial shipments. Noncommercial shipments are more prone to infestations because the commodity is often ripe to overripe and is often grown with little or no pest control. Commercial shipments, as defined in § 319.56–1, are shipments of fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Identification of a particular shipment as commercial is based on a variety of indicators, including, but not limited to, the quantity of produce, the type of packaging, identification of a grower or packinghouse on the packaging, and documents consigning the shipment to a wholesaler or retailer.

The proposed conditions described above for the importation of table grapes from Namibia into the United States would be added to the fruits and vegetables regulations as a new § 319.56–2ss. In addition, we would also amend the table in § 305.2(h)(2)(i) of the phytosanitary treatments regulations to add an entry for grapes from Namibia and designate methyl bromide schedule T104–a–2 and cold treatment schedule T107–e as approved treatments for the specific pests named in this document.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the fruits and vegetables regulations to allow the importation into the United States of fresh table grapes from Namibia under certain conditions. As a condition of entry, the grapes would have to undergo cold treatment and fumigation with methyl bromide and would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the commodity has been inspected and found free of the specified pests. In addition, the grapes would also be subject to inspection at the port of first arrival. This action would allow for the importation of grapes from Namibia into the United States while continuing to provide protection against the introduction of quarantine pests.

According to the Trade Law Center for Southern Africa, 7 grape companies in Namibia are currently cultivating 1,300 hectares, irrigated by water from the Orange River, and another 2,000 hectares are expected to be put to cultivation soon. Because of the climate in Namibia, grapes mature in November, which gives producers there a competitive advantage over producers in other southern hemisphere countries where the grape harvest begins in December. Imports of Namibian table grapes into the United States in the first year are expected to reach 22.5 40-foot containers (approximately 744,000 pounds), which would account for less than one-tenth of 1 percent of current U.S. fresh table grape imports.

The Regulatory Flexibility Act requires agencies to specifically consider the economic effects of their rules on small entities. The Small Business Administration (SBA) has established size criteria based on the North American Industry Classification System (NAICS) to determine which economic entities meet the definition of a small firm. The proposed rule may affect producers and wholesalers of table grapes in the United States.

The small business size standards for grape farming without making wine, as identified by the SBA based upon NAICS code 111332, is $750,000 or less in annual receipts.[2] While the available data do not provide the number of U.S. grape-producing entities according to size distribution as it relates to annual receipts, it is reasonable to assume that the majority of the operations are considered small businesses by SBA standards. According to the 2002 Census of Agriculture data, there were a total of 23,856 grape farms in the United States in 2002.[3] It is estimated that approximately 93 percent of these grape farms had annual sales in 2002 of $500,000 or less, and are considered to be small entities by SBA standards.

The United States is a net importer of fresh table grapes. In 2004, the United States imported 1,322.8 million pounds of fresh table grapes with approximately 79 and 19 percent arriving from Chile and Mexico, respectively. In that same year, the United States exported approximately 606.3 million pounds of table grapes. Canada is the largest importer of U.S. fresh grapes, accounting for 44 percent of U.S. exports. The second and third largest importers of U.S. fresh grapes are Malaysia and Mexico, accounting for approximately 9 and 7 percent of U.S. grape exports, respectively.[4] U.S. imports of table grapes experienced an average increase of 6.6 percent annually over the last decade while exports have increased an average of 3.4 percent.[5] Fresh utilization of U.S. grape production only accounts, on average, for 13 percent of total utilized U.S. grape production annually. U.S. wine production and raisin production account for an average of 60 percent and 25 percent, respectively, of U.S. grape utilization annually.[6]

Domestic consumers would benefit because Namibian table grapes mature a month earlier than table grapes from other countries in the southern hemisphere, providing access to an increased supply of fresh table grapes for a longer period of time. The competitive impact of imports from Namibia would likely be minimal for domestic producers, whose grapes are mainly intended for processed utilization. As noted previously, forecast Namibian table grape imports would comprise less than one-tenth of 1 percent of total U.S. table grape imports.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow table grapes to be imported into the United States from Namibia. If this proposed rule is adopted, State and local laws and regulations regarding table grapes imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Use of Methyl Bromide

Under this proposed rule, table grapes imported into the United States from Namibia must be fumigated with methyl bromide in accordance with schedule T104–a–1 to kill external feeder insects. We estimate that between 1 and 22.5 40-foot containers of fresh table grapes would be imported from Namibia during the first shipping season. Importations may increase in future years. Fumigation using schedule T104–a–1 would require no more than 10 pounds of methyl bromide per container. No alternative treatment is currently available for these pests.

The United States is fully committed to the objectives of the Montreal Protocol, including the reduction and ultimately the elimination of reliance on methyl bromide for quarantine and pre-shipment uses in a manner that is consistent with the safeguarding of U.S. agriculture and ecosystems. APHIS reviews its methyl bromide policies and their effect on the environment in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and Decision XI/13 (paragraph 5) of the 11th Meeting of the Parties to the Montreal Protocol, which calls on the Parties to review their "national plant, animal, environmental, health, and stored product regulations with a view to removing the requirement for the use of methyl bromide for quarantine and pre-shipment where technically and economically feasible alternatives exist."

The United States Government encourages methods that do not use methyl bromide to meet phytosanitary standards where alternatives are deemed to be technically and economically feasible. In some circumstances, however, methyl bromide continues to be the only technically and economically feasible treatment against specific quarantine pests. In addition, in accordance with Montreal Protocol Decision XI/13 (paragraph 7), APHIS is committed to promoting and employing gas recapture technology and other methods whenever possible to minimize harm to the environment caused by methyl bromide emissions. In connection with this rulemaking, we welcome comments, especially data or other information, regarding other treatments that may be efficacious and technically and economically feasible that we may consider as alternatives to methyl bromide.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the proposed importation into the United States of table grapes from Namibia, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

[2] Based upon 2002 Census of Agriculture—State Data and the "Small Business Size Standards by NAICS Industry," Code of Federal Regulations, Title 13, Chapter 1.

[3] The number of grape farms in the United States, as reported by the 2002 Census of Agriculture, is the total number of grape-producing operations, which also include grapes produced for processed utilization.

[4] Source: Global Trade Atlas.

[5] Source: USDA FAS, PS&D Online. "Table Grapes: Production, Supply and Distribution in Selected Countries," *http://www.fas.usda.gov/psd/complete_tables/HTP-table6-104.htm.*

[6] USDA ERS Briefing Room, Fruit and Tree Nut Yearbook, 2005.

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2006–0025. Please send a copy of your comments to: (1) Docket No. APHIS–2006–0025, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the fruits and vegetables regulations to allow the importation into the United States of fresh table grapes from Namibia. As a condition of entry, the grapes would have to undergo cold treatment and fumigation with methyl bromide, and would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the commodity has been inspected and found free of the specified pests. In addition, the grapes would also be subject to inspection at the port of first arrival.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.16 hours per response.

Respondents: Growers of grapes, the Namibian NPPO.

Estimated annual number of respondents: 16,000.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 16,000.

Estimated total annual burden on respondents: 2,560 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR parts 305 and 319 as follows:

PART 305—PHYTOSANITARY TREATMENTS

1. The authority citation for part 305 would continue to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In paragraph (h)(2)(i) of § 305.2, the table would be amended by adding, in alphabetical order, an entry for Namibia to read as follows:

§ 305.2 Approved treatments.

* * * * *

(h) * * *

(2) * * *

(i) * * *

Location	Commodity	Pest	Treatment schedule
*	*	*	*
Namibia	Grape	External feeders *Cryptophlebia leucotreta, Ceratitis capitata, Ceratitis rosa, Epichoristodes acerbella.*	MB T104–a–1 CT T107–e
*	*	*	*

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

4. A new § 319.56–2ss would be added to read as follows:

§ 319.56–2ss Conditions governing the entry of grapes from Namibia.

Grapes (*Vitis vinifera*) may be imported into the United States from Namibia only under the following conditions:

(a) The grapes must be cold treated for *Cryptophlebia leucotreta*, *Ceratitis capitata*, *Ceratitis rosa*, and *Epichoristodes acerbella* in accordance with part 305 of this chapter.

(b) The grapes must be fumigated for *Aleurocanthus spiniferus*, *Apate monachus*, *Bustomus setulosus*, *Ceroplastes rusci*,*Cryptoblabes gnidiella*, *Dischista cincta*, *Empoasca lybica*, *Eremnus atratus*, *Eremnus cerealis*, *Eremnus setulosus*, *Eutetranychus orientalis*, *Helicoverpa armigera*, *Icerya seychellarum*, *Macchiademus diplopterus*, *Oxycarenus hyalinipennis*, *Pachnoda sinuata*, *Phlyctinus callosus*, *Scirtothrips aurantii*, *Scirtothrips dorsalis*, *Spodoptera littoralis*, and *Tanyrhynchus* carinatus in accordance with part 305 of this chapter.

(c) Each shipment of grapes must be accompanied by a phytosanitary certificate of inspection issued by the national plant protection organization of Namibia bearing the following additional declaration: "The grapes in this shipment have been inspected and found free of *Maconellicoccus hirsutus*, *Nipaecoccus vastator*, *Rastrococcus iceryoides*, *Cochlicella ventricosa*, and *Theba pisana*."

(d) The grapes may be imported in commercial shipments only.

Done in Washington, DC, this 20th day of June 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–10017 Filed 6–23–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 451

RIN 1904–AB62

Renewable Energy Production Incentives

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy today proposes to amend its regulations for the Renewable Energy Production Incentives (REPI) program to incorporate changes made to the enabling statute by section 202 of the Energy Policy Act of 2005. The REPI program provides for production incentive payments to owners or operators of qualified renewable energy facilities, subject to the availability of appropriations. The statutory changes that DOE is proposing to implement through amendments to Part 451 relate primarily to allocation of available funds between owners or operators of two categories of qualified facilities, incorporation of additional ownership categories, extension of the eligibility window and program termination date, and expansion of applicable renewable energy technologies. In addition to the changes required by the Energy Policy Act of 2005 (EPAct 2005), DOE is modifying the method for accrued energy accounting in light of the new law. DOE also is taking this opportunity to make minor changes to update the regulations.

DATES: Public comments on this proposed rule will be accepted until July 26, 2006.

ADDRESSES: You may submit comments, identified by RIN 1904–AB62, by any of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

2. E-mail to *repi.rulemaking@ee.doe.gov*. Include RIN 1904–AB62 in the subject line of the e-mail. Please include the full body of your comments in the text of the message or as an attachment.

3. Mail: Address the comments to Teresa Carroll, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2K, 1000 Independence Avenue, SW., Washington, DC 20585. Comments should be identified on the outside of the envelope and on the documents themselves with the designation "REPI NOPR, RIN 1904–AB62." Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt.

You may obtain copies of comments received by DOE by contacting Teresa Carroll of the Office of Energy Efficiency and Renewable Energy at the address and telephone number given in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Daniel Beckley, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2K, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7691. For questions regarding the administrative file maintained for this rulemaking, contact Teresa Carroll, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2K, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6477.

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Policy Act of 1992, Pub. L. 102–486, established the REPI program to encourage production of electric energy by State-owned (or political subdivisions of a State) entities and non-profit electric cooperative utilities using certain renewable energy resources. Subject to availability of appropriations, DOE was authorized to pay 1.5 cents, adjusted annually for inflation, to facility owners or operators for each kilowatt-hour of electric energy produced by qualified renewable energy facilities. As specified in the statute as originally enacted, the first energy production year was fiscal year 1994 and a ten-year eligibility window was prescribed. Therefore, DOE did not accept applications for the REPI program after September 30, 2003. Qualified facility owners are eligible for payment for ten successive years beginning with the first year for which an energy payment is made. As a result, incentive payments were expected to continue through 2013. DOE has continued to make incentive payments, based on available appropriations, to those applicants whose ten successive years of participation in the program have not expired.

Section 202 of EPACT 2005 (Pub. L. 109–58) modifies the REPI program by: (a) Extending the eligibility window, (b) extending the termination date for the program, (c) increasing the number of renewable energy technologies eligible under the program, (d) broadening the category of qualified owners, and (e) altering the procedure for determining payment distributions if insufficient funds are appropriated to make full incentive payments for all approved applications. This proposed rule would amend the current REPI program regulations (10 CFR Part 451) to implement these statutory amendments. Additionally, this proposed rule would modify the method of incorporating accrued energy into *pro rata* calculations when insufficient funds are appropriated to cover all qualified kilowatt-hours. DOE is proposing the accrued methodology change to avoid inequity or unfairness that it believes may otherwise result from the new funds distribution method specified by the new law.

The changes made by EPACT 2005 reinforce the program as it has been conducted by DOE for over 12 years and do not alter its basic structure. Consequently, the rule amendments that DOE is proposing today are limited to changes needed to implement EPACT 2005 and to revise provisions that have become outdated since DOE initially implemented the program in 1995.

II. Description of Rule Amendments

Section 451.1 (Purpose and scope). In describing the purpose and scope of the REPI program, DOE proposes to revise references to the types of organizations that qualify for payment by: (a) Substituting the EPACT 2005 term "not-for-profit" for "non-profit" when referring to electric cooperative utilities; (b) describing public utilities by reference to section 115 of the Internal Revenue Service Code; (c) citing State, Commonwealth, U.S. territory or possession, and the District of Columbia as eligible facility owners as indicated in EPACT 2005; and (d) including as eligible recipients Indian tribal governments and Native corporations, as required by EPACT 2005.

Section 451.2 (Definitions). DOE proposes to add a definition of "ocean," which was made an eligible renewable energy source by EPACT 2005. Because the REPI program is available only for renewable energy generated in the United States, DOE is proposing to define the term "ocean" to mean the parts of the Atlantic Ocean (including the Gulf of Mexico) and the Pacific Ocean that are contiguous to the United States coastline and from which energy may be derived through application of tides, waves, currents, thermal differences, or other means.

DOE also proposes a definition for the term "biomass." The proposed definition codifies the broad interpretation of the term that has been used by the program to date, and which EPACT 2005 implicitly recognizes by including landfill gas and livestock methane among the technologies included in the definition of qualified renewable energy facility (42 U.S.C. 13317(b)).

DOE proposes to add a definition for the term "date of first use." This proposed definition would accommodate the new statutory language regarding use of permits to establish first use (42 U.S.C. 13317(d)) and add clarity to the Part 451 provisions discussing time of first use.

DOE proposes to update the existing definition of "Deciding Official" to reflect DOE's designation of the Manager of the Golden Field Office as the Deciding Official shortly after the REPI program was established.

DOE proposes to replace the definition of "non-profit electrical cooperative" with the term "not-for-profit electrical cooperative" in § 451.2 to conform to the change in terminology made by EPACT 2005.

DOE also proposes to add definitions for "Indian tribal government" and for "Native corporation." Section 202 of EPACT 2005 amends 42 U.S.C. 13317(b) to include Indian tribal governments and subdivisions thereof among the owners of qualified renewable energy facilities, but it does not define the term "Indian tribal government." DOE proposes to define "Indian tribal government" to mean the governing body of an Indian tribe as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b). This definition of "Indian tribe" is incorporated into Title XXVI of the Energy Policy Act of 1992 by section 503 of EPACT 2005 (amending 25 U.S.C. 3501). The proposed definition of "Native corporation" follows section 202(b)(1) of EPACT 2005, which adopts the definition of the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

DOE proposes to amend the definition of "renewable energy source" to include "ocean" as a qualified renewable source. The ocean, as well as landfill gas and livestock methane captured by DOE's proposed definition of "biomass," were added by section 202(b)(1) of EPACT 2005 to the list of eligible sources of energy.

DOE proposes to amend the definition of "State" to specifically reference Commonwealths, consistent with section 202(b)(1) of EPACT 2005.

Section 451.4 (What is a qualified renewable energy facility). DOE proposes five changes to this section to conform to the EPACT 2005 amendments: (a) The description of owner qualifications includes Indian tribal governments and Native corporations; (b) the date on which a renewable energy facility must first be used is extended to 2016; (c) a designated date of first use is provided for facilities placed in operation after the expiration date for new applicants specified in the statute as originally enacted and prior to the first fiscal year of energy production receiving payment under this proposed rule; (d) ocean energy is added to the provisions describing the conversion of non-qualified facilities; and (e) U.S. territorial waters are included as an acceptable facility location.

In regard to the date of first use, DOE notes that nearly one year and ten months elapsed between expiration of the original eligibility period for new facilities (September 30, 2003) and the extension of the eligibility period enacted by EPACT 2005 (August 8, 2005). DOE interprets the extension to apply to the interim period without interruption. As a result, qualifying facilities for which date of first use occurred in fiscal years 2004 (October 1, 2003–September 30, 2004) and 2005 (October 1, 2004–September 30, 2005) become eligible participants. Those facilities for which date of first use and subsequent energy production occur in fiscal year 2005 may apply for payment from fiscal year 2006 available funds as provided under these proposed rule amendments. Facilities with date of first use in fiscal year 2004 are deemed to have a date of first use of October 1, 2004, and may apply for fiscal year 2005 energy production under these same rule amendments. For the latter applicants, fiscal year 2004 energy production will be disregarded and fiscal year 2005, assuming application for payment for qualifying energy produced therein is made, will be deemed the first year of the ten-year eligibility period for payments.

Section 451.5 (Where and when to apply). DOE proposes to eliminate the special provision, at § 451.5(b)(2), regarding the application period for the program's initial 1994 fiscal year because it is no longer applicable. In its place, DOE is proposing a new paragraph (b)(2) that would provide an extended application submission period for owners or operators of facilities

whose date of first use occurs during the period October 1, 2003, and September 30, 2005.

Section 451.8 (Application content requirements). DOE proposes changes to the required content of each annual application for payment that are made necessary by other proposed rule amendments. Because DOE proposes to maintain a permanent record of accrued energy for each participant, the submission of accrued energy totals, currently required by § 451.8 (h), would no longer be required with each annual application. Proposed § 451.8 (i) identifies supporting materials to be submitted by entities claiming date of first use based on receipt of construction permits. Because the Federal Government has adopted electronic funds transfer as the preferred method for financial transactions with commercial and institutional entities, DOE proposes to remove the option to select other methods of payment from § 451.8 (j). Lastly, DOE proposes to substitute the new statutory term "not-for-profit" for "non-profit" when referring to an electrical cooperative.

Section 451.9 (Procedures for processing applications.) To conform to EPACT 2005 requirements, DOE proposes several amendments in the procedures for processing applications. As specified in EPACT 2005, available funds will be divided in a 60:40 ratio between two categories of eligible renewable energy facility types. The composition of the 60 percent category corresponds to Tier 1 under the existing regulations except for the addition of ocean energy as a qualifying technology. The 40 percent category will be identical to the prior Tier 2. Also as specified in EPACT 2005, the rule adds the provision to allow the Secretary to modify the 60:40 distribution for any given year, provided that Congress is notified of the reasons for such change. DOE anticipates that this option would be employed primarily in the event that one of the two categories of payment has excess available funds for the year under the standard distribution ratio, while the other has insufficient funds.

DOE also proposes to amend the provisions dealing with incentive payments when there are insufficient funds to make payments for all qualifying energy. Under both the existing and proposed amended rule, the total qualified electrical energy consists of (a) the energy produced in the most recent year and (b) the accrued energy (which is the qualified energy produced in all preceding years for which payment was not made). To more fairly accommodate the change to the 60:40 funds allocation, DOE proposes to amend the process for partial payment calculations. After funds have been determined to be insufficient and the 60:40 allocations have been made to the respective categories, the amended rule would require DOE to calculate potential payments, on a *pro rata* basis if necessary, based on the prior year's energy production. Excess funds in either of the 60 percent or 40 percent categories would be reallocated to the category still insufficiently funded and *pro rata* calculations based on prior year energy would continue. If funding is not exhausted by this first set of calculations, remaining funds are allocated to the two categories on a 60:40 basis and a second set of calculations is undertaken based on accrued energy. Under this approach, recent annual energy competes for energy payments with recent annual energy, and accrued energy competes with accrued energy. To support its accrued energy calculations, DOE would maintain a record of each applicant's accrued energy total.

To illustrate, assume applicants A and B have equivalent eligible facilities that produced 100 kWh of qualified energy in the prior year and that A has no accrued energy and B has 200 kWh accrued energy total. Under the existing rule, B's energy basis for all calculations would be 300 kWh, while A's would be 100 kWh and B would receive three times the energy payment of A regardless of the funding levels. Under the proposed amended process, if available funds were sufficient to make payments for the total qualified energy, B (with total energy basis of 300 kWh) would receive three times the payment of A as before. If funds were sufficient to make payments for only part (or all) of the prior year energy production, A and B (each with prior year energy basis of 100 kWh) would receive equal payments as determined by *pro rata* calculations. If funds were sufficient to exceed prior year energy payments, but insufficient to make full accrued energy payments, B (with accrued energy basis of 200 kWh) would receive an additional payment as determined by *pro rata* calculations, while A (with accrued energy basis of zero) would receive no further payment.

DOE believes that this proposed method of accounting for accrued energy would be more equitable for all program participants in view of the potential for both payment categories to be subject to *pro rata* calculations in any given year. Without this proposed amendment, applicants with several years in the REPI program and large accrued energy backlogs, who have already received multiple REPI payments, would be weighted more heavily than newer applicants who have facilities producing equal annual energy, but have zero or small accrued energy backlogs. This would have had minor effect in the original program where the two categories, or tiers, were paid successively and Tier 1 was fully compensated or nearly so. Under these prior conditions, *pro rata* calculations affected small percentages of the total qualified electrical energy and/or a small fraction of program participants. Under the new 60:40 funding division and with the 60 percent and 40 percent categories being considered in parallel, insufficient funding and *pro rata* calculations may occur for both categories and, therefore, apply to all participants. This could result in accrued energy having excessive influence on funding distributions. DOE's proposed amendment would require DOE to consider annual energy first, and accrued energy thereafter, when making *pro rata* calculations. DOE believes the proposed approach is consistent with the legislation. Both the statute as originally enacted and the amendments prescribed in EPACT 2005 describe a REPI program based on annual energy production and annual incentive payments, and neither includes provisions for addressing backlog or accrued energy. Accrued energy was introduced in DOE's implementation of the REPI program to allow for potential payment of backlogged unpaid energy in the event that available funding exceeded the total payments needed for qualified annual energy production.

The proposed amendment would not alter the 60:40 division between categories and would not change DOE's continued recording and recognition of accrued energy totals. The proposed provisions would alter slightly, and more equitably, funding distribution within each category, while maintaining the 60:40 legislative intent. DOE emphasizes that, irrespective of the method used to calculate incentive payments, no owner or operator should assume that all, or any, accrued energy will ultimately receive incentive payments.

III. Opportunity for Public Comment

Interested persons are invited to participate in this rulemaking by submitting data, views, or comments with respect to the proposed rule. Written comments should be submitted to the address given in the **ADDRESSES** section of this notice of proposed rulemaking and must be received by the date given in the DATES section of this notice. Comments should be identified

on the outside of the envelope and on the documents themselves with the designation "REPI NOPR, RIN 1904–AB62." Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. All written comments received will be available for public inspection as part of the administrative record on file for this rulemaking maintained by the Office of Energy Efficiency and Renewable Energy at the address provided at the beginning of this notice of proposed rulemaking.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure, should submit one complete copy of the document, as well as two copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information and to treat it according to its determination.

DOE has determined that this rulemaking does not raise the kinds of substantial issues or impacts that, pursuant to 42 U.S.C. 7191, would require DOE to provide an opportunity for oral presentation of views, data and arguments. Therefore, DOE has not scheduled a public hearing on these proposed amendments to Part 451. DOE may reconsider this determination based on the written comments it receives.

IV. Regulatory Review

A. Executive Order 12866

Today's proposed rule has been determined to not be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. National Environmental Policy Act

DOE has determined that this proposed rule is covered under the Categorical Exclusion found in the Department's National Environmental Policy Act regulations at paragraph A.6 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

DOE has reviewed today's proposed procedures under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. These proposed amendments revise DOE's regulations for its program for making production incentive payments to owners or operators of qualified renewable energy facilities, subject to the availability of appropriations. The regulations are procedural in nature and affect only entities that choose to apply for incentive payments under the program. The proposed procedures will not have a significant economic impact on any class of entities. On the basis of the foregoing, DOE certifies that the proposed procedures, if implemented would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Paperwork Reduction Act

This proposed rule would not impose any new collection of information subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

These proposed procedures would not impose a Federal mandate on State, local or tribal governments. The proposed rule would not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. The proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the

States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and 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. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed procedures meet the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA), as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's Notice of Proposed Rulemaking. Issued in Washington, DC, on June 19, 2006.

List of Subjects in 10 CFR Part 451

Electric utilities, Grant programs, Renewable energy.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 451 of title 10, chapter II of the Code of Federal Regulations as follows:

PART 451—RENEWABLE ENERGY PRODUCTION INCENTIVES

1. The authority citation for part 451 is revised to read as follows:

Authority: 42 U.S.C. 7101, *et seq.*; 42 U.S.C. 13317.

2. Section 451.1(a) is revised to read as follows:

§ 451.1 Purpose and scope.

(a) The provisions of this part cover the policies and procedures applicable to the determinations by the Department of Energy (DOE) to make incentive payments, under the authority of 42 U.S.C. 13317, for electric energy generated in a qualified renewable energy facility owned by: A not-for-profit electric cooperative; a public utility described in section 115 of the Internal Revenue Code of 1986; a State, Commonwealth, territory or possession of the United States, the District of Columbia, or political subdivision thereof; an Indian tribal government or subdivision thereof; or a Native corporation as defined in section 3 of the Alaskan Native Claims Settlement Act (43 U.S.C. 1602).

* * * * *

3. Section 451.2 is amended by:

a. Adding in alphabetical order new definitions of "Biomass," "Date of first use," "Indian tribal government," "Native corporation," "Not-for-profit electrical cooperative," and "Ocean".

b. Revising the definitions of "Closed loop biomass," "Deciding Official," "Renewable energy source" and "State."

c. Removing the definition of "Nonprofit electrical cooperative."

The revisions and additions read as follows:

§ 451.2 Definitions.

* * * * *

Biomass means biologically generated energy sources such as heat derived from combustion of plant matter, or from combustion of gases or liquids derived from plant matter, animal wastes, or sewage, or from combustion of gases derived from landfills, or hydrogen derived from these same sources.

Closed-loop biomass means any organic material from a plant which is planted exclusively for purposes of being used at a qualified renewable energy facility to generate electricity.

Date of first use means, at the option of the facility owner, the date of the first kilowatt-hour sale, the date of completion of facility equipment testing, or the date when all approved permits required for facility construction are received.

Deciding Official means the Manager of the Golden Field Office of the Department of Energy (or any DOE official to whom the authority of the Manager of the Golden Field Office may be redelegated by the Secretary of Energy).

* * * * *

Indian tribal government means the governing body of an Indian tribe as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Native corporation has the meaning set forth in the Alaska Native Claims Settlement Act (25 U.S.C. 1602).

* * * * *

Not-for-profit electrical cooperative means a cooperative association that is legally obligated to operate on a not-for-profit basis and is organized under the laws of any State for the purpose of providing electric service to its members.

Ocean means the parts of the Atlantic Ocean (including the Gulf of Mexico) and the Pacific Ocean that are contiguous to the United States coastline and from which energy may be derived through application of tides, waves, currents, thermal differences, or other means.

* * * * *

Renewable energy source means solar heat, solar light, wind, ocean, geothermal heat, and biomass, except for—

(1) Heat from the burning of municipal solid waste; or

(2) Heat from a dry steam geothermal reservoir which—

(i) Has no mobile liquid in its natural state;

(ii) Is a fluid composed of at least 95 percent water vapor; and

(iii) Has an enthalpy for the total produced fluid greater than or equal to 2.791 megajoules per kilogram (1200 British thermal units per pound).

State means the District of Columbia, Puerto Rico, and any of the States, Commonwealths, territories, and possessions of the United States.

4. Section 451.4 is amended by:

a. Revising paragraphs (a)(2) and (a)(3) and adding new paragraphs (a)(4) and (a)(5).

b. Revising paragraph (e).

c. Adding the word "ocean" after the word "wind" in paragraphs (f)(1) and (f)(2).

d. Adding the words "or in U.S. territorial waters" after the word "State" in paragraph (g).

The revisions and additions read as follows:

§ 451.4 What is a qualified renewable energy facility.

* * * * *

(a) * * *

(2) A public utility described in section 115 of the Internal Revenue Code of 1986;

(3) A not-for-profit electrical cooperative;

(4) An Indian tribal government or subdivision thereof; or

(5) A Native corporation.

* * * * *

(e) *Time of first use.* The date of the first use of a newly constructed renewable energy facility, or a facility covered by paragraph (f) of this section, must occur during the inclusive period beginning October 1, 1993, and ending on September 30, 2016. For facilities whose date of first use occurred in the period October 1, 2003, through September 30, 2004, the time of first use shall be deemed to be October 1, 2004.

* * * * *

5. Section 451.5 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 451.5 Where and when to apply.

* * * * *

(b) * * *

(1) An application for an incentive payment for electric energy generated and sold in a fiscal year must be filed during the first quarter (October 1 through December 31) of the next fiscal year, except as provided in paragraph (2) of this section.

(2) For facilities whose date of first use occurred in the period October 1, 2003, through September 30, 2005, applications for incentive payments for electric energy generated and sold in fiscal year 2005 must be filed by August 31, 2006.

* * * * *

§ 451.6 [Amended]

6. Section 451.6 is amended by adding the word "consecutive" before the words "fiscal years" in the first sentence, and in the last sentence, by removing the date "2013" and adding in its place the date "2026".

7. Section 451.8 is amended by:

a. Removing the comma after the word "owner," where it is first used in paragraph (a).

b. Removing paragraph (h) and redesignating (i) as paragraph (h).

c. Revising redesignated paragraph (h).

d. Adding a new paragraph (i).

e. Revising paragraph (j).

f. Removing the word "nonprofit" and adding in its place the term "not-for-profit" in paragraph (m).

The revisions and additions read as follows:

§ 451.8 Application content requirements.

* * * * *

(h) The total amount of electric energy for which payment is requested, including the net electric energy generated in the prior fiscal year, as determined according to paragraph (f) or (g) of this section;

(i) Copies of permit authorizations if the date of first use is based on permit approvals and this is the initial application;

(j) Instructions for payment by electronic funds transfer;

* * * * *

8. Section 451.9 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 451.9 Procedures for processing applications.

* * * * *

(c) *DOE determinations.* The Assistant Secretary for Energy Efficiency and Renewable Energy shall determine the extent to which appropriated funds are available to be obligated under this program for each fiscal year. Subject to paragraph (e) of this section and upon evaluating each application and any other relevant information, DOE shall further determine:

(1) Eligibility of the applicant for receipt of an incentive payment, based on the criteria for eligibility specified in this part;

(2) The number of kilowatt-hours to be used in calculating a potential incentive payment, based on the net electric energy generated from a qualified renewable energy source at the qualified renewable energy facility and sold during the prior fiscal year;

(3) The number of kilowatt-hours to be used in calculating a potential additional incentive payment, based on the total quantity of accrued energy generated during prior fiscal years;

(4) The amounts represented by 60% of available funds and by 40% of available funds; and

(5) Whether justification exists for altering the 60:40 payment ratio specified in paragraph (e) of this section.

(d) *Calculating payments.* Subject to the provisions of paragraph (e) of this section, potential incentive payments under this part shall be determined by multiplying the number of kilowatt-hours determined under § 451.9(c)(2) by 1.5 cents per kilowatt-hour, and adjusting that product for inflation for each fiscal year beginning after calendar year 1993 in the same manner as provided in section 29(d)(2)(B) of the Internal Revenue Code of 1986, except that in applying such provisions, calendar year 1993 shall be substituted for calendar year 1979. Using the same procedure, a potential additional payment shall be determined for the number of kilowatt-hours determined under paragraph (c)(3) of this section. If the sum of these calculated payments does not exceed the funds determined to be available by the Assistant Secretary for Energy Efficiency and Renewable Energy under § 451.9(c), DOE shall

make payments to all qualified applicants.

(e) *Insufficient funds.* If funds are not sufficient to make full incentive payments to all qualified applicants, DOE shall—

(1) Calculate potential incentive payments, if necessary on a *pro rata* basis, not to exceed 60% of available funds to owners or operators of qualified renewable energy facilities using solar, wind, ocean, geothermal, and closed-loop biomass technologies based on prior year energy generation;

(2) Calculate potential incentive payments, if necessary on a *pro rata* basis, not to exceed 40% of available funds to owners or operators of all other qualified renewable energy facilities based on prior year energy generation;

(3) If the amounts calculated in paragraphs (e)(1) and (2) of this section result in one owner group with insufficient funds and one with excess funds, allocate excess funds to the owner group with insufficient funds and calculate additional incentive payments, on a pro rata basis if necessary, to such owners or operators based on prior year energy generation.

(4) If potential payments calculated in paragraphs (e)(1), (2), and (3) of this section do not exceed available funding, allocate 60% of remaining funds to paragraph (e)(1) recipients and 40% to paragraph (e)(2) recipients and calculate additional incentive payments, if necessary on a *pro rata* basis, to owners or operators based on accrued energy;

(5) If the amounts calculated in paragraph (e)(4) of this section result in one owner group with insufficient funds and one with excess funds, allocate excess funds to the owner group with insufficient funds and calculate additional incentive payments, on a *pro rata* basis if necessary, to such owners or operators based on accrued energy.

(6) Notify Congress if potential payments resulting from paragraphs (e)(3) or (5) of this section will result in alteration of the 60:40 payment ratio;

(7) Make incentive payments based on the sum of the amounts determined in paragraphs (e)(1) through (5) of this section for each applicant;

(8) Treat the number of kilowatt-hours for which an incentive payment is not made as a result of insufficient funds as accrued energy for which future incentive payment may be made; and

(9) Maintain a record of each applicant's accrued energy.

* * * * *

[FR Doc. E6–9998 Filed 6–23–06; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2550–AA35

Risk-Based Capital Regulation Amendment

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is proposing technical amendments to Appendix A to Subpart B Risk-Based Capital Regulation Methodology and Specifications of 12 CFR part 1750, (Risk-Based Capital Regulation). The proposed amendments are intended to enhance the accuracy and transparency of the calculation of the risk-based capital requirement for the Enterprises and updates the Risk-Based Capital Regulation to incorporate approved new activities treatments.

DATES: Comments regarding this Notice of Proposed Rulemaking must be received in writing on or before July 26, 2006. For additional information, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit your comments on the proposed rulemaking, identified by "RIN 2550–AA35," by any of the following methods:,

- U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service: The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2550–AA35, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- Hand Delivery/Courier: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2550–AA35, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- E-mail: Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail at RegComments@OFHEO.gov. Please include "RIN 2550–AA35" in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Isabella W. Sammons, Deputy General Counsel, telephone (202) 414-3790 or Jamie Schwing, Associate General Counsel, telephone (202) 414–3787 (not toll free numbers), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

The Office of Federal Housing Enterprise Oversight (OFHEO) invites comments on all aspects of the proposed regulation, and will take all comments into consideration before issuing the final regulation. OFHEO requests that comments submitted in hard copy also be accompanied by the electronic version in Microsoft® Word or in portable document format (PDF) on 3.5″ disk or CD–ROM.

Copies of all comments will be posted on the OFHEO Internet web site at http://www.ofheo.gov. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–3751.

II. Background

Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, titled the Federal Housing Enterprise Financial Safety and Soundness Act of 1992 (Act) (12 U.S.C. 4501 *et seq.*) established OFHEO as an independent office within the Department of Housing and Urban Development to ensure that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) are adequately capitalized, operate safely and soundly, and comply with applicable laws, rules and regulations.

In furtherance of its regulatory responsibilities, OFHEO published a final regulation setting forth a risk-based capital test which forms the basis for determining the risk-based capital requirement for each Enterprise.[1] The Risk-Based Capital Test has been amended to incorporate corrective and technical amendments that enhance the accuracy and transparency of the calculation of the risk-based capital requirement.[2] Since the last amendment

[1] Risk-Based capital, 66 FR 47730 (September 13, 2001), 12 CFR part 1750.

[2] Risk-Based Capital, 66 FR 47730 (September 13, 2001), 12 CFR part 1750, as amended, 67 FR 11850 (March 15, 2002), 67 FR 19321 (April 19, 2002), 68 FR 7309 (February 13, 2003).

to the Risk-Based Capital Regulation, additional experience with the regulation has raised further operational and technical issues. OFHEO now proposes technical amendments to address four aspects of the Risk-Based Capital Regulation. The proposed technical amendments would incorporate additional interest rates indices, clarify definitions, incorporate approved new Enterprise activities and update treatment of certain mark-to-market accounting issues. These amendments are capital neutral and largely codify existing practice undertaken pursuant to the current Risk-Based Capital Regulation. In addition to the proposed technical amendments, OFHEO plans additional future rulemakings to address substantial topics such as making adjustments to the loss severity equations used to calculate Enterprise risk-based capital and the appropriateness of incorporating mark-to-market accounting into the Risk-Based Capital Regulation. OFHEO also plans to update the Minimum Capital Regulation to address fair value accounting and other issues.[3]

Although the changes set forth in this amendment are technical and are being proposed to incorporate proxy treatments, new activities, and updates already used to calculate Enterprise capital requirements, OFHEO welcomes comment as to whether these changes are optimal and on any additional issues mentioned herein. The proposed technical amendments are discussed in greater detail below.

A. Additional Interest Rate Indices

Due to developments in the mortgage and financial markets since the promulgation of the Risk-Based Capital Regulation and the introduction of a number of approved new activities at each Enterprise, OFHEO is proposing additions to the interest rate indices used to measure Enterprise risk. These new indices would be incorporated into the Risk-Based Capital Regulation through revisions to Table "3–18, Interest Rate and Index Inputs," and Table "3–27, Non-Treasury Interest Rates," of Appendix A to Subpart B. The new interest rate indices are the Constant Maturity Mortgage Index, 12 month Moving Treasury Average, One month Freddie Mac Reference Bill, Certificate of Deposits Index, 2 Year Swap, 3 Year Swap, 5 Year Swap, 10 Year Swap, and 30 Year Swap.

[3]Minimum Capital, 61 FR 35607 (July 8, 1996), 12 CFR 1750, as amended, 67 FR 19321 (April 19, 2002).

B. Revised Risk-Based Capital Regulation Definitions

Additional operational experience with the Risk-Based Capital Regulation, as well as financial and mortgage market developments, have led OFHEO to conclude that a number of defined terms in the Risk-Based Capital Regulation lack clarity or were otherwise insufficient. Proposed technical amendments in this area include changes to recognize that single family loans with interest-only periods have become common and that the Enterprises have acquired or guaranteed such loans. Sections 3.1.2.1, 3.6.3.3.1, and 3.6.3.3.2 of Appendix A to Subpart B, currently provide a treatment for loans with interest-only periods. However, the data definitions in sections 3.1.2.1, 3.6.3.3.1, and 3.6.3.3.2 assume only multifamily loans have this feature. OFHEO proposes modifications to the data definitions in those sections of the Risk-Based Capital Regulation to accommodate single family interest-only loans. In addition to the single family interest-only issue, there are more than 30 definitions related to deferred balances throughout the Risk-Based Capital Regulation. These definitions are not clear or consistent throughout the Risk-Based Capital Regulation and across product type. Finally, the Risk-Based Capital Regulation definition of "float days" in sections 3.1.2.1.1 and 3.6.3.7.2 would be revised to indicate more accurately that amounts referred to in that definition are based on weighted averages for a given loan group.

C. Incorporation of New Enterprise Activities

Section 3.11 of the Risk-Based Capital Regulation provides a method for recognizing and quantifying the capital impact of the innovations in the financial and mortgage markets that impact the risk profiles of the Enterprises. Section 3.11.3, Treatment of New Activities, sets forth the procedures by which new Enterprise activities are reported to OFHEO, analyzed by OFHEO to determine an appropriately conservative treatment, and incorporated into the risk-based capital calculation. The section also describes how each newly incorporated treatment is made available to the public for comment and possible further revision. Since the promulgation of the Risk-Based Capital Regulation, many new activities treatments have been incorporated into the capital calculation and posted on the OFHEO web site for public comment. Because these new activities appear to be permanent and their treatments have proved effective, OFHEO is proposing to incorporate them into the text of the Risk-Based Capital Regulation. The proposed technical amendments regarding new activities treatments in section 3.6, whole loan cash flows, include treatments concerning reverse mortgages and split-rate arm loans. New activities treatments in section 3.8, nonmortgage instrument cash flows, relate to futures and options on futures, swaptions, consumer price index coupon linked instruments, and pre-refunded tax-exempt municipal bonds. The proposed amendments would appear at sections 3.6.3.3.1 and 3.8.3.6.2.

D. Update of Mark-to-Market Accounting Treatment

During the notice and comment development of the Risk-Based Capital Regulation, commenters raised concerns regarding treatment of the impact of mark-to-market accounting. At that time, Financial Accounting Standard (FAS) 115 and FAS 133 required mark-to-market accounting for certain instruments. In response to the requirements of FAS 115 and FAS 133, and taking into account public comments, OFHEO determined to implement simplified procedures to allow the efficient and practical implementation of the stress test. Generally, the simplified procedures provide for the removal of the effects of mark-to-market accounting from the balance sheet such that the balance sheet is stated on an amortized cost basis.

Since the adoption of the Risk-Based Capital Regulation, a number of new accounting standards have been adopted by the Financial Accounting Standards Board that introduce fair values to the balance sheet and that are similar in complexity to FAS 115 and FAS 133. OFHEO is proposing a technical amendment to Section 3.10.3.6.2 [a] of the Risk-Based Capital Regulation that would extend the current risk-based capital regulatory treatment of FAS 115 and FAS 133 to other accounting standards that require mark-to-market accounting. Under current guidance from OFHEO, the Enterprises back out the impact of the new mark-to-market accounting standards from their respective balance sheets prior to submitting their Risk-Based Capital Reports to OFHEO. The treatment set forth in the proposed amendment would codify this practice.

Regulatory Impacts

Executive Order 12866, Regulatory Planning and Review

The proposed technical amendments address provisions of the Risk-Based Capital Regulation. The proposed technical amendments incorporate new activities treatments of the Enterprises adopted in accordance with the Risk-Based Capital Regulation, corrections to certain definitions, updates to interest-rate indices and recognition of accounting rule changes adopted since the Risk-Based Capital Regulation was promulgated. The proposed technical amendments to the Risk-Based Capital Regulation are not classified as an economically significant rule under Executive Order 12866 because they would not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in foreign or domestic markets. Accordingly, no regulatory impact assessment is required. Nevertheless, the proposed technical amendments were submitted to the Office of Management and Budget (OMB) for review under the provisions of Executive Order 12866 as a significant regulatory action.

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the states, on the relationship or distribution of power between the Federal Government and the states, or on the distribution of power and responsibilities among various levels of government. The Enterprises are federally chartered entities supervised by OFHEO. The proposed technical amendments to the Risk-Based Capital Regulation address matters which the Enterprises must comply with for Federal regulatory purposes. The proposed technical amendments to the Risk-Based Capital Regulation address matters regarding the risk-based capital calculation for the Enterprises and therefore do not affect in any manner the powers and authorities of any state with respect to the Enterprises or alter the distribution of power and responsibilities between Federal and state levels of government. Therefore, OFHEO has determined that the proposed amendments to the Capital regulation have no federalism implications that warrant preparation of a Federalism Assessment in accordance with Executive Order 13132.

Paperwork Reduction Act

These amendments do not contain any information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the proposed technical amendments to the Risk-Based Capital Regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the proposed technical amendments to the Risk-Based Capital Regulation are not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1750

Capital classification, Mortgages, Risk-based capital.

Accordingly, for the reasons stated in the preamble, OFHEO amends 12 CFR part 1750 as follows:

PART 1750—CAPITAL

1. The authority citation for part 1750 continues to read as follows:

Authority: 12 U.S.C. 4513, 4514, 4611, 4612, 4614, 4615, 4618.

2. Amend Appendix A to subpart B of part 1750 as follows:

a. Revise Table 3–2 in paragraph 3.1.2.1 [c];

b. Revise Table 3–4 in paragraph 3.1.2.1 [c];

c. Revise Table 3–5 in paragraph 3.1.2.1.1;

d. Revise Table 3–8 in paragraph 3.1.2.1.1;

e. Revise Table 3–9 in paragraph 3.1.2.1.1;

f. Revise Table 3–12 in paragraph 3.1.2.2 [a];

g. Revise Table 3–13 in paragraph 3.1.2.2 [b];

h. Revise Table 3–14 in paragraph 3.1.2.2 [c];

i. Revise Table 3–15 in paragraph 3.1.2.3;

j. Revise Table 3–16 in paragraph 3.1.2.4;

k. Revise Table 3–18 in paragraph 3.1.3.1 [c];

l. Revise Table 3–27 in paragraph 3.3.3 [a] 3. b.;

m. Redesignate paragraphs 3.6.3.3.1 [d] and [e] as new paragraphs 3.6.3.3.1. [c] 5. and [c] 6., respectively;

n. Add new paragraphs 3.6.3.3.1 [c] 7. and [c] 8.;

o. Revise Table 3–32 in paragraph 3.6.3.3.2;

p. Revise Table 3–51 in paragraph 3.6.3.7.2;

q. Revise Table 3–54 in paragraph 3.6.3.8.2;

r. Revise Table 3–56 in paragraph 3.7.2.1.1;

s. Revise Table 3–57 in paragraph 3.7.2.1.2 [a];

t. Revise Table 3–58 in paragraph 3.7.2.1.3 [a];

u. Revise Table 3–66 in paragraph 3.8.2 [a];

v. Redesignate paragraph 3.8.3.6.2 [d] as new paragraph 3.8.3.6.2 [h];

w. Add new paragraphs 3.8.3.6.2 [d] thru [g];

x. Revise Table 3–70 in paragraph 3.9.2;

y. Amend paragraphs 3.10.3.6.2 [a] 1. a. and b.

The revisions and additions read as follows:

Appendix A to Subpart B of Part 1750—Risk-Based Capital Test Methodology and Specifications

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3.1.2.1 * * *

[c] * * *

TABLE 3–2—WHOLE LOAN CLASSIFICATION VARIABLES

Variable	Description	Range
Reporting Date	The last day of the quarter for the loan group activity that is being reported to OFHEO	YYYY0331 YYYY0630 YYYY0930 YYYY1231
Enterprise	Enterprise submitting the loan group data	Fannie Mae Freddie Mac
Business Type	Single family or multifamily	Single family Multifamily
Portfolio Type	Retained portfolio or Sold portfolio	Retained Portfolio Sold Portfolio
Government Flag	Conventional or Government insured loan	Conventional Government
Original LTV	Assigned LTV classes based on the ratio, in percent, between the original loan amount and the lesser of the purchase price or appraised value	LTV<=60 60 <LTV<=70 70 <LTV<=75 75 <LTV<=80 80 <LTV<=90 90 <LTV<=95 95 <LTV<=100 100 <LTV
Interest-only Flag	Indicates if the loan is currently paying interest-only. Loans that started as I/Os and are currently amortizing should be flagged as 'N'	Yes No
Current Mortgage Interest Rate	Assigned classes for the current mortgage interest rate	0.0<=Rate<4.0 4.0<=Rate<5.0 5.0<=Rate<6.0 6.0<=Rate<7.0 7.0<=Rate<8.0 8.0<=Rate<9.0 9.0<=Rate<10.0 10.0<=Rate<11.0 11.0<=Rate<12.0 12.0<=Rate<13.0 13.0<=Rate<14.0 14.0<=Rate<15.0 15.0<=Rate<16.0 Rate=>16.0
Original Mortgage Interest Rate	Assigned classes for the original mortgage interest rate	0.0<=Rate<4.0 4.0<=Rate<5.0 5.0<=Rate<6.0 6.0<=Rate<7.0 7.0<=Rate<8.0 8.0<=Rate<9.0 9.0<=Rate<10.0 10.0<=Rate<11.0 11.0<=Rate<12.0 12.0<=Rate<13.0 13.0<=Rate<14.0 14.0<=Rate<15.0 15.0<=Rate<16.0 Rate=>16.0
Mortgage Age	Assigned classes for the age of the loan	0<=Age<=12 12<Age<=24 24<Age<=36 36<Age<=48 48<Age<=60 60<Age<=72 72<Age<=84 84<Age<=96 96<Age<=108 108<Age<=120 120<Age<=132 132<Age<=144 144<Age<=156 156<Age<=168 168<Age<=180 Age>180

TABLE 3–2—WHOLE LOAN CLASSIFICATION VARIABLES—Continued

Variable	Description	Range
Rate Reset Period	Assigned classes for the number of months between rate adjustments	Period=1 1<Period<=4 4<Period<=9 9<Period<=15 15<Period<=60 60<Period<999 Period=999 (not applicable)
Payment Reset Period	Assigned classes for the number of months between payment adjustments after the duration of the teaser rate	Period<=9 9<Period<=15 15<Period<999 Period=999 (not applicable)
ARM Index	Specifies the type of index used to determine the interest rate at each adjustment	FHLB 11th District Cost of Funds. 1 Month Federal Agency Cost of Funds. 3 Month Federal Agency Cost of Funds. 6 Month Federal Agency Cost of Funds. 12 Month Federal Agency Cost of Funds. 24 Month Federal Agency Cost of Funds. 36 Month Federal Agency Cost of Funds. 60 Month Federal Agency Cost of Funds. 120 Month Federal Agency Cost of Funds. 360 Month Federal Agency Cost of Funds. Overnight Federal Funds (Effective). 1 Week Federal Funds 6 Month Federal Funds 1 month LIBOR 3 Month LIBOR 6 Month LIBOR 12 Month LIBOR Conventional Mortgage Rate. 15 Year Fixed Mortgage Rate. 7 Year Balloon Mortgage Rate. Prime Rate 1 Month Treasury Bill 3 Month CMT 6 Month CMT 12 Month CMT 24 Month CMT 36 Month CMT 60 Month CMT 120 Month CMT 240 Month CMT 360 Month CMT
Cap Type Flag	Indicates if a loan group is rate-capped, payment-capped or uncapped	Payment Capped Rate Capped No periodic rate cap
OFHEO Ledger Code	OFHEO-specific General Ledger account number used in the Stress Test	Appropriate OFHEO Ledger Code based on the chart of accounts.

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3.1.2.1 * * *

[c] * * *

TABLE 3–4—ADDITIONAL MULTIFAMILY LOAN CLASSIFICATION VARIABLES

Variable	Description	Range
Multifamily Product Code	Identifies the mortgage product types for multifamily loans	Fixed Rate Fully Amortizing Adjustable Rate Fully Amortizing 5 Year Fixed Rate Balloon 7 Year Fixed Rate Balloon 10 Year Fixed Rate Balloon 15 Year Fixed Rate Balloon Balloon ARM Other
New Book Flag	"New Book" is applied to Fannie Mae loans acquired beginning in 1988 and Freddie Mac loans acquired beginning in 1993, except for loans that were refinanced to avoid a default on a loan originated or acquired earlier	New Book Old Book
Ratio Update Flag	Indicates if the LTV and DCR were updated at origination or at Enterprise acquisition	Yes No

TABLE 3–4—ADDITIONAL MULTIFAMILY LOAN CLASSIFICATION VARIABLES—Continued

Variable	Description	Range
Current DCR	Assigned classes for the Debt Service Coverage Ratio based on the most recent annual operating statement	DCR<1.00 1.00<=DCR<1.10 1.10<=DCR<1.20 1.20<=DCR<1.30 1.30<=DCR<1.40 1.40<=DCR<1.50 1.50<=DCR<1.60 1.60<=DCR<1.70 1.70<=DCR<1.80 1.80<=DCR<1.90 1.90<=DCR<2.00 2.00<=DCR<2.50 2.50<=DCR<4.00 DCR>=4.00
Prepayment Penalty Flag	Indicates if prepayment of the loan is subject to active prepayment penalties or yield maintenance provisions	Yes No

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3.1.2.1.1* * *

TABLE 3–5—MORTGAGE AMORTIZATION CALCULATION INPUTS

Variable	Description
	Rate Type (Fixed or Adjustable)
	Product Type (30/20/15-Year FRM, ARM, Balloon, Government, etc.)
UPB_{ORIG}	Unpaid Principal Balance at Origination (aggregate for Loan Group)
UPB_0	Unpaid Principal Balance at start of Stress Test (aggregate for Loan Group), adjusted by UPB scale factor
MIR_0	Mortgage Interest Rate for the Mortgage Payment prior to the start of the Stress Test, or Initial Mortgage Interest Rate for new loans (weighted average for Loan Group) (expressed as a decimal per annum)
PMT_0	Amount of the Mortgage Payment (Principal and Interest) prior to the start of the Stress Test, or first Payment for new loans (aggregate for Loan Group), adjusted by UPB scale factor
AT	Original loan Amortizing Term in months (weighted average for Loan Group)
RM	Remaining term to Maturity in months (i.e., number of contractual payments due between the start of the Stress Test and the contractual maturity date of the loan) (weighted average for Loan Group)
A_0	Age of the loan at the start of Stress Test, in months (weighted average for Loan Group)
IRP	Initial Rate Period, in months
	Interest-only Flag
RIOP	Remaining Interest-only period, in months (weighted average for loan group)
UPB Scale Factor	Factor determined by reconciling reported UPB to published financials
Additional Interest Rate Inputs	
GFR	Guarantee Fee Rate (weighted average for Loan Group) (decimal per annum)
SFR	Servicing Fee Rate (weighted average for Loan Group) (decimal per annum)
Additional Inputs for ARMs (weighted averages for Loan Group, except for Index)	
$INDEX_m$	Monthly values of the contractual Interest Rate Index
LB	Look-Back period, in months
MARGIN	Loan Margin (over index), decimal per annum
RRP	Rate Reset Period, in months
	Rate Reset Limit (up and down), decimal per annum
	Maximum Rate (life cap), decimal per annum
	Minimum Rate (life floor), decimal per annum
NAC	Negative Amortization Cap, decimal fraction of UPB_{ORIG}

TABLE 3–5—MORTGAGE AMORTIZATION CALCULATION INPUTS—Continued

Variable	Description
	Unlimited Payment Reset Period, in months
PRP	Payment Reset Period, in months
	Payment Reset Limit, as decimal fraction of prior payment

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3.1.2.1.1 * * *

TABLE 3–8—MISCELLANEOUS WHOLE LOAN CASH AND ACCOUNTING FLOW INPUTS

Variable	Description
GF	Guarantee Fee rate (weighted average for Loan Group) (decimal per annum)
FDS	Float Days for Scheduled Principal and Interest (weighted average for Loan Group)
FDP	Float Days for Prepaid Principal (weighted average for Loan Group)
FREP	Fraction Repurchased (weighted average for Loan Group) (decimal)
RM	Remaining Term to Maturity in months
UPD_0	Sum of all unamortized discounts, premiums, fees, commissions, etc., for the loan group, such that the unamortized balance equals the book value minus the face value for the loan group at the start of the Stress Test, adjusted by the Unamortized Balance Scale Factor
Unamortized Balance Scale Factor	Factor determined by reconciling reported Unamortized Balance to published financials

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3.1.2.1.1 * * *

TABLE 3–9—ADDITIONAL INPUTS FOR REPURCHASED MBS

Variable	Description
Wtd Ave Percent Repurchased	For sold loan groups, the percent of the loan group UPB that gives the actual dollar amount of loans that collateralize single class MBSs that the Enterprise holds in its own portfolio.
$SUPD_0$	The aggregate sum of all unamortized discounts, premiums, fees, commissions, etc., associated with the securities modeled using the Wtd Ave Percent Repurchased, such that the unamortized balance equals the book value minus the face value for the relevant securities at the start of the Stress Test, adjusted by the percent repurchased and the Security Unamortized Balance Scale Factor.
Security Unamortized Balances Scale Factor	Factor determined by reconciling reported Security Unamortized Balances to published financials

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3.1.2.2 * * *

[a] * * *

TABLE 3–12—INPUTS FOR SINGLE CLASS MBS CASH FLOWS

Variable	Description
Pool Number	A unique number identifying each mortgage pool
CUSIP Number	A unique number assigned to publicly traded securities by the Committee on Uniform Securities Identification Procedures
Issuer	Issuer of the mortgage pool
Government Flag	Indicates Government insured collateral
Original UPB Amount	Original pool balance adjusted by UPB scale factor and multiplied by the Enterprise's percentage ownership
Current UPB Amount	Initial Pool balance (at the start of the StressTest), adjusted by UPB scale factor and multiplied by the Enterprise's percentage ownership
Product Code	Mortgage product type for the pool

TABLE 3–12—INPUTS FOR SINGLE CLASS MBS CASH FLOWS—Continued

Variable	Description
Security Rate Index	If the rate on the security adjusts over time, the index that the adjustment is based on
Unamortized Balance	The sum of all unamortized discounts, premiums, fees, commissions, etc., such that the unamortized balance equals book value minus face value, adjusted by Unamortized Balance Scale Factor
Wt Avg Original Amortization Term	Original amortization term of the underlying loans, in months (weighted average for underlying loans)
Wt Avg Remaining Term of Maturity	Remaining maturity of the underlying loans at the start of the Stress Test (weighted average for underlying loans)
Wt Avg Age	Age of the underlying loans at the start of the Stress Test (weighted average for underlying loans)
Wt Avg Current Mortgage Interest rate	Mortgage Interest Rate of the underlying loans at the start of the Stress Test (weighted average for underlying loans)
Wt Avg Pass-Through Rate	Pass-Through Rate of the underlying loans at the start of the Stress Test (Sold loans only) (weighted average for underlying loans)
Wtg Avg Original Mortgage Interest Rate	The current UPB weighted average mortgage interest rate in effect at origination for the loans in the pool
Security Rating	The most current rating issued by any Nationally Recognized Statistical Rating Organization (NRSRO) for this security, as of the reporting date
Wt Avg Gross Margin	Gross margin for the underlying loans (ARM MBS only) (weighted average for underlying loans)
Wt Avg Net Margin	Net margin (used to determine the security rate for ARM MBS) (weighted average for underlying loans)
Wt Avg Rate Reset Period	Rate reset period in months (ARM MBS only) (weighted average for underlying loans)
Wt Avg Rate Reset Limit	Rate reset limit up/down (ARM MBS only) (weighted average for underlying loans)
Wt Avg Life Interest Rate Ceiling	Maximum rate (lifetime cap) (ARM MBS only) (weighted average for underlying loans)
Wt Avg Life Interest Rate Floor	Minimum rate (lifetime floor) (ARM MBS only) (weighted average for underlying loans)
Wt Avg Payment Reset Period	Payment reset period in months (ARM MBS only) (weighted average for underlying loans)
Wt Avg Payment Reset Limit	Payment reset limit up/down (ARM MBS only) (weighted average for underlying loans)
Wt Avg Lockback Period	The number of months to look back from the interest rate change date to find the index value that will be used to determine the next interest rate. (weighted average for underlying loans)
Wt Avg Negative Amortization Cap	The maximum amount to which the balance can increase before the payment is recast to a fully amortizing amount. It is expressed as a fraction of the original UPB. (weighted average for underlying loans)
Wt Avg Original Mortgage Interest Rate	The current UPB weighted average original mortgage interest rate for the loans in the pool
Wt Avg Initial Interest Rate Period	Number of months between the loan origination date and the first rate adjustment date (weighted average for underlying loans)
Wt Avg Unlimited Payment Reset Period	Number of months between unlimited payment resets, i.e., not limited by payment caps, starting with origination date (weighted average for underlying loans)
Notional Flag	Indicates if the amounts reported in Original Security Balance and Current Security Balance are notional
UPB Scale Factor	Factor determined by reconciling reported UPB to published financials
Unamortized Balance Scale Factor	Factor determined by reconciling reported Unamortized Balance to published financials
Whole Loan Modeling Flag	Indicates that the Current UPB Amount and Unamortized Balance associated with this repurchased MBS are included in the Wtg Avg Percent Repurchased and Security Unamortized Balance fields
FAS 115 Classification	The financial instrument's classification according to FAS 115
$HPGR_K$	Vector of House Price Growth Rates for quarters q=1...40 of the Stress Period.

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3.1.2.2 * * *

[b] * * *

TABLE 3–13—INFORMATION FOR MULTI-CLASS AND DERIVATIVE MBS CASH FLOWS INPUTS

Variable	Description
CUSIP Number	A unique number assigned to publicly traded securities by the Committee on Uniform Securities Identification Procedures
Issuer	Issuer of the security: FNMA, FHLMC, GNMA or other
Original Security Balance	Original principal balance of the security (notional amount for interest-only securities) at the time of issuance, adjusted by UPB scale factor, multiplied by the Enterprise's percentage ownership
Current Security Balance	Initial principal balance, or notional amount, at the start of the Stress Period, adjusted by UPB scale factor, multiplied by the Enterprise's percentage ownership
Current Security Percentage Owned	The percentage of a security's total current balance owned by the Enterprise
Notional Flag	Indicates if the amounts reported in Original Security Balance and Current Security Balance are notional
Unamortized Balance	The sum of all unamortized discounts, premiums, fees, commissions, etc., such that the unamortized balance equals book value minus face value, adjusted by the Unamortized Balance Scale Factor
Unamortized Balance Scale Factor	Factor determined by reconciling reported Unamortized Balance to published financials
UPB Scale Factor	Factor determined by reconciling the reported current security balance to published financials
Security Rating	The most current rating issued by any Nationally Recognized Statistical Rating Organization (NRSRO) for this security, as of the reporting date

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3.1.2.2 * * *

[c] * * *

TABLE 3–14—INPUTS FOR MRBS AND DERIVATIVE MBS CASH FLOWS INPUTS

Variable	Description
CUSIP Number	A unique number assigned to publicly traded securities by the Committee on Uniform Securities Identification Procedures
Original Security Balance	Original principal balance, adjusted by UPB scale factor and multiplied by the Enterprise's percentage ownership
Current Security Balance	Initial principal balance (at start of Stress Period), adjusted by UPB scale factor and multiplied by the Enterprise's percentage ownership
Unamortized Balance	The sum of all unamortized discounts, premiums, fees, commissions, etc., such that the unamortized balance equals book value minus face value, adjusted by Unamortized Balance scale factor
Unamortized Balance Scale Factor	Factor determined by reconciling reported Unamortized Balance to published financials
UPB Scale Factor	Factor determined by reconciling the reported current security balance to published financials
Floating Rate Flag	Indicates the instrument pays interest at a floating rate
Issue Date	The issue date of the security
Maturity Date	The stated maturity date of the security
Security Interest Rate	The rate at which the security earns interest, as of the reporting date
Principal Payment Window Starting Date, Down-Rate Scenario	The month in the Stress Test that principal payment is expected to start for the security under the statutory "down" interest rate scenario, according to Enterprise projections
Principal Payment Window Ending Date, Down-Rate Scenario	The month in the Stress Test that principal payment is expected to end for the security under the statutory "down" interest rate scenario, according to Enterprise projections
Principal Payment Window Starting Date, Up-Rate Scenario	The month in the Stress Test that principal payment is expected to start for the security under the statutory "up" interest rate scenario, according to Enterprise projections
Principal Payment Window Ending Date, Up-Rate Scenario	The month in the Stress Test that principal payment is expected to end for the security under the statutory "up" interest rate scenario, according to Enterprise projections
Notional Flag	Indicates if the amounts reported in Original Security Balance and Current Security Balance are notional
Security Rating	The most current rating issued by any Nationally Recognized Statistical Rating Organization (NRSRO) for this security, as of the reporting date
Security Rate Index	If the rate on the security adjusts over time, the index on which the adjustment is based

TABLE 3–14—INPUTS FOR MRBS AND DERIVATIVE MBS CASH FLOWS INPUTS—Continued

Variable	Description
Security Rate Index Coefficient	If the rate on the security adjusts over time, the coefficient is the number used to multiply by the value of the index
Security Rate Index Spread	If the rate on the security adjusts over time, the spread is added to the value of the index multiplied by the coefficient to determine the new rate
Security Rate Adjustment Frequency	The number of months between rate adjustments
Security Interest Rate Ceiling	The maximum rate (lifetime cap) on the security
Security Interest Rate Floor	The minimum rate (lifetime floor) on the security
Life Ceiling Interest Rate	The maximum interest rate allowed throughout the life of the security
Life Floor Interest Rate	The minimum interest rate allowed throughout the life of security

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3.1.2.3 * * *

TABLE 3–15—INPUT VARIABLES FOR NONMORTGAGE INSTRUMENT CASHFLOWS

Data Elements	Description
Amortization Methodology Code	Enterprise method of amortizing deferred balances (e.g., straight line)
Asset ID	CUSIP or Reference Pool Number identifying the asset underlying a derivative position
Asset Type Code	Code that identifies asset type used in the commercial information service (e.g., ABS, Fannie Mae pool, Freddie Mac pool)
Associated Instrument ID	Instrument ID of an instrument linked to another instrument
Coefficient	Indicates the extent to which the coupon is leveraged or de-leveraged
Compound Indicator	Indicates if interest is compounded
Compounding Frequency	Indicates how often interest is compounded
Counterparty Credit Rating	NRSRO's rating for the counterparty
Counterparty Credit Rating Type	An indicator identifying the counterparty's credit rating as short-term ('S') or long-term ('L')
Counterparty ID	Enterprise counterparty tracking ID
Country Code	Standard country codes in compliance with Federal Information Processing Standards Publication 10–4
Credit Agency Code	Identifies NRSRO (e.g., Moody's)
Current Asset Face Amount	Current face amount of the asset underlying a swap adjusted by UPB scale factor
Current Coupon	Current coupon or dividend rate of the instrument
Current Unamortized Discount	Current unamortized premium or unaccreted discount of the instrument adjusted by Unamortized Balance Scale Factor. If the proceeds from the issuance of debt or derivatives or the amount paid for an asset were greater than par, the value should be positive. If the proceeds or the amounts paid were less than par, the value should be negative
Current Unamortized Fees	Current unamortized fees associated with the instrument adjusted by Unamortized Balance Scale Factor. Generally fees associated with the issuance of debt or derivatives should be negative numbers. Fees associated with the purchase of an asset should generally be reported as positive numbers
Current Unamortized Hedge	Current unamortized hedging gains (positive) or losses (negative) associated with the instrument adjusted by the Unamortized Balance Scale Factor
Current Unamortized Other	Any other unamortized items originally associated with the instrument adjusted by Unamortized Balance Scale Factor. If the proceeds from the issuance of debt or derivatives or the amount paid for an asset were greater than par, the value should be positive. If the proceeds or the amounts paid were less than par, the value should be negative
CUSIP_ISIN	CUSIP or ISIN Number identifying the instrument
Day Count	Day count convention (e.g., 30/360)
End Date	The last index repricing date
EOP Principal Balance	End of Period face, principal or notional, amount of the instrument adjusted by UPB scale factor
Exact Representation	Indicates that an instrument is modeled according to its contractual terms
Exercise Convention	Indicates option exercise convention (e.g., American Option)
Exercise Price	Par=1.0; Options

TABLE 3–15—INPUT VARIABLES FOR NONMORTGAGE INSTRUMENT CASHFLOWS—Continued

Data Elements	Description
First Coupon Date	Date first coupon is received or paid
Index Cap	Indicates maximum index rate
Index Floor	Indicates minimum index rate
Index Reset Frequency	Indicates how often the interest rate index resets on floating-rate instruments
Index Code	Indicates the interest rate index to which floating-rate instruments are tied (e.g., LIBOR)
Index Term	Point on yield curve, expressed in months, upon which the index is based
Instrument Credit Rating	NRSRO credit rating for the instrument
Instrument Credit Rating Type	An indicator identifying the instruments credit rating as short-term ('S') or long-term ('L')
Instrument ID	An integer used internally by the Enterprise that uniquely identifies the instrument
Interest Currency Code	Indicates currency in which interest payments are paid or received
Interest Type Code	Indicates the method of interest rate payments (e.g., fixed, floating, step, discount)
Issue Date	Indicates the date that the instrument was issued
Life Cap Rate	The maximum interest rate for the instrument throughout its life
Life Floor Rate	The minimum interest rate for the instrument throughout its life
Look-Back Period	Period from the index reset date, expressed in months, that the index value is derived
Maturity Date	Date that the instrument contractually matures
Notional Indicator	Identifies whether the face amount is notional
Instrument Type Code	Indicates the type of instrument to be modeled (e.g., ABS, Cap, Swap)
Option Indicator	Indicates if instrument contains an option
Option Type	Indicates option type (e.g., Call option)
Original Asset Face Amount	Original face amount of the asset underlying a swap adjusted by UPB scale factor
Original Discount	Original premium or discount associated with the purchase or sale of the instrument adjusted by Unamortized Balance Scale Factor. If the proceeds from the issuance of debt or derivatives or the amount paid for an asset were greater than par, the value should be positive. If the proceeds or the amounts paid were less than par, the value should be negative
Original Face	Original face, principal or notional, amount of the instrument adjusted by UPB scale factor
Original Fees	Fees or commissions paid at the time of purchase or sale adjusted by the Unamortized Balance Scale Factor. Generally fees associated with the issuance of debt or derivatives should be negative numbers. Fees associated with the purchase of an asset should generally be reported as positive numbers
Original Hedge	Gains (positive) or losses (negative) from closing out a hedge associated with the instrument at settlement, adjusted by the Unamortized Balance Scale Factor
Original Other	Any other items originally associated with the instrument to be amortized or accreted adjusted by the Unamortized Balance Scale Factor. If the proceeds from the issuance of debt or derivatives or the amount paid for an asset were greater than par, the value should be positive. If the proceeds of the amounts paid were less than par, the value should be negative
Parent Entity ID	Enterprise internal tracking ID for parent entity
Payment Amount	Interest payment amount associated with the instrument (reserved for complex instruments where interest payments are not modeled) adjusted by UPB scale factor
Payment Frequency	Indicates how often interest payments are made or received
Performance Date	"As of" date on which the data is submitted
Periodic Adjustment	The maximum amount that the interest rate for the instrument can change per reset
Position Code	Indicates whether the Enterprise pays or receives interest on the instrument
Principal Currency Code	Indicates currency in which principal payments are paid or received
Principal Factor Amount	EOP Principal Balance expressed as a percentage of Original Face
Principal Payment Date	A valid date identifying the date that principal is paid
Settlement Date	A valid date identifying the date the settlement occurred
Spread	An amount added to an index to determine an instrument's interest rate

TABLE 3–15—INPUT VARIABLES FOR NONMORTGAGE INSTRUMENT CASHFLOWS—Continued

Data Elements	Description
Start Date	The date, spot or forward, when some feature of a financial contract becomes effective (e.g., Call Date), or when interest payments or receipts begin to be calculated
Strike Rate	The price or rate at which an option begins to have a settlement value at expiration, or, for interest-rate caps and floors, the rate that triggers interest payments
Submitting Entity	Indicates which Enterprise is submitting information
Trade ID	Unique code identifying the trade of an instrument
Transaction Code	Indicates the transaction that an Enterprise is initiating with the instrument (e.g., buy, issue reopen)
Transaction Date	A valid date identifying the date the transaction occurred
UPB Scale Factor	Factor determined by reconciling reported UPB to published financials
Unamortized Balances Scale Factor	Factor determined by reconciling reported Unamortized Balances to published financials

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3.1.2.4 * * *

TABLE 3–16—INPUTS FOR ALTERNATIVE MODELING TREATMENT ITEMS

Variable	Description
TYPE	Type of item (asset, liability or off-balance-sheet item)
BOOK	Book Value of item (amount outstanding adjusted for deferred items)
FACE	Face Value or notional balance of item for off-balance sheet items
REMATUR	Remaining Contractual Maturity of item in whole months. Any fraction of a month equals one whole month
RATE	Interest Rate
INDEX	Index used to calculate Interest Rate
FAS 115	Designation that the item is recorded at fair value, according to FAS 115
RATING	Instrument or counterparty rating
FHA	In the case of off-balance-sheet guarantees, a designation indicating 100% of collateral is guaranteed by FHA
MARGIN	Margin over an Index

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TABLE 3–18—INTEREST RATE AND INDEX INPUTS

Interest rate index	Description	Source
1 MO Treasury Bill	One-month Treasury bill yield, monthly simple average of daily rate, quoted as actual/360	Bloomberg Generic 1 Month U.S. Treasury bill Ticker: GB1M (index)
3 MO CMT	Three-month constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
6 MO CMT	Six-month constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
1 YR CMT	One-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
2 YR CMT	Two-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
3 YR CMT	Three-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release

TABLE 3–18—INTEREST RATE AND INDEX INPUTS—Continued

Interest rate index	Description	Source
5 YR CMT	Five-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
10 YR CMT	Ten-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
20 YR CMT	Twenty-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
30 YR CMT	Thirty-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield; after February 15, 2002, estimated according to the Department of the Treasury methodology using long-term average rates and extrapolation factors as referenced in OFHEO guideline 402	Federal Reserve H.15 Release, Extrapolation Factors used for estimation, U.S. Dept. of the Treasury
12-mo Moving Treasury Average (MTA)	12-month Federal Reserve cumulative average 1 year CMT, monthly simple average of daily rate.	Bloomberg Ticker: 12MTA (Index)
Overnight Fed Funds (Effective)	Overnight effective Federal Funds rate, monthly simple average of daily rate	Federal Reserve H.15 Release
Certificate of Deposits Index (CODI)	12-month average of monthly published yields on 3-month certificates of deposit, based on the Federal Reserve Board statistical release, H–15	Bloomberg Ticker: COF CODI (index)
1 Week Federal Funds	1 week Federal Funds rate, monthly simple average of daily rates	Bloomberg Term Fed Funds U.S. Domestic Ticker: GFED01W (index)
6 Month Fed Funds	6 month Federal Funds rate, monthly simple average of daily rates	Bloomberg Term Fed Funds U.S. Domestic Ticker: GFED06M (index)
Conventional Mortgage Rate	FHLMC (Freddie Mac) contract interest rates for 30 YR fixed-rate mortgage commitments, monthly average of weekly rates	Federal Reserve H.15 Release
Constant Maturity Mortgage (CMM) Index	Bond equivalent yield on TBA mortgage-backed security which prices at the par price	TradeWeb
1-mo Freddie Mac Reference Bill	1-month Freddie Mac Reference Bill, actual price and yield by auction date	Freddiemac.com Web site: *http://www.freddiemac.com/debt/data/cgi-bin/refbillaucres.cgi?order=AD*
FHLB 11th District COF	11th District (San Francisco) weighted average cost of funds for savings and loans, monthly	Bloomberg Cost of Funds for the 11th District Ticker: COF11 (index)
1 MO LIBOR	One-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association Bloomberg Ticker: US0001M (index)
3 MO LIBOR	Three-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association Bloomberg Ticker: US0003M (index)
6 MO LIBOR	Six-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association Bloomberg Ticker: US0006M (index)
12 MO LIBOR	One-year London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association Bloomberg Ticker: US0012M (index)
Prime Rate	Prevailing rate as quoted, monthly average of daily rates	Federal Reserve H.15 Release
1 MO Federal Agency COF	One-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 1 Month Agency Discount Note Yield. Ticker: AGDN030Y (index)
3 MO Federal Agency COF	Three-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 3 Month Agency Discount Note Yield. Ticker: AGDN090Y (index)
6 MO Federal Agency COF	Six-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 6 Month Agency Discount Note Yield. Ticker: AGDN180Y (index)
1 YR Federal Agency COF	One-year Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 12 Month Agency Discount Note Yield. Ticker: AGDN360Y (index)
2 YR Federal Agency COF	Two-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 2 Year Agency Fair Market Yield. Ticker: CO842Y (index)
3 YR Federal Agency COF	Three-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 3 Year Agency Fair Market Yield. Ticker: CO843Y (index)
5 YR Federal Agency COF	Five-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 5 Year Agency Fair Market Yield. Ticker: CO845Y (index)

TABLE 3–18—INTEREST RATE AND INDEX INPUTS—Continued

Interest rate index	Description	Source
10 YR Federal Agency COF	Ten-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 10 Year Agency Fair Market Yield. Ticker: CO8410Y (index)
30 YR Federal Agency COF	Thirty-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 30 Year Agency Fair Market Yield. Ticker: CO8430Y (index)
15 YR fixed-rate mortgage	FHLMC (Freddie Mac) contract interest rates for 15 YR fixed-rate mortgage commitments, monthly average of FHLMC (Freddie Mac) contract interest rates for 15 YR	Bloomberg FHLMC 15 YR, 10 day commitment rate. Ticker: FHCR1510 (index)
7-year balloon mortgage rate	Seven-year balloon mortgage, equal to the Conventional Mortgage Rate less 50 basis points	Computed
2-yr Swap	2-yr U.S. Dollar Swap Rate, quoted as semi-annually fixed rate vs. 3-mo U.S. dollar	Bloomberg Ticker: USSWAP2 (index)
3-yr Swap	3-yr U.S. Dollar Swap Rate, quoted as semi-annually fixed rate vs. 3-mo U.S. dollar LIBOR	Bloomberg Ticker: USSWAP3 (Index)
5-yr Swap	5-yr U.S. Dollar Swap Rate, quoted as semi-annually fixed rate vs. 3-mo U.S. dollar LIBOR	Bloomberg Ticker: USSWAP5 (Index)
10-yr Swap	10-yr U.S. Dollar Swap Rate, quoted as semi-annually fixed rate vs. 3-mo U.S. dollar LIBOR	Bloomberg Ticker: USSWAP10 (Index)
30-yr Swap	30-yr U.S. Dollar Swap Rate, quoted as semi-annually fixed rate vs. 3-mo U.S. dollar LIBOR	Bloomberg Ticker: USSWAP30 (Index)

3.3.3 * * *
[a] * * *
3. * * *
b. * * *

TABLE 3–27—NON-TREASURY INTEREST RATES

Mortgage Rates	Spread Based on
15-year Fixed-rate Mortgage Rate	10-year CMT
30-year Conventional Mortgage Rate	10-year CMT
7-year Balloon Mortgage Rate	(computed from Conventional Mortgage Rate)
Constant Maturity Mortgage Index	10-year CMT
Other Non-Treasury Interest Rates	
Overnight Fed Funds	1-month Treasury Yield
7-day Fed Funds	1-month Treasury Yield
1-month LIBOR	1-month Treasury Yield
1-month Federal Agency Cost of Funds	1-month Treasury Yield
12-mo Moving Treasury Average	1-month Treasury Yield
3-month LIBOR	3-month CMT
3-month Federal Agency Cost of Funds	3-month CMT
PRIME	3-month CMT
6-month LIBOR	6-month CMT
6-month Federal Agency Cost of Funds	6-month CMT
6-month Fed Funds	6-month CMT
FHLB 11th District Cost of Funds	1-year CMT
12-month LIBOR	1-year CMT
1-mo Freddie Mac Reference Bill	1-year CMT
Certificate of Deposits Index	1-year CMT
1-year Federal Agency Cost of Funds	1-year CMT

TABLE 3–27—NON-TREASURY INTEREST RATES—Continued

Mortgage Rates	Spread Based on
2-year Federal Agency Cost of Funds	2-year CMT
3-year Federal Agency Cost of Funds	3-year CMT
5-year Federal Agency Cost of Funds	5-year CMT
10-year Federal Agency Cost of Funds	10-year CMT
30-year Federal Agency Cost of Funds	30-year CMT
2-yr Swap	2-year CMT
3-yr Swap	3-year CMT
5-yr Swap	5-year CMT
10-yr Swap	10-year CMT
30-yr Swap	30-year CMT

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3.6.3.3.1 * * *

[c] * * *

7. *Reverse Mortgages.* In a reverse mortgage, a borrower receives one or more payments from the lender and the lender is repaid with a lump sum when the borrower dies, sells the property or moves out of the home permanently. The stress test models reverse mortgages as a ladder of zero-coupon securities:
   a. 11 proxy securities for each reverse mortgage program are created.
   b. A 10% conditional payment rate is used to create the zero-coupon securities that will mature in every year of the stress test. The zero-coupon securities are a laddered series of floating-rate coupon-bearing accreting bonds with a first payment date at maturity.
   c. The 11th zero-coupon security will mature three months after the stress test to reflect the 35% of UPB not paid down during the stress period.
   d. An OFHEO credit rating equivalent to AAA for the FHA insured programs and AA for other reverse mortgage programs is assigned.
8. *Split-Rate ARM Loans.* In split-rate ARM loans, the principal portion of the payment is based on a fixed-rate amortization schedule while the interest portion is based on a floating rate index. These multifamily loans are available as fully amortizing product or with a balloon feature. The stress test model does not provide treatment for split-rate ARM loans. Split-rate loans shall be treated as ARMs when they are issued without a balloon payment feature or as Balloon ARMs when the loans contain a balloon payment feature.

3.6.3.3.2 * * *

TABLE 3–32—LOAN GROUP INPUTS FOR MORTGAGE AMORTIZATION CALCULATION

Variable*	Description	Source
	Rate Type (Fixed or Adjustable)	RBC Report
	Product Type (30/20/15-Year FRM, ARM, Balloon, Government, etc.)	RBC Report
UPB_{ORIG}	Unpaid Principal Balance at Origination (aggregate for Loan Group)	RBC Report
UPB_0	Unpaid Principal Balance at start of Stress Test (aggregate for Loan Group)	RBC Report
MIR_0	Mortgage Interest Rate for the Mortgage Payment prior to the start of the Stress Test, or Initial Mortgage Interest Rate for new loans (weighted average for Loan Group) (expressed as a decimal per annum)	RBC Report
PMT_0	Amount of the Mortgage Payment (Principal and Interest) prior to the start of the Stress Test, or first payment for new loans (aggregate for Loan Group)	RBC Report
AT	Original loan Amortizing Term in months (weighted average for Loan Group)	RBC Report
RM	Remaining term to Maturity in months (i.e., number of contractual payments due between the start of the Stress Test and the contractual maturity date of the loan) (weighted average for Loan Group)	RBC Report
A_0	Age immediately prior to the start of the Stress Test, in months (weighted average for Loan Group)	RBC Report
	Interest-only Flag	RBC Report
RIOP	Remaining Interest-only period, in months (weighted average for loan group)	RBC Report
Additional Interest Rate Inputs		
GFR	Guarantee Fee Rate (weighted average for Loan Group) (decimal per annum)	RBC Report
SFR	Servicing Fee Rate (weighted average for Loan Group) (decimal per annum)	RBC Report

TABLE 3–32—LOAN GROUP INPUTS FOR MORTGAGE AMORTIZATION CALCULATION—Continued

Variable*	Description	Source
Additional Inputs for ARMs (weighted averages for Loan Group, except for Index)		
$INDEX_m$	Monthly values of the contractual Interest Rate Index	section 3.3, Interest Rates
LB	Look-Back period, in months	RBC Report
MARGIN	Loan Margin (over index), decimal per annum	RBC Report
RRP	Rate Reset Period, in months	RBC Report
	Rate Reset Limit (up and down), decimal per annum	RBC Report
	Maximum Rate (life cap), decimal per annum	RBC Report
	Minimum Rate (life floor), decimal per annum	RBC Report
NAC	Negative Amortization Cap, decimal fraction of UPB_{ORIG}	RBC Report
	Unlimited Payment Reset Period, in months	RBC Report
PRP	Payment Reset Period, in months	RBC Report
	Payment Reset Limit, as decimal fraction of prior payment	RBC Report
IRP	Initial Rate Period, in months	RBC Report

*Variable name is given when used in an equation

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3.6.3.7.2 * * *

TABLE 3–51—INPUTS FOR FINAL CALCULATION OF STRESS TEST WHOLE LOAN CASH FLOWS

Variable	Description	Source
UPB_m	Aggregate Unpaid Principal Balance in month m=0...RM	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
NYR_m	Net Yield Rate in month m=1...RM	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
GF	Guarantee Fee rate (weighted average for Loan Group) (decimal per annum)	RBC Report
PTR_m	Pass-Through Rate in month m=1...RM	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
SP_m	Aggregate Scheduled Principal (Amortization) in month m=1...RM	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
PRE_m^{SF} PRE_m^{MF}	Prepaying Fraction of original Loan Group in month m=1...RM	section 3.6.3.4.4, Single Family Default and Prepayment Outputs and, section 3.6.3.5.4, Multifamily Default and Prepayment Outputs
DEF_m^{SF} DEF_m^{MF}	Defaulting Fraction of original Loan Group in month m=1...RM	section 3.6.3.4.4, Single Family Default and Prepayment Outputs and, section 3.6.3.5.4, Multifamily Default and Prepayment Outputs
$PERF_m^{SF}$ $PERF_m^{MF}$	Performing Fraction of original Loan Group in month m=1...RM	section 3.6.3.4.4, Single Family Default and Prepayment Outputs and, section 3.6.3.5.4, Multifamily Default and Prepayment Outputs
FDS	Float Days for Scheduled Principal and Interest (weighted average for Loan Group)	RBC Report
FDP	Float Days for Prepaid Principal (weighted average for Loan Group)	RBC Report
FER_m	Float Earnings Rate in month m=1...RM	1 week Fed Funds Rate; section 3.3, Interest Rates
LS_m^{SF}	Loss Severity Rate in month m=1...RM	section 3.6.3.6.5.2, Single Family and Multifamily Net Loss Severity Outputs
FREP	Fraction Repurchased (weighted average for Loan Group) (decimal)	RBC Report

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3.6.3.8.2 * * *

TABLE 3–54—INPUTS FOR WHOLE LOAN ACCOUNTING FLOWS

Variable	Description	Source
RM	Remaining Term to Maturity in months	RBC Report
UPD_0	Sum of all unamortized discounts, premiums, fees, commissions, etc., for the loan group, such that the unamortized balance equals the book value minus the face value for the loan group at the start of the Stress Test, adjusted by the Unamortized Balance Scale Factor	RBC Report
NYR_0	Net Yield Rate at time zero	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
$PUPB_m$	Performing Loan Group UPB in months m=0...RM	section 3.6.3.7.4, Stress Test Whole Loan Cash Flow Outputs
PTR_0	Pass-Through Rate at time zero	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
$SPUPB_m$	Security Performing UPB in months m=0...RM	section 3.6.3.7.4, Stress Test Whole Loan Cash Flow Outputs
$SUPD_0$	The sum of all unamortized discounts, premiums, fees, commissions, etc. associated with the securities modeled using the Wtd Ave Percent Repurchased, such that the unamortized balance equals the book value minus the face value for the relevant securities at the start of the Stress Test, adjusted by the percent repurchased and the Security Unamortized Balance Scale Factor	RBC Report

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3.7.2.1.1 * * *

TABLE 3–56—RBC REPORT INPUTS FOR SINGLE CLASS MBS CASH FLOWS

Variable	Description
Pool Number	A unique number identifying each mortgage pool
CUSIP Number	A unique number assigned to publicly traded securities by the Committee on Uniform Securities Identification Procedures
Issuer	Issuer of the mortgage pool
Original UPB Amount	Original pool balance multiplied by the Enterprise's percentage ownership
Current UPB Amount	Initial Pool balance (at the start of the Stress Test), multiplied by the Enterprise's percentage ownership
Product Code	Mortgage product type for the pool
Security Rate Index	If the rate on the security adjusts over time, the index that the adjustment is based on
Unamortized Balance	The sum of all unamortized discounts, premiums, fees, commissions, etc., such that the unamortized balance equals book value minus face value, adjusted by the Unamortized Balance Scale Factor
Wt Avg Original Amortization Term	Original amortization term of the underlying loans, in months (weighted average for underlying loans)
Wt Avg Remaining Term of Maturity	Remaining Maturity of the underlying loans at the start of the Stress Test (weighted average for underlying loans)
Wt Avg Age	Age of the underlying loans at the start of the Stress Test (weighted average for underlying loans)
Wt Avg Current Mortgage Interest rate	Mortgage Interest Rate of the underlying loans at the start of the Stress Test (weighted average for underlying loans)
Wt Avg Pass-Through Rate	Pass-Through Rate of the underlying loans at the start of the Stress Test (weighted average for underlying loans)
Wtg Avg Original Mortgage Interest Rate	The current UPB weighted average Mortgage Interest Rate in effect at Origination for the loans in the pool
Security Rating	The most current rating issued by any Nationally Recognized Statistical Rating Organization (NRSRO) for this security, as of the reporting date. In the case of a "split" rating, the lowest rating should be given
Wt Avg Gross Margin	Gross margin for the underlying loans (ARM MBS only) (weighted average for underlying loans)
Wt Avg Net Margin	Net margin (used to determine the security rate for ARM MBS) (weighted average for underlying loans)
Wt Avg Rate Reset Period	Rate reset period in months (ARM MBS only) (weighted average for underlying loans)

TABLE 3–56—RBC REPORT INPUTS FOR SINGLE CLASS MBS CASH FLOWS—Continued

Variable	Description
Wt Avg Rate Reset Limit	Rate reset limit up/down (ARM MBS only) (weighted average for underlying loans)
Wt Avg Life Interest Rate Ceiling	Maximum rate (lifetime cap) (ARM MBS only) (weighted average for underlying loans)
Wt Avg Life Interest Rate Floor	Minimum rate (lifetime floor) (ARM MBS only) (weighted average for underlying loans)
Wt Avg Payment Reset Period	Payment reset period in months (ARM MBS only) (weighted average for underlying loans)
Wt Avg Payment Reset Limit	Payment reset limit up/down (ARM MBS only) (weighted average for underlying loans)
Wt Avg Lookback Period	The number of months to look back from the interest rate change date to find the index value that will be used to determine the next interest rate (ARM MBS only) (weighted average for underlying loans)
Wt Avg Negative Amortization Cap	The maximum amount to which the balance can increase before the payment is recast to a fully amortizing amount. It is expressed as a fraction of the original UPB. (ARM MBS only) (weighted average for underlying loans)
Wt Avg Initial Interest Rate Period	Number of months between the loan origination date and the first rate adjustment date (ARM MBS only) (weighted average for underlying loans)
Wt Avg Unlimited Payment Reset Period	Number of months between unlimited payment resets i.e., not limited by payment caps, starting with Origination date (ARM MBS only) (weighted average for underlying loans)
Notional Flag	Indicates that amounts reported in Original UPB Amount and Current UPB Amount are notional
UPB Scale Factor	Factor applied to the current UPB that offsets any timing adjustments between the security level data and the Enterprise's published financials
Whole Loan Modeling Flag	Indicates that the Current UPB Amount and Unamortized Balance associated with this Repurchased MBS are included in the Wtg Avg Percent Repurchased and Security Unamortized Balance fields
FAS 115 Classification	The financial instrument's classification according to FAS 115
$HPGR_K$	Vector of House Price Growth Rates for quarters q=1...40 of the Stress Period

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3.7.2.1.2 * * *

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TABLE 3–57—RBC REPORT INPUTS FOR MULTI-CLASS AND DERIVATIVE MBS CASH FLOWS

Variable	Description
CUSIP Number	A unique number assigned to publicly traded securities by the Committee on Uniform Securities Identification Procedures
Issuer	Issuer of the security: FNMA, FHLMC, GNMA or other
Original Security Balance	Original principal balance of the security (notional amount for Interest-Only securities) at the time of issuance, multiplied by the Enterprise's percentage ownership
Current Security Balance	Initial principal balance, or notional amount, at the start of the Stress Period multiplied by the Enterprise's percentage ownership
Current Security Percentage Owned	The percentage of a security's total current balance owned by the Enterprise
Unamortized Balance	The sum of all unamortized discounts, premiums, fees, commissions, etc., such that the unamortized balance equals book value minus face value, adjusted by the Unamortized Balance Scale Factor

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3.7.2.1.3 * * *

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TABLE 3–58—RBC REPORT INPUTS FOR MRBS AND DERIVATIVE MBS CASH FLOWS

Variable	Description
CUSIP Number	A unique number assigned to publicly traded securities by the Committee on Uniform Securities Identification Procedures
Original Security Balance	Original principal balance, multiplied by the Enterprise's percentage ownership
Current Security Balance	Initial principal balance (at start of Stress Period), multiplied by the Enterprise's percentage ownership

TABLE 3–58—RBC REPORT INPUTS FOR MRBS AND DERIVATIVE MBS CASH FLOWS—Continued

Variable	Description
Unamortized Balance	The sum of all unamortized discounts, premiums, fees, commissions, etc., such that the unamortized balance equals book value minus face value, adjusted by the Unamortized Balance Scale Factor
Issue Date	The Issue Date of the security
Maturity Date	The stated Maturity Date of the security
Security Interest Rate	The rate at which the security earns interest, as of the reporting date
Principal Payment Window Starting Date, Down-Rate Scenario	The month in the Stress Test that principal payment is expected to start for the security under the statutory "down" interest rate scenario, according to Enterprise projections
Principal Payment Window Ending Date, Down-Rate Scenario	The month in the Stress Test that principal payment is expected to end for the security under the statutory "down" interest rate scenario, according to Enterprise projections
Principal Payment Window Starting Date, Up-Rate Scenario	The month in the Stress Test that principal payment is expected to start for the security under the statutory "up" interest rate scenario, according to Enterprise projections
Principal Payment Window Ending Date, Up-Rate Scenario	The month in the Stress Test that principal payment is expected to end for the security under the statutory "up" interest rate scenario, according to Enterprise projections
Security Rating	The most current rating issued by any Nationally Recognized Statistical Rating Organization (NRSRO) for this security, as of the reporting date. In the case of a "split" rating, the lowest rating should be given
Security Rate Index	If the rate on the security adjusts over time, the index on which the adjustment is based
Security Rate Index Coefficient	If the rate on the security adjusts over time, the coefficient is the number used to multiply by the value of the index
Security Rate Index Spread	If the rate on the security adjusts over time, the spread is added to the value of the index multiplied by the coefficient to determine the new rate
Security Rate Adjustment Frequency	The number of months between rate adjustments
Security Interest Rate Ceiling	The maximum rate (lifetime cap) on the security
Security Interest Rate Floor	The minimum rate (lifetime floor) on the security

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3.8.2 * * *

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TABLE 3–66—INPUT VARIABLES FOR NONMORTGAGE INSTRUMENT CASH FLOWS

Data Elements	Description
Amortization Methodology Code	Enterprise method of amortizing deferred balances (e.g., straight line)
Asset ID	CUSIP or Reference Pool Number identifying the asset underlying a derivative position
Asset Type Code	Code that identifies asset type used in the commercial information service (e.g. ABS, Fannie Mae pool, Freddie Mac pool)
Associated Instrument ID	Instrument ID of an instrument linked to another instrument
Coefficient	Indicates the extent to which the coupon is leveraged or de-leveraged
Compound Indicator	Indicates if interest is compounded
Compounding Frequency	Indicates how often interest is compounded
Counterparty Credit Rating	NRSRO's rating for the counterparty
Counterparty Credit Rating Type	An indicator identifying the counterparty's credit rating as short-term (S) or long-term (L)
Counterparty ID	Enterprise counterparty tracking ID
Country Code	Standard country codes in compliance with Federal Information Processing Standards Publication 10–4
Credit Agency Code	Identifies NRSRO (e.g., Moody's)
Current Asset Face Amount	Current face amount of the asset underlying a swap
Current Coupon	Current coupon or dividend rate of the instrument

TABLE 3–66—INPUT VARIABLES FOR NONMORTGAGE INSTRUMENT CASH FLOWS—Continued

Data Elements	Description
Current Unamortized Discount	Current unamortized premium or unaccreted discount of the instrument adjusted by the Unamortized Balance Scale Factor. If the proceeds from the issuance of debt or derivatives or the amount paid for an asset were greater than par, the value should be positive. If the proceeds or the amounts paid were less than par, the value should be negative
Current Unamortized Fees	Current unamortized fees associated with the instrument adjusted by the Unamortized Balance Scale Factor. Generally fees associated with the issuance of debt or derivatives should be negative numbers. Fees associated with the purchase of an asset should generally be reported as positive numbers
Current Unamortized Hedge	Current unamortized hedging gains (positive) or losses (negative) associated with the instrument adjusted by the Unamortized Balance Scale Factor
Current Unamortized Other	Any other unamortized items originally associated with the instrument adjusted by the Unamortized Balance Scale Factor. If the proceeds from the issuance of debt or derivatives or the amount paid for an asset was greater than par, the value should be positive. If the proceeds or the amounts paid were less than par, the value should be negative.
CUSIP_ISIN	CUSIP or ISIN Number identifying the instrument
Day Count	Day count convention (e.g. 30/360)
End Date	The last index repricing date
EOP Principal Balance	End of Period face, principal or notional, amount of the instrument
Exact Representation	Indicates that an instrument is modeled according to its contractual terms
Exercise Convention	Indicates option exercise convention (e.g., American Option)
Exercise Price	Par=1.0; Options
First Coupon Date	Date first coupon is received or paid
Index Cap	Indicates maximum index rate
Index Floor	Indicates minimum index rate
Index Reset Frequency	Indicates how often the interest rate index resets on floating-rate instruments
Index Code	Indicates the interest rate index to which floating-rate instruments are tied (e.g., LIBOR)
Index Term	Point on yield curve, expressed in months, upon which the index is based
Instrument Credit Rating	NRSRO credit rating for the instrument
Instrument Credit Rating Type	An indicator identifying the instruments credit rating as short-term (S) or long-term (L)
Instrument ID	An integer used internally by the Enterprise that uniquely identifies the instrument
Interest Currency Code	Indicates currency in which interest payments are paid or received
Interest Type Code	Indicates the method of interest rate payments (e.g., fixed, floating, step, discount)
Issue Date	Indicates the date that the instrument was issued
Life Cap Rate	The maximum interest rate for the instrument throughout its life
Life Floor Rate	The minimum interest rate for the instrument throughout its life
Look-Back Period	Period from the index reset date, expressed in months, that the index value is derived
Maturity Date	Date that the Instrument contractually matures
Notional Indicator	Identifies whether the face amount is notional
Instrument Type Code	Indicates the type of instrument to be modeled (e.g., ABS, Cap, Swap)
Option Indicator	Indicates if instrument contains an option
Option Type	Indicates option type (e.g., Call option)
Original Asset Face Amount	Original face amount of the asset underlying a swap
Original Discount	Original premium or discount associated with the purchase or sale of the instrument adjusted by the Unamortized Balance Scale Factor. If the proceeds from the issuance of debt or derivatives or the amount paid for an asset were greater than par, the value should be positive. If the proceeds or the amounts paid were less than par, the value should be negative
Original Face	Original face, principal or notional, amount of the instrument

TABLE 3–66—INPUT VARIABLES FOR NONMORTGAGE INSTRUMENT CASH FLOWS—Continued

Data Elements	Description
Original Fees	Fees or commissions paid at the time of purchase or sale adjusted by the Unamortized Balance Scale Factor. Generally fees associated with the issuance of debt or derivatives should be negative numbers. Fees associated with the purchase of an asset should generally be reported as positive numbers
Original Hedge	Gains (positive) or losses (negative) from closing out a hedge associated with the instrument at settlement, adjusted by the Unamortized Balance Scale Factor
Original Other	Any other amounts originally associated with the instrument to be amortized or accreted adjusted by the Unamortized Balance Scale Factor. If the proceeds from the issuance of debt or derivatives or the amount paid for an asset were greater than par, the value should be positive. If the proceeds or the amounts paid were less than par, the value should be negative
Parent Entity ID	Enterprise internal tracking ID for parent entity
Payment Amount	Interest payment amount associated with the instrument (reserved for complex instruments where interest payments are not modeled)
Payment Frequency	Indicates how often interest payments are made or received
Performance Date	"As of" date on which the data is submitted
Periodic Adjustment	The maximum amount that the interest rate for the instrument can change per reset
Position Code	Indicates whether the Enterprise pays or receives interest on the instrument
Principal Currency Code	Indicates currency in which principal payments are paid or received
Principal Factor Amount	EOP Principal Balance expressed as a percentage of Original Face
Principal Payment Date	A valid date identifying the date that principal is paid
Settlement Date	A valid date identifying the date the settlement occurred
Spread	An amount added to an index to determine an instrument's interest rate
Start Date	The date, spot or forward, when some feature of a financial contract becomes effective (e.g., Call Date), or when interest payments or receipts begin to be calculated
Strike Rate	The price or rate at which an option begins to have a settlement value at expiration, or, for interest-rate caps and floors, the rate that triggers interest payments
Submitting Entity	Indicates which Enterprise is submitting information
Trade ID	Unique code identifying the trade of an instrument
Transaction Code	Indicates the transaction that an Enterprise is initiating with the instrument (e.g. buy, issue reopen)
Transaction Date	A valid date identifying the date the transaction occurred
UPB Scale Factor	Factor applied to UPB to adjust for timing differences
Unamortized Balances Scale Factor	Factor applied to Unamortized Balances to adjust for timing differences

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3.8.3.6.2 * * *

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[b] * * *

[c] * * *

[d] Futures and Options on Futures also require special treatment:

1. Settle positions on their expiration dates. Exercise only in-the-money options (settlement value greater than zero).
2. Settle all contracts for cash.
3. Calculate the cash settlement amount—the change in price of a contract from the contract trade date to its expiration date. Calculate the price on the expiration date based on stress test interest rates (or, as necessary, forward rates extrapolated from these rates).
4. Amortize amounts received or paid at the expiration date into income or expense on a straight-line basis over the life of the underlying instrument (in the case of an option on a futures contract, the life of the instrument underlying the futures contract).
5. Amortize an option premium on a straight-line basis over the life of the option. (Amortize any remaining balances upon option exercise.)

[e] Swaptions also require special treatment:

1. Assume swap settlement (*i.e.*, initiation of the underlying swap) when a swap option is exercised.
2. Calculate a "normalized" fixed-pay coupon by subtracting the spread over the index, if any, from the coupon on the fixed-rate swap leg.
3. For all exercise types (American, Bermudan, and European), consistent with RBC Rule section 3.8.3.7, assume exercise by the party holding the swap option if the equivalent maturity Enterprise Cost of Funds is more than

a. 50 basis points above the normalized fixed-pay coupon, for a pay-fixed swaption (a call or 'payor' swaption), or

b. 50 basis points below the normalized fixed pay coupon for a receive-fixed swaption (a put or 'receiver' swaption).

4. Amortize option premiums on a straight-line basis over the option term. (Amortize any remaining balances upon option exercise).

[f] CPI-Linked Instruments also require special treatment. The stress test lacks the ability to accommodate

floating-rate instruments that reset in response to changes in the consumer price index (CPI) as published by the Bureau of Labor Statistics. Enterprise issuance of CPI-linked instruments is tied to swap market transactions intended to create desired synthetic debt structure and terms. In such cases, the true economic position nets to the payment terms of the related derivative contract. Accordingly, in order to accommodate and address the existence of CPI-linked instruments in the Enterprises' portfolios, the net synthetic position shall be evaluated in the stress test. That is, for CPI-linked instruments tied to swap transactions that are formally linked in a hedge accounting relationship, the Enterprise should substitute the CPI-linked instrument's coupon payment terms with those of the related swap contract.

[g] Pre-refunded municipal bonds also require special treatments. Pre-refunded municipal bonds are collateralized by securities that are structured to fund all the cash flows of the refunded municipal bonds until the bonds are callable. Since the call date for the bonds, also referred to as the pre-refunded date, is a more accurate representation of the payoff date than the contractual maturity date of the bonds, the stress test models the bonds to mature on the call date.

* * * * *

3.9.2 * * *

TABLE 3–70—ALTERNATIVE MODELING TREATMENT INPUTS

Variable	Description
TYPE	Type of item (asset, liability or off-balance sheet item)
BOOK	Book Value of item (amount outstanding adjusted for deferred items)
FACE	Face Value or notional balance of item for off-balance sheet items
REMATUR	Remaining Contractual Maturity of item in whole months. Any fraction of a month equals one whole month.
RATE	Interest Rate
INDEX	Index used to calculate Interest Rate
FAS115	Designation that the item is recorded at fair value, according to FAS 115
RATING	Instrument or counterparty rating
FHA	In the case of off-balance sheet guarantees, a designation indicating 100% of collateral is guaranteed by FHA
MARGIN	Margin over an Index

* * * * *

3.10.3.6.2 * * *

[a] * * *

1. Fair Values

a. The valuation impact of any Applicable Fair Value Standards (AFVS), cumulative from their time of implementation, will be reversed out of the starting position data, by debiting any accumulated credits, and crediting any accumulated debits.

(1) AFVS are defined as GAAP pronouncements that require recognition of periodic changes in fair value, *e.g.*, EITF 99–20, FAS 65, FAS 87, FAS 115, FAS 133, FAS 140, FAS 149 and FIN 45.

(2) The GAAP pronouncements covered by this treatment are subject to OFHEO review. The Enterprises will submit a list of standards and pronouncements which are being reversed in the RBC Reports.

b. After reversing the valuation impact of AFVS, any affected activities are rebooked as follows:

(1) If absent the adoption of the AFVS, the affected transactions would have been accounted for on an historical cost basis, they are rebooked and presented as if they had always been accounted for on an historical cost basis. (The historical cost basis may include amortization from the time of the activity to the beginning of the stress test.)

(2) To the extent that transactions would not have been accounted for on an historical cost basis, they are accounted for as if they were income and expense activities.

* * * * *

Dated: June 6, 2006.

James B. Lockhart III,

Acting Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 06–5330 Filed 6–23–06; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–114–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 340B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 340B airplanes, that would have required modification of the hot detection system of the tail pipe harness of the engine nacelles. This new action revises the original NPRM by reducing the compliance time for the modification and adding repetitive inspections. The actions specified by this new proposed AD are intended to prevent false warning indications to the flightcrew from the hot detection system due to discrepancies of the harness, which could result in unnecessary aborted takeoffs on the ground or an in-flight engine shutdown. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 21, 2006.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–114–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–114–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 1, 2004 (69 FR 17101). That NPRM would have required modification of the hot detection system of the tail pipe harness of the engine nacelles. That NPRM was prompted by reports of false warning indications to the flightcrew from the hot detection system of the tail pipe harness of the engine nacelles. That condition, if not corrected, could result in unnecessary aborted takeoffs on the ground or an in-flight engine shutdown.

Actions Since Issuance of Original NPRM

Since the issuance of the original NPRM, we have been receiving reports from operators indicating new incidents of false warning indications to the flightcrew from the hot detection system of the tail pipe harness of the engine nacelles. We have determined that, the unsafe condition is severe enough to justify adding repetitive general visual inspections after accomplishing the modification, in order to maintain an appropriate level of safety. The one-time inspection specified in the original NPRM was determined to be appropriate in consideration of the safety implications at that time. However, in light of the additional reports, we have added repetitive inspections at intervals not to exceed 12 months to paragraph (a) of this supplemental NPRM.

This supplemental NPRM also requires that operators report the results of all hot tail pipe events to the Swedish Civil Aviation Authority (Luftfartsstyrelsen). Because the cause of the events is not known, these required reports will help determine the extent of the problem in the affected fleet. Based on the results of these reports, we may determine that further corrective action is warranted.

New Relevant Service Information

We have received Saab Service Bulletin 340–26–030, Revision 01, dated November 14, 2003. (The original NPRM refers to Service Bulletin 340–26–030, dated October 28, 2002, as the appropriate source of service information for accomplishing the proposed actions.) Revision 01 of the service bulletin adds no significant changes to the original issue and has been added to the supplemental NPRM as the appropriate source of service information for accomplishing the actions.

Comments

Due consideration has been given to the comments received in response to the original NPRM.

Request To Add Certain Repetitive Inspection Requirements

Mesaba Airlines states that initially it had problems with false warning indications from the hot detection system, and after several attempts, came up with a process to seal the tail pipe hot detectors with thixotropic sealant. The commenter notes that the work instructions it developed were added to Saab Service Bulletin 340–26–029, and adds that it has had success with this new process and has had a low number of false warning indications. The commenter states that the inspection and application of sealant specified in its Maintenance Review Board (MRB) Item 26–12–01 (Bench Check of Exhaust Duct Overtemp Spot Detectors) are done every 6,000 flight hours; the replacement of the spot detectors is done at the same time. (The inspection is referenced as Task #0600–454–01E and Task #0600–464–01E, and the application of sealant is referenced as Chapter 26–12–05, in the SAAB 340 Airplane Maintenance Manual.) The commenter asks that this visual inspection of the harness and associated terminal ends, and application of thixotropic sealant to the detector/terminal end areas every 6,000 flight hours be added to the original NPRM. The commenter adds that these actions would be done in conjunction with the replacement of the spot detectors.

We partially agree with the commenter. We agree that additional general visual inspections, as identified

by the commenter, are necessary. We do not agree that those inspections can be done at intervals of 6,000 flight hours, as specified in the referenced maintenance manual. In light of the additional incidents that have occurred, a repetitive interval of 6,000 flight hours would not address the unsafe condition in a timely manner. We have revised paragraph (a) of this supplemental NPRM to specify accomplishing a general visual inspection for discrepancies of the heat shrink sleeve, thixotropic sealant, and connectors for damage and/or corrosion, and doing all applicable repairs. We find that repetitive inspections and maintenance done every 12 months will result in a decrease in incidents of false warning indications to the flightcrew from the hot detection system. Additionally, we do not agree to add replacement of the spot detectors in conjunction with the actions because such replacement is an on-condition action.

Request To Add Parts Cost

Saab Aircraft states that in the "Cost Impact" section of the original NPRM we have specified that required parts would be free of charge. The commenter notes that Paragraph 1.G. (Material—Cost and Availability) of the referenced service bulletin specifies, "Price and availability for Modification Kit No. SAAB 340–26—3–01/02 will be furnished on request." The commenter provided the parts cost for the kits and asked that the cost be added to the original NPRM. We agree, and we have changed the cost impact section of this supplemental NPRM to reflect the parts cost.

Explanation of Change to Applicability

We have revised the applicability of the original NPRM to identify model designations as published in the most recent type certificate data sheet for the affected models.

Explanation of Change to Costs of Compliance

After the original NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $65 per work hour to $80 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Conclusion

Since certain changes expand the scope of the original NPRM, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

We estimate that 280 airplanes of U.S. registry would be affected by this supplemental NPRM.

It would take about 10 work hours per airplane to accomplish the proposed modification, at an average labor rate of $80 per work hour. Required parts cost would be between $218 and $2,253. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be between $1,018 and $3,053 per airplane.

It would take about 1 work hour per airplane to accomplish the proposed inspection and application of sealant, at an average labor rate of $80 per work hour. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $22,400, or $80 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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 Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

Saab Aircraft AB: Docket 2003–NM–114–AD.

Applicability

Model SAAB-Fairchild SF340A (SAAB/SF340A) airplanes, serial numbers –004 through –159 inclusive, and SAAB 340B airplanes, serial numbers –160 through –459 inclusive, certificated in any category.

Compliance

Required as indicated, unless accomplished previously.

To prevent false warning indications to the flightcrew from the hot detection system of the tail pipe harness of the engine nacelles due to discrepancies of the harness, which could result in unnecessary aborted takeoffs

on the ground or an in-flight engine shutdown, accomplish the following:

Modification/Repetitive Inspections

(a) Within 12 months after the effective date of this AD: Modify the hot detection system of the tail pipe harness of the engine nacelles (including a general visual inspection of the heat shrink sleeve, thixotropic sealant, and connectors for damage and/or corrosion, and all applicable repairs), by doing all the actions specified in the Accomplishment Instructions of Saab Service Bulletin 340–26–030, Revision 01, dated November 14, 2003. All applicable repairs must be done before further flight in accordance with the service bulletin. Repeat the general visual inspection thereafter at intervals not to exceed 12 months.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(b) Accomplishing the modification/repetitive inspections specified in Saab Service Bulletin 340–26–030, dated October 28, 2002; or Saab Service Bulletins 340–26–018, Revision 02, and 340–26–029, both dated October 28, 2002; before the effective date of this AD, is considered acceptable for compliance with the modification required by paragraph (a) of this AD.

Reporting Requirement

(c) Within 30 days after any false warning indication to the flightcrew from the hot detection system of the tail pipe harness of the engine nacelles occurs: Submit a report containing the information specified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD to the Swedish Civil Aviation Authority (Luftfartsstyrelsen)—Attn: Mr. Christer Sundqvist, SAAB 340 Certification Manager, SE–601 79, Norrköping, Sweden. Under the provisions of the Paperwork Reduction Act (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.

(1) The date and time, weather conditions, and phase of flight of the warning.

(2) The action taken by the crew to address the warning (aborted takeoff, high speed/high energy abort requiring inspection, return for landing, in-flight diversion, declared emergency, ATC priority handling requested or given, or engine shutdown).

(3) The action taken by maintenance to address/correct the warning.

(4) Time-in-service on the airplane since the last inspection accomplished in accordance with paragraph (a) of this AD.

Alternative Methods of Compliance (AMOCs)

(d)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve AMOCs for this AD.

(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.

Note 2: The subject of this AD is addressed in Swedish airworthiness directive 1–184, dated October 28, 2002.

Issued in Renton, Washington, on June 19, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–10014 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25174; Directorate Identifier 2005–NM–007–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 45 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 Learjet Model 45 airplanes. This proposed AD would require revising the Airworthiness Limitations section of the airplane maintenance manual to incorporate certain inspections and compliance times to detect fatigue cracking of certain principal structural elements (PSEs). This proposed AD results from new and more restrictive life limits and inspection intervals for certain PSEs. We are proposing this AD to ensure that fatigue cracking of various PSEs is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

DATES: We must receive comments on this proposed AD by August 10, 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 Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Steve Litke, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4127; fax (316) 946–4107.

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–2006–25174; Directorate Identifier 2005–NM–007–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

As service experience is accumulated on airplanes or as the result of post-certification testing and evaluation, it may become necessary to revise removal limits for removal of certain life-limited components of the airplane or revise the interval for certain structural inspections in order to ensure the continued structural integrity of the airplane. The manufacturer may revise the Airworthiness Limitations document to include more restrictive life limits or revise repetitive intervals for certain non-destructive inspection (NDI) techniques and procedures for each principal structural element (PSE). For the purposes of this airworthiness directive, a PSE is defined as an element of structure that contributes significantly to carrying flight, ground, and pressurization loads. If a failure occurs on any of those PSEs, it could adversely affect the structural integrity of the airplane.

The actions specified by the proposed AD are intended to ensure that fatigue cracking of various PSEs is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

New Revisions of Airworthiness Limitations Sections (ALS)

We have reviewed Chapter 4, "Airworthiness Limitations," of the Learjet 40 Maintenance Manual (MM), Revision 6, dated April 24, 2006; and Chapter 4, "Airworthiness Limitations," of the Learjet 45 MM, Revision 38, dated April 24, 2006. These MM chapters add new and more restrictive life limits and inspection intervals for certain PSEs. PSEs include, but are not limited to, door cutouts, windshields, skin sections, bolts, and attachment hardware. The MM chapters explicitly identify all of the PSEs that are to be inspected in accordance with the requirements of the Airworthiness Limitations section (ALS). Accomplishing the actions specified in these chapters 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 revising the ALS of the MM to incorporate certain inspections and compliance times to detect fatigue cracking of certain PSEs.

Clarification of Model Designations

Certain Learjet Model 45 airplanes are also referred to as Model 45 (Learjet 40) airplanes. Model 45 (Learjet 40) airplanes have serial numbers (S/Ns) 45–2001 through 45–4000 inclusive. The remainder of the Learjet Model 45 airplanes are referred to as Model 45 (Learjet 45) airplanes, and have S/Ns 45–002 through 45–2000 inclusive.

Costs of Compliance

There are about 230 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 171 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $13,680, or $80 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):

Learjet: Docket No. FAA–2006–25174; Directorate Identifier 2005–NM–007–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 10, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Learjet Model 45 airplanes, certificated in any category; serial numbers (S/Ns) 45–002 through 45–233 inclusive, and S/Ns 45–2001 through 45–2031 inclusive.

Unsafe Condition

(d) This AD results from new and more restrictive life limits and inspection intervals for certain principal structural elements (PSEs). We are issuing this AD to ensure that fatigue cracking of various PSEs is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

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.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (g) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Revise the Airworthiness Limitations Section (ALS)

(f) Within 30 days after the effective date of this AD, revise the ALS of the airplane maintenance manual (AMM) to include new life limits and inspection intervals according to a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Incorporating the applicable chapters in paragraph (f)(1) or (f)(2) of this AD in the AMM is one approved method for doing the revision. Thereafter, except as provided in paragraph (g) of this AD, no alternative life limits or inspection intervals may be approved for the affected PSEs.

(1) For Learjet Model 45 airplanes, S/Ns 45–002 through 45–233 inclusive: Chapter 4 of the Learjet 45 Maintenance Manual, Revision 38, dated April 24, 2006.

(2) For Learjet Model 45 airplanes, S/Ns 45–2001 through 45–2031 inclusive: Chapter 4 of the Learjet 40 Maintenance Manual, Revision 6, dated April 24, 2006.

AMOCs

(g)(1) The Manager, Wichita 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 14, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–10004 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25059; Airspace Docket No. 06–ACE–8]

Proposed Establishment of Class E5 Airspace; Higginsville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area extending upward from 700 feet above the surface at Higginsville Industrial Municipal Airport, MO.

DATES: Comments for inclusion in the Rules Docket must be received on or before August 1, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–25059/ Airspace Docket No. 06–ACE–8, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2006–25059/Airspace Docket No. 06–ACE–8." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket number for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This notice proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area extending upward from 700 feet above the surface at Higginsville Industrial Municipal Airport, MO. The establishment of Area Navigation (RNAV) Global Positioning System (GPS) Instrument Approach Procedures (IAP) to Runways 16 and 34 have made this action necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules operations at Higginsville Industrial Municipal Airport, MO. The area would be depicted on appropriate aeronautical charts.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations

listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority since it would contain aircraft executing instrument approach procedures to Higginsville Industrial Municipal Airport, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 33 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Higginsville, MO

Higginsville Industrial Municipal Airport, MO
(Lat. 39°04′22″ N., long. 93°40′39″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Higginsville Industrial Municipal Airport.

* * * * *

Issued in Kansas City, MO, on June 13, 2006.

Donna R. McCord,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 06–5672 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 50 and 380

[Docket No. RM06–12–000]

Regulations for Filing Applications for Permits To Site Interstate Electric Transmission Corridors

Issued June 16, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing regulations in accordance with section 1221 of the Energy Policy Act of 2005 to implement filings requirements and procedures for entities seeking to construct electric transmission facilities. The proposed regulations will expedite the Commission's permitting process by coordinating the processing of Federal authorizations and environmental review of electric transmission facilities in national interest transmission corridors.

DATES: Comments are due on or before August 25, 2006.

ADDRESSES: You may submit comments, identified by Docket No. RM06–12–000, by one of the following methods:

- *Agency Web Site: http://ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.
- *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT: John Schnagl, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8756, *john.schnagl@ferc.gov*; Carolyn Van Der Jagt, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8620, *carolyn.VanDerJagt@ferc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

1. On August 8, 2005, the Energy Policy Act of 2005 (EPAct 2005) became law.[1] Section 1221 of EPAct 2005 adds a new section 216 to the Federal Power Act (FPA), providing for Federal siting of electric transmission facilities under certain circumstances. The Nation's electric system is an extensive, interconnected network of power lines that transport electricity from generator to consumer. The system was originally built by electric utilities over a period of 100 years, primarily to serve local customers and maintain system reliability. However, due to a doubling of electricity demand and generation over the past three decades and the advent of competitive wholesale electricity markets, the need to transfer large amounts of electricity across the grid has increased significantly in recent years.[2] Investment in new transmission facilities has not kept pace with the need to increase transmission system capacity and maintain system reliability. The blackout of August 2003 highlighted the need to bolster the nation's electric transmission system.

2. New section 216 of the FPA requires that the Secretary of Energy (Secretary) identify transmission constraints. It mandates that the Secretary conduct a study of electric transmission congestion within one year of enactment and every three years thereafter, and that the Secretary then issue a report, based on the study, which may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects

[1] Pub. L. 109–58, 119 Stat. 594 (2005).

[2] *See* Considerations for Transmission Congestion Study and Designation of National Interest Electric Transmission Corridors (Department of Energy), 71 FR 5560 (February 2, 2006).

consumers as a national interest electric transmission corridor.

3. Once a national interest transmission corridor is designated by the Secretary, the Commission has the authority under FPA section 216(b) to issue permits to construct or modify electric transmission facilities in such a corridor under certain circumstances. The Commission has the authority to issue permits to construct or modify electric transmission facilities if it finds that: (1) A State in which such facilities are located does not have the authority to approve the siting of the facilities or to consider the interstate benefits expected to be achieved by the construction or modification of the facilities; (2) the applicant is a transmitting utility but does not qualify to apply for siting approval in the State because the applicant does not serve end-use customers in the State; (3) the State commission or entity with siting authority withholds approval of the facilities for more than one year after an application is filed or one year after the designation of the relevant national interest electric transmission corridor, whichever is later, or the State conditions the construction or modification of the facilities in such a manner that the proposal will not significantly reduce transmission congestion in interstate commerce or is not economically feasible.[3]

4. Additionally, under FPA sections 216(b)(2) through (6), the Commission must find that the proposed facility: (1) Will be used for the transmission of electric energy in interstate commerce; (2) is consistent with the public interest;[4] (3) will significantly reduce transmission congestion in interstate commerce and protect or benefit consumers; (4) is consistent with sound national energy policy and will enhance energy independence; and (5) will maximize, to the extent reasonable and economical, the transmission capabilities of existing towers or structures.

5. New FPA section 216(h)(2) designates the Department of Energy (DOE) as lead agency to coordinate all Federal authorizations needed to construct proposed electric transmission facilities in national interest electric transmission corridors. Under FPA section 216(h)(4)(A), to ensure timely efficient reviews and permit decisions, DOE is required to establish prompt and binding intermediate milestones and ultimate deadlines for all Federal reviews and authorizations required for a proposed electric transmission facility.[5] Section 216(h)(5)(A) of the FPA requires that DOE as lead agency, in consultation with the other affected agencies, prepare a single environmental review document that would be used as the basis for all decisions for the proposed projects under Federal law.

6. The Secretary determined that it would be beneficial to use the Commission's existing expertise and experience in siting energy facilities to coordinate and process Federal authorizations and related environmental reviews for proposed facilities in national interest transmission corridors. Thus, effective May 16, 2006, the Secretary delegated paragraphs (2), (3), (4)(A)–(B), and (5) of FPA section 216(h) to the Commission as they apply to proposed facilities in designated national interest electric transmission corridors.[6] Specifically, the Secretary delegated to the Commission DOE's lead agency responsibilities for the purpose of coordinating all applicable Federal authorizations and related environmental review and preparing a single environmental review document for facilities in a designated national interest electric transmission corridor. In developing the environmental document, the Commission will establish prompt and binding intermediate milestones and ultimate deadlines for the review, and ensure that all Federal permits are issued, and reviews for proposed facilities in a designated national interest electric transmission corridor are completed, within a year or as soon as practicable thereafter.

7. Under FPA section 216(h)(4)(C), DOE is required to provide an expeditious pre-application mechanism for an applicant to confer with the agencies responsible for any separate permitting and environmental reviews required by Federal law. During that process, the agencies are required to communicate to applicants the likelihood for approval for a potential facility and key issues of concern. While DOE will conduct a pre-application process under for Federal authorizations under FPA section 216(h)(4)(C), the Commission will also conduct a pre-filing process to facilitate maximum participation from all interested entities and individuals and to assist an applicant in compiling the information needed to file a complete application. Based on its experience in processing applications for natural gas facilities and hydroelectric projects, the Commission has found that an extensive pre-filing process allows the Commission to process the ultimate application expeditiously. The Commission intend that its pre-filing process be consistent with DOE's pre-application process to ensure a prompt and coordinated approach to siting facilities within national interest transmission corridors.

II. Discussion

8. Section 216(c)(2) of the FPA requires that the Commission issue rules specifying the form of, and the information to be contained in, an application for proposed construction or modification of electric transmission facilities in a designated national interest electric transmission corridor, and the manner of service of notice of the permit application on interested persons. The Commission proposes to implement regulations in a new Part 50 of existing subchapter B of the Commission's regulations. The new procedures will also require certain modifications to other existing regulations, including the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA) in Part 380. The proposed regulations provide for a Project Participation Plan (Participation Plan) that will be filed at the beginning of the pre-filing process and will be used during the pre-filing and application processes to facilitate maximum participation from all interested entities and individuals.

A. Project Participation

9. Section 216(d) of the FPA requires that the Commission afford each State in which the transmission facility covered by the permit application is or will be located, each affected Federal agency and Indian tribe, private property owners, and other interested persons, a reasonable opportunity to present their views and recommendations with respect to the need for and impact of a facility covered by the permit application. Additionally, under FPA section 216(h)(3) and its delegated authority, the Commission needs to coordinate the Federal authorization

[3] Under FPA section 216(i)(4), the Commission may not issue a permit for facilities within a State that is a party to an interstate compact establishing a regional transmission siting agency unless the members of the compact are in disagreement and the Secretary makes certain findings.

[4] The Commission will make a public interest determination based on the entire record of the proceeding, and after due consideration of the issues raised.

[5] Under FPA section 216(h)(6)(A), if any agency has denied a Federal authorization required for a transmission facility, or has failed to act by the deadline established by the Secretary, the applicant or any State in which the facility would be located may file an appeal with the President.

[6] Department of Energy Delegation Order No. 00–004.00A.

and review process with any Federal agencies, Indian tribes, multistate entities, and State agencies that are responsible for conducting separate permitting and environmental reviews of the facilities.

10. The Commission is proposing a Participation Plan to facilitate maximum participation from all stakeholders. Proposed § 50.1 defines a stakeholder as a Federal, State, or multistate, tribal or local agency, any affected non-governmental organization, or other interested person. In other words, a stakeholder includes agencies and individuals contemplated under FPA section 216(d) and the permitting agencies contemplated under FPA section 216(h)(3).[7] Proposed § 50.4 details the requirements for the Participation Plan, including document availability and project notification. Under proposed § 50.5(c)(7), the Participation Plan needs to be filed at the beginning of the pre-filing process.

1. Stakeholder Participation

11. Under proposed § 50.4, the Commission proposes to require a potential applicant to prepare a Participation Plan to use during the pre-filing and application processes. The Participation Plan will be used to provide accurate and timely information concerning all aspects of the proposed project, including environmental impacts as well as the national and local benefits of the proposed project, to all stakeholders. The Participation Plan will detail how the applicant will facilitate stakeholder communications and dissemination of information about the proposed project for both the pre-filing and application proceedings, discussed below. It will also detail the applicant's plan for seeking and acquiring all necessary Federal, State, tribal, and local authorizations under Federal, State, and local laws.

12. Proposed § 50.4(a)(1), requires, among other things, that the applicant identify how it intends to facilitate stakeholder communications. It also requires that the applicant create and maintain a Web site specifically devoted to the project and have a single point of contact within the company to address communications from stakeholders.

13. Proposed § 50.4(a)(2) requires that the applicant list the central locations throughout the project area where copies of the all filings related to the proposed project will be located. Proposed § 50.4(a)(3) requires that the applicant detail how it intends to respond to requests for information from the public as well as Federal, State, and tribal permitting entities.

2. Document Availability

14. Under proposed § 50.4(b), the applicant must make copies of all of its filings readily available for all stakeholders to review. Within three business days of the date a pre-filing request is filed and when the application is issued a docket number, copies of the pre-filing and application materials must be placed in accessible central locations in each county throughout the project area listed under proposed § 50.4(b)(1) in paper or electronic format and on the company's Web site developed in compliance with proposed § 50.4(a)(1).

3. Project Notification

15. Proposed § 50.4(c) lists the project notification requirements. The applicant is required to notify all stakeholders, including affected landowners. Proposed § 50.1 defines an affected landowner as an owner of property interests, as noted in the most recent tax notice, whose property is: (1) Directly affected, crossed or used, by the proposed project; or (2) abuts either side of an existing right-of-way or proposed facility site or right-of-way.

16. Under proposed § 50.4(c)(1)(i)(A), the applicant is required to send notification of the proposed new facilities or modification of existing facilities to all stakeholders within 14 days after the Director of Office of Energy Projects (OEP) or his designee notifies the applicant of the commencement of the pre-filing process. Under proposed § 50.4(c)(1)(i)(B), when an application is subsequently filed, the applicant must notify all stakeholders within three business days after the Commission issues a notice of the application as proposed in § 50.9. Additionally, under proposed § 50.4(c)(1)(ii), the applicant must publish the notice of the pre-filing request and application filing twice in a daily or weekly newspaper of general circulation in each county in which the facilities will be located.

17. During the pre-filing process, discussed below, under proposed § 50.4(c)(2)(i), the notification distributed by the applicant must include: (1) The docket number of the pre-filing proceeding; (2) a copy of the most recent edition of the Commission's pamphlet *Electric Transmission Permitting Process*; (3) a description of the project, its location, purpose, and the applicant's anticipated timing of its construction or modification process; (4) a general description of what the landowner will need to do if the project is approved and a company contact knowledgeable about the project; (5) a brief summary of the eminent domain rules of the relevant State; (6) information on how the landowner can obtain a copy of the pre-filing materials and the subsequent application, including information on how the landowner can obtain copies of CEII; and (7) an explanation of the difference between the pre-filing and application process and how the affected landowner may participate in each.

18. Given the extent of the pre-filing process, the Commission believes that all stakeholders will be notified during that process. Therefore, once the application is filed, under proposed § 50.4(c)(2)(ii), the applicant is only required to notify all stakeholders that the application has been filed by supplying them with a copy of the Commission's notice of the application. If the project route is changed during the pre-filing or application process to potentially affect additional stakeholders, or it is determined that stakeholders have not previously been identified, once the stakeholder is identified, the applicant must supply those new stakeholders with the information required in proposed § 50.4(c).

19. Finally, under proposed § 50.4(c)(5), if any stakeholder requests information that contains CEII, the applicant must request that information from the Commission under the procedures in § 388.113 of the Commission's regulations.

B. Pre-Filing Process

20. The proposed regulations provide for, among other things, an extensive pre-filing process in proposed § 50.5 that will facilitate maximum participation from all stakeholders to provide them with an opportunity to present their views and recommendations with respect to the need for and impact of the facilities early on in the planning stages of the proposed facilities as required under FPA section 216(d). The pre-filing process also will assist the applicant in compiling the information needed to file a complete application so that all reviews under Federal law can be completed within one year after the application is filed, or as soon thereafter as is practicable. During the pre-filing process, the Commission will work with the applicant and other permitting entities to coordinate the reviews and compile the information necessary for

[7] Proposed § 50.1 defines a permitting entity as any entity, including Federal, State, tribal, or multistate, or local agency that is responsible for conducting reviews for any Federal authorization that will be required to construct an electric transmission facility in a national interest electric transmission corridor.

all required Federal authorizations for the proposed facilities.[8]

21. Because of the potential for differences between projects, the Commission does not propose to set exact timeframes for the pre-filing process. The timeframe will depend upon, among other things, the size of the project, stakeholder participation, and the applicant's preparedness. The Commission expects that the pre-filing process for large, multi-state "greenfield" projects, will take longer than the pre-filing process for minor modifications to existing facilities.[9] The Commission anticipates that the pre-filing process for extensive projects may take at least a year to complete. Additionally, the environmental resource reports required under proposed § 380.16, discussed below, will require comprehensive field work and study to compile the information necessary to comply with the Commission's obligations under NEPA.

22. As stated above, the pre-filing timeframe is also dependent on the preparedness of the applicant. The pre-filing process is designed to assist the applicant in compiling the information needed to prepare a complete application and to coordinate the review process for other Federal authorizations. The further along the applicant is in obtaining the necessary Federal authorizations and the information needed for a completed application when it commences the pre-filing process, the sooner the applicant will be prepared to file a complete application. Under proposed § 50.5(a), all applicants seeking a permit to site new or to modify existing electric transmission facilities must comply with the proposed pre-filing process before they submit a permit application.

1. Initial Consultation

23. Under proposed § 50.5(b), an applicant must meet with the Director of OEP before filing its pre-filing materials. During that meeting, Commission staff will review the applicant's proposed project description, including the status of the applicant's progress towards collecting the data needed to commence the pre-filing process, any preliminary contacts the applicant has had with stakeholders, including its progress in DOE's pre-application process, and preliminary details about the project.

24. Commission staff will also review the applicant's eligibility for Commission approval of a proposed facility, outline the pre-filing process, and provide guidance as to what further work is necessary to prepare the pre-filing request. Commission staff will also review the proposed project to determine if the applicant will be required to hire a third-party contractor to assist in preparing a NEPA document, under the direction of the Commission staff. The use of a third-party contractor can ensure that the environmental review of a proposed project proceeds expeditiously.

2. Initial Filing Requirements

25. Proposed § 50.5(c) lists the contents of a pre-filing request. Proposed § 50.5(c)(1) requires that the applicant file a proposed schedule, including when it anticipates filing its completed application and when it proposes to energize its project and commence service on the facilities. Proposed § 50.5(c)(2) requires that a pre-filing request include a description of the project, including maps and plot plans showing all major components, zoning requirements, and site availability. Any additional case-specific information that may be needed under this section will be discussed at the initial consultation. Proposed § 50.5(c)(3) requires that the applicant file a list of the permitting entities responsible for conducting separate Federal permitting and environmental reviews for the proposed project.

26. Proposed § 50.5(c)(4) requires a list of other stakeholders that have been contacted, or have contacted the applicant, about the project. Proposed § 50.5(c)(5) requires the applicant to file information concerning the status of work already conducted, including contacting agencies and individuals listed in proposed §§ 50.5(c)(3) and (4) its progress in DOE's pre-application process. Additionally, the applicant must file all information concerning engineering and environmental studies and route planning work conducted by contractors. The filing also must include information concerning any public meetings the proposed applicant has conducted regarding the proposed project.

27. Proposed § 50.5(c)(6) requires that the applicant propose at least three third-party NEPA contractors for the Commission to consider for the proposed project. Under proposed § 50.5(d)(1), the Director of OEP's notice commencing the pre-filing process will designate the chosen third-party contractor.

28. Finally, proposed § 50.5(c)(7) requires that the applicant file the Participation Plan required in proposed § 50.4(a). The Participation Plan must include a listing and schedule of all pre-filing and application activities, including, among other things, consultations, information gathering and studies, and proposed location(s) and date(s) for the meetings and site visits, if applicable. The Director of OEP may require that the applicant modify the Participation Plan as necessary.

3. Commencement of Pre-filing Process

29. The Director of OEP will review the information filed by the applicant and determine if there is sufficient information to commence the pre-filing process. If the Director of OEP determines the information filed is insufficient, the applicant will be notified in writing of any deficiencies or the need for additional information, and be given a reasonable time to correct the deficiencies or file the additional information. If the applicant fails to cure the deficiencies within the time specified, the Director of OEP may terminate the pre-filing process. If the Director of OEP determines the filing is sufficient, the applicant will be notified under proposed § 50.5(d) and the pre-filing process will begin.

4. Subsequent Filing Requirements

30. The proposed regulations include a schedule for subsequent filings, once the pre-filing process has begun. Proposed § 50.5(e)(1) requires that the applicant finalize its Participation Plan within seven days after the notice is issued. Proposed § 50.5(e)(2) requires that the applicant finalize the contract with the third-party contractor, if required, in 14 days. Proposed § 50.5(e)(3)(i) requires that the applicant provide all stakeholders with the notice commencing the pre-filing process. Proposed § 50.5(e)(3)(ii) specifically refers to the additional notification requirement for affected landowners in proposed § 50.4(c).

31. Proposed § 50.5(e)(3)(iii) provides that the applicant must notify permitting entities with Federal authorization processes within 14 days of commencing the pre-filing process. As discussed below, the Commission intends to compile the information necessary for its NEPA analysis primarily during the pre-filing process. Thus, the Commission proposes that the applicant request in its notice, and that the permitting agencies identify in their responses, any specific information, not required by the Commission in its resource reports required under proposed § 380.16, that they may need

[8] Proposed § 50.1 defines Federal authorization to include such permits, special use authorizations, certifications, opinions, or other approvals that may be required under Federal law to site a transmission facility, as defined in FPA section 216(h)(B).

[9] Greenfield facilities are facilities that primarily will be located in new rights-of-way.

to reach a decision concerning the proposed project. The Commission envisions that this information will be compiled during the pre-filing process to facilitate the development of a preliminary NEPA document by the conclusion of the pre-filing process. Once all stakeholders have been notified under proposed § 50.5(e)(3), proposed § 50.5(e)(4) requires that the applicant must submit a mailing list of all stakeholders contacted within 30 days.

32. Under proposed § 50.5(e)(5), the applicant must file a summary of all alternatives considered within 30 days of the Director of OEP's notification. Proposed § 50.5(e)(6) requires that the applicant file an updated list of all Federal, State, tribal, and local agencies permits and authorizations that are necessary to construct or modify the proposed facilities. The list must include a schedule detailing when the applications for the permits and authorizations will be submitted (or were submitted). As stated, the Secretary will establish a pre-application mechanism under FPA section 216(h)(4)(C). The mechanism will facilitate consultation among prospective applicants and permitting agencies regarding key issues of concern and the likelihood of approval of the proposed facility. The permitting entities have 60 days to respond to the applicant's request for information. The applicant's filing under proposed § 50.5(e)(6)(iii) must specifically detail the information gathered during DOE's pre-application process.

33. One purpose of the Commission's pre-filing process is to assist the applicant in compiling the necessary environmental resource reports. Proposed § 50.5(e)(7) requires that the applicant file the first drafts of the resource reports required in proposed § 380.16 in a format that will allow for efficient interpretation and incorporation of the information into the draft NEPA document. Specific formatting requirements will be discussed at the initial consultation meeting proposed under proposed § 50.5(b) and will be based on best available technology.

34. Under proposed § 50.5(e)(8), the applicant is required to file monthly status reports updating its progress in compiling the application information. If the applicant fails to file a status report or a response to a request for additional information, or is failing to make sufficient progress toward obtaining the requisite permits or authorizations or towards the goal of compiling the information needed for a complete application, under proposed § 50.5(e)(8), the Director of OEP may terminate the pre-filing proceeding without prejudice to the applicant's re-applying.

5. Pre-filing Activities

35. The Commission envisions that, during the pre-filing process, Commission staff will assist the applicant to compile a complete application while informing the public of the proposed project and promoting participation to provide an opportunity for all stakeholders to present their views and recommendations for the proposed project. Potential staff activities during the pre-filing process may include, but will not be limited to: (1) Assisting the applicant in identifying stakeholders, including landowners, interested organizations, and other individuals; (2) conducting site visits, examining potential alternatives, and holding open meetings; (3) facilitating the identification of issues and resolution of those issues; (4) assisting the applicant in coordinating other necessary Federal authorizations; (5) preparing and issuing the environmental scoping documents; (6) facilitating cooperating agency environmental review and the preparation of a preliminary Environmental Assessment or Environmental Impact Statement under NEPA; and (7) providing technical assistance to other permitting entities, upon request.

6. Concluding the Pre-Filing Process

36. The Director of OEP will determine when the applicant has compiled sufficient information such that a complete application can be filed. Under proposed § 50.5(f), the applicant is required to include all the information specified by the Commission staff during the pre-filing process, including all required exhibits and environmental information, in the electric transmission facility application. As discussed below, because of statutory time limits, the Commission will require that a preliminary NEPA document be prepared before an application is filed. Once the pre-filing process is completed, the Commission anticipates expeditiously processing the resultant application.

C. Applications

1. General Content

37. As stated, once the pre-filing process is completed a permit application may be filed. Section 216(h)(4)(B) of the FPA requires that once an application is submitted, all reviews under Federal law for the proposed facilities must be completed within one year, or, if a requirement of another provision of Federal law does not permit compliance within one year, as soon thereafter as practicable. Therefore, it is imperative that a filed application contain all information necessary for the Commission to proceed with an expedited review of the proposal.

38. Proposed § 50.6 requires that the application generally summarize and provide background and non-technical information concerning the proposed project. Proposed §§ 50.6(a) and (b) require information concerning the applicant's contact information and a description of the applicant's existing business.

39. Under proposed § 50.6(c), the applicant must file a concise, general description of the proposed project sufficient to explain its scope and purpose, including the proposed geographic location of the principal project features and the planned routing of the transmission line. The summary also must contain the general characteristics of the transmission line including voltage, types of towers, origin and termination point of the transmission line, and the geographic character of the area traversed by the line. The written description must be accompanied by an overview map of sufficient scale to show the entire transmission route.

40. Proposed §§ 50.6(d) requires that the applicant demonstrate that the filing complies with FPA sections 216(a). Specifically, the applicant must demonstrate that the proposed facilities are located in a national interest electric transmission corridor, as determined by DOE. Under proposed § 50.6(e), the applicant must demonstrate that the proposed project complies with the requirements of FPA sections 216(b)(2) through (6). Specifically, it must demonstrate that the proposed construction or modification of facilities: (1) Will be used for the transmission of electric energy in interstate commerce; (2) is consistent with the public interest; (3) will significantly reduce transmission congestion in interstate commerce and protect or benefit consumers; (4) is consistent with sound national energy policy and will enhance energy independence; and (5) will maximize, to the extent reasonable and economical, the transmission capabilities of existing towers or structures.

41. Proposed §§ 50.6(f) and (g) require that the applicant describe the anticipated timeframe for constructing or modifying the facilities and commencing operations and a general

description of how the applicant proposes to finance the project. Proposed § 50.6(h) requires the applicant to list all necessary approvals that it will need to construct the proposed facilities and provide information concerning how it intends to acquire, or the status of, those approvals.

42. Proposed § 50.6(i) states that the application must contain a table of contents listing all exhibits and supporting evidence that is filed with the application. Finally, under proposed § 50.6(j), the applicant is required to file a draft notice for the Commission to have published in the **Federal Register**.

2. Exhibits

43. Proposed § 50.7 contains the requirements for the exhibits that must be filed with the application. The exhibits will contain the technical data needed for the Commission's analysis of the application. Proposed §§ 50.7(a) through (c), Exhibits A through C, require information concerning the applicant's company, including articles of incorporation, bylaws, State authorizations, company officials, and subsidiaries and affiliations. Proposed § 50.7(d), Exhibit D, requires a list of other filings the applicant currently has pending before the Commission which could impact the proposed project.

44. As discussed above, a general location map must be filed under proposed § 50.7(e), as Exhibit E. All the environmental data required in Part 380 of the Commission's regulations, discussed below, will be filed as proposed Exhibit F under proposed § 50.7(f). Engineering data and system analysis data must be filed in Exhibits G and H, respectively, under proposed §§ 50.7(g) and (h). Finally, project cost and financial data and construction, operation, and management data must be filed in Exhibits I and J, respectively.

D. Acceptance/Rejection of Applications

45. As stated, FPA section 216(h)(4)(B) requires that all Federal permit decisions and environmental review be completed within one year after the application is filed, or as soon thereafter as practicable. Under proposed § 50.8(a) applications will be docketed when received. Under proposed § 50.8(b), the Director of OEP will reject any application that does not comply with the FPA and the Commission's regulations. Under proposed § 50.8(c), if an application has been rejected and refiled, it will be docketed as a new application.

E. Notice of Application

46. Under proposed § 50.9(a), the Commission will issue, and publish in the **Federal Register**, a notice of the application when it determines the application contains all the necessary information for an expedited review. Under proposed § 50.9(b), the notice will establish prompt and binding intermediate milestones and ultimate deadlines for the coordination and review of all applicable Federal authorizations, as determined in consultation with the permitting agencies during the Commission's pre-filing and DOE's pre-application processes, as required under FPA section 216(h)(4)(A).

F. Intervention

47. Proposed § 50.10 pertains to the intervention procedures for the application process.[10] As stated, once it is determined that the application is complete, the Commission will issue a notice that it intends to process the application. The notice will fix a time within which anyone desiring to participate in the proceeding may file a motion to intervene in accordance with § 385.214 of the Commission's regulations.

G. General Conditions Applicable to Permits

48. The Commission will condition permits to construct or modify transmission facilities in order to conclude that the proposed facilities are in the public interest. Proposed §§ 50.11(a) and (b) list general conditions that will be applicable to all permits. Other case-specific conditions will be discussed in the permit order.

49. Under proposed § 50.11(c), all applicants must follow the American National Standards Institute's National Electrical Safety Code while constructing the permitted facilities. Proposed § 50.11(d) requires that the permittee obtain approval from the Director of OEP prior to constructing the facilities or commencing operations. Proposed § 50.11(e) requires that the permittee construct the facilities within the time frame specified by the Commission. If the applicant cannot meet this deadline, it must notify the Commission and request an extension of time. If circumstances have changed since the permit was issued, the Commission may require additional analysis of the proposed project to ensure the proposed request is in the public interest. Proposed § 50.11(f) requires that the permittee notify the Commission when it has commenced construction and when it places the new or modified facilities in service.

50. A permit cannot be transferred without prior Commission's approval. Under proposed § 50.11(g), an applicant proposing to transfer a permit to construct or modify transmission facilities, must file a petition requesting authorization to do so. The petition must: (1) State the reasons for the transfer; (2) show that the transferee is qualified to carry out the provision of the permit; (3) be verified by all parties to the proposed transfer; (4) be accompanied by a copy of the transfer agreement; (5) be accompanied by an affidavit of service of a copy on all parties to the permit proceeding; and (6) be accompanied by a affidavit that all affected landowners have been notified of the proposed transfer.

H. Regulations Implementing the National Environmental Policy Act

51. Part 380 of the Commission's regulations implements its responsibilities under NEPA.[11] The Commission proposes to revise those regulations by adding sections dealing with its new responsibilities with respect to the siting of electric transmission facilities. Proposed § 380.3(c)(3) adds electric transmission projects to the list of activities for which environmental information must be supplied. Proposed §§ 380.5(b)(14) and 380.6(a)(5) add electric transmission facilities to the lists of projects for which the Commission will do an environmental assessment or environmental impact statement.

52. Based on some confusion encountered by the Commission in natural gas pre-filing proceedings, proposed § 380.10(a)(2)(iii) clarifies that interventions should not be filed in natural gas pre-filing proceedings and in the proposed electric transmission pre-filing proceedings. Interventions and party status, and the rights and obligations established thereunder, are granted under § 385.214 of the Commission regulations after an application is filed. The pre-filing natural gas and electric transmission processes are informal proceedings for which intervention status is not appropriate.

53. Under proposed § 380.15(c), approved electric transmission facilities are subject to the National Electric Safety Code. Additionally, under proposed §§ 380.15(d) and (e), the transmission facilities rights-of way will be subject to the same construction and

[10] The notice and intervention regulations are not applicable to the pre-filing process.

[11] 18 CFR part 380 (2005).

maintenance requirements as natural gas pipelines.

54. The Commission proposes a new § 380.16 to delineate specific environmental filing requirements for electric transmission facilities. While these generally mirror the natural gas pipeline requirements, to avoid confusion the Commission proposes a separate section specifically tailored to electric transmission facilities.

55. Proposed § 380.16 requires 11 Resource Reports, as follows. Resource Report 1 would include, among other things, a description of the project by milepost and construction spreads, topographic maps, aerial images and/or photographs, descriptions of other permits and mitigation measure, and names and addresses of affected landowners.

56. Proposed Resource Report 2 requires information necessary for the Commission to determine the impact of the proposed project on water use and water quality.

57. Proposed Resource Report 3 describes aquatic life, wildlife, and vegetation in the vicinity or the proposed project.

58. Proposed Resource Report 4 lists the information the applicant will need to supply the Commission for a cultural resource review to implement the Commission's obligations under the National Historic Preservation Act.

59. Proposed Resource Report 5 requires that the applicant identify and quantify the impact of the construction and operation of the proposed project on towns and counties in the project vicinity.

60. Proposed Resource Report 6 requires that the applicant describe geological resources and hazards in the project area that might be directly or indirectly affected by the proposed facility or may place the proposed facility at risk.

61. Proposed Resource Report 7 requires information concerning soils and measures proposed to minimize or avoid impacts to them.

62. Proposed Resource Report 8 requires information concerning the uses of land around the proposed transmission facility, including measures the applicant proposes to protect and enhance the existing land use.

63. Resource Report 9 requires that the applicant describe alternatives to the project and compare the environmental impacts of such alternatives. This report also requires the applicant explain the environmental benefits and document the costs of each alternative.

64. Proposed Resource Report 10 addresses, among other things, the potential hazard to the public of the proposed facilities that would result from accidents or natural catastrophes and how these events would affect reliability.

65. Finally, proposed Resource Report 11 requires additional design and engineering data.

III. Information Collection Statement

66. The Commission is submitting the following collection of information contained in this proposed rulemaking to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[12] The Commission will identify the information provided for under the proposed Part 50 as FERC–729.

67. The number of applicants for electric transmission permits in national interest electric transmission corridors is unknown. Proposed transmission projects would have to, among other things, significantly reduce electric transmission congestion in a national interest electric transmission corridor. These corridors are yet to be defined by the Secretary. Also, Federal permitting of electric transmission facilities used in interstate commerce will occur only if, or when, States do not or cannot act on an application, or have conditioned a project in such a manner that the proposed construction or modification will not significantly reduce congestion in interstate commerce or is not economically feasible. Any estimates of the number of anticipated electric transmission construction permit applications are extremely variable, ranging from two to 20 per year.

68. The Commission solicits comments on the Commission's need for the information required by the proposed regulations, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality and clarity of the information that the Commission will collect, and any suggested methods for minimizing the respondent's burden, including the use of information techniques. The burden estimates for complying with this proposed rule are as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–729	10	1	9,600	96,000

Information Collection Costs: Because of the regional differences and the various staffing levels that will be involved in preparing the documentation (legal, technical and support) the Commission is using an hourly rate of $150 to estimate the costs for filing and other administrative processes (reviewing instructions, searching data sources, completing and transmitting the collection of information). The estimated annual cost is anticipated to be $14.4 million.

Title: FERC–729 Electric Transmission Facilities.

Action: Proposed Data Collections.

OMB Control No.: To be determined.

Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number or the Commission has provided justification as to why the control number should not be displayed.

Respondents: Businesses or other for profit, State, local, or tribal government.

Necessity of the Information: The information collected from applicants will be used by the Commission to review the suitability of the proposal for a permit to construct the proposed electric transmission facilities. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

69. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*].

[12] 44 U.S.C. 3507(d) (2000).

70. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4650, fax: (202) 395–7285, e-mail: *oira_submission@omb.eop.gov*].

IV. Environmental Analysis

71. The Commission is required to prepare an EA or EIS for any action that may have a significant adverse effect on the human environment. No environmental consideration is raised by the promulgation of a rule that is procedural in nature or does not substantially change the effect of legislation or regulations being amended. The proposed regulations implement the procedural filing requirements for applications to construct electric transmission facilities. Accordingly, neither an environmental impact statement nor environmental assessment is required.

V. Regulatory Flexibility Act Analysis Certification

72. The Regulatory Flexibility Act (RFA) [13] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[14] The Commission is not required to make such analyses if a rule would not have such an effect.

73. The Commission expects entities seeking approval for interstate transmission siting will be major transmission utilities capable of financing complex and costly transmission projects. The Commission anticipates that the high cost of construction of transmission facilities will bar the entry into this field by small entities as defined by the RFA. Therefore, the Commission concludes that this proposed rule would not have a significant economic impact on a substantial number of small entities.

VI. Public Comments

74. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due by August 25, 2006. Comments must refer to Docket No. RM06–12–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

75. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats and requests commenters to submit comments in a text-searchable format rather than a scanned image format. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

76. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

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

List of Subjects

18 CFR Part 50

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 380

Environmental impact statements, Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to add part 50 and amend part 380, chapter I, title 18, *Code of Federal Regulations*, as follows.

1. Part 50 is added to subchapter B to read as follows:

PART 50—APPLICATIONS FOR PERMITS TO SITE INTERSTATE ELECTRIC TRANSMISSION FACILITIES

Sec.

Authority: 16 U.S.C. 824p, DOE Delegation Order No. 00–004.00A.

§ 50.1 Definitions.

As used in this part:

Affected landowners means owners of property interests, as noted in the most recent county/city tax records as receiving the tax notice, whose property:

(1) Is directly affected (*i.e.*, crossed or used) by the proposed activity, including all facility sites, rights-of-way, access roads, pipe and contractor yards, and temporary workspace; and

(2) Abuts either side of an existing right-of-way or facility site owned in fee by any utility company, or abuts the edge of a proposed facility site or right-of-way which runs along a property line in the area in which the facilities would be constructed, or contains a residence within 50 feet of a proposed construction work area.

Director of the Office of Energy Projects means the Director or his designees.

Federal authorization means permits, special use authorization, certifications, opinions, or other approvals that may be required under Federal law in order to site a transmission facility.

National interest electric transmission corridor means any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers, as designated by the Secretary of Energy.

Permitting entity means any Federal or State agency, Indian tribe, multistate, or local agency that is responsible for

[13] 5 U.S.C. 601–612 (2000).

[14] The RFA definition of "small entity" refers to the definition provided in the Small Business Act, which defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632 (2000). The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal years did not exceed 4 million MWh. 13 CFR 121.201 (section 22, Utilities, North American Industry Classification System, NAICS) (2004).

conducting separate authorizations pursuant to Federal law that are required to construct electric transmission facilities in a national interest electric transmission corridor.

Stakeholder means any Federal, State, interstate, tribal, or local agency, any affected non-governmental organization, affected landowner, or interested person.

Transmitting utility means an entity that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce for the sale of electric energy at wholesale.

§ 50.2 Purpose and intent of rules.

(a) The purpose of the regulations in this part is to provide for efficient and timely review of requests for permits for the siting of electric transmission facilities under section 216 of the Federal Power Act. The regulations ensure that each stakeholder is afforded an opportunity to present views and recommendations with respect to the need for and impact of a facility covered by the permit. They also coordinate, to the maximum extent practicable, the Federal authorization and review process of other Federal and State agencies, Indian tribes, multistate, and local entities that are responsible for conducting any separate permitting and environmental reviews of the proposed facilities.

(b) Every applicant shall file all pertinent data and information necessary for a full and complete understanding of the proposed project.

(c) Every requirement of this part will be considered as an obligation of the applicant which can only be avoided by a definite and positive showing that the information or data called for by the applicable rules is not necessary for the consideration and ultimate determination of the application.

(d) This part will be strictly applied to all applications and information as submitted and the burden of adequate presentation in intelligible form as well as justification for omitted data or information rests with the applicant.

§ 50.3 Applications/pre-filing; rules and format.

(a) Filings are subject to the formal paper and electronic filing requirements for proceedings before the Commission located in part 385 of this chapter.

(b) Applications, amendments, and all exhibits and other submissions required to be furnished by an applicant to the Commission under this part must be submitted in an original and 7 conformed copies.

(c) When an application considered alone is incomplete and depends vitally upon information in another application, it will not be accepted for filing until the supporting application has been filed. When applications are interdependent, they shall be filed concurrently.

(d) All filings must be signed in compliance with § 385.2005 of this chapter.

(e) The Commission will conduct a paper hearing on applications for permits for electric transmission facilities.

(f) Permitting entities will be subject to the filing requirements of this section and the prompt and binding intermediate milestones and ultimate deadlines established in the notice issued under § 50.9.

(g) Any person submitting documents containing critical energy infrastructure information must follow the procedures specified in § 388.113 of this chapter.

§ 50.4 Stakeholder participation.

A Project Participation Plan is required to ensure stakeholders access to accurate and timely information on the proposed project and permit application process.

(a) *Project Participation Plan.* An applicant must develop a Project Participation Plan to be filed with the pre-filing materials under § 50.5(c)(7) of this part that:

(1) Identifies specific tools and actions to facilitate stakeholder communications and public information, including an up-to-date project Web site, and a readily accessible, single point of contact within the company;

(2) Lists all central locations in each county throughout the project area where the applicant will provide copies of all their filings related to the proposed project; and

(3) Includes a description and schedule explaining how the applicant intends to respond to requests for information from the public as well as Federal, State, and tribal permitting agencies, and other legal entities with local authorization requirements.

(b) *Document availability.* Within three business days of the date the pre-filing materials are filed or application is issued a docket number:

(1) Complete copies of the pre-filing and application materials must be available in accessible central locations in each county throughout the project area, either in paper or electronic format, and

(2) Complete copies of all filed materials must be available on the project Web site.

(c) *Project notification.* (1) For all pre-filing and application information filed under this part, the applicant must make a good faith effort to notify: All affected landowners; landowners with a residence within a quarter mile from the edge of the construction right-of-way of the proposed project; towns and communities; permitting agencies; and other local, State, tribal, and Federal governments and agencies involved in the project:.

(i) By certified or first class mail, sent:

(A) Within 14 days after the Director of the Office of Energy Projects notifies the applicant of the commencement of the pre-filing process under § 50.5(d) of this part.

(B) Within 3 business days after the Commission notices the application under § 50.9.

(ii) By twice publishing a notice of the pre-filing request and application filings, no later than 14 days after the date that a docket number is assigned for the pre-filing process or to the application, in a daily or weekly newspaper of general circulation in each county in which the project is located.

(2) Contents of participation notice:

(i) The pre-filing request notification must, at a minimum, include:

(A) The docket number assigned to the proceeding;

(B) The most recent edition of the Commission's pamphlet *Electric Transmission Facilities Permit Process.* The newspaper notice need only refer to the pamphlet and indicate that it is available on the Commission's Web site;

(C) A description of the applicant and the proposed project, its location (including a general location map), its purpose, and the timing of the project;

(D) A general description of the property the applicant will need from an affected landowner if the project is approved, how to contact the applicant, including a local or toll-free phone number, the name of a specific person to contact who is knowledgeable about the project, and a reference to the project Web site. The newspaper notice need not include a description of the property, but should indicate that a separate notice is being mailed to affected landowners and governmental entities;

(E) A brief summary of what rights the affected landowner has at the Commission and in proceedings under the eminent domain rules of the relevant State. The newspaper notice does not need to include this summary;

(F) Information on how to get a copy of the pre-filing information or application from the company or the location(s) where a copy of the application may be found as specified in paragraph (b) of this section;

(G) A copy of the Director of the Office of Energy Projects' notification of commencement of the pre-filing process, the Commission's Internet address, and the telephone number for the Commission's Office of External Affairs; and

(H) Information explaining the pre-filing and application process and when and how to intervene in the application proceedings.

(ii) The application notification must include the Commission's notice issued under § 50.9.

(3) If, for any reason, an stakeholder is not identified when the notices under this paragraph are sent or published, the applicant must supply the information required under paragraphs (c)(2)(i) and (ii) of this section when the stakeholder is identified.

(4) If the notification is returned as undeliverable, the applicant will make a reasonable attempt to find the correct address and notify the stakeholder.

(5) Access to critical energy infrastructure information is subject to the requirements of § 388.113 of this chapter.

§ 50.5 Pre-filing procedures.

(a) *Introduction.* Any applicant seeking a permit to site new electric transmission facilities or modify existing facilities must comply with this section's pre-filing procedures prior to filing an application for Commission review.

(b) *Initial consultation.* An applicant must meet and consult with the Director of the Office of Energy Projects concerning the proposed project.

(1) At the initial consultation meeting, the applicant shall be prepared to discuss the nature of the project, the contents of the pre-filing request, and the status of the applicant's progress toward obtaining the information required for the pre-filing request described in paragraph (c) of this section.

(2) The initial consultation meeting will also include a discussion of whether a third-party contractor is likely to be needed for the project and the specifications for the applicant's solicitation for prospective third-party contractors to prepare the environmental documentation for the project.

(c) *Contents of the initial filing.* An applicant's initial pre-filing request will be filed after the initial consultation and must include the following information:

(1) A description of the schedule desired for the project, including the expected application filing date, desired date for Commission approval, and proposed project operation date.

(2) A detailed description of the project, including location maps and plot plans to scale showing all major components, including a description of zoning and site availability for any permanent facilities.

(3) A list of the permitting entities responsible for conducting separate Federal permitting and environmental reviews and authorizations for the project, including contact names and telephone numbers, and a list of local entities with local authorization requirements. The filing shall include information concerning:

(i) How the applicant intends to account for each of the permitting and local entity's permitting and environmental review schedules, including its progress in DOE's pre-application process; and

(ii) When the applicant proposes to file with these permitting and local entities for the respective permits or other authorizations.

(4) A list of other stakeholders that have been contacted, or have contacted the applicant, about the project (include contact names and telephone numbers), including a list specifying all affected landowners.

(5) A description of what other work has already been done, including, contacting stakeholders, agency and Indian tribe consultations, project engineering, route planning, environmental and engineering contractor engagement, environmental surveys/studies, and open houses. This description also must include the identification of the environmental and engineering firms and sub-contractors under contract to develop the project.

(6) Proposals for at least three prospective third-party contractors from which Commission staff may make a selection to assist in the preparation of the requisite NEPA document, if the Director of the Office of Energy Projects determined a third-party contractor would be necessary in the Initial Consultation meeting.

(7) A proposed Project Participation Plan, required in § 50.4(a).

(d) *Director's notice.* (1) When the Director of the Office of Energy Projects finds that an applicant for authority to site and construct an electric transmission facility has adequately addressed the requirements of paragraphs (a), (b), and (c) of this section, and any other requirements determined at the Initial Consultation meeting, the Director of the Office of Energy Projects will so notify the applicant.

(i) The notification will designate the third-party contractor, and

(ii) The pre-filing process will be deemed to have commenced on the date of the Director of the Office of Energy Projects' notification.

(2) If the Director of the Office of Energy Projects determines that the contents of the initial filing requirements are insufficient, the applicant will be notified and given a reasonable time to correct the deficiencies.

(e) *Subsequent filing requirements.* Upon the Director of the Office of Energy Projects' issuance of a notice commencing an applicant's pre-filing process, the applicant must:

(1) Within 7 days, finalize and file the Project Participation Plan, as defined in § 50.4(a), and establish the dates and locations at which the applicant will conduct meetings with stakeholders and Commission staff.

(2) Within 14 days, finalize the contract with the selected third-party contractor, if applicable.

(3) Within 14 days:

(i) Provide all stakeholders with a copy of the Director of the Office of Energy Project's notification commencing the pre-filing process;

(ii) Notify affected landowners in compliance with the requirements of § 50.4(c); and

(iii) Notify permitting entities and request information detailing the permitting entities need for any specific information not required by the Commission in the resource reports required under § 380.16 of this chapter that they may require to reach a decision concerning the proposed project. The responses must be filed with the Commission as well as the applicant.

(4) Within 30 days, submit a mailing list of all stakeholders contacted in paragraph (e)(3) of this section, including the names of the Federal, State, tribal, and local jurisdictions' representatives, if available, for the proposed project and alternatives. The list must include information concerning affected landowner notifications that were returned as undeliverable.

(5) Within 30 days, file a summary of the project alternatives considered or under consideration.

(6) Within 30 days, file an updated list of all Federal, State, tribal, and local agencies permits and authorizations that are necessary to construct the proposed facilities. The list must include:

(i) A schedule detailing when the applications for the permits and authorizations will be submitted (or were submitted);

(ii) Copies of all filed applications; and

(iii) The status of the required permit or authorization and of the Secretary of Energy's pre-application process being conducted under section 216(h)(4)(C) of the Federal Power Act.

(7) Within 60 days, file the draft resource reports required in § 380.16 of this chapter.

(8) On a monthly basis, file status reports detailing the applicant's project activities including surveys, stakeholder communications, and agency and tribe meetings, including updates on the status of other required permits or authorizations. If the applicant fails to respond to any request for additional information, fails to provide sufficient information, or is not making sufficient progress towards completing the pre-filing process, the Director of the Office of Energy Projects may issue a notice terminating the process.

(f) *Concluding the pre-filing process.* The Director of the Office of Energy Projects will determine when the information gathered during the pre-filing process is complete, after which the applicant may file an application. An application must contain all the information specified by the Commission staff after reviewing the draft materials filed by the applicant during the prefiling process, including the environmental material required in part 380 of this chapter and exhibits required in § 50.7.

§ 50.6 Applications: general content.

Each application filed under this part must provide the following information:

(a) The exact legal name of applicant; its principal place of business; whether the applicant is an individual, partnership, corporation, or otherwise; the State laws under which the applicant is organized or authorized; and the name, title, and mailing address of the person or persons to whom communications concerning the application are to be addressed.

(b) A concise description of applicant's existing operations.

(c) A concise general description of the proposed project sufficient to explain its scope and purpose. The description must, at a minimum: Describe the proposed geographic location of the principal project features and the planned routing of the transmission line; contain the general characteristics of the transmission line including voltage, types of towers, origin and termination point of the transmission line, and the geographic character of area traversed by the line; and be accompanied by an overview map of sufficient scale to show the entire transmission route on one or a few 8.5 by 11-inch sheets.

(d) Verification that the proposed route lies within a national interest electric transmission corridor designated by the Secretary of the Department of Energy under section 216 of the Federal Power Act.

(e) A demonstration that the facilities to be authorized by the permit will be used for the transmission of electric energy in interstate commerce, and that the proposed construction or modification:

(1) Is consistent with the public interest;

(2) Will significantly reduce transmission congestion in interstate commerce and protects or benefits consumers;

(3) Is consistent with sound national energy policy and will enhance energy interdependence; and

(4) Will maximize, to the extent reasonable and economical, the transmission capabilities of existing towers or structures.

(f) A description of the proposed construction and operation of the facilities, including the proposed dates for the beginning and completion of construction and the commencement of service.

(g) A general description of project financing.

(h) A full statement as to whether any other application to supplement or effectuate the applicant's proposals must be or is to be filed by the applicant, any of the applicant's customers, or any other person, with any other Federal, State, tribal, or other regulatory body; and if so, the nature and status of each such application.

(i) A table of contents that must list all exhibits and documents filed in compliance with this part, as well as all other documents and exhibits otherwise filed, identifying them by their appropriate titles and alphabetical letter designations. The alphabetical letter designations specified in the sections (section for the exhibits) must be strictly adhered to and extra exhibits submitted at the volition of applicant must be designated in sequence under the letter Z (Z1, Z2, Z3, etc.).

(j) A form of notice suitable for publication in the **Federal Register**, as contemplated by § 50.9(a), which will briefly summarize the facts contained in the application in such a way as to acquaint the public with its scope and purpose. The form of notice must also include the name, address, and telephone number of an authorized contact person.

§ 50.7 Applications: exhibits.

Each exhibit must contain a title page showing the applicant's name, title of the exhibit, the proper letter designation of the exhibit, and, if 10 or more pages, a table of contents, citing by page, section number or subdivision, the component elements or matters contained in the exhibit.

(a) *Exhibit A—Articles of incorporation and bylaws.* If the applicant is not an individual, a conformed copy of its articles of incorporation and bylaws, or other similar documents.

(b) *Exhibit B—State authorization.* For each State where the applicant is authorized to do business, a statement showing the date of authorization, the scope of the business the applicant is authorized to carry on and all limitations, if any, including expiration dates and renewal obligations. A conformed copy of applicant's authorization to do business in each State affected must be supplied upon request.

(c) *Exhibit C—Company officials.* A list of the names and business addresses of the applicant's officers and directors, or similar officials if the applicant is not a corporation.

(d) *Exhibit D—Other pending applications and filings.* A list of other applications and filings submitted by the applicant that are pending before the Commission at the time of the filing of an application and that directly and significantly affect the proposed project, including an explanation of any material effect the grant or denial of those other applications and filings will have on the application and of any material effect the grant or denial of the application will have on those other applications and filings.

(e) *Exhibit E—Maps of general location of facilities.* The general location map required under § 50.5(c) must be provided as Exhibit E. Detailed maps required by other exhibits must be filed in those exhibits, in a format determined during the initial consultation required under § 50.5(b).

(f) *Exhibit F—Environmental report.* An environmental report as specified in §§ 380.3 and 380.16 of this chapter. The applicant must submit all appropriate revisions to Exhibit F whenever route or site changes are filed. These revisions must identify the locations by mile post and describe all other specific differences resulting from the route or site changes, and should not simply provide revised totals for the resources affected. The format of the environmental report filing will be determined as part of the initial consultation meeting required under § 50.5(b).

(g) *Exhibit G—Engineering data.* (1) A detailed project description including:

(i) Name and destination of the project;
(ii) Design voltage rating (kV);
(iii) Operating voltage rating (kV);
(iv) Normal peak operating current rating;
(v) Line design features for minimizing television and/or radio interference cause by operation of the proposed facilities;
(vi) Line design features that minimize audible noise during fog/rain caused by operation of the proposed facilities, including comparing expected audible noise levels to the applicable Federal, State, and local requirements.
(2) A conductor, structures, and substations description including:
(i) Conductor size and type;
(ii) Type of structures;
(iii) Height of typical structures;
(iv) An explanation why these structures were selected;
(v) Dimensional drawings of the typical structures to be used in the project; and
(vi) A list of the names of all new (and existing if applicable) substations or switching stations that will be associated with the proposed new transmission line.
(3) The location of the site and right-of-way including:
(i) Miles of right-of-way;
(ii) Miles of circuit;
(iii) Width of the right-of-way;
(iv) A brief description of the area traversed by the proposed transmission line, including a description of the general land uses in the area and the type of terrain crossed by the proposed line;
(v) Assumptions, bases, formulae, and methods used in the development and preparation of the diagrams and accompanying data; and
(vi) A technical description providing the following information:
(A) Number of circuits, with identification as to whether the circuit is overhead or underground;
(B) The operating voltage and frequency; and
(C) Conductor size, type and number of conductors per phase.
(4) If the proposed interconnection is an overhead line, the following additional information also must be provided:
(i) The wind and ice loading design parameters;
(ii) A full description and drawing of a typical supporting structure including strength specifications;
(iii) Structure spacing with typical ruling and maximum spans;
(iv) Conductor (phase) spacing; and
(v) The designed line-to-ground and conductor-side clearances.
(5) If an underground or underwater interconnection is proposed, the following additional information also must be provided:
(i) Burial depth;
(ii) Type of cable and a description of any required supporting equipment, such as insulation medium pressurizing or forced cooling;
(iii) Cathodic protection scheme; and
(iv) Type of dielectric fluid and safeguards used to limit potential spills in waterways.
(6) Technical diagrams that provide clarification of any of the above items should be included.
(7) Any other data or information not previously identified that has been identified as a minimum requirement for the siting of a transmission line in the State the facility will be located.
(h) *Exhibit H—System analysis data.* An analysis evaluating the impact the proposed facilities will have on the existing electric transmission system performance, including:
(1) An analysis of the existing and expected congestion on the electric transmission system.
(2) Power flow cases used to analyzes the proposed and future transmission system under anticipated load growth, operating conditions, variations in power import and export levels, and additional transmission facilities required for system reliability. The cases must:
(i) Provide all files to model normal, single contingency, multiple contingency, and special protective systems, including the special protective systems' automatic switching or load shedding system; and
(ii) State the assumptions, criteria, and guidelines upon which it is based and must take into consideration transmission facility loading; first contingency incremental transfer capability (FCITIC); normal incremental transfer capability (NIYC); system protection; and system stability.
(3) A stability analysis including study assumptions, criteria, and guidelines used in the analysis, including load shedding allowables;
(4) A short circuit analysis for all power flow cases;
(5) A concise analysis to include:
(i) An explanation of how the proposed project will improve system reliability over the long and short term;
(ii) An analysis of how the proposed project will impact the long term regional transmission expansion plans;
(iii) An analysis of how the proposed project will impact congestion on the applicant's entire system; and
(iv) A description of proposed high technology design features.
(6) Detailed single-line diagrams, including existing system facilities identified by name and circuit number, that show system transmission elements, in relation to the project and other principal interconnected system elements as well as power flow and loss data that represent system operating conditions.
(i) *Exhibit I—Project cost and financing.* (1) A statement of estimated costs of any new construction or modification.
(2) The estimated capital cost and estimated annual operations and maintenance expense of each proposed environmental measures; and
(3) A statement and evaluation of the consequences of denial of the transmission line permit application.
(j) *Exhibit J—Construction, operation, and management.* A concise statement providing arrangements for supervision, management, engineering, accounting, legal, or other similar service to be rendered in connection with the construction or operation of the project, if not to be performed by employees of applicant, including reference to any existing or contemplated agreements, together with a statement showing affiliation between applicant and any parties to the agreements or arrangements.

§ 50.8 Acceptance/rejection of applications.

(a) Applications will be docketed when received and the applicant so advised.
(b) If an application patently fails to comply with applicable statutory requirements or with applicable Commission rules, regulations, and orders for which a waiver has not been granted, the Director of the Office of Energy Projects may reject the application as provided by § 385.2001(b) of this chapter. This rejection is without prejudice to an applicant's refiling a complete application. However, an application will not be rejected solely on the basis that the environmental reports are incomplete because the company has not been granted access by affected landowners to perform required surveys.
(c) An application that relates to a construction or modification for which a prior application has been filed and rejected, will be docketed as a new application. The new application must state the docket number of the prior rejected application.

§ 50.9 Notice of application.

(a) Notice of each application filed, except when rejected in accordance with § 50.8, will be issued and

subsequently published in the **Federal Register**.

(b) The notice will establish prompt and binding intermediate milestones and ultimate deadlines for the coordination and review of, and Federal authorization decisions relating to, the proposed facilities.

§ 50.10 Interventions.

Notices of applications, as provided by § 50.9. will fix the time within which any person desiring to participate in the proceeding may file a petition to intervene, and within which any interested regulatory agency, as provided by § 385.214 of this chapter, desiring to intervene may file its notice of intervention.

§ 50.11 General conditions applicable to permits.

(a) The following terms and conditions, among others, as the Commission will find is required by the public interest, will attach to the issuance of each permit and to the exercise of the rights granted thereunder.

(b) The permit will be void and without force or effect unless accepted in writing by the permitee within 30 days from the issue date of the order issuing such permit.

(c) *Standards of construction and operation.* In determining standard practice, the Commission will be guided by the provisions of the American National Standards Institute, Incorporated, the National Electrical Safety Code, and any other codes and standards that are generally accepted by the industry, except as modified by this Commission or by municipal regulators within their jurisdiction. Each electric utility will construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with these standards, and in such manner to best accommodate the public, and to prevent interference with service furnished by other public utilities insofar as practical.

(d) Written authorization must be obtained from the Director of the Office of Energy Projects prior to commencing construction of the facilities or initiating operations. Requests for such authorizations must demonstrate compliance with all terms and conditions of the construction permit.

(e) Any authorized construction or modification must be completed and made available for service by the permitee within a period of time to be specified by the Commission in each order issuing the transmission line construction permit. If facilities are not completed within the specified timeframe, the permittee must file for an extension of time under § 385.2008 of this chapter.

(f) A permittee must file with the Commission, in writing and under oath, an original and four conformed copies, as provided in § 385.2011 of this chapter, of the following:

(1) Within ten days after the bona fide beginning of construction, notice of the date of the beginning; and

(2) Within ten days after authorized facilities have been constructed and placed in service, notice of the date of the completion of construction and commencement of service.

(g) The permit issued to the applicant may be transferred, subject to the approval of the Commission, to a person who agrees to comply with the terms, limitations or conditions contained in the filing and in every subsequent Order issued thereunder. A permit holder seeking to transfer a permit must file with the Secretary a petition for approval of the transfer. The petition must:

(1) State the reasons supporting the transfer;

(2) Show that the transferee is qualified to carry out the provisions of the permit and any Orders issued under the permit;

(3) Be verified by all parties to the proposed transfer;

(4) Be accompanied by a copy of the proposed transfer agreement;

(5) Be accompanied by an affidavit of service of a copy on the parties to the certification proceeding; and

(6) Be accompanied by an affidavit of publication of a notice concerning the petition and service of such notice on all affected landowners that have executed agreements to convey property rights to the transferee and all other persons, municipalities or agencies entitled by law to be given notice of, or be served with a copy of, any application to construct a major electric generation facility.

(h) The Commission will not issue a permit before the criteria established in Federal Power Act section 216(b)(1)(C) have been met.

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

2. The authority citation for part 380 continues to read as follows:

Authority: 42 U.S.C. 4321–4370a, 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

3. Section 380.3 is amended by revising paragraphs (a) introductory text and (b) introductory text, and by adding a new paragraph (c)(3) to read as follows:

§ 380.3 Environmental information to be supplied by an applicant.

(a) An applicant must submit information as follows:

* * * * *

(b) An applicant must also:

* * * * *

(c) * * *

(3) *Electric transmission project.* For pre-filing requests and applications filed under section 216 of the Federal Power Act identified in §§ 380.5(b)(14) and 380.6(a)(5).

4. Amend § 380.5 by revising paragraphs (b)(11), (b)(12), and (b)(13), and by adding a new paragraph (b)(14) to read as follows:

§ 380.5 Actions that require an environmental assessment.

(b) * * *

(11) Approval of electric interconnections and wheeling under sections 202(b), 210, 211, and 212 of the Federal Power Act, unless excluded under § 380.4(a)(17);

(12) Regulations or proposals for legislation not included under § 380.4(a)(2);

(13) Surrender of water power licenses and exemptions where project works exist or ground disturbing activity has occurred and amendments to water power licenses and exemptions that require ground disturbing activity or changes to project works or operations; and

(14) Except as identified in § 380.6, authorization to site new electric transmission facilities under section 216 of the Federal Power Act and DOE Delegation Order No. 00–004.00A.

5. Amend § 380.6 by revising paragraphs (a)(3) and (a)(4) and by adding a new paragraph (a)(5) to read as follows:

§ 380.6 Actions that require an environmental impact statement.

(a) * * *

(3) Major pipeline construction projects under section 7 of the Natural Gas Act using right-of-way in which there is no existing natural gas pipeline;

(4) Licenses under Part I of the Federal Power Act and Part 4 of this chapter for construction of any unconstructed water power projects; and

(5) Major electric transmission facilities under section 216 of the Federal Power Act and DOE Delegation Order No. 00–004.00A using right-of-way in which there is no existing facility.

* * * * *

6. Section 380.8 is revised to read as follows:

§ 380.8 Preparation of environmental documents.

The preparation of environmental documents, as defined in § 1508.10 of the regulations of the Council, on hydroelectric projects, natural gas facilities, and electric transmission facilities in national interest electric transmission corridors is the responsibility of the Commission's Office of Energy Projects, 888 First Street, NE., Washington, DC 20426, (202) 219–8700. Persons interested in status reports or information on environmental impact statements or other elements of the NEPA process, including the studies or other information the Commission may require on these projects, can contact this office.

7. Section 380.10 is amended by adding paragraph (a)(2)(iii) to read as follows:

§ 380.10 Participation in Commission proceeding.

(a) * * *

(2) * * *

(iii) Commission pre-filing activities commenced under §§ 157.21 and 50.5 of this chapter, respectively, are not considered proceedings under part 385 of this chapter and are not open to motions to intervene. Once an application is filed under part 157 subpart A or part 50 of this chapter, any person may file a motion to intervene in accordance with § 157.10 or § 50.10 of this chapter or in accordance with this section.

* * * * *

8. Amend § 380.15 by revising paragraph (c), the heading in paragraph (d), and paragraph (f)(5) to read as follows:

§ 380.15 Siting and maintenance requirements.

* * * * *

(c) *Safety regulations.* The requirements of this paragraph do not affect a project sponsor's obligations to comply with safety regulations of the U.S. Department of Transportation and recognized safe engineering practices for Natural Gas Act projects and the National Electric Safety Code for section 216 Federal Power Act projects.

(d) *Pipeline and electric transmission facilities construction.* * * *

* * * * *

(f) * * *

(5) For Natural Gas Act projects, the site of above-ground facilities which are visible from nearby residences or public areas, should be planted in trees and shrubs, or other appropriate landscaping and should be installed to enhance the appearance of the facilities, consistent with operating needs.

9. A new § 380.16 is added to read as follows:

§ 380.16 Environmental reports for section 216 Federal Power Act Permits.

(a) *Introduction.* (1) The applicant must submit an environmental report with any application that proposes the construction or modification of any facility identified in § 380.3(c)(3). The environmental report must include the eleven resource reports and related material described in this section.

(2) The detail of each resource report must be commensurate with the complexity of the proposal and its potential for environmental impact. Each topic in each resource report must be addressed or its omission justified, unless the data is not required for that type of proposal. If material required for one resource report is provided in another resource report or in another exhibit, it may be cross referenced. If any resource report topic is required for a particular project but is not provided at the time the application is filed, the environmental report must explain why it is missing and when the applicant anticipates it will be filed.

(b) *General requirements.* As appropriate, each resource report shall:

(1) Address conditions or resources that are likely to be directly or indirectly affected by the project;

(2) Identify significant environmental effects expected to occur as a result of the project;

(3) Identify the effects of construction, operation (including maintenance and malfunctions), as well as cumulative effects resulting from existing or reasonably foreseeable projects;

(4) Identify measures proposed to enhance the environment or to avoid, mitigate, or compensate for adverse effects of the project; and

(5) Provide a list of publications, reports, and other literature or communications, including agency contacts that were cited or relied upon to prepare each report. This list must include the names and titles of the persons contacted, their affiliations, and telephone numbers.

(6) Whenever this section refers to "mileposts" the applicant may substitute "survey centerline stationing" if so preferred. However, whatever method is chosen must be used consistently throughout the resource reports.

(c) *Resource Report 1—General project description.* This report must describe facilities associated with the project, special construction and operation procedures, construction timetables, future plans for related construction, compliance with regulations and codes, and permits that must be obtained. Resource Report 1 must:

(1) Describe and provide location maps of all project facilities, include all facilities associated with the project (such as transmission line towers, substations, and any appurtenant facilities), to be constructed, modified, replaced, or removed, including related construction and operational support activities and areas such as maintenance bases, staging areas, communications towers, power lines, and new access roads (roads to be built or modified). As relevant, the report must describe the length and size of the proposed transmission line conductor cables, the types of appurtenant facilities that would be constructed, and associated land requirements.

(2) Provide the following maps and photos:

(i) Current, original United States Geological Survey (USGS) 7.5-minute series topographic maps or maps of equivalent detail, covering at least a 0.5-mile-wide corridor centered on the electric transmission facility centerline, with integer mileposts identified, showing the location of rights-of-way, new access roads, other linear construction areas, substations, and construction materials storage areas. Show nonlinear construction areas on maps at a scale of 1:3,600 or larger keyed graphically and by milepost to the right-of-way maps. In areas where the facilities described in paragraph (j)(6) are located, topographic map coverage must be expanded to depict those facilities.

(ii) Original aerial images or photographs or photo-based alignment sheets based on these sources, not more than one year old (unless older ones accurately depict current land use and development) and with a scale of 1:6,000, or larger, showing the proposed transmission line route and location of transmission line towers, substations and appurtenant facilities, covering at least a 0.5 mile-wide corridor, and including mileposts. The aerial images or photographs or photo-based alignment sheets must show all existing transmission facilities located in the area of the proposed facilities and the location of habitable structures, radio transmitters and other electronic installations, and airstrips. Older images/photographs/alignment sheets must be modified to show any residences not depicted in the original. In areas where the facilities described in paragraph (j)(6) of this section are located, aerial photographic coverage

must be expanded to depict those facilities. Alternative formats (*e.g.*, blue-line prints of acceptable resolution) need prior approval by the environmental staff of the Office of Energy Projects.

(iii) In addition to the copies required under § 50.3(b) of this chapter, the applicant must send three additional copies of topographic maps and aerial images/photographs directly to the environmental staff of the Commission's Office of Energy Projects.

(3) Describe and identify by milepost, proposed construction and restoration methods to be used in areas of rugged topography, residential areas, active croplands and sites where explosives are likely to be used.

(4) Identify the number of construction spreads, average workforce requirements for each construction spread and estimated duration of construction from initial clearing to final restoration, and any identified constraints to the timing of construction.

(5) Describe reasonably foreseeable plans for future expansion of facilities, including additional land requirements and the compatibility of those plans with the current proposal.

(6) Describe all authorizations required to complete the proposed action and the status of applications for such authorizations. Identify environmental mitigation requirements specified in any permit or proposed in any permit application to the extent not specified elsewhere in this section.

(7) Provide the names and mailing addresses of all affected landowners identified in § 50.5(c)(4) of this chapter and certify that all affected landowners will be notified as required in § 50.4(c) of this chapter.

(d) *Resource Report 2—Water use and quality.* This report must describe water quality and provide data sufficient to determine the expected impact of the project and the effectiveness of mitigative, enhancement, or protective measures. Resource Report 2 must:

(1) Identify and describe by milepost waterbodies and municipal water supply or watershed areas, specially designated surface water protection areas and sensitive waterbodies, and wetlands that would be crossed. For each waterbody crossing, identify the approximate width, State water quality classifications, any known potential pollutants present in the water or sediments, and any potable water intake sources within three miles downstream.

(2) Provide a description of site-specific construction techniques that will be used at each major waterbody crossing.

(3) Describe typical staging area requirements at waterbody and wetland crossings. Also, identify and describe waterbodies and wetlands where staging areas are likely to be more extensive.

(4) Include National Wetland Inventory (NWI) maps. If NWI maps are not available, provide the appropriate State wetland maps. Identify for each crossing, the milepost, the wetland classification specified by the U.S. Fish and Wildlife Service, and the length of the crossing. Include two copies of the NWI maps (or the substitutes, if NWI maps are not available) clearly showing the proposed route and mileposts. Describe by milepost, wetland crossings as determined by field delineations using the current Federal methodology.

(5) Identify aquifers within excavation depth in the project area, including the depth of the aquifer, current and projected use, water quality and average yield, and known or suspected contamination problems.

(6) Discuss proposed mitigation measures to reduce the potential for adverse impacts to surface water, wetlands, or groundwater quality. Discuss the potential for blasting to affect water wells, springs, and wetlands, and measures to be taken to detect and remedy such effects.

(7) Identify the location of known public and private groundwater supply wells or springs within 150 feet of proposed construction areas. Identify locations of EPA or State-designated sole-source aquifers and wellhead protection areas crossed by the proposed transmission line facilities.

(e) *Resource Report 3—Fish, wildlife, and vegetation.* This report must describe aquatic life, wildlife, and vegetation in the vicinity of the proposed project; expected impacts on these resources including potential effects on biodiversity; and proposed mitigation, enhancement, or protection measures. Resource Report 3 must:

(1) Describe commercial and recreational warmwater, coldwater, and saltwater fisheries in the affected area and associated significant habitats such as spawning or rearing areas and estuaries.

(2) Describe terrestrial habitats, including wetlands, typical wildlife habitats, and rare, unique, or otherwise significant habitats that might be affected by the proposed action. Describe typical species that have commercial, recreational, or aesthetic value.

(3) Describe and provide the affected acreage of vegetation cover types that would be affected, including unique ecosystems or communities such as remnant prairie or old-growth forest, or significant individual plants, such as old-growth specimen trees.

(4) Describe the impact of construction and operation on aquatic and terrestrial species and their habitats, including the possibility of a major alteration to ecosystems or biodiversity, and any potential impact on State-listed endangered or threatened species. Describe the impact of maintenance, clearing and treatment of the project area on fish, wildlife, and vegetation. Surveys may be required to determine specific areas of significant habitats or communities of species of special concern to State, tribal, or local agencies.

(5) Identify all federally listed or proposed threatened or endangered species and critical habitat that potentially occur in the vicinity of the project. Discuss the results of the consultation requirements listed in § 380.13(b) through § 380.13(b)(5)(i) and include any written correspondence that resulted from the consultation. The initial application must include the results of any required surveys unless seasonal considerations make this impractical. If species surveys are impractical, there must be field surveys to determine the presence of suitable habitat unless the entire project area is suitable habitat.

(6) Identify all federally listed essential fish habitat (EFH) that potentially occurs in the vicinity of the project. Provide information on all EFH, as identified by the pertinent Federal fishery management plans, that may be adversely affected by the project and the results of abbreviated consultations with NMFS, and any resulting EFH assessments.

(7) Describe site-specific mitigation measures to minimize impacts on fisheries, wildlife, and vegetation.

(8) Include copies of correspondence not provided under paragraph (e)(5) of this section, containing recommendations from appropriate Federal and State fish and wildlife agencies to avoid or limit impact on wildlife, fisheries, and vegetation, and the applicant's response to the recommendations.

(f) *Resource Report 4—Cultural resources.* In order to prepare this report, the applicant must follow the principles in § 380.14.

(1) Resource Report 4 must contain:

(i) Documentation of the applicant's initial cultural resources consultation, including consultations with Native Americans and other interested persons (if appropriate);

(ii) Overview and Survey Reports, as appropriate;

(iii) Evaluation Report, as appropriate;

(iv) Treatment Plan, as appropriate; and

(v) Written comments from State Historic Preservation Officer(s) (SHPO), Tribal Historic Preservation Officers (THPO), as appropriate, and applicable land-managing agencies on the reports in paragraphs (f)(1)(i) through (iv) of this section.

(2) The initial application or pre-filing documents, as applicable, must include the documentation of initial cultural resource consultation, the Overview and Survey Reports, if required, and written comments from SHPOs, THPOs, and land-managing agencies, if available. The initial cultural resources consultations should establish the need for surveys. If surveys are deemed necessary by the consultation with the SHPO/THPO, the survey report must be filed with the initial application or pre-filing documents.

(i) If the comments of the SHPOs, THPOs, or land-management agencies are not available at the time the application is filed, they may be filed separately, but they must be filed before a permit is issued.

(ii) If landowners deny access to private property and certain areas are not surveyed, the unsurveyed area must be identified by mileposts, and supplemental surveys or evaluations must be conducted after access is granted. In those circumstances, reports, and treatment plans, if necessary, for those inaccessible lands may be filed after a permit is issued.

(3) The Evaluation Report and Treatment Plan, if required, for the entire project must be filed before a permit is issued.

(i) In preparing the Treatment Plan, the applicant must consult with the Commission staff, the SHPO, and any applicable THPO and land-management agencies.

(ii) Authorization to implement the Treatment Plan will occur only after the permit is issued.

(4) Applicant must request privileged treatment for all material filed with the Commission containing location, character, and ownership information about cultural resources in accordance with § 388.112 of this chapter. The cover and relevant pages or portions of the report should be clearly labeled in bold lettering: "CONTAINS PRIVILEGED INFORMATION—DO NOT RELEASE."

(5) Except as specified in a final Commission order, or by the Director of the Office of Energy Projects, construction may not begin until all cultural resource reports and plans have been approved.

(g) *Resource Report 5—Socioeconomics.* This report must identify and quantify the impacts of constructing and operating the proposed project on factors affecting towns and counties in the vicinity of the project. Resource Report 5 must:

(1) Describe the socioeconomic impact area;

(2) Evaluate the impact of any substantial immigration of people on governmental facilities and services and plans to reduce the impact on the local infrastructure;

(3) Describe on-site manpower requirements and payroll during construction and operation, including the number of construction personnel who currently reside within the impact area, will commute daily to the site from outside the impact area, or will relocate temporarily within the impact area;

(4) Determine whether existing housing within the impact area is sufficient to meet the needs of the additional population;

(5) Describe the number and types of residences and businesses that will be displaced by the project, procedures to be used to acquire these properties, and types and amounts of relocation assistance payments;

(6) Conduct a fiscal impact analysis evaluating incremental local government expenditures in relation to incremental local government revenues that will result from construction of the project. Incremental expenditures include, but are not limited to, school operating costs, road maintenance and repair, public safety, and public utility costs; and

(7) Conduct a property value impact analysis for residential properties located adjacent or abutting to the proposed right-of-way of the proposed transmission line facilities. The analysis must include estimates of residential property values both prior to and subsequent to transmission line construction. The analysis must state the assumptions made and the methodology used to conduct the analysis.

(h) *Resource Report 6—Geological resources.* This report must describe geological resources and hazards in the project area that might be directly or indirectly affected by the proposed action or that could place the proposed facilities at risk, the potential effects of those hazards on the facility, and methods proposed to reduce the effects or risks. Resource Report 6 must:

(1) Describe, by milepost, mineral resources that are currently or potentially exploitable;

(2) Describe, by milepost, existing and potential geological hazards and areas of nonroutine geotechnical concern, such as high seismicity areas, active faults, and areas susceptible to soil liquefaction; planned, active, and abandoned mines; karst terrain; and areas of potential ground failure, such as subsidence, slumping, and landsliding. Discuss the hazards posed to the facility from each one;

(3) Describe how the project will be located or designed to avoid or minimize adverse effects to the resources or risk to itself, including geotechnical investigations and monitoring that would be conducted before, during, and after construction. Discuss also the potential for blasting to affect structures, and the measures to be taken to remedy such effects;

(4) Specify methods to be used to prevent project-induced contamination from surface mines or from mine tailings along the right-of-way and whether the project would hinder mine reclamation or expansion efforts.

(i) *Resource Report 7—Soils.* This report must describe the soils that will be affected by the proposed project, the effect on those soils, and measures proposed to minimize or avoid impact. Resource Report 7 must:

(1) List, by milepost, the soil associations that would be crossed and describe the erosion potential, fertility, and drainage characteristics of each association.

(i) List the soil series within the transmission line right-of-way and the percentage of the property comprised of each series;

(ii) List the percentage of each series that will be permanently disturbed;

(iii) Describe the characteristics of each soil series; and

(iv) Indicate which are classified as prime or unique farmland by the U.S. Department of Agriculture, Natural Resources Conservation Service.

(2) Identify, by milepost, potential impact from: Soil erosion due to water, wind, or loss of vegetation; soil compaction and damage to soil structure resulting from movement of construction vehicles; wet soils and soils with poor drainage that are especially prone to structural damage; damage to drainage tile systems due to movement of construction vehicles and trenching activities; and interference with the operation of agricultural equipment due to the possibility of large stones or blasted rock occurring on or near the surface as a result of construction; and

(3) Identify, by milepost, cropland, and residential areas where loss of soil fertility due to construction activity can occur.

(j) *Resource Report 8—Land use, recreation, and aesthetics.* This report must describe the existing uses of land on, and (where specified) within 0.25 mile of the edge of the proposed transmission line right-of-way and changes to those land uses that will occur if the project is approved. The report must discuss proposed mitigation measures, including protection and enhancement of existing land use. Resource Report 8 must:

(1) Describe the width and acreage requirements of all construction and permanent rights-of-way required for project construction, operation and maintenance;

(i) List, by milepost, locations where the proposed right-of-way would be adjacent to existing rights-of-way of any kind;

(ii) Identify, preferably by diagrams, existing rights-of-way that will be used for a portion of the construction or operational right-of-way, the overlap and how much additional width will be required;

(iii) Identify the total amount of land to be purchased or leased for each project facility, the amount of land that would be disturbed for construction, operation, and maintenance of the facility, and the use of the remaining land not required for project operation and maintenance, if any; and

(iv) Identify the size of typical staging areas and expanded work areas, such as those at railroad, road, and waterbody crossings, and the size and location of all construction materials storage yards and access roads.

(2) Identify, by milepost, the existing use of lands crossed by the proposed transmission facility, or on or adjacent to each proposed project facility;

(3) Describe planned development on land crossed or within 0.25 mile of proposed facilities, the time frame (if available) for such development, and proposed coordination to minimize impacts on land use. Planned development means development which is included in a master plan or is on file with the local planning board or the county;

(4) Identify, by milepost and length of crossing, the area of direct effect of each proposed facility and operational site on sugar maple stands, orchards and nurseries, landfills, operating mines, hazardous waste sites, wild and scenic rivers, designated trails, nature preserves, game management areas, remnant prairie, old-growth forest, national or State forests, parks, golf courses, designated natural, recreational or scenic areas, or registered natural landmarks, Native American religious sites and traditional cultural properties to the extent they are known to the public at large, and reservations, lands identified under the Special Area Management Plan of the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, and lands owned or controlled by Federal or State agencies or private preservation groups. Also identify if any of those areas are located within 0.25 mile of any proposed facility.

(5) *Tribal resources.* Describe Indian tribes, tribal lands, and interests that may be affected by the project.

(i) Identify Indian tribes that may attach religious and cultural significance to historic properties within the project right-of-way or in the project vicinity, as well as available information on Indian traditional cultural and religious properties, whether on or off of any federally-recognized Indian reservation.

(ii) Information made available under this section must delete specific site or property locations, the disclosure of which will create a risk of harm, theft, or destruction of archaeological or Native American cultural resources or to the site at which the resources are located, or which would violate any Federal law, including the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470w–3, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh.

(6) Identify, by milepost, all residences and buildings within 200 feet of the edge of the proposed transmission line construction right-of-way and the distance of the residence or building from the edge of the right-of-way. Provide survey drawings or alignment sheets to illustrate the location of the transmission facilities in relation to the buildings:

(i) *Buildings.* List all single-family and multi-family dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, schools, or other structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis within 0.5-mile-wide corridor centered on the proposed transmission line alignment. Provide a general description of each habitable structure and its distance from the centerline of the proposed project. In cites, towns, or rural subdivisions, houses can be identified in groups. Provide the number of habitable structures in each group and list the distance from the centerline to the closest habitable structure in the group;

(ii) *Electronic installations.* List all commercial AM radio Transmitters located within 10,000 feet of the centerline of the proposed project and all FM radio transmitters, microwave relay stations, or other similar electronic installations located within 2,000 feet of the centerline of the proposed project. Provide a general description of each installation and its distance from the centerline of the projects. Locate all installations on a routing map; and

(iii) *Airstrips.* List all known private airstrips within 10,000 feet of the centerline of the project. List all airports registered with the Federal Aviation Administration (FAA) with at least one runway more than 3,200 feet in length that are located within 20,000 feet of the centerline of the proposed project. Indicate whether any transmission structures will exceed a 100:1 horizontal slope (one foot in height for each 100 feet in distance) from the closest point of the closest runway. List all airports registered with the FAA having no runway more than 3,200 feet in length that are located within 10,000 feet of the centerline of the proposed project. Indicate whether any transmission structures will exceed a 50:1 horizontal slope from the closest point of the closest runway. List all heliports located within 5,000 feet of the centerline of the proposed project. Indicate whether any transmission structures will exceed a 25:1 horizontal slope from the closest point of the closest landing and takeoff area of the heliport. Provide a general description of each private airstrip, registered airport, and registered heliport, and state the distance of each from the centerline of the proposed transmission Line. Locate all airstrips, airports, and heliports on a routing map.

(7) Describe any areas crossed by or within 0.25 mile of the proposed transmission project facilities which are included in, or are designated for study for inclusion in: The National Wild and Scenic Rivers System (16 U.S.C. 1271); The National Trails System (16 U.S.C. 1241); or a wilderness area designated under the Wilderness Act (16 U.S.C. 1132);

(8) For facilities within a designated coastal zone management area, provide a consistency determination or evidence that the applicant has requested a consistency determination from the State's coastal zone management program;

(9) Describe the impact the project will have on present uses of the affected area as identified above, including commercial uses, mineral resources, recreational areas, public health and safety, and the aesthetic value of the land and its features. Describe any

temporary or permanent restrictions on land use resulting from the project;

(10) Describe mitigation measures intended for all special use areas identified under this section;

(11) Describe the visual characteristics of the lands and waters affected by the project. Components of this description include a description of how the transmission line project facilities will impact the visual character of project right-of-way and surrounding vicinity, and measures proposed to lessen these impacts. Applicants are encouraged to supplement the text description with visual aids; and

(12) Demonstrate that applications for rights-of-way or other proposed land use have been or soon will be filed with Federal land-management agencies with jurisdiction over land that would be affected by the project.

(k) *Resource Report 9—Alternatives.* This report must describe alternatives to the project and compare the environmental impacts of such alternatives to those of the proposal. It must discuss technological and procedural constraints, costs, and benefits of each alternative. The potential for each alternative to meet project purposes and the environmental consequences of each alternative shall be discussed. Resource Report 9 must:

(1) Discuss the "no action" alternative and other alternatives given serious consideration to achieve the proposed objectives.

(2) Provide an analysis of the relative environmental benefits and impacts of each such alternative.

(3) Describe alternative routes or locations considered for each facility during the initial screening for the project:

(i) For alternative routes considered in the initial screening for the project but eliminated, describe the environmental characteristics of each route or site, and the reasons for rejecting it. Identify the location of such alternatives on maps of sufficient scale to depict their location and relationship to the proposed action, and the relationship of the transmission facilities to existing rights-of-way; and

(ii) For alternative routes or locations considered for more in-depth consideration, describe the environmental characteristics of each route or site and the reasons for rejecting it. Provide comparative tables showing the differences in environmental characteristics for the alternative and proposed action. The location of any alternatives in this paragraph shall be provided on maps equivalent to those required in paragraph (c)(2) of this section.

(l) *Resource Report 10—Reliability and safety.* This report must address the potential hazard to the public from facility components resulting from accidents or natural catastrophes, how these events will affect reliability, and what procedures and design features have been used to reduce potential hazards. Resource Report 10 must:

(1) Describe measures proposed to protect the public from failure of the proposed facilities (including coordination with local agencies);

(2) Discuss hazards, the environmental impact, and service interruptions which could reasonably ensue from failure of the proposed facilities;

(3) Discuss design and operational measures to avoid or reduce risk;

(4) Discuss contingency plans for maintaining service or reducing downtime;

(5) Describe measures used to exclude the public from hazardous areas. Discuss measures used to minimize problems arising from malfunctions and accidents (with estimates of probability of occurrence) and identify standard procedures for protecting services and public safety during maintenance and breakdowns; and

(6) Provide a description of the electromagnetic fields generated by the transmission lines, including their strength and extent. Provide a depiction of the expected field compared to distance horizontally along the right-of-way under the conductors, and perpendicular to the centerline of the right-of-way laterally.

(7) Discuss the potential for acoustic and electrical noise from electric and magnetic fields, including shadowing and reradiation, as they may affect health or communication systems along the transmission right-of-way. Indicate the noise level generated by the line in both dB and dBA scales and compare this to any known noise ordinances for the zoning districts through which the transmission line will pass; and

(8) Discuss the potential for induced or conducted currents along the transmission right-of-way from electric and magnetic fields.

(m) *Resource Report 11—Design and Engineering.* This report consists of general design and engineering drawings of the principal project facilities described under Resource Report—General project description. If this report submitted with the application is preliminary in nature, applicant must state that in the application. The drawings must conform to the specifications determined in the initial consultation meeting required by § 50.5(b) of this chapter.

(1) The drawings must show all major project structures in sufficient detail to provide a full understanding of the project including:

(i) Plans (overhead view);

(ii) Elevations (front view);

(iii) Profiles (side view); and

(iv) Sections.

(2) The applicant may submit preliminary design drawings with the pre-filing documents or application. The final design drawings may be submitted during the construction permit process or after the Commission issues a permit and must show the precise plans and specifications for proposed structures. If a permit is granted on the basis of preliminary designs, the applicant must submit final design drawings for written approval by the Director of the Office of Energy Project's prior to commencement of any construction of the project.

(3) *Supporting design report.* The applicant must submit, at a minimum, the following supporting information to demonstrate that existing and proposed structures are safe and adequate to fulfill their stated functions and must submit such information in a separate report at the time the application is filed:

(i) An assessment of the suitability of the transmission line towers and appurtenant structures locations based on geological and subsurface investigations, including investigations of soils and rock borings and tests for the evaluation of all foundations and construction materials sufficient to determine the location and type transmission line tower or appurtenant structures suitable for the site;

(ii) Copies of boring logs, geology reports, and laboratory test reports;

(iii) An identification of all borrow areas and quarry sites and an estimate of required quantities of suitable construction material;

(iv) Stability and stress analyses for all major transmission structures and conductors under all probable loading conditions, including seismic, wind, and ice loading as appropriate in sufficient detail to permit independent staff evaluation.

(4) The applicant must submit two copies of the supporting design report described in paragraph (m)(3) of this section at the time preliminary and final design drawings are filed. If the report contains preliminary drawings, it must be designated a "Preliminary Supporting Design Report."

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM06–7–000]

Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates

June 16, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its blanket certification regulations to expand the scope and scale of activities that may be undertaken pursuant to blanket authority. The Commission proposes to expand the types of natural gas projects permitted under blanket authority and to increase the cost limits that apply to blanket projects. In addition, the Commission will clarify that a natural gas company is not necessarily engaged in an unduly discriminatory practice if it charges different customers different rates for the same service based on the date that customers commit to service.

DATES: Comments are due August 25, 2006.

ADDRESSES: You may submit comments, identified by Docket No. RM06–7–000, by one of the following methods:

- *Agency Web Site: http://www.ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble. The Commission encourages electronic filing.
- *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Please refer to the Comments Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT: Gordon Wagner, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. *gordon.wagner@ferc.gov.* (202) 502–8947.

John Leiss, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. *john.leiss@ferc.gov.* (202) 502–8058.

SUPPLEMENTARY INFORMATION:

1. The Federal Energy Regulatory Commission (Commission) proposes to amend its part 157, subpart F, blanket certification regulations to expand the scope and scale of activities that may be undertaken pursuant to blanket authority.[1] The Commission proposes to expand the types of natural gas projects permitted under blanket authority and to increase the cost limits that apply to blanket projects. In addition, the Commission will clarify that a natural gas company is not necessarily engaged in an unduly discriminatory practice if it charges different customers different rates for the same service based on the date that customers commit to service.

2. A natural gas company must obtain a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act (NGA) to construct, acquire, alter, abandon, or operate jurisdictional gas facilities or to provide jurisdictional gas services. Natural gas companies holding an NGA section 7(c) certificate may also obtain blanket certificate authority under part 157, subpart F, of the Commission's regulations to undertake certain types of activities without the need to obtain case-specific certificate authorization for each project. Activities undertaken pursuant to blanket certificate authority are not subject to the longer and more exacting review process associated with individual authorizations issued on an application-by-application basis.[2]

3. Natural gas facilities that may be constructed, acquired, altered, or abandoned pursuant to blanket authority are currently constrained by a cost limit of $8,200,000 for projects which can be undertaken without prior notice (also referred to as self-implementing or automatic authorization projects) and $22,700,000 for projects for which prior notice is required.[3] In addition, the blanket certificate provisions apply only to a restricted set of eligible facilities;[4] ineligible facilities currently include mainlines, storage field facilities, and facilities receiving gas from a liquefied natural gas (LNG) plant or a synthetic gas plant.[5]

4. In this notice of proposed rulemaking (NOPR) the Commission proposes to expand the scope of activities that can be undertaken pursuant to blanket authority by (1) increasing the project cost limit to $9,600,000 for an automatic authorization project and $27,400,000 for a prior notice project and (2) expanding the category of facilities eligible for construction under blanket certificate authority to include mainline facilities, certain LNG and synthetic gas facilities, and certain storage facilities. In addition, the Commission will clarify that a natural gas company is not necessarily engaged in an unduly discriminatory practice if it charges different customers different rates for the same service based on the date that customers commit to service.

Background

Petition To Expand the Blanket Certificate Program and Clarify Criteria Defining Just and Reasonable Rates

5. On November 22, 2005, the Interstate Natural Gas Association of America (INGAA) and the Natural Gas Supply Association (NGSA) jointly filed a petition under § 385.207(a) of the Commission's regulations proposing that the blanket certificate provisions be expanded "to improve the industry's ability to ensure the adequacy of infrastructure, without impairing any legitimate rights of any party and without frustrating any public-policy objectives."[6] Petitioners point to natural gas prices and tight gas supply and demand, and stress the need to ensure that natural gas facilities are adequate to reliably move available gas supplies to consuming markets. By way of example, Petitioners observe that natural gas producers faced with takeaway constraints can experience shut-ins, the depression of wellhead prices, and uncertainty as to when and where to

[1] 18 CFR 157.201–157.218 (2005).

[2] Certain activities are exempted from the certificate requirements of NGA section 7(c). For example, § 2.55 of the Commission's regulations exempts auxiliary installations and the replacement of physically deteriorated or obsolete facilities; part 284, subpart I, of the regulations provides for the construction and operation of facilities needed to alleviate a gas emergency.

[3] *See* 18 CFR 157.208(d), Table I (2006), as updated. In November 2005, in response to the impacts of hurricanes Katrina and Rita on gas production, processing, and transportation in and along the Gulf of Mexico, these cost limits were temporarily raised to $50,000,000 for prior notice projects and $16,000,000 for self-implementing projects, provided the projects increase access to gas supply and will be completed by October 31, 2006. *See Expediting Infrastructure Construction To Speed Hurricane Recovery*, 113 FERC ¶ 61,179 (2005). The October 31, 2006 deadline was subsequently extended to February 28, 2007. 114 FERC ¶ 61,186 (2006).

[4] *See* § 157.202(b)(2)(i) of the Commission's regulations, defining "eligible facilities," and § 157.202(b)(2)(ii) (2005) of the regulations, describing facilities excluded from the definition of "eligible facilities."

[5] The November 2005 Order cited in note 3 also temporarily extended blanket certificate authority to include what would otherwise be ineligible facilities, namely, an extension of a mainline; a facility, including compression and looping, that alters the capacity of a mainline; and temporary compression that raises the capacity of a mainline.

[6] INGAA/NGSA Petition at 2 (November 22, 2005).

drill new wells. Petitioners add that companies faced with an inability to build new facilities when and where they are needed can experience a lack of growth, operational problems, and constraints on system flexibility. Petitioners argue that implementing their requested regulatory revisions will diminish the likelihood of experiencing such adverse events.[7]

Expanded Blanket Certificate Authority

6. Petitioners observe that the natural gas industry has undergone fundamental change since the blanket certificate provisions were put in place in 1982,[8] and believe that the rationale for certain of the limitations imposed when the blanket certificate program was implemented should no longer apply. Petitioners request that blanket certificate authority be expanded to include mainline facilities, LNG takeaway facilities, and certain underground storage field facilities which are currently excluded from the blanket certificate program, and request that the cost limits for blanket projects be raised.

Blanket Project Cost Limits

7. Petitioners comment that "in the Commission's original justification for the [blanket certificate program] restrictions in Order No. 234, the primary reason given was the impact on ratepayers, not environmental impact or safety."[9] In 1982, the blanket project cost limits were set at $4,200,000 for automatic projects and $12,000,000 for prior notice projects; presently, these cost limits stand at an inflation adjusted $8,200,000 and $22,700,000, respectively. Petitioners assert that the current blanket project cost cap is "sufficiently small" to render any rate impacts *de minimis* and state their belief in "the likelihood that new investments will produce new revenue that covers the cost of the investments."[10]

8. Petitioners claim that natural gas project costs have escalated faster than inflation, citing costs attributable to more extensive public outreach, greater agency involvement, a more complex permitting process, additional environmental remediation requirements, and the use of technologically advanced construction equipment. In view of this, Petitioners ask the Commission to reassess project costs and raise the blanket project cost limits in § 157.208(d), Table I, of the regulations. Petitioners do not characterize this as enlarging the scale of projects permitted under blanket authorization,[11] but as recalibrating the cost limits to permit a project that could have been constructed within the cost limit in effect in 1982 to be built again today within today's updated cost limit.

Request To Clarify Criteria Defining Just and Reasonable Rate

9. Petitioners state that a natural gas company's decision to go forward with a proposed project can turn on whether there are customer service commitments in hand sufficient to demonstrate the proposal's economic viability. Petitioners request that the Commission allow preferential rate treatment for "foundation shippers," *i.e.*, customers that sign up early for firm service and thereby establish the financial foundation for a new project. Doing so, Petitioners claim, will "provide a strong incentive for more potential shippers to become foundation shippers, thus allowing needed infrastructure projects to get underway earlier."[12] Petitioners seek assurance that offering customers that commit early to a proposed project a more favorable rate than customers that seek service later will not be viewed as unduly discriminatory.

Notice and Comments

10. Notice of the INGAA/NGSA petition was published in the **Federal Register** on December 9, 2005.[13] The Commission sought comments on whether it should take further action on the petition. Responses were filed by: American Gas Association (AGA); American Public Gas Association (APGA); Anadarko Petroleum Corporation (Anadarko); Devon Energy Corporation (Devon); Duke Energy Gas Transmission Corporation (Duke); Enstor Operating Company, LLC (Enstor); Honeoye Storage Corporation (Honeoye Storage); Illinois Municipal Gas Agency (Illinois Municipal); Independent Petroleum Association of America (IPAA); Kinder Morgan Interstate Gas Transmission, LLC (Kinder Morgan); NiSource Inc. (NiSource); Process Gas Consumers Group (Process Gas Consumers); Public Service Commission of New York (PSCNY); and Sempra Global (Sempra).

11. Duke, Enstor, Honeoye Storage, IPAA, and Process Gas Consumers unequivocally support the petition, and the majority of the remaining comments support aspects of the proposal. Several comments question and/or oppose the petition's proposals. The comments are discussed below.

Request for Technical Conference and Commission Response

12. AGA requests the Commission convene a technical conference to consider whether the proposal could adversely impact rates or degrade service, and thus be inconsistent with Commission policy which requires weighing the impact of new facilities on existing customers.[14] AGA is concerned expanding blanket certificate authority would undermine the Commission's rationale for initiating the blanket certificate program, which rests on the premise that blanket activities are minor in scope and "so well understood as an established industry practice that little scrutiny is required to determine their compatibly with the public convenience and necessity."[15]

13. AGA raises legitimate issues relevant to the outcome of this proceeding. That said, the Commission expects all interested persons will have an adequate opportunity to express their views in comments in response to this NOPR. Given that comments have yet to be submitted on the merits of the regulatory revisions proposed herein, the Commission will dismiss AGA's request for a technical conference as premature. Following a review of the comments received in response to this NOPR, the request will be reassessed.

[7] While Petitioners have "determined that there is little to be improved in the Commission's processing of certificate applications," and that "there are few changes to the current authorization process that would accelerate the process beyond its current, efficient state," they nevertheless contend that adopting the proposed revisions will "further enhance the authorization process" and provide additional certainty regarding regulatory treatment. INGAA/NGSA Petition at 2 and 4 (November 22, 2005).

[8] *Interstate Pipeline Certificates for Routine Transactions*, Order No. 234, 47 FR 24254 (June 4, 1982), FERC Stats. & Regs. ¶ 30,368 (1982); Order No. 234–A, 47 FR 38871 (September. 3, 1982), FERC Stats. & Regs. ¶ 30,389 (1982).

[9] INGAA/NGSA Petition at 8 (November 22, 2005).

[10] *Id.*

[11] "[I]t is not contemplated that an increase in the dollar limits will cause blanket projects to be larger, in terms of the project foot print or right of way needed, than they would have been" in 1982. INGAA/NGSA Petition at 16 (November 22, 2005).

[12] *Id.* at 20.

[13] 70 FR 73,232 (2005).

[14] *See Certification of New Interstate Noturol Gas Pipeline Facilities (Policy Stotement on New Facilities)*, 88 FERC ¶ 61,227 (1999), *orders clorifying stotement of policy*, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094 (2000), *order further clarifying stotement of policy*, 92 FERC ¶ 61,094 (2000).

[15] *Interstate Pipeline Certificates for Routine Transactions*, Order No. 234, FERC Stats. & Regs. ¶ 30,368 at 30,200 (1982). *See also, Distrigas of Massachusetts Corp.*, 60 FERC ¶ 61,274 at 61,931 (1992), in which the Commission stated that "[t]he blanket procedures were intended to apply only to proposals which by their very nature require limited Commission involvement."

Proposed Regulatory Revisions

Rationale for the Blanket Certificate

14. The blanket certificate program was designed to provide an administratively efficient means to authorize a generic class of routine activities, without assessing each prospective project on a case-by-case basis. In 1982, in instituting the blanket certificate program, the Commission explained the new program as follows:

[T]he final regulations divide the various actions that the Commission certificates into several categories. The first category applies to certain activities performed by interstate pipelines that either have relatively little impact on ratepayers, or little effect on pipeline operations. This first category also includes minor investments in facilities which are so well understood as an established industry practice that little scrutiny is required to determine their compatibility with the public convenience and necessity. The second category of activities provides for a notice and protest procedure and comprises certain activities in which various interested parties might have a concern. In such cases there is a need to provide an opportunity for a greater degree of review and to provide for possible adjudication of controversial aspects. Activities not authorized under the blanket certificate are those activities which may have a major potential impact on ratepayers, or which propose such important considerations that close scrutiny and case-specific deliberation by the Commission is warranted prior to the issuance of a certificate.[16]

15. The Commission continues to apply the above criteria in an effort to distinguish those types of activities that may appropriately be constructed under blanket certificate authority from those projects that merit closer, case-specific scrutiny due to their potentially significant impact on rates, services, safety, security, competing natural gas companies or their customers, or on the environment.

16. "Under section 7 of the NGA, pursuant to which the blanket certificate rule is promulgated," the Commission has "an obligation to issue certificates only where they are required by the public convenience and necessity. The blanket certificate rules set out a class of transactions, subject to specific conditions, that the Commission has determined to be in the public convenience and necessity." [17] To the extent this class of transactions is enlarged, there must be an assessment, and assurance, that each added class of transactions is similarly required by the public convenience and necessity.

17. In this NOPR, the Commission proposes to expand the scope of blanket certificate activities to include mainlines, storage facilities, and certain facilities carrying regasified LNG and synthetic gas, and to expand the scale of blanket certificate activities by raising the project cost limits. The Commission seeks comments on whether this can be accomplished without compromising the rationale upon which the blanket certificate program is founded.

Comments and Commission Response

18. APGA questions the rationale for revising the blanket certificate program. Unlike Petitioners, APGA sees no cause to attribute current high natural gas prices and recent price volatility to inadequate gas transportation or storage facilities. Instead, APGA contends prices reflect tight supplies and a relatively inelastic demand.[18] Consequently, APGA does not expect the proposed regulatory revisions to result in lower gas prices or less price volatility. APGA contends the proposed changes will eliminate protections mandated by the NGA and will be contrary to Commission's Policy Statement on New Facilities.[19]

19. The regulatory revisions proposed herein are not intended to drive down current gas costs; rather, the Commission seeks to provide a streamlined means for natural gas companies to make infrastructure enhancements in a timely manner. Nevertheless, to the extent prices reflect capacity constraints that might be alleviated by adding or upgrading facilities, then expanding the blanket certificate program, which offers companies an expedited means to obtain construction authorization, may indirectly drive prices down by allowing companies to address system bottlenecks expeditiously through use of their blanket certificate authority. The Commission recognizes that the proposed revisions, by expanding blanket certificate authorization, would modify the nature of the blanket program; however, for the reasons discussed below, the Commission believes the proposed revisions comport with the Commission's mandate under the NGA and are consistent with current Commission policy.

20. APGA observes that in the past, the Commission has temporarily altered provisions of the blanket certificate program in response to natural gas emergencies, and states that these temporary measures have proved effective. In view of the Commission's success in making temporary adjustments, APGA sees no need to permanently expand blanket certificate authority. APGA contends that but for the electric crisis in the Western United States in 2000–2001, Petitioners have not cited any instance of mainline pipeline capacity constraint that would justify lifting the prohibition on adding mainline capacity under blanket certificate authority. APGA states that the Commission's response to the 2005 Gulf Coast hurricanes is designed to expedite rebuilding infrastructure to restore lost services, and does not reflect a need to permanently alter the blanket certificate regulations in order to promote a nationwide expansion of facilities and services.

21. The Commission concurs with APGA that flexibility afforded by the NGA, and the intermittent use of provisional waivers of certain Commission regulations, have proved effective in accelerating the industry's recovery from natural gas emergencies. However, the Commission does not view the result of a temporary waiver of compliance with certain blanket certificate requirements —whether the result be deemed a success or not—as a reason to adopt or reject the blanket certificate program expansion as Petitioners propose. The Commission believes the emphasis of the blanket certificate program should remain, as it always has, on expediting the process of adding and improving gas facilities and services, while ensuring that there are no adverse impacts on existing rates, services, or the environment. The immediate crisis in the aftermath of the hurricanes has eased. However, the need to restore and add infrastructure remains critical: (1) To attach new supplies to offset the continuing decline from existing gas sources; (2) to add interconnections, extensions, and other new facilities to enhance the flexibility and responsiveness of the grid; and (3) to accommodate anticipated increases in imports of LNG. It is with these objectives in mind that the Commission proposes to expand its blanket certificate program.

22. The Commission seeks comment whether allowing project sponsors the option of requesting an incremental rate

[16] 47 FR 24254 (June 4, 1982).

[17] *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 436, 50 FR 42408 (October 18, 1985).

[18] APGA adds that the municipal and publicly-owned local distribution systems it represents, and the retail customers they serve, are "extremely sensitive" to increases in the cost of natural gas and it urges the Commission to "take all reasonable actions to ensure the lowest natural gas prices and to minimize price volatility." APGA's Comments at 4 (January 17, 2006).

[19] *See* note 14.

for a particular project[20] will provide additional flexibility to expedite the process of adding and improving gas facilities and services, while ensuring that there are no adverse impacts on existing rates, services, or the environment. Further, the Commission seeks comment regarding what additional or alternative revisions to the blanket certificate regulations would be necessary to establish the appropriate procedures.

Facilities Subject to Blanket Certificate Authority

23. To meet the above stated objectives, the Commission proposes to expand the scope of the blanket certificate program by including certain facilities associated with LNG and synthetic gas plants, storage facilities, and mainlines—all of which have heretofore been excluded from the blanket certificate program.[21] In 1982, these facilities were excluded principally due to their perceived potential to adversely impact existing customers' rates and services. With respect to rates, a presumption that blanket certificate project costs will qualify for rolled-in rate treatment will continue to apply, subject to rebuttal by showing adverse impacts in a NGA section 4 rate case proceeding. With respect to facilities and services, the proposal discussed below to require prior notice for projects undertaken as a result of expanded blanket certificate authority, in conjunction with the proposal to lengthen the prior notice period, should provide a reasonable opportunity to review the potential system impacts of a proposed blanket project prior to its construction.

Facilities Receiving LNG and Synthetic Gas

24. The blanket certificate regulations exclude facilities used to take gas away from plants regasifying LNG and manufacturing synthetic gas, a restriction imposed in 1982, in part, to protect customers from the impact of paying the high commodity cost of LNG and synthetic gas.[22] Such rate protection is now little more than an artifact of the era when jurisdictional pipelines provided merchant service, charging customers a bundled rate that combined a transportation charge for delivering natural gas plus the cost to purchase gas. In 1992, in Order No. 636,[23] the Commission undertook a process of restructuring the gas industry, resulting in the itemization and separate billing of previously bundled gas services. As a result, today's jurisdictional rates no longer include the commodity cost of gas purchased by the pipeline and sold to the customer. Further, over the last several years, the cost differential between non-traditional energy sources, particularly imported LNG, and traditional domestic, Canadian, and Mexican gas supplies has narrowed. In view of recent and anticipated market conditions, barring facilities receiving LNG and synthetic gas from the blanket program may be hindering consumers' access to competitively-priced gas supplies.

25. The Commission believes that increasing access to LNG and synthetic gas is consistent with the public interest. Accordingly, the Commission proposes to revise its regulations to permit certificate holders to rely on blanket authority to add, alter, or abandon certain pipeline facilities used to carry gas away from an LNG terminal, a deepwater LNG port, an inland LNG storage facility, or a synthetic gas manufacturing plant.

26. The Commission proposes to add § 157.212, to read as follows:

§ 157.212 Synthetic and liquefied natural gas facilities.

Prior Notice. Subject to the notice requirements of §§ 157.205(b) and 157.208(c), the certificate holder is authorized to acquire, abandon, construct, modify, replace, or operate natural gas facilities that are used to transport exclusively either synthetic gas or revaporized liquefied natural gas and that are not "related jurisdictional natural gas facilities" as defined in § 153.2(e). The cost of a project may not exceed the cost limitation set forth in column 2 of Table I of § 157.208(d). The certificate holder must not segment projects in order to meet this cost limitation.

27. This approach is intended to provide advance notice of proposed blanket certificate projects involving facilities carrying exclusively LNG or synthetic gas to allow the public, or Commission staff, to comment or protest, and thereby possibly compel case-specific consideration of a proposal.[24] The Commission views "facilities that are used to transport exclusively either synthetic gas or revaporized liquefied natural gas" as pipelines interconnected directly to an LNG or synthetic gas plant and downstream laterals; the facilities extend from an LNG or synthetic gas source to the first junction with a line carrying natural gas drawn from the ground. Once gas supply sources are commingled, § 157.212 becomes inapplicable. Pursuant to § 153.2(e), blanket certificate authority will not apply to the outlet pipe of an LNG or synthetic gas plant, but only to those facilities that attach to the directly interconnected pipe.

28. The Commission acknowledges that there may be no objections presented to certain LNG and synthetic gas takeaway pipeline projects, *e.g.*, a meter at a line leading from an inland LNG peaking plant. Nevertheless, the Commission believes it is prudent to provide prior notice of all LNG and synthetic gas takeaway pipeline projects to give end users, local distribution companies, the Commission, and others the opportunity to review the potential impacts of a proposal and the option to comment or protest.

29. The blanket certificate provisions do not apply to LNG plant facilities,[25] and this proposed regulatory revision will not change that. LNG plant facilities are not within the class of minor, well-understood, routine activities that the blanket certificate program is intended to embrace; LNG plant facilities necessarily require a review of engineering, environmental,

[20] *See, e.g.*, Tennessee Gas Pipeline Company, 110 FERC ¶ 61,047, *order denying reh'g*, 111 FERC ¶ 61,094 (2005), discussing the Commission's rejection of a pipeline's proposal to construct a five-mile lateral line under blanket authority and charge an incremental rate.

[21] Certain limited underground storage field testing and development is permitted under § 157.215; this NOPR proposes a significant expansion of blanket-eligible storage field activities. Also, as noted above, blanket certificate authority has been extended to otherwise ineligible facilities on a temporary basis in order to respond to a natural gas emergency.

[22] As stated in the 1982 order promulgating the blanket certificate regulations, because LNG and synthetic gas "facilities may have a significant impact on ratepayers, the Commission believes they should not be authorized under a blanket certificate, but should be subjected instead to the scrutiny of a case-specific determination." 47 FR 24254 (June 4, 1982).

[23] *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636–A, FERC Stats. & Regs. ¶ 30,950 (1992), order on reh'g, Order No. 636–B, 61 FERC ¶ 61,272 (1992), *aff'd in part, rev'd in part sub nom. United Distribution Cos.* v. *FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *cert. denied sub nom. Associated Gas Distributors* v. *FERC*, 520 U.S. 1224 (1997), *on remand*, Order No. 636–C, 78 FERC P 61,186 (1997), *order on reh'g*, Order No. 636–D, 83 FERC ¶ 61,210 (1998).

[24] A protest may be filed in response to a prior notice of a proposed blanket project. 18 CFR 157.205(e) (2005). If the protest is not withdrawn or dismissed within the time allotted, the prior notice proceeding is then treated as an application for a case-specific NGA section 7 certificate authorization. 18 CFR 157.205(f) and (g) (2005).

[25] LNG facilities' construction and operation remain subject to separate regulatory requirements, either NGA section 3 approval for import or export plant facilities, or NGA section 7 case-specific certificate authorization for LNG storage facilities. The Commission's jurisdiction over the transportation and sale of natural gas in interstate commerce does not apply to synthetic gas manufacturing plant facilities.

safety, and security issues that the Commission believes only can be properly considered on a case-by-case basis. Similarly, the proposed blanket certificate provisions will be inapplicable to jurisdictional natural gas facilities directly attached to an LNG terminal, since such facilities are subject to the mandatory 180-day pre-filing process specified in § 157.21 of the Commission's regulations.[26]

30. The mandatory 180-day pre-filing process for jurisdictional natural gas facilities that directly interconnect with the facilities of an LNG terminal was put in place last year pursuant to section 311(d) of the Energy Policy Act of 2005 (EPAct 2005).[27] Petitioners ask that the Commission revise these recently enacted regulations so that "the pipeline lateral receiving LNG is not subject to the Commission's mandatory pre-filing process," asserting that a "lateral to hook up to existing LNG facilities should cause no additional issues regarding safety and environmental concerns."[28] The Commission disagrees. Because an LNG terminal and the facilities that attach directly to it are interdependent—inextricably bound in design and operation—a terminal and its takeaway facilities must be evaluated in tandem; both merit a similar degree of regulatory scrutiny.

31. Petitioners argue that rules "that make it considerably more difficult to hook up LNG to the interstate grid * * * differentiate between facilities for different types of supply" which "appears unduly discriminatory."[29] Again, the Commission disagrees. The different rules applicable to different natural gas supply sources reflect the different technology involved in importing, storing, and regasifying LNG. In addition, different public policy considerations apply to LNG, *e.g.*, safety and reliability concerns and issues related to gas quality and interchangeability. In view of this, the Commission finds legitimate cause to draw a regulatory distinction between LNG imports and traditional gas supplies, and will decline the request to revisit the provisions put in place in last year's Order No. 665.

Comments and Commission Response

32. Devon is apprehensive that expanding blanket certificate authority to include certain LNG pipelines could give LNG imports a competitive advantage over domestic gas supplies. The Commission is not in a position to address this, as it is not charged with or conducting a comparative analysis of types of energy, or with promoting one source or type of energy over another, or with determining whether the national interest lies with obtaining energy independence or foreign energy supplies. More to the point, LNG import terminals and the pipelines directly interconnected to them need to be constructed, or expanded, in tandem before additional volumes of LNG can be brought into the United States, and the proposed expansion of blanket certificate authority will not apply to either LNG terminals or the facilities that are directly interconnected with them.[30] Thus, the construction, expansion, or modification of facilities capable of boosting LNG imports will remain subject to case-specific NGA section 7 certificate authorization and case-specific NGA section 3 approval.

33. Devon and APGA observe that LNG imports can have characteristics different from traditional gas supplies and assert that the changed character of the gas could result in adverse impacts on pipelines carrying imported LNG and end users consuming it. The Commission's Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs (Policy Statement on Gas Quality) in Docket No. PL04–3–000, issued concurrently with this NOPR, provides direction for addressing gas quality and interchangeability concerns. Assuming LNG supplies conform to the gas quality standards of jurisdictional pipelines' tariffs, and the tariffs are in accord with the Policy Statement on Gas Quality, the Commission believes that objections that concern the character of particular volumes of gas are best presented to parties buying and reselling the gas. However, if there are indications that gas volumes—regardless of their source—may have characteristics incompatible with pipelines' tariff provisions, or inconsistent with the Policy Statement on Gas Quality, then it would be appropriate to inform the Commission either by a protest to a proposed blanket certificate project or by presenting an NGA section 5 complaint.

34. Devon suggests that LNG imports could interfere with pipelines' operations by creating capacity constraints. A pipeline would not agree to accept LNG imports—or, indeed, additional quantities of gas from any source—if doing so could compromise its ability to continue to reliably meet its commitments to its existing customers, since doing so would conflict with the pipeline's certificate obligation to meet its customers' firm service requirements. If there is an indication that a change in a natural gas company's operations, be it due to receipt of LNG or any other cause, may interfere with the company's capability to continue to provide certificated services, allegations to this effect may be presented in a protest to a proposed blanket certificate project or in an NGA section 5 complaint. The Commission will act as necessary to prevent and remedy improper practices; as appropriate, the Commission will employ its NGA enforcement authority, under which it may impose a civil penalty of up to $1,000,000 per day for the violation of any provision of the NGA "or any rule, regulations, restriction, condition, or order made or imposed by the Commission under authority of" the NGA.[31]

35. AGA and Petitioners concur that the motive for excluding LNG takeaway facilities from blanket certificate projects—*i.e.*, the concern that high-priced LNG imports would raise gas costs for the customers of merchant pipelines—is now no more than an artifact of the bundled era, and is thus no longer relevant. Nevertheless, AGA urges that LNG takeaway lines continue to be excluded from the blanket certificate program due to the public safety and operational issues raised by the import of additional LNG supplies. AGA suggests awaiting the outcome of the proceeding in Docket No. PL04–3–000 prior to applying any expanded blanket certificate authority to LNG pipeline facilities. Similarly, APGA maintains that modifications to LNG takeaway facilities raise technical issues that merit examination prior to implementation. APGA adds that the compatibility of LNG supplies with existing transmission equipment and with end users' facilities and processes is an issue that should be considered, yet might not receive the attention deserved if LNG takeaway facilities were expanded under blanket certificate authority.

[26] Section 153.2 of the Commission's regulations states that the construction of any pipelines or other natural gas facilities subject to section 7 of the NGA which will directly interconnect with the facilities of an LNG terminal, and which are necessary to transport gas to or regasified LNG from a proposed or existing authorized LNG terminal, are subject to a mandatory minimum six-month pre-filing process. 18 CFR 153.2 (2006). *See Regulations Implementing Energy Policy Act of 2005; Pre-Filing Procedures for Review of LNG Terminals and Other Natural Gas Facilities*, Order No. 665, 113 FERC ¶61,015 (2005).

[27] Public Law 109–58, 119 Stat. 594 (2005).

[28] INGAA/NGSA Petition at 14 (November 22, 2005).

[29] *Id.*

[30] *See* 18 CFR 153.2(e) (2006).

[31] *See* EPAct 2005 section 314, amending the Commission's civil penalty authority under NGA section 22.

36. First, pursuant to Order No. 665, the blanket certificate provisions do not apply to facilities attached directly to an LNG terminal. With respect to LNG and synthetic gas takeaway facilities to which the blanket certificate provisions will apply, all proposed § 157.212 projects will require prior notice, which should permit the public an adequate opportunity to identify, address, and resolve issues before construction can commence. If there is an interest in exploring gas quality and interchangeability issues, or any issues related to the operational characteristics of LNG and synthetic gas plants, an interested person may protest, and by doing so, potentially convert the blanket proceeding to a case-specific NGA section 7 certificate authorization proceeding. Finally, as noted, in Docket No. PL04–3–000 a Policy Statement on Gas Quality is issued concurrently with this NOPR and will apply to all blanket certificate projects.

Underground Storage Field Facilities

37. Currently, the blanket certificate program excludes a "facility required to test or develop an underground storage field or that alters the certificated capacity, deliverability, or storage boundary, or a facility required to store gas above ground * * * or wells needed to utilize an underground storage field."[32] Petitioners request these restrictions be removed, provided blanket certificate activities do not result in inappropriate changes to the physical characteristics of an underground storage field. Specifically, Petitioners seek to expand the blanket certificate program to include: (1) Facilities that provide deliverability enhancements (*e.g.* aboveground piping or compression); (2) infill wells that increase injection or withdrawal capability; (3) the development of new caverns or storage zones within a previously defined project area or field, as long as there is no change in the certificated boundaries or pressure of the field.

38. As a general proposition, it is easier to track gas volumes moving through a pipeline than gas volumes moving in and out of an underground reservoir. The boundaries, integrity, and operational characteristics of a segment of pipe are known and fixed, but these characteristics are neither obvious nor immutable for an underground storage facility. In view of the operational and engineering ambiguities inherent in managing underground storage facilities, these facilities (but for a limited § 157.215 exception for facilities for testing and development) have been excluded from the blanket certificate program.

39. Underground storage fields are designed, constructed, developed, and operated based on initial available data, and as additional data are obtained over the course of a storage field's operation, the facilities' design and the operational parameters may be modified to optimize the field's development and productivity. Because storage design and development is not an exact science, it typically takes three to ten years of full operation to understand and incorporate engineering, geological, and related data to obtain optimal storage field functioning.

40. The Commission seeks to ensure that storage facilities are operated in a manner that will maintain their long-term integrity while meeting day-to-day performance requirements. Because certain modifications may affect operational parameters such as total storage capacity and working and cushion gas volumes, the Commission believes it would be imprudent to expand blanket certificate authority to activities that could impact the operating pressures, reservoir or buffer boundaries, or the certificated capacity of a storage facility. Nevertheless, the Commission believes the administrative advantages of construction under blanket certificate authority can be prudently extended to certain storage field activities provided there is sufficiently detailed prior notice of a proposed project. This will allow companies, under blanket certificate authority, to utilize re-engineering to enhance the capability of existing storage facilities while permitting the Commission and the public to assess whether a proposal might compromise a storage field's integrity or alter its physical characteristics or certificated capacity.

41. The Commission proposes to add § 157.213, specifying information to be included in a prior notice of a proposed project affecting underground storage field facilities.[33] Under these proposed regulatory revisions, if a certificate holder is able to demonstrate, by theoretical or empirical evidence, that a proposed project will improve storage operations without altering an underground storage facility's total inventory, reservoir pressure, or reservoir or buffer boundaries, and will comply with environmental and safety provisions, then blanket certificate authority may be used to re-engineer an existing storage facility to decrease cushion gas, increase working gas, improve injection and withdrawal capabilities, and add more cycles per season. Storage field facilities can include gathering lines, wells (vertical, horizontal, directional, observation, and injection and withdrawal), pipelines, compression units, and dehydration and other gas treatment facilities. This proposed expanded blanket certificate authority might be used to maintain and enhance deliverability in existing fields with lagging performance due to deteriorated wells or flow strings, damage to well bore drainage areas, water encroachment, and other operational and facility problems, and to make field enhancements, such as converting a nonjurisdictional observation well to withdrawal or injection/withdrawal status. These enhancements can serve to improve peak, daily, and/or seasonal deliverability by decreasing cushion gas, increasing working gas, improving injection and withdrawal capabilities, or adding more cycles per season—all without affecting overall operating limits.

42. Petitioners promote expanding blanket certificate authority to encompass the development of new caverns or storage zones within a previously defined and certificated project area or field. The Commission, however, views the blanket certificate program as ill suited to construction that would create new storage zones, because impacts associated with such projects are wide ranging and go beyond the limited impact that increases in deliverability are expected to have on existing fields. The development of new storage zones within a previously defined and certificated field is no different than the development of an entirely new storage field and thus deserves the same level of scrutiny. The issues to be considered in establishing new underground gas reservoirs require a close review of technical characteristics and test results, among other criteria, that go far beyond the project description, and limited assessment thereof, available in prior notice proceeding.[34]

43. Similarly, the proposed expanded blanket certificate authority is not

[32] 18 CFR 157.202(b)(2)(ii)(D) (2005).

[33] The information to be included in prior notice should satisfy APGA's request for an opportunity to review blanket project storage field modifications before construction.

[34] This also applies to the development of new salt caverns. The safety parameters of a salt cavern within a salt dome or salt formation are more complicated and require more detailed studies and analysis than depleted gas or oil fields. The development of salt caverns, even if within a previously studied and certificated dome or bedded salt formation, calls for exacting step-by-step procedures to verify the validity of the original and modified design.

intended to include storage reservoirs that are still under development or reservoirs which have yet to reach their inventory and pressure levels as determined from their original certificated construction parameters. Such reservoirs may or may not have reliable information available on geological confinement or operational parameters via data gathered throughout the life of a storage field, whereas new storage zones lack data collected over time on physical and operational aspects of a field. Therefore, for such facilities, the Commission finds it necessary to individually examine each reservoir to determine its potential operating parameters (capacity, cushion and working gas, operational limits, well locations, etc.) and to review data essential to understand and predict how modifications might affect the integrity, safety, and certificated parameters of the facility.

44. The Commission proposes to expand the blanket certificate program to permit additional storage field activities subject to the §§ 157.205 and 157.208(c) prior notice provisions and the submission of information pertinent to the proposed project, as specified below. The current § 157.215 automatic authorization remains in effect for limited storage testing and development. The Commission proposes to add a new § 157.213 for prior notice storage projects, as follows:

§ 157.213 Underground storage field facilities.

(a) *Prior Notice.* Subject to the notice requirements of §§ 157.205(b) and 157.208(c), the certificate holder is authorized to acquire, abandon, construct, modify, replace, or operate natural gas underground storage facilities, provided the storage facility's total inventory, reservoir pressure, reservoir and buffer boundaries, certificated capacity, and compliance with environmental and safety provisions remain unaffected. The cost of a project may not exceed the cost limitation set forth in column 2 of Table I of § 157.208(d). The certificate holder must not segment projects in order to meet this cost limitation.

(b) *Contents of request.* In addition to the requirements of §§ 157.206(b) and 157.208(c), requests for activities authorized under paragraph (a) must contain:

(1) A description of the current geological interpretation of the storage reservoir, including both the storage formation and the caprock, including summary analysis of any recent cross-sections, well logs, quantitative porosity and permeability data, and any other relevant data for both the storage reservoir and caprock;

(2) The latest isopach and structural maps of the storage field, showing the storage reservoir boundary, as defined by fluid contacts or natural geological barriers; the protective buffer boundary; the surface and bottomhole locations of the existing and proposed injection/withdrawal wells and observation wells; and the lengths of open-hole sections of existing and proposed injection/withdrawal wells;

(3) Isobaric maps (data from the end of each injection and withdrawal cycle) for the last three injection/withdrawal seasons, which include all wells, both inside and outside the storage reservoir and within the buffer area;

(4) A detailed description of present storage operations and how they may change as a result of the new facilities or modifications. Include a detailed discussion of all existing operational problems for the storage field, including but not limited to gas migration and gas loss;

(5) Current and proposed working gas volume, cushion gas volume, native gas volume, deliverability (at maximum and minimum pressure), maximum and minimum storage pressures, at the present certificated maximum capacity or pressure, with volumes and rates in MMcf and pressures in psia;

(6) The latest field injection/withdrawal capability studies including curves at present and proposed working gas capacity, including average field back pressure curves and all other related data;

(7) The latest inventory verification study for the storage field, including methodology, data, and work papers;

(8) The shut-in reservoir pressures (average) and cumulative gas-in-place (including native gas) at the beginning of each injection and withdrawal season for the last 10 years; and

(9) A detailed analysis, including data and work papers, to support the need for additional facilities (wells, gathering lines, headers, compression, dehydration, or other appurtenant facilities) for the modification of working gas/cushion gas ratio and/or to improve the capability of the storage field.

Comments and Commission Response

45. APGA argues that making modifications to underground storage facilities raises technical issues that should be reviewed in advance of any construction activity, and that the blanket certificate program does not provide for adequate advance oversight. The Commission believes adequate oversight will be assured because prospective storage field projects will be subject to prior notice, which notice must include the detailed information descried above.

46. Honeoye Storage contends that there is no reason to subject storage field construction to greater scrutiny than other construction activities as long as additional well construction or other activities do not alter the certificated parameters of existing storage facilities. For the reasons discussed above, the Commission believes that activities that alter certain characteristics of a storage field merit close scrutiny. However, provided there is adequate advance study and documentation of the proposed construction, the Commission finds no reason to bar every activity that might alter a certificated parameter from the blanket certificate program.[35] The information a project sponsor is required to submit pursuant to proposed § 157.213 is intended to give the Commission and interested persons a sufficient basis upon which to assess the prudence of proposed storage field activities.

Mainline Facilities

47. The Commission proposes to extend blanket certificate authority to mainline facilities. Heretofore, the blanket certificate provisions have excluded mainline facilities, in part out of concern that mainline project costs could be large enough to adversely impact existing rates. Without this exclusion, it might be possible for a natural gas company to break a costly mainline project into several blanket-sized segments. This remains a valid concern, and as stressed in comments, this concern is rendered more acute as blanket project cost limits increase.

48. To allay this concern, the Commission proposes to require that all blanket certificate projects involving mainline facilities be subject to prior notice to give the Commission and interested persons a means to assess a proposal and express objections before construction begins. Section 157.208(b) of the Commission's regulations states that a blanket certificate holder "shall not segment projects in order to meet the cost limitation set forth in column 2 of Table I," *i.e.*, the prior notice project cost cap. The Commission intends to continue to closely monitor blanket certificate projects, and in cases when a project sponsor relies on blanket certificate authority for multiple projects, to review blanket activities to verify that individual projects are not piecemeal portions of a larger integrated undertaking. If the Commission determines segmentation has occurred, it may impose sanctions, which can include precluding a natural gas company from acting under blanket certificate authority[36] and penalties of up to $1,000,000 per day per violation.

49. The Commission proposes to add § 157.210, to read as follows:

§ 157.210 Mainline natural gas facilities.

Prior Notice. Subject to the notice requirements of §§ 157.205(b) and 157.208(c),

[35] *See Texas Eastern Transmission Corporation*, 62 FERC ¶ 61,196 (1993).

[36] *See, e.g., Destin Pipeline Company, L.L.C.*, 90 FERC ¶ 61,270 (2000), in which the Commission responded to construction costs that greatly exceeded the project cost limit by suspending the natural gas company's blanket certificate authority.

the certificate holder is authorized to acquire, abandon, construct, modify, replace, or operate natural gas mainline facilities. The cost of a project may not exceed the cost limitation set forth in column 2 of Table I of § 157.208(d). The certificate holder must not segment projects in order to meet this cost limitation.

Comments and Commission Response

50. Petitioners observe that one of the reasons for excluding mainline capacity expansion projects in the past was the worry that the new capacity might be inequitably allocated, and reply that the regulations instituted since the industry restructuring following Order No. 636 have reduced the potential to allocate existing or new capacity inequitably. The Commission believes its current capacity allocation requirements, *e.g.*, posting and bidding, which apply to capacity made available as a result of blanket projects, will act as a check on discrimination in capacity allocation. If a party suspects a request for service has been improperly awarded, it may seek redress by submitting a complaint to the Commission under NGA section 5. The Commission will act as necessary to prevent, remedy, and penalize improper practices.

51. AGA is apprehensive that expanding blanket authority to include mainline facilities could lead to insufficient scrutiny of environmental or operational impacts, particularly in the case of automatic authorization projects. First, the Commission does not propose to permit automatic authorization for projects involving mainline facilities, regardless of cost. Second, blanket certificate projects are subject to the § 157.206(b) environmental compliance conditions to ensure that actions that could cause a significant adverse impact on the human environment are not conducted under blanket certificate authority, but are instead subject to case-specific review. If the blanket certificate program is enlarged to include mainline facilities as proposed, the § 157.206(b) conditions will apply. In view of this, and the proposal herein to fortify prior notice and environmental compliance provisions, the Commission concludes that proposals involving mainline facilities will receive sufficient scrutiny.

52. Anadarko is apprehensive the proposed revisions could undermine the Commission's authority to ensure that the legislative goals and requirements of the Alaska Natural Gas Transportation Act of 1976 (ANGTA) [37] and the Alaska Natural Gas Pipeline Act (ANGPA) [38] are met. Anadarko states that the Commission's consideration of a case-specific certificate application, and the attendant open season allocation requirement, provides "the first, and perhaps the only, opportunity for objections to be raised to the size of the proposed expansion, the allocation of capacity, or the rate to be charged, and it is the first opportunity for discrimination claims to be raised." [39] Anadarko argues that allowing "any mainline expansion of an Alaskan natural gas pipeline" without "all of the protections afforded by a complete NGA section 7(c) certificate proceeding" could conflict with the ANGTA and ANGPA rate and the open season regulatory requirements recently articulated in the Commission's Order No. 2005.[40] Anadarko asks that the Commission specifically exempt an Alaska natural gas transportation project from any expanded blanket certificate authority.

53. The Commission, in implementing its regulatory authority under ANGPA, explained that "a number of existing Commission policies predicated on competitive conditions in the lower 48 states are ill-suited for application in the case of an Alaska natural gas transportation project;" therefore, there is a "need in certain instances to accommodate existing Commission policy to the unique circumstances surrounding the exploration, production, development, and transportation to market of Alaska natural gas." [41] Consequently, the Commission will consider the need to accommodate the blanket certificate program to the unique circumstances of an Alaska project in any future proceedings authorizing such a project.

54. Kinder Morgan states its intention to extend or expand mainlines in order to bring natural gas to new ethanol production plants. Kinder Morgan cites public policy initiatives intended to promote the production and consumption of ethanol and expresses the concern that the current blanket certificate program's exclusion of mainline facilities may hinder the timely construction of facilities necessary to supply gas to new ethanol plants. The Commission expects the proposal to expand the blanket certificate provisions to include mainlines will provide Kinder Morgan with the additional authority it seeks. Kinder Morgan describes requests it has received from a developer of two new ethanol plants: one to extend a mainline by adding 2 to 3 miles of 8-inch pipe, the other to loop a mainline with 14 miles of 12-inch pipe. Under the proposed revised regulations, both projects would fall well within the parameters of the expanded blanket certificate program.

Blanket Project Cost Limits

55. Blanket certificate projects are constrained (1) by cost caps, (2) by compliance with the § 157.206(b) environmental requirements, and (3) by being limited to a restricted set of facilities.[42] The Commission proposes to raise the cost caps for blanket certificate projects.

56. The blanket certificate project cost limits were initially set at $4,200,000 for an automatic authorization project and $12,000,000 for a prior notice project. Since 1982, the Commission has used an inflation tracker (the gross domestic product implicit price deflator as determined by the Department of Commerce) that has resulted in incrementally ratcheting up blanket project cost limits to the current level of $8,200,000 for an automatic authorization project and $22,700,000 for a prior notice project. Petitioners contend these inflation-adjusted cost caps fail to take into account additional costs, such as regulatory compliance requirements and the use of more expensive construction technology, which did not play as prominent a part in 1982 as they do today, and request the Commission initiate a study to analyze and compare costs in 1982 to costs today.

57. There is no question that construction costs vary over time, and do so in a manner that is not easily predicted. Recently, for example, certain project components—notably the price of steel pipe—have risen far faster than any measure of overall inflation. However, although steel prices have run up over the past several years, in looking back to 1982, there were periods during which steel prices fell substantially. Further, changing regulatory requirements and construction techniques, to which Petitioners attribute cost increases, do

[37] 15 U.S.C. 719, *et seq.* (2000).

[38] 15 U.S.C. 720, *et seq.* (2000).

[39] Anadarko's Comments at 4 (January 17, 2005).

[40] *Regulations Governing the Conduct of Open Seasons for Alaska Natural Gas Transportation Projects*, Order No. 2005, 70 FR 8269 (February 9, 2005) 110 FERC ¶ 61,095 (2005).

[41] Order No. 2005–A, 70 FR 35011, 35016 (June 16, 2005); 111 FERC ¶ 61,332, P 36 (2005).

[42] Further, as a prerequisite for a blanket certificate, the Commission requires a company to first obtain a case-specific certificate, because it is in the context of evaluating an application for an NGA section 7 certificate authorization that the Commission establishes a "jurisdictional and informational base * * * concerning such matters as rates, system supplies and certificated customers." *Interstate Pipeline Certificates for Routine Transactions*, Order No. 234, 47 FR 24254 (June 4, 1982); 47 FR 30724 (July 15, 1982). Reg. Preambles 1982–1985 P 30,200 (1982).

not always add to project costs, and may well contribute to cost reductions and efficiencies.

58. Petitioners request the Commission reassess construction costs to determine if a project constructed within 1982 cost limits could be replicated within today's cost limits. The Commission is concerned that a focus on changes in construction costs over time risks losing sight of the fundamental premise of the blanket certificate program, namely, that blanket authorization be restricted (1) to projects that are modest in scale and routine in nature, *i.e.*, projects that are sufficiently well understood so as to permit them to proceed with a lesser level of regulatory scrutiny, and (2) to projects that will not result in unjustified increases in existing customers' rates. With respect to the latter, comparing construction costs over time is irrelevant; the relevant question is whether the project cost caps have served to adequately insulate existing rates from increases attributable to blanket program costs. The Commission cautions that even if it were possible to mirror 1982 costs to costs today, the dollar amounts would not reflect proportionate impacts on existing rates, since in 1982 the commodity cost of gas was a significant portion of pipeline customers' merchant service rate, whereas today, gas costs are no longer a component of pipeline customers' transportation service rate. In view of this, the Commission questions the utility of undertaking a formal inquiry to try to true up construction costs from 1982 to today, and so declines Petitioners' invitation to do so.

59. Nevertheless, in an effort to gauge whether the inflation tracker employed by the Commission over the past quarter century has functioned as a reliable indicator of the rise in construction costs, the Commission has reviewed changes in gas utility construction materials costs. Between 1982 and 2005, such costs have risen by a factor of approximately 2.29,[43] compared to a factor of approximately 1.90 using the inflation tracker employed by the Commission. To account for this divergence, the Commission proposes to raise blanket cost limits to $9,600,000 for a no-notice project and to $27,400,000 for a prior notice project. In view of the relatively small disparity demonstrated between utility construction materials costs and the Department of Commerce's GDP implicit price deflator, the Commission proposes to continue to rely the latter, a commonly used and generally accepted measure of overall inflation levels, as the measure for making annual adjustments to the project cost limits. The Commission declines to tie the blanket cost limit adjustment to commodity prices (such as steel), labor rates, or other potentially subjective and varying project cost components out of a concern that this could result in volatile or inappropriate cost limit adjustments.

60. The Commission requests comments on (1) the merits of this proposed boost in the blanket project cost limits, (2) whether the inflation tracker mechanism currently employed by the Commission accurately reflects changes in blanket project costs, and (3) whether another means of accounting for changes in project costs may be preferable. With respect to prospective comments, the Commission notes that the blanket certificate program was implemented to allow a generic class of minor projects to go forward without case-specific review, based on the expectation that the cumulative effect of such construction would neither raise existing rates nor degrade existing services. Thus, the pertinent question is not the extent to which construction costs may have changed over the last quarter century, but whether blanket certificate activities can be expanded without compromising the program's premise that there be no significant adverse impacts on existing ratepayers, services, or the environment.

Comments and Commission Response

61. Commentors did not argue for either particular new cost limits or any means to calculate such limits, although AGA did ask as an initial matter to establish "whether the initial purpose of the blanket construction certificate regulations is being frustrated by the current dollar limits." [44] The Commission welcomes comments on this question.

62. Several commentors caution that increasing the blanket certificate project cost limits will put exiting customers at risk for rising rates. Currently, blanket certificate project costs are afforded a presumption that they will qualify for rolled in rate treatment in a future NGA section 4 rate proceeding.[45] Commentors are apprehensive that if the blanket certificate program is expanded as proposed, additional construction will take place under blanket certificate authority, and the costs of this additional construction subsequently will be rolled into a natural gas company's existing rate base, and thereby raise systemwide rates. The Commission believes that the proposed measured increase in blanket certificate project cost caps, in conjunction with the proposal to require prior notice for projects that rely on the expanded blanket certificate authority proposed herein, will provide interested persons a preview of and opportunity to comment on the rate impact of proposed blanket certificate projects. As noted, persons that object to a blanket project subject to prior notice can file a protest, which if not withdrawn or dismissed within the allotted time, will result in the proposed blanket certificate project being treated as a case-specific NGA section 7 certificate application.

63. Commentors suggest the proposed revisions could alter the nature of the blanket certificate program and undermine the premise of the program: that the impacts of projects constructed under blanket certificate authority will be insignificant. The Commission seeks comments on what additional measures, if any, it should consider to limit any potentially adverse impacts which might be associated with its proposed expansion of the blanket certificate program.[46]

[43] The gas utility construction materials cost factor is derived by averaging regional costs throughout the 48 contiguous states, as estimated in the *Handy-Whitman Index of Public Utility Construction Costs, Trends of Construction Costs*, Bulletin No. 162, 1912 to July 1, 2005. In initiating the blanket certificate program, "[m]any commenters argued against the use of the "GNP implicit price deflator" for adjusting * * * [project cost] limits and recommended using the Handy-Whitman Index, a pricing index of various utility and utility-type equipment, updated semi-annually, for this purpose. The Commission believes that it is preferable to use the GNP implicit price deflator instead of an index based on a private collection of data not easily susceptible to governmental verification." (*Footnote omitted.*) 47 FR 24254 (June 4, 1982). The Commission reaffirms this preference.

[44] AGA's Comments at 12 (January 17, 2005).

[45] The Commission has routinely allowed blanket certificate project costs to be rolled into a natural gas company's existing rate base. *See, e.g., Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines*, 71 FERC ¶ 61,241, 61917 (1995), stating that blanket "projects will be presumed to qualify for the presumption in favor of rolled-in pricing upon a showing of system-wide benefits," and *Destin Pipeline Company, L.L.C.*, 83 FERC ¶ 61,308, 61,308 (1988), further clarifying "the Commission has determined that such facilities qualify for the presumption of rolled-in rate treatment without a case-specific analysis of system-wide benefits because the resulting rate impact in such situations is usually *de minimis*."

[46] For example, in 1982, in promulgating the blanket program, the Commission considered shielding existing customers from the impact of the costs of blanket certificate projects by imposing both a per-project cost cap and an annual cost cap, the latter at a suggested maximum of three percent of the certificate holder's net plant. In the end, the Commission elected not to impose any annual limit, reasoning that "[g]iven the high costs of purchased gas relative to the customer's total gas bill, it is unlikely that the cumulative effect of the activities approved under this section will have any significant effect on ratepayers." 47 FR 24254 (June 4, 1982).

64. NiSource supports the petition, but cautions the Commission to guard against segmentation, *i.e.*, a series of small projects, each of which is within the blanket certificate cost limit, but each of which is also an integral part of a larger project that would otherwise exceed the cost limit. NiSource contends that when blanket certificate costs are afforded a presumption that they will receive rolled-in rate treatment, segmentation could result in existing customers subsidizing expansion costs. The Commission has previously cautioned against segmenting a large project into a daisy chain of smaller blanket-sized projects, and reiterates its intention to exercise close oversight when a certificate holder presents a series of potentially interrelated blanket certificate proposals. To the extent any person suspects a natural gas company is employing its blanket certificate authority to put in place projects that are not only interrelated but interdependent, such an abuse of the blanket certificate program should be brought to the Commission's attention.

65. APGA notes the Commission's Policy Statement on New Facilities declares that the threshold criterion for a proposed project is that revenues meet or exceed costs so that there will be no subsidization, and cautions this threshold calculation, and the Commission's assessment of the remaining public interest criteria articulated in its policy statement, are not considered when the costs of facilities added under blanket certificate authority are presumed to merit rolled-in rate treatment. To date, the Commission has not found cause to apply its Policy Statement on New Facilities to blanket certificate facilities,[47] and invites comments on whether this approach merits reconsideration in light of the proposed expansion of the blanket certificate program.

66. AGA observes that cost limits were imposed to ensure projects constructed under blanket authorization would have a *de minimis* impact on existing rates, and argues that if cost limits are raised, then rolled-in rate treatment for blanket certificate costs should be reconsidered. AGA suggests it may be prudent to require that all blanket certificate projects be subject to prior notice, in order to provide an opportunity to review the potential rate, service, and environmental impacts.

67. The Commission does not anticipate the relatively modest proposed increase in blanket certificate project cost limits will significantly shift the impact that costs of construction under blanket certificates now have on existing rates. However, recognizing that expanding blanket certificate authority to include types of projects heretofore excluded from the blanket certificate program may lead to additional expenditures on blanket certificate construction, the Commission is proposing all newly enfranchised blanket certificate projects be subject to prior notice. As noted above, concerns regarding rate impacts may be raised in response to a prior notice or in an NGA section 4 rate proceeding. To the extent the AGA has remaining concerns regarding rate impacts, the Commission welcomes comments on whether additional or alternative revisions to the blanket certificate regulations are necessary to ensure that projects constructed pursuant to blanket certificate authority will have no more than a *de minimis* impact on existing rates.

Notification Requirements

68. The Commission has previously emphasized the "need for advance notification of landowners for blanket certificate activities" so that landowners are able to air their views and concerns "to make sure that our regulations provide for similar protections for similar activities."[48] If the scale or scope of blanket certificate-eligible activities is expanded, the Commission believes additional notice and compliance provisions are needed to guarantee that protections under the blanket certificate program remain comparable to those applicable to case-specific applications.

69. Section 157.203(d) describes the procedures for notice to landowners affected by a proposed project, and § 157.205 describes the public prior notice procedure applicable to blanket certificate projects that exceed the automatic authorization cost limit. Currently, § 157. 203(d)(1) requires that project sponsors must notify landowners affected by an automatic authorization project at least 30 days prior to construction.[49] The Commission proposes to extend this to 45 days. In view of the proposed expanded scope and scale of blanket certificate authority, which can be expected to increase number of automatic authorization projects undertaken and the number of people impacted, an additional 15 days offers greater assurance that there will be adequate time for landowners to state their concerns and for project sponsors and the Commission to respond.

70. In addition, the Commission proposes to modify §§ 157.203(d)(2)(iv) and 157.205(d) to extend the deadline to protest a proposed prior notice project from 45 to 60 days. This additional time will offer greater certainty that public notice of a proposed project reaches all potentially interested persons and that they have an adequate interval to reply. Further, the additional time will provide the Commission with a more reasonable period of time to conduct and conclude its environmental assessment (EA) of a proposal. This NOPR contemplates an increase the number, extent, kind, and complexity of facilities subject to blanket certificate authority, yet even for the types of projects currently permitted, 45 days has proved to be, on occasion, an unrealistically short time for the consultation and analysis required to complete an EA. The additional time will ensure the Commission is not forced to protest a prior notice project merely as a means to gain time to finish an EA. The Commission does not expect the extended landowner and public notice periods to unduly delay blanket certificate projects, since natural gas companies, in large part, can dictate when a blanket certificate project may begin construction by when the company elects to initiate the notice process.

71. To provide landowners with a more complete understanding of the blanket certificate program and the potential impacts of a particular blanket certificate project, the Commission proposes to expand the description of the program and project that is provided in the notice to landowners. The proposed new landowner notification requirements at §§ 157.203(d)(1)(iii) and 157.203(d)(2)(vii) will require the notice to include: A general map; a statement of the proposed project's purpose and timing; a discussion of what the project sponsor will need from the landowner and how to contact the project sponsor; a Commission pamphlet addressing basic concerns of landowners; a brief summary of the landowner's rights under the eminent domain rules of the relevant state; and the project sponsor's environmental complaint resolution procedure. While this suggested change

[47] 88 FERC ¶ 61,227, 61,737, note 3 (1999).

[48] *Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements,* Order No. 609, 64 FR 57374, 57383 (October 25, 1999).

[49] A project sponsor's contact with a landowner to initiate easement negotiations qualifies as notice. A landowner may waive the 30-day notice requirement in writing, provided notice has been provided. For activity required to restore service in an emergency, the 30-day prior notice period is satisfied if a natural gas company obtains all necessary easements. These aspects of § 157. 203(d)(1) are unaffected by this NOPR.

will require that future notices include more information than they currently do, the more detailed new notice will still require a project sponsor to present considerably less information than would be necessary for a case-specific application. The Commission notes that all the activities this NOPR contemplates placing under the proposed expanded blanket certificate authority, but for the expanded blanket certificate authority, would require case-specific NGA section 7 certificate authorization.

Environmental Conditions

72. Commenters note, and the Commission concurs, that as the scope and scale of the blanket certificate program grows, so does the potential for a blanket certificate project to constitute a major federal action likely to have a significant impact on the quality of the human environment. A blanket certificate project must continue to meet the environmental conditions set forth in § 157.206(b) of the Commission regulations, and compliance with these conditions serves to reduce the potential adverse environmental impacts of a project to acceptable levels. To ensure that this continues to be the case with larger and more varied types of blanket certificate projects, the Commission proposes to modify the blanket certificate program's environmental compliance conditions as follows.

73. Section 157.6(d)(2)(i) will be revised to clarify that "facility sites" include wells and all other aboveground facility sites. Section 157.206(b)(5), describing noise attributable to compressor stations, will be revised to specify that the noise level is to be measured at the site property boundary. Also in § 157.206(b)(5), a goal is established that horizontal directional drilling (HDD) and well drilling noise not exceed a day-night level (Ldn) of 55 decibels (dBA) at the nearest noise sensitive area (NSA). In turn, § 157.208(c)(9) will be revised to require a description of the steps to be taken to comply with the revised § 157.206(b)(5) HDD and well drilling noise levels, or a description of the mitigation to be employed. Finally, the Commission proposes to revise § 157.208(e)(4) to require a noise survey verifying compliance with § 157.206(b)(5) for new or modified compression.

74. The Commission proposes to add a new § 157.208(c)(10), directing the certificate holder to include a statement committing to have the environmental inspector(s) report—as currently required by § 157.206(b)(3)(iv) under the Upland Erosion Control, Revegetation and Maintenance Plan—filed with the Commission on a weekly basis. This is necessitated by the proposed wider scope of prior notice projects, which present a greater potential for environmental harm, and consequently require a heightened vigilance to ensure environmental safeguards are not inadvertently overlooked. Moreover, this will allow the Commission, through its staff, to more efficiently monitor compliance; this may also reduce the need for the natural gas company to assist in routine staff field investigations.

75. Recently, in certain regions, the United States Fish and Wildlife Service has adopted a practice of not responding in writing if a determination of no effect on endangered or threatened species is reached; yet the Commission's current regulations require the certificate holder to provide copies of the agency's determination. To reconcile this regulatory incompatibility, the Commission proposes to modify § 157.208(c)(9) to allow the certificate holder to present substitute documentation of agency concurrence if no written concurrence is received. This substitute documentation may consist of telephone logs, copies of e-mails, or any other reliable means of identifying the agency personnel contacted from whom confirmation of the agency's determination is received.

76. In anticipation of an increase in the number and type of automatic authorization projects, and in view of the fact that automatic authorization projects are not identified by a docket number, the Commission proposes to modify § 157.208(e)(4) by adding new paragraphs (ii) and (iii) to require the annual report for automatically authorized projects to document the progress toward restoration, and a discussion of problems or unusual construction issues—including those identified by affected landowners—and corrective actions taken or planned.

Comments and Commission Response

77. Sempra contends that expanded blanket certificate authority could induce competitive inequities because a potential new entrant would have to undergo a *de novo* environmental review, whereas an incumbent could construct identical facilities as long as it is able to satisfy the § 157.206((b) environmental compliance conditions. This purported inequity is likely to be tempered by the additional notice and environmental compliance conditions proposed above. Moreover, a new entrant submitting an NGA section 7 application and a certificate holder relying on blanket authority for equivalent projects must both comply with the same set of environmental requirements.

78. Nevertheless, Sempra's objection to the blanket certificate environmental provisions remains, and in effect constitutes a collateral attack on the entire blanket certificate program. The Commission concedes that in terms of procedural efficiency, a new market entrant can be at a competitive disadvantage when pitted against a certificate holder able to act under blanket certificate authority. This disparity is inherent in the blanket certificate program, as the blanket certificate program provides for expedited authorization when compared to having to obtain case-specific section 7 authorization. The Commission is unaware of any systematic distortion of infrastructure development due to its blanket certificate program's providing incumbent certificate holders with this advantage over prospective, but as yet uncertificated, competitors. Comments on this are requested.

Clarification of Criteria Defining Just and Reasonable Rates

Rate Treatment for Foundation Shippers

79. Turning from requested revisions to the blanket certificate program and to NGA section 7 applications in general, Petitioners request clarification that it is not undue discrimination for a natural gas company to offer rate benefits to prospective customers who commit to a project before the company makes a public statement of its intent to build the project. Petitioners state that reaching bilateral agreements with as many of a project's potential customers as early as possible may be the most significant variable affecting the timing of infrastructure additions. Petitioners argue that project sponsors must have a critical mass of customers willing to commit early as "foundation shippers" to provide the financial support for a project before project sponsors commit to go forward with the project.

80. However, Petitioners state that there is an economic incentive for a potential customer to "sit in the wings," and bet that the critical mass of support will evolve, and the project go forward, at which point the customer may then make a choice as to whether to take service. Petitioners assert that if enough potential customers adopt this "wait and see" approach, project sponsors may not be able to justify spending the capital required to initiate the environmental review and certificate application process. Petitioners desire to encourage early commitments by offering rates to customers that commit early which are more favorable than the

rates that will be available to those that seek service later.

81. Petitioners propose to divide the foundation shippers eligible for such favorable rates into two groups. "Group I Foundation Shippers" would receive the most favorable rates; this group includes all shippers who execute a binding precedent agreement by the deadline established in the open season for the project.[50] Petitioners subdivide Group I into three different types of shippers. First, those typically large shippers that reach agreements with the project sponsor through one-on-one negotiation in formulating the project and come forward hand-in-hand with the project sponsor when the project is announced. Second, shippers of multiple sizes that bid successfully in the public open season and execute binding precedent agreements by the deadline established by the project sponsor. Third, shippers that make their first contractual commitment to the project by the deadline established in the open season by the project's sponsor.[51] Petitioners state that such shippers, large and small, ultimately provide the critical mass of support for the project.

82. "Group II Foundation Shippers" would consist of shippers that do not execute binding commitments until after the deadline set in the open season, but do commit to the project prior to the point at which the project sponsor commits publicly to its willingness to build the project. Petitioners state that such shippers also provide essential support for a project, but should not necessarily be considered similarly situated with the Group I shippers because they did not commit to the project by the open-season deadline.

83. Petitioners assert that project sponsors and the foundation shippers currently risk their bargain being undone by the Commission, either by disallowing the preferential rate treatment afforded to shippers that signed up early or by extending the preferential rate to shippers seeking service later in time. Petitioners request the Commission confirm that it is not undue discrimination to provide rate benefits to foundation shippers and withhold the same benefits from later-generation shippers. Similarly, Petitioners request the Commission confirm that it is not undue discrimination to provide rate benefits to Group I shippers that are not available to Group II shippers. Petitioners state that their proposal does not address distinctions among foundation shippers within Group I, thus Petitioners do not ask the Commission to address whether rate preferences among the different categories of Group I shippers would be unduly discriminatory.

84. Petitioners assert that a Commission statement affirming the legitimacy of disparate rate offerings will allow project sponsors and foundation shippers to negotiate bilateral commitments confident that their agreements will be neither overturned nor conferred on later shippers. Petitioners argue that such a confirmation will provide a strong incentive for more potential shippers to become foundation shippers, thus enabling needed infrastructure projects to get underway earlier.

Comments

85. The AGA finds the proposal worthy of discussion and believes that shippers that commit early to new projects should be recognized for the risks they take. The AGA also states that it is important to clarify that all shippers should have the ability to become foundation shippers and that existing customers should not be made to subsidize the foundation shippers.

86. Duke endorses a policy to encourage relatively early commitments by potential shippers. In particular, Duke contends that shippers willing to sign up for capacity prior to a project's development should be able to rely on their contracted-for capacity without the risk of *pro rata* reallocation if additional shippers request capacity at a later time. Duke asserts that unless foundation shippers are protected against reallocations resulting from open seasons, there is little incentive to make an early commitment to a project. NiSource asserts that the Commission should not view the proposed differential rates as undue discrimination, but as a positive practical benefit that will prompt the development of needed infrastructure.

87. Illinois Municipal seeks assurance that if the foundation shipper proposal is accepted, the Commission will still continue to prohibit discount adjustments for discounts given on expansion capacity.[52] Illinois Municipal asserts that the Commission's discount policies do not prohibit project sponsors from granting special lower negotiated rates to foundation shippers. However, there should be no attempt to impose a discount adjustment on the rate to the pre-expansion shippers.

88. PSCNY asserts that the proposal is overly complicated and may cause more problems than it solves, but should be explored. PSCNY asserts that the qualifications for membership in the two groups of foundation shippers appear to be based upon arbitrary deadlines, which leads to concern over the criteria used to define a bid as binding and how project sponsors will designate deadlines. PSCNY states that the creation of rate distinctions will complicate Commission policies regarding the pricing of pipeline expansions and produce additional issues for litigation in subsequent rate cases. PSCNY also argues that it is not clear why customers that commit in a later open season should receive less favorable treatment than customers that commit in an earlier open season, especially when the reason or cause of a subsequent open season is within the control of the pipeline. Further, PSCNY argues that there is no assurance that this proposal will achieve its objective of providing an incentive for customers to make an early commitment to a new project. Finally, PSCNY claims that forcing shippers to commit early to a project may conflict with the public interest, since having binding commitments in hand might discourage the development of competing project proposals.

89. PSCNY states that the preferential rates given to the Group I Foundation Shippers may provide such shippers with a competitive advantage over later-committing shippers, and that this competitive advantage may discourage smaller marketers from entering retail open access markets. PSCNY asserts that policies that promote nondiscriminatory pricing are more likely to achieve the desired objective of establishing competitive retail as well as wholesale markets.

90. PSCNY appreciates the need for project sponsors to obtain binding commitments from prospective customers in order to obtain financial backing for projects, but argues that issues associated with the difficulties in obtaining such commitments go far

[50] To date, it has been the Commission's policy, developed through its orders and opinions, that all new interstate pipeline construction be preceded by a nondiscriminatory, nonpreferential public "open season" process through which all potential shippers may seek and obtain firm capacity rights.

[51] INGAA/NGSA Petition at 18–19 (November 22, 2005). However, at page 21, Petitioners describe their proposal somewhat differently, stating that the common defining criterion for Group I shippers is their execution of a binding commitment by the point at which a project sponsor makes the "go/no go" decision for the project. The Commission assumes that the point at which the project's sponsors make the "go/no go" decision is approximately the same time as the deadline established by the open season for a binding agreement to be signed.

[52] Illinois Municipal at 3, *citing, Policy For Selective Discounting By Natural Gas Pipelines*, 113 FERC ¶ 61,173 (2005).

beyond rate treatment. PSCNY insists that the way to keep the process as transparent and nondiscriminatory as possible is to establish clear guidelines for implementing a transparent open-season process that define the criteria for eligible bids and the binding nature of such bids. PSCNY claims this will ensure that all shippers, including those that commit in a secondary open season, have equal access to new capacity. Potential customers will have a built-in incentive to make binding bids before the end of an open season, because if they delay, they risk the capacity being fully subscribed.

91. Sempra states that preferential rate treatment for foundation shippers may pose no undue discrimination in most cases. However, it prefers for the Commission to develop undue discrimination policies through individual natural gas company adjudications because such determinations are necessarily fact specific, and a case-by-case approach allows the Commission to fully consider the implications of each individual proposal, including public interest considerations particular to a proposed project. Accordingly, Sempra rejects Petitioners' contention that the Commission issue a rulemaking or policy statement to address the foundation shipper rate issue on a generic basis.

92. Anadarko requests that the Commission clarify that its action regarding foundation shippers will have no effect on or application to an Alaska project authorized under ANGTA or the NGA.

Discussion

93. The Commission does not dispute the premise that a project sponsor is best positioned to secure financial backing and perfect an application if it has customer commitments in hand. Accordingly, the sooner a project sponsor can induce customers to sign up for firm service, the sooner a project can be expected to go forward. For the reasons discussed below, the Commission finds that its existing policies can accommodate the Petitioners' desire to offer rate incentives to obtain such early project commitments, and pursuant to these existing policies, rate incentives do not constitute undue discrimination.

94. The NGA contemplates individualized contracts for service.[53] Under the NGA, the Commission's role is to ensure that the rates offered and accepted as a result of individual negotiations are just and reasonable and not unduly discriminatory.[54] Further, the Supreme Court has held that the purpose of the NGA was not to "abrogate private contracts to be filed with the Commission" and that the NGA "expressly recognized that rates to particular customers may be set by individual contracts."[55] Therefore, not all differentiations in rate treatment are unreasonable or illegal. Rather, "[it] is only when a preference or advantage accorded to one customer over another is undue or a difference in service as between them is unreasonable that * * * [the undue discrimination provisions] of the Act come [ ] into play."[56]

95. Moreover, in *Cities of Bethany, et al* v. *FERC*,[57] the Court of Appeals found that the "mere fact of a rate disparity [between customers receiving the same service] does not establish unlawful rate discrimination" under the NGA, and that "rate differences may be justified and rendered lawful by facts—cost of service or otherwise."[58] Relying on the Supreme Court's decisions in *Mobile* and *Sierra*, the court held that the anti-discrimination mandate of NGA section 4(b) should not be interpreted as "obliterating the public policy supporting private rate contracts" between natural gas pipelines and their customers.[59] Therefore, it is clear that pipelines may provide different rates to different customers based upon different circumstances.

96. Consistent with this statutory scheme, in both its discounted rate and negotiated rate programs, the Commission has authorized natural gas companies to negotiate individualized rates with particular customers. Section 284.10(c)(5) of the Commission's open access regulations permits a pipeline to offer discounted rates in a range between its maximum and minimum tariff rate; discounted rates must reflect the same rate design as the tariff rate. In its 1996 negotiated rate policy statement,[60] the Commission allowed pipelines to negotiate individualized rates that are not constrained by the maximum and minimum rates in the pipeline's tariff and need not reflect the same rate design.[61]

97. The Commission has permitted pipelines to use both discounted and negotiated rates in establishing rates for the participants in new projects. In fact, in the Commission's Policy Statement on New Facilities, the Commission encouraged pipelines to negotiate risk sharing agreements with shippers participating in a new project regarding the effect of cost overruns and underutilized capacity on rates for the proposed facilities.[62] Negotiated rates that will remain fixed regardless of actual construction costs are an obvious way of accomplishing such risk sharing. In recent years, many project sponsors have entered into such negotiated rate agreements with their foundation shippers, and the Commission has approved the rates.[63]

98. It is within this regulatory framework that the Commission considers whether to confirm that it is not unduly discriminatory to provide rate benefits to foundation shippers and withhold the same benefits from later-generation shippers[64] or to provide rate benefits to Group I shippers and withhold the same benefits from Group II shippers. The Commission finds, as a general matter, that rate differentials between foundation shippers that sign

[53] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp. (Mobile)*, 350 U.S. 332 at pp. 338–9 (1956); *FPC* v. *Sierra Pacific Power Co. (Sierra)*, 350 U.S. 348 (1956).

[54] *Id.* NGA section 4 prohibits natural gas companies subject to the Commission's jurisdiction from: (1) Making or granting any undue preference or advantage to any person or subjecting any person to any undue prejudice or disadvantage, or (2) maintaining any unreasonable difference in rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service.

[55] *Mobile*, 350 U.S. 332 at pp. 338–339.

[56] *Michigan Consolidated Gas Co.* v. *FPC*, 203 F.2d 895, 901 (3d Cir. 1953).

[57] 727 F.2d 1131 (D.C. Cir. 1984).

[58] *Id.* at 1139. Thus, the court observed that fixed rate contracts between the parties may justify a rate disparity, *citing Town of Norwood* v. *FERC*, 587 F.2d 1306, 1310 (D.C. Cir. 1978); *Boroughs of Chambersburg, et al.* v. *FERC*, 580 F.2d 573, 577 (D.C. Cir. 1978) (*per curium*)). *See also, United Municipal Distributors Group* v. *FERC*, 732 F.2d 202 (D.C. Cir. 1984).

[59] *Id.*

[60] *Alternatives to Traditional Cost-of-Service Ratemaking far Natural Gas Pipelines, Regulation of Negotiated Transportation Services, Statements of Policy and Comments*, 74 FERC ¶ 61,076 (1996), *order on clarification*, 74 FERC ¶ 61,194 (1996), *order on reh'g*, 75 FERC ¶ 61,024 (1996).

[61] *See Northern Natural Gas Co.*, 105 FERC ¶ 61,299 at P12–16 (2003) (discussing the distinction between discounted and negotiated rates).

[62] 88 FERC ¶ 61,128 at 61,747 (1999), stating "should reach such agreements with new shippers concerning who will bear the risks of underutilization of capacity and cost overruns."

[63] In some instances, the negotiated rates have been lower than the ultimate recourse rate for the service provided. *See e.g. Natural Gas Pipeline Co. of America*, 110 FERC ¶ 61,341 (2005) ("Natural executed three precedent agreements with shippers for the full capacity of the proposed project. The $4,911,988 in revenue generated by the fixed $3.07 per Dth monthly negotiated rate under the precedent agreements will not fully recover the estimated $6.6 million cost of service for the project. Thus, Natural will be at risk for any revenue shortfall due to the lower negotiated contract rates with the incremental shippers.") (*Footnote omitted.*) *Id. at* P 23–25.

[64] As discussed above, Petitioners do not ask the Commission to address distinctions among foundation shippers within the same group; thus, the Commission does not do so.

up for service early and shippers that sign up for service later are not unduly discriminatory, since the later shippers are not similarly situated to the foundation shippers. However, integral to this finding is the concept discussed below, that all potential shippers have an equal and open opportunity to become foundation shippers. The contractual commitments by the foundation shippers to purchase capacity on the new projects provide essential support for the sponsor to proceed with the project. For example, these contractual commitments help the project sponsor to obtain financing for the construction of the project, and may reduce the cost of that financing by reducing the perceived risk of the investment in the new facilities. Moreover, by committing to a particular project, foundation shippers may be giving up other competitive alternatives to obtain their needed capacity, either on an existing pipeline or by participating in a different new project. An essential component of the Commission's certificate policy has been to provide both the project sponsor and project participants the opportunity to obtain greater certainty concerning the rate that the participants will pay, so that all parties can make an informed decision as to whether to go forward. Approving negotiated rates that will remain fixed regardless of subsequent developments is consistent with this policy.[65]

99. The Commission's policies contain adequate safeguards to minimize the possibility of undue discrimination in permitting the use of rate incentives to obtain early commitments for construction projects. First, under the Commission's policies, all new interstate pipeline construction must be preceded by a nondiscriminatory, nonpreferential, open-season process through which potential shippers may seek and obtain firm capacity rights. The instant proposal contemplates the use of such an open season. Therefore, under the instant proposal all potential shippers would have an opportunity to become foundation shippers in a nondiscriminatory, nonpreferential open-season process, consistent with Commission policy. Second, as part of the open season, the project sponsor must offer a maximum recourse rate so that the bidder in the open season may have the option to choose between the recourse rate or a negotiated rate.[66] This recourse rate may be based upon an estimated cost of service for the proposed project where actual construction costs are not yet known.[67]

100. PSCNY raises various concerns about the procedures to be used in open seasons in which the proposed rate incentives are offered. The Commission believes such issues are best addressed on a case-by-case basis. Petitioners do not propose the Commission modify any aspect of its open-season policies, which require that pipelines conduct nondiscriminatory, nonpreferential open seasons for new projects.[68] To the extent any potential shipper believes that a pipeline's open season did not comply with this policy, it may raise that issue in the certificate proceeding or in an NGA section 5 complaint. The Commission will act as necessary to prevent, remedy, and penalize improper practices.

101. Here, Petitioners posit an open-season process that will produce in two distinct sets of foundation shippers. Group I shippers sign a binding agreement either by the date established in the open season for executing contracts or by the date the project sponsor makes a "go/no go" decision for the project; Group II shippers sign a binding agreement prior to the time the project sponsor commits publicly to build the project. Under the Petitioners' proposal, the rate incentives a project sponsor offers to obtain early commitments to a project will be based solely on the timing of each shipper's contractual commitment to the project. However, the Commission can envision that different project sponsors may prefer to offer rate incentives based on something other than the timing of contractual commitments. Because Commission policies permit rate differentials among customers based on a number of grounds[69]—including differing elasticities of demand, volumes to be transported, and length of service commitments—a project sponsor might wish to offer preferential rates to shippers who contract for larger volumes of service.

102. Given the variety of rate incentives that might be offered consistent with Commission policy, the Commission believes it would be premature to go beyond our general finding above and seek to itemize every rate incentive that might be offered in an open season without risk of undue discrimination. Instead, the Commission prefers to review different rate incentives on a case-by-case basis. The Commission observes that the risk of undue discrimination would be reduced to the extent that the rate incentives offered are clearly defined in the announcement of the open season, publicly verifiable, and equally available to all potential shippers. For example, Petitioners have described the eligibility standard for Group I foundation shippers variously as (1) the date established in the open season for executing contracts or (2) the date the project sponsor makes a "go/no go" decision for the project. The first date would appear to involve less risk of discrimination, since it would be publicly available from the start of the open season, whereas the second date appears to give the project sponsor considerable discretion as to when to terminate eligibility for Group I.

103. AGA and Illinois Municipal are concerned that existing customers not subsidize the foundation shippers. We find these concerns are adequately addressed by our Policy Statement on New Facilities, which requires that existing pipelines proposing new projects must be prepared to financially support the project without relying on subsidies from existing customers. Moreover, the Commission has stated that when an expansion project is incrementally priced, there will be no discount adjustment for service on the expansion that affects the rates of the current shippers, since rates for the expansion service will be designed incrementally.[70]

104. Duke submits that shippers willing to sign up for capacity prior to pipeline development (when the project is being sized) should be able to rely on their contracted-for capacity without the

[65] However, rate distinctions based on the timing of a customers' commitment are inapplicable to the blanket certificate program. The streamlined blanket certificate process is intended for relatively small projects; financing such small scale projects should not entail finding customers willing to provide an economic incentive.

[66] *Natural Gas Pipeline Co. of America*, 101 FERC ¶ 61,125 (2002).

[67] *Id.* at P 39. "In the certificate proceeding for any such project the Commission will approve an initial recourse rate for the project which the pipeline must file before the project goes into service. Moreover, in this proceeding, the Commission may ensure that pre-expansion shippers on a pipeline will not subsidize a proposed expansion project. However, the Commission will permit a newly constructed pipeline to employ the same discounting policies as an existing pipeline." *See Policy for Selective Discounting By Natural Gas Pipelines*, 113 FERC ¶ 61,173 P 96–99 (2005). The pipeline will have to offer available capacity for sale to new shippers that offer to pay the maximum just and reasonable recourse rate, and this rate may change from time to time pursuant to sections 4 and 5 of the NGA.

[68] The Commission endorses the Petitioners' clarification of this policy as follows: "As long as potential shippers received the same notice and ability to acquire capacity created by a * * * [new] expansion as they do on any existing capacity that becomes available, any risk of undue discrimination should be avoided" INGAA/NGSA Petition at 8 (November 22, 2005).

[69] *Policy For Selective Discounting By Natural Gas Pipelines*, 113 FERC ¶ 61,173 (2005).

[70] *Id.* at P 98.

risk of *pro rata* reallocation if additional shippers request capacity at a later time. As Petitioners state, the instant proposal does not apply to non-rate issues such as capacity allocation. The Commission requires that capacity be allocated on a basis that is not unduly discriminatory, but the Commission has not prescribed any particular capacity allocation method that must be used. Thus, the Commission has permitted pipelines to use a first-come first-served allocation method, and has not required the use of a *pro-rata* allocation method. For example, in approving certain new projects, the Commission found that the finite nature of capacity and the anchor shippers' reliance on receiving the full capacity for which they had bargained justified giving the anchor shippers their required capacity, while open-season shippers were subject to an allocation of available capacity.[71] The instant proposal does not contemplate any change from existing Commission policy and precedent in these non-rate areas.

105. APGA claims that by far the largest group of potential new customers that may seek rate inducements to contract for capacity on new projects, if not the only potential new customers of any size, are electric generators.[72] APGA sees no justification for a policy that would act as an incentive to increase demand during a period of supply constraints. PSCNY and Sempra also question whether rate incentives based on timing might distort infrastructure development. Petitioners and commentors supporting the petition argue the opposite.

106. The Commission seeks to promote new infrastructure in order to help relieve existing supply constraints. The Commission agrees that new facilities should not be added unless they fulfill a demonstrated need. However, in the Commission's view, this showing of need is satisfied by the willingness of companies and customers to take on the economic risk of the cost of constructing and operating new facilities. The Commission proposes no changes in its existing policy that pipelines must be willing to financially support a project without subsidies from its existing customers.

107. Anadarko requests that the Commission clarify that its action regarding foundation shippers will have no effect on or application to an Alaska project. The Commission recognizes the unique nature of an Alaska natural gas pipeline project and will consider the applicability of its rate policies, both in general and with respect to blanket facilities, to an Alaska project in any future proceeding authorizing such a project.

Information Collection Statement

108. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, recordkeeping, and public disclosure requirements (collections of information) imposed by an agency.[73] Therefore, the Commission is providing notice of its proposed information collections to OMB for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995.[74] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. The only entities affected by this rule would be the natural gas companies under the Commission's jurisdiction.

109. FERC–537, "Gas Pipeline Certificates: Construction, Acquisition and Abandonment," identifies the Commission's information collections relating to part 157 of its regulations, which apply to natural gas facilities for which authorization under NGA section 7 is required, and includes all blanket certificate projects. FERC–577, "Gas Pipeline Certificates: Environmental Impact Statement," identifies the Commission's information collections relating to Part 380 of its regulations implementing the National Environmental Policy Act of 1969 (NEPA),[75] which include the environmental compliance conditions of § 157.206(b).

110. The proposed revisions to the Commission's regulations, as contained in the NOPR, and the resulting change in collections of information burdens, are as follows.

111. The NOPR proposes to provide an additional 15 days for notice to landowners and the public. This will have no impact on the collections of information.

112. The NOPR proposes specific additional information to be included in the notice to landowners located along the route of a proposed blanket certificate project and in the prior notice to the public of a proposed project. This should have a minor impact on blanket certificate project sponsors, since the additional information is already required for the landowner notification for case-specific NGA section 7 applications. Expanding the blanket certificate program to include mainline, certain LNG and synthetic gas facilities, and storage facilities is expected to allow approximately 62 projects per year to proceed under blanket certificate authority that would otherwise be required to obtain case-specific NGA section 7 certificate authorization. Thus, these 62 projects will be removed from FERC–577 and shifted to FERC–537. Project sponsors permitted to rely on the proposed expanded blanket certificate authority to undertake projects that currently require case-specific NGA section 7 certificate authorization will not need to submit any additional information to meet the proposed blanket certificate notice requirements. The exception to this is the proposal to require a description of a natural gas company's environmental complaint resolution procedure in the blanket certificate program notice. However, this information is also frequently required for case-specific NGA section 7 projects and may be satisfied by a generic description of the complaint resolution process applicable to all projects along with individual contact information applicable to each project.

113. The NOPR proposes to specify additional information to be included in the prior notice to the public and in the annual report. This should result in a minor increase in the existing burden. Only proposed prior notice blanket certificate projects that involve HDD and well drilling will be required to include a description of how noise limits will be achieved. Prior notice projects will also need to commit to file weekly environmental inspector reports. The annual reports covering projects subject to automatic blanket certificate authority will require discussions of the progress of restoration efforts, problems, and corrections. Where applicable, noise surveys are also required in annual reports, but such surveys are normally done to verify compliance with the standard environmental conditions, so this requirement adds only a minimal burden.

114. The NOPR proposes to revise the environmental compliance conditions to apply the noise standard to the site property boundary instead of the noise-sensitive areas, and as a goal, to apply the noise standard to drilling. Neither of these changes involves a change in the reporting burden.

115. Because the proposed expansion of the blanket certificate program will

[71] *See, e.g., Garden Banks Gas Pipeline, LLC*, 78 FERC ¶ 61,066 (1997); *Green Canyon Pipe Line Co.*, 47 FERC ¶ 61,310 (1989); *Destin Pipeline Co. L.L.C.*, 81 FERC ¶ 61,211 (1997); *Maritimes & Northeast Pipeline, L.L.C.*, 76 FERC ¶ 61,124 (1996), *order on reh'g*, 80 FERC ¶ 61,136 (1997).

[72] APGA's Comments at 11. APGA adds that there is no need to offer rate inducements to local distribution companies, as they are captive customers subject to a public interest mandate to contract for capacity as necessary to meet demand.

[73] 5 CFR 1320.11 (2005).

[74] 44 U.S.C. 3507(d) (2000).

[75] 42 U.S.C. 4321, *et seq.* (2000).

permit projects that are now processed under the case-specific NGA section 7 procedures to go forward under the streamlined blanket certificate program, while the burden under the expanded blanket certificate program will increase, the overall burden on the industry will decrease. The Commission estimates that the total annual hours for the blanket certificate program burden will increase by 7,727, whereas the total annual hours associated with case-specific application projects will decrease by 11,997. This represents an overall reduction of 4,270 hours.

Data collection	Number of respondents	Number of responses/filings	Number of hours per response	Total annual hours
FERC–537 (Part 157)	76	206	−42.02	7,727
FERC–577 (Part 380)	76	−62	193.50	−11,997

Information Collection Costs: The above reflects the total blanket certificate program reporting burden if expanded as proposed. Because of the regional differences and the various staffing levels that will be involved in preparing the documentation (legal, technical and support) the Commission is using an hourly rate of $150 to estimate the costs for filing and other administrative processes (reviewing instructions, searching data sources, completing and transmitting the collection of information). The estimated cost is anticipated to be $2,748,900, an amount that is $640,500 less than the current estimated cost.

Title: FERC–537 and FERC–577.

Action: Proposed Data Collection.

OMB Control Nos.: 1902–0060 and 1902–0128.

Respondents: Natural gas pipeline companies.

Frequency of Responses: On occasion.

Necessity of Information: Submission of the information is necessary for the Commission to carry out its NGA statutory responsibilities and meet the Commission's objectives of expediting appropriate infrastructure development to ensure sufficient energy supplies while addressing landowner and environmental concerns fairly. The information is expected to permit the Commission to meet the request of the natural gas industry, as expressed in the INGAA and NGSA petition to improve industry's ability to ensure the adequacy of the infrastructure to meet increased demands from consuming markets, to expand the scope and scale of the blanket certificate program to provide a streamlined means to build and maintain infrastructure necessary to ensure all gas supplies are available to fulfill market needs.

116. The Commission requests comments on the accuracy of the burden estimates, how the quality, quantity, and clarity of the information to be collected might be enhanced, and any suggested methods for minimizing the respondent's burden. Interested persons may obtain information on the reporting requirements or submit comments by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415 or e-mail *michael.miller@ferc.gov*). Comments may also be sent to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285 or e-mail: *oira_submission@omb.eop.gov*.)

Environmental Analysis

117. The Commission is required to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) for any action that may have a significant adverse effect on the human environment.[76] In 1982, in promulgating the blanket certificate program, the Commission prepared an EA in which it determined that, subject to compliance with the standard environmental conditions, projects under the blanket program would not have a significant environmental impact. As a result, the Commission determined that automatic authorization projects would be categorically excluded from the need for an EA or (EIS) under § 380.4 of the Commission's regulations. However, the Commission specified that prior notice projects should be subject an EA to ensure each individual project would be environmentally benign. For the reasons set forth below the Commission continues to believe this would be the case under the blanket certificate program as modified in this NOPR.

118. First, the monetary limits on projects are simply being adjusted to account for inflationary effects which were not completely captured under the mechanism specified in the regulations (the gross domestic product implicit price deflator as determined by the Department of Commerce). As a result, the scale of projects which will be within the new cost limits will be comparable to those projects that were allowed when the blanket program was first created. Second, the proposed additions to the types of projects which are acceptable under the blanket program will be subject to the prior notice provisions and will be subject to an EA. Finally, the Commission is proposing to strengthen the standard environmental conditions applicable to all blanket projects. Therefore, this proposed rule does not constitute a major federal action that may have a significant adverse effect on the human environment.

Regulatory Flexibility Act Analysis

119. The Regulatory Flexibility Act of 1980 (RFA)[77] generally requires a description and analysis of proposed regulations that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if proposed regulations would not have such an effect.[78] Under the industry standards used for purposes of the RFA, a natural gas pipeline company qualifies as "a small entity" if it has annual revenues of $6.5 million or less. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity.[79]

120. The procedural modifications proposed herein should have no significant economic impact on those entities—be they large or small—subject to the Commission's regulatory jurisdiction under NGA section 3 or 7, and no significant economic impact on state agencies. Accordingly, the Commission certifies that this notice's proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities.

[76] Order No. 486, *Regulations Implementing the National Environmental Policy Act*, 52 FR 47897 (December 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[77] 5 U.S.C. 601–612 (2000).

[78] 5 U.S.C. 605(b) (2000).

[79] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 623 (2000). Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

Public Comments

121. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due by August 25, 2006. Comments must refer to Docket No. RM06–7–000, and must include the commenter's name, the organization represented, if applicable, and address in the comments. Comments may be filed either in electronic or paper format. The Commission encourages electronic filing.

122. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats and requests commenters to submit comments in a text-searchable format rather than a scanned image format. Commenters filing electronically do not need to make a paper filing. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

123. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

Document Availability

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

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend part 157, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. In § 157.6, paragraph (d)(2)(i) is revised to read as follows:

§ 157.6 Applications; general requirements.

* * * * *

(d) * * *

(2) * * *

(i) Is directly affected (*i.e.*, crossed or used) by the proposed activity, including all facility sites (including compressor stations, well sites, and all above-ground facilities), rights of way, access roads, pipe and contractor yards, and temporary workspace;

* * * * *

3. In § 157.203:

a. In paragraph (d)(1), the phrase "30 days" is removed and the phrase "45 days" is added in its place, and the phrase "30-day" is removed and the phrase "45-day" is added in its place;

b. In paragraph (d)(1)(ii), the phrase "; and" is removed and the phrase ";" is added in its place;

c. Paragraph (d)(1)(iii) is redesignated as paragraph (d)(1)(iv)and a new paragraph (d)(1)(iii) is added;

d. Paragraphs (d)(2)(i) and (d)(2)(ii) are revised;

e. In paragraph (d)(2)(iii), the word "and" is removed;

f. Paragraph (d)(2)(iv) is redesignated as paragraph (d)(2)(vi), and the phrase "45 days" is removed and the phrase "60 days" is added its place, and the period at the end of the paragraph is removed and the phrase "; and" is added in its place;

g. New paragraphs (d)(2)(iv), (d)(2)(v) and (d)(2)(vii) are added to read as follows:

§ 157.203 Blanket certification.

* * * * *

(d) *Landowner notification.* * * *

(1) * * *

(iii) A description of the company's environmental complaint resolution procedure that must:

(A) Provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems and concerns during construction of the project and restoration of the right-of way;

(B) Provide a local contact that the landowners should call first with problems and concerns and indicate when a landowner should expect a response;

(C) Instruct landowners that if they are not satisfied with the response, they should call the company's Hotline; and

(D) Instruct landowners that, if they are still not satisfied with the response, they should contact the Commission's Enforcement Hotline.

(2) * * *

(i) A brief description of the company and the proposed project, including the facilities to be constructed or replaced and the location (including a general location map), the purpose, and the timing of the project and the effect the construction activity will have on the landowner's property;

(ii) A general description of what the company will need from the landowner if the project is approved, and how the landowner may contact the company, including a local or toll-free phone number and a name of a specific person to contact who is knowledgeable about the project;

* * * * *

(iv) The most recent edition of the Commission pamphlet that explains the Commission's certificate process and addresses basic concerns of landowners;

(v) A brief summary of the rights the landowner has in Commission proceedings and in proceedings under the eminent domain rules of the relevant state(s); and

* * * * *

(vii) The description of the company's environmental complaint resolution procedure as described in paragraph 157.203(d)(1)(iii) of this section.

* * * * *

§ 157.205 [Amended]

4. In § 157.205, paragraph (d)(1), the phrase "45 days" is removed and the phrase "60 days" is inserted in its place.

5. In § 157.206, paragraph (b)(5) is redesignated as (b)(5)(i) and revised, and paragraph (b)(5)(ii) is added to read as follows:

§ 157.206 Standard conditions.

* * * * *

(b) * * *

(5)(i) The noise attributable to any new compressor station, compression added to an existing station, or any modification, upgrade or update of an existing station, must not exceed a day-night level (Ldn) of 55 dBA at the site property boundary.

(ii) Any horizontal directional drilling or drilling of wells which will occur between 10 p.m. and 6 a.m. local time must be conducted with the goal of keeping the perceived noise from the

drilling at any pre-existing noise-sensitive area (such as schools, hospitals, or residences) at or below 55 Ldn dBA.

* * * * *

6. In § 157.208:

a. Paragraph (c)(9) is revised;

b. Paragraph (c)(10) is added;

c. in paragraph (d), Table I, "Year 2006," in column 1, titled "Automatic project cost limit," the figure "8,200,000" is removed and the figure "9,600,000" is added in its place, and in column 2, titled "Prior notice project cost limit," the figure "22,000,000" is removed and the figure "27,400,000" is added in its place; and

d. paragraph (e)(4) is redesignated as (e)(4)(i) and paragraphs (e)(4)(ii) through (e)(4)(iv) are added to read as follows:

§ 157.208 Construction, acquisition, operation, replacement, and miscellaneous rearrangement of facilities.

* * * * *

(c) * * *

(9) A concise analysis discussing the relevant issues outlined in § 380.12 of this chapter. The analysis must identify the existing environmental conditions and the expected significant impacts that the proposed action, including proposed mitigation measures, will cause to the quality of the human environment, including impact expected to occur to sensitive environmental areas. When compressor facilities are proposed, the analysis must also describe how the proposed action will be made to comply with applicable State Implementation Plans developed under the Clean Air Act. The analysis must also include a description of the contacts made, reports produced, and results of consultations which took place to ensure compliance with the Endangered Species Act, National Historic Preservation Act and the Coastal Zone Management Act. Include a copy of the agreements received for compliance with the Endangered Species Act, National Historic Preservation Act, and Coastal Zone Management Act, or if no written concurrence is issued, a description of how the agency relayed its opinion to the company. Describe how drilling for wells or horizontal direction drilling would be designed to meet the goal of limiting the perceived noise at NSAs to an Ldn of 55 dBA or what mitigation would be offered to landowners.

(10) A commitment to having the Environmental Inspector's report filed every week.

* * * * *

(e) * * *

(4)(i) * * *

(ii) Documentation, including images, that restoration of work areas is progressing appropriately;

(iii) A discussion of problems or unusual construction issues, including those identified by affected landowners, and corrective actions taken or planned; and

(iv) For new or modified compression, a noise survey verifying compliance with § 157.206(b)(5).

* * * * *

7. Section 157.210 is added to read as follows:

§ 157.210 Mainline natural gas facilities.

Prior Notice. Subject to the notice requirements of §§ 157.205(b) and 157.208(c), the certificate holder is authorized to acquire, abandon, construct, modify, replace, or operate natural gas mainline facilities. The cost of a project may not exceed the cost limitation set forth in column 2 of Table I of § 157.208(d). The certificate holder must not segment projects in order to meet this cost limitation.

8. Sections 157.212 and 157.213 are added to read as follows:

§ 157.212 Synthetic and liquefied natural gas facilities.

Prior Notice. Subject to the notice requirements of §§ 157.205(b) and 157.208(c), the certificate holder is authorized to acquire, abandon, construct, modify, replace, or operate natural gas facilities that are used to transport exclusively either synthetic gas or revaporized liquefied natural gas and that are not "related jurisdictional natural gas facilities" as defined in § 153.2(e) of this chapter. The cost of a project may not exceed the cost limitation set forth in column 2 of Table I in § 157.208(d) of this chapter. The certificate holder must not segment projects in order to meet this cost limitation.

§ 157.213 Underground storage field facilities.

(a) *Prior Notice.* Subject to the notice requirements of §§ 157.205(b) and 157.208(c) of this chapter, the certificate holder is authorized to acquire, abandon, construct, modify, replace, or operate natural gas underground storage facilities, provided the storage facility's total inventory, reservoir pressure, reservoir and buffer boundaries, certificated capacity, and compliance with environmental and safety provisions remain unaffected. The cost of a project may not exceed the cost limitation set forth in column 2 of Table I in § 157.208(d) of this chapter. The certificate holder must not segment projects in order to meet this cost limitation.

(b) *Contents of request.* In addition to the requirements of §§ 157.206(b) and 157.208(c), requests for activities authorized under paragraph (a) of this section must contain:

(1) A description of the current geological interpretation of the storage reservoir, including both the storage formation and the caprock, including summary analysis of any recent cross-sections, well logs, quantitative porosity and permeability data, and any other relevant data for both the storage reservoir and caprock;

(2) The latest isopach and structural maps of the storage field, showing the storage reservoir boundary, as defined by fluid contacts or natural geological barriers; the protective buffer boundary; the surface and bottomhole locations of the existing and proposed injection/withdrawal wells and observation wells; and the lengths of open-hole sections of existing and proposed injection/withdrawal wells;

(3) Isobaric maps (data from the end of each injection and withdrawal cycle) for the last three injection/withdrawal seasons, which include all wells, both inside and outside the storage reservoir and within the buffer area;

(4) A detailed description of present storage operations and how they may change as a result of the new facilities or modifications. Include a detailed discussion of all existing operational problems for the storage field, including but not limited to gas migration and gas loss;

(5) Current and proposed working gas volume, cushion gas volume, native gas volume, deliverability (at maximum and minimum pressure), maximum and minimum storage pressures, at the present certificated maximum capacity or pressure, with volumes and rates in MMcf and pressures in psia;

(6) The latest field injection/withdrawal capability studies including curves at present and proposed working gas capacity, including average field back pressure curves and all other related data;

(7) The latest inventory verification study for the storage field, including methodology, data, and work papers;

(8) The shut-in reservoir pressures (average) and cumulative gas-in-place (including native gas) at the beginning of each injection and withdrawal season for the last 10 years; and

(9) A detailed analysis, including data and work papers, to support the need for additional facilities (wells, gathering lines, headers, compression, dehydration, or other appurtenant facilities) for the modification of

working gas/cushion gas ratio and/or to improve the capability of the storage field.

[FR Doc. 06–5618 Filed 6–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

28 CFR Part 16

[AAG/A Order No. 010–2006]

Privacy Act of 1974: Implementation

AGENCY: Drug Enforcement Administration, DOJ.

ACTION: Proposed rule.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), proposes to exempt a new system of records entitled the El Paso Intelligence Center (EPIC) Seizure System (ESS) (JUSTICE/DEA–022) from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(j) and (k). The exemption is necessary to avoid interference with the law enforcement, intelligence, counter-drug, counterterrorism functions and responsibilities of the DEA and its El Paso Intelligence Center (EPIC). Public comment is invited.

DATES: Comments must be received by August 7, 2006.

ADDRESSES: Address all comments to Mary E. Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building), Facsimile Number (202) 307–1853. To ensure proper handling, please reference the AAG/A Order No. on your correspondence. You may review an electronic version of this proposed rule at *http://www.regulations.gov*. You may also comment via the Internet to the DOJ/Justice Management Division at the following e-mail address: *DOJPrivacyACTProposed Regulations@usdoj.gov;* or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically, you must include the AAG/A Order No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Mary E. Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register,** the DEA provides a description of the "El Paso Intelligence Center (EPIC) Seizure System (ESS), JUSTICE/DEA–022" in compliance with the Privacy Act, 5 U.S.C. 552a(e)(4) and (11). The ESS is a system of records established to support the mission of the El Paso Intelligence Center to support criminal investigations conducted by Federal, state, local, tribal, and international law enforcement agencies. EPIC maintains information in databases obtained from contributing law enforcement agencies and provides information upon request from authorized law enforcement agencies and officers in support of criminal investigations. Additional information about EPIC and its operations is provided in the **Federal Register** notice referenced above.

Regulatory Flexibility Act

This proposed rule relates to individuals, as opposed to small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, the proposed rule will not have a significant economic impact on a substantial number of small entities.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the DEA to comply with small entity requests for information and advice about compliance with statutes and regulations within DEA jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT.** Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html.*

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793–78, it is proposed to amend 28 CFR part 16 as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.98 is amended to add new paragraphs (g) and (h) to read as follows:

§ 16.98 Exemption of Drug Enforcement Administration Systems—limited access.

* * * * *

(g) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g): EPIC Seizure System (ESS) (JUSTICE/DEA–022). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement and counter-drug purposes of this system, and the overall law enforcement process, the applicable exemption may be waived by the DEA in its sole discretion.

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any investigative interest in the individual. Revealing this information would permit the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to determine whether he is the subject of investigation, or to obtain valuable information concerning the nature of that investigation, and the information obtained, or the identity of witnesses and informants. Similarly, disclosing this information could reasonably be expected to compromise ongoing investigatory efforts by notifying the record subject that he/she is under investigation. This information could also permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(2) From subsection (c)(4) because this system is exempt from the access and amendment provisions of subsection (d).

(3) From subsections (d)(1), (2), (3), and (4) because these provisions concern individual access to and amendment of records contained in this system, which consists of counter-drug and criminal investigatory records. Compliance with these provisions could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, or the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to

effective law enforcement because they could prevent the successful completion of the investigation; endanger the physical safety of witnesses or informants; or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary to complete an identity comparison between the individual being screened and a known or suspected criminal or terrorist. Also, it may not always be known what information will be relevant to law enforcement for the purpose of conducting an operational response or on-going investigation.

(5) From subsection (e)(2) because application of this provision could present a serious impediment to law enforcement and counter-drug efforts in that it would put the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counter-drug investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his own activities.

(6) From subsection (e)(3), to the extent that this subsection is interpreted to require EPIC to provide notice to an individual if EPIC receives information about that individual from a third party. Should the subsection be so interpreted, exemption from this provision is necessary to avoid impeding counter-drug efforts by putting the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that activity.

(7) From subsection (e)(5) because many of the records in this system are derived from other domestic record systems and therefore it is not possible for the DEA and EPIC to vouch for their compliance with this provision; however, EPIC has implemented internal quality assurance procedures to ensure that ESS data is as thorough, accurate, and current as possible. In addition, EPIC supports but does not conduct investigations; therefore, it must be able to collect information related to illegal drug and other criminal activities and encounters for distribution to law enforcement and intelligence agencies that do conduct counter-drug investigations. In the collection of information for law enforcement and counter-drug purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts. EPIC has, however, implemented internal quality assurance procedures to ensure that ESS data is as thorough, accurate, and current as possible. ESS is also exempt from the requirements of subsection (e)(5) in order to prevent the use of a challenge under subsection (e)(5) as a collateral means to obtain access to records in the ESS. ESS records are exempt from the access and amendment requirements of subsection (d) of the Privacy Act in order to protect the integrity of investigations. Exempting ESS from subsection (e)(5) serves to prevent the assertion of challenges to a record's accuracy, timeliness, completeness, and/or relevance under subsection (e)(5) to circumvent the exemption claimed from subsection (d).

(8) From subsection (e)(8) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on the DEA and EPIC and could alert the subjects of counter-drug, counterterrorism, law enforcement, or intelligence investigations to the fact of those investigations when not previously known. Additionally, compliance could present a serious impediment to law enforcement as this could interfere with the ability to issue warrants or subpoenas and could reveal investigative techniques, procedures, or evidence.

(9) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: June 19, 2006.

Lee J. Lofthus,

Acting Assistant Attorney General for Administration.

[FR Doc. E6–9976 Filed 6–23–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–06–013]

RIN 1625–AA09

Drawbridge Operation Regulation; Illinois Waterway, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes that the procedures found in § 117.393 for operation of the Pekin Railroad Drawbridge, Mile 151.2, across the Illinois Waterway at Pekin, Illinois, be revised to reflect the actual procedures that have always been followed. The present regulation in § 117.393 was intended to be temporary, for test purposes only, and was inadvertently permanently included. The revision would eliminate the "Specific Requirements" for remote operation and the bridge would continue to operate, as required by the Coast Guard, under the "General Requirements".

DATES: Comments and related material must reach the Coast Guard on or before August 25, 2006.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832. Commander (dwb) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 2.107f in the Robert A. Young Federal Building, Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 269–2378.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08–06–013], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound

format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Eighth Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

A test period to remotely operate the Pekin Railroad Drawbridge, Mile 151.2, across the Illinois Waterway was proposed by the bridge owner and determined that remote operation was not feasible. The bridge owner withdrew the proposal and the Coast Guard required the continued on-site operation of the bridge. The bridge is not remotely operated. The bridge owner has always maintained an on-site bridge operator for the bridge. However, the temporary regulation allowing the test period was inadvertently published in 33 CFR Part 117, Subpart B.

This proposed rulemaking will correct the drawbridge operating regulations to reflect Coast Guard approved operating conditions presently adhered to by the bridge owner and waterway users.

Discussion of Proposed Rule

The proposal is to delete the regulation § 117.393(b) that requires remote operation of the bridge. If the remote operation requirement is deleted, it will have no impact on river or rail traffic because the bridge will continue to be operated on-site and open on demand for passage of river traffic. Removing the regulation for remote operation will allow the bridge owner to not install additional equipment and to not operate the bridge from a remote location to meet the regulation.

Regulatory Evaluation

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

The Coast Guard expects that this change will have no economic impact on commercial traffic operating on the Illinois Waterway.

The proposed regulation change will not affect the present safe operation of the bridge.

Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 269–2378.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore this rule is categorically excluded under figure 2–1, paragraph 32(e) of the Instruction from further environmental documentation. Paragraph 32(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA. Since this proposed regulation would alter the normal operating conditions of the drawbridge, it falls within this exclusion. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 017.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.393 [Amended]

2. In § 117.393, remove paragraph (b) and redesignate paragraphs (c) through (d) as paragraphs (b) through (c) respectively.

Dated: June 12, 2006.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. E6–10043 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–06–002]

Drawbridge Operation Regulations; Chincoteague Channel, Chincoteague, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice; request for comments, and notice of public meeting.

SUMMARY: On March 31, 2006, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (71 FR 19150). That document contains a detailed history of the Coast Guard's previous regulatory efforts regarding the SR 175 Bridge. The Coast Guard is reopening the period for public comment concerning the drawbridge operation regulations that govern the SR 175 Bridge, mile 3.5, across Chincoteague Channel at Chincoteague, Virginia, because an Accomack County official communicated to the Coast Guard those residents of Chincoteague have additional comments concerning the operating regulations of the drawbridge.

DATES: Comments must be received by on or before July 21, 2006.

ADDRESSES: Comments and material received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD05–06–002]. To make sure they do not enter the docket more than once, please submit them by only one of the following means:

(1) By mail to Commander (dpb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704.

(2) By hand delivery to Commander (dpb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6629.

(3) By fax to the Bridge Administration office at (757) 398–6334.

Commander, Fifth Coast Guard District (dpb) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble, will become part of this docket and will be available for inspection or copying at the address listed above between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Gary S. Heyer, Commander (dpb) Fifth Coast Guard District, by telephone at (757) 398–6629, or by e-mail at *gary.s.heyer@uscg.mil*. For questions on viewing or submitting material to the docket, also contact Mr. Gary S. Heyer.

Request for Comments

We encourage you to participate in this rulemaking by submitting your comments to Commander (dpb), Fifth Coast Guard District as specified in **ADDRESSES**. We will consider comments received during this additional comment period and may change the rule in response to the comments.

Public Meeting and Procedure

The Coast Guard will also hold a public meeting to provide a forum for citizens to provide oral comments relating to the drawbridge operation regulations for the SR 175 Bridge, mile 3.5, across Chincoteague Channel at Chincoteague, Virginia. The meeting will be open to the public and it will be held from 7:30 p.m. to 9:30 p.m. on July 18, 2006, at the Chincoteague Community Center, 6155 Community Drive, Chincoteague, VA 23336. The meeting may close early if all business is finished. Written material and advance notice requests to make oral comments should reach the Coast Guard on or before July 17, 2006.

Members of the public are invited to make comments and those who wish to provide oral comment will be recognized by the meeting moderator. Each person will be limited to no more than 5 minutes of oral comments. The moderator will first call off names of individuals who have notified the meeting moderator in advance that they

are planning to comment. After that, individuals who arrived prior to the start of the meeting on July 18, 2006, and received numbers in the lobby will be called. After all of these individuals have been called, the moderator will then ask for members of the audience who have not provided advance notification or who did not arrive prior to the meeting to come forward, sign-in with the recorder, and then be able to approach the podium to deliver comments.

Send written material and requests to make oral comments to Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 or via fax at (757) 398–6334 or by e-mail at *gary.s.heyer@uscg.mil.*

The agenda of the public meeting will include the following:

(1) Introduction of panel members.

(2) Overview of meeting format.

(3) Background on the proposed rulemaking.

(4) Statements from citizens. Statements may be delivered in written form at the public meeting and made part of the docket or delivered orally not to exceed 5 minutes.

Questions

We need assistance from the public in ensuring the Coast Guard fully understands the impact of potential rulemaking on all users of the bridge, both road and waterway usage. We believe that the impacts can be better understood by articulating answers to questions such as those posed below. In responding to the questions listed below, please explain your reasons for each answer as specifically as possible so that we can weigh the impacts and consequences of future actions that we may take. The following are the types of pertinent questions that may be used:

(1) If the SR 175 Bridge opened every two hours, would this have a positive or a negative impact on your business interests? And, what would be the approximate monetary value of this impact per day?

(2) If the SR 175 Bridge opened every two hours, would this increase or decrease the time you spend per day as a motor vehicle commuter? And, approximately how much would your commuting time increase or decrease?

(3) If the SR 175 Bridge opened every two hours and this opening schedule had a negative impact on your business interests, what actions could you take, if any, to minimize the negative impact?

(4) If the SR 175 Bridge continued to open once per hour, would this have a negative or positive financial impact on your life or business? And, what would be the approximate amount of the negative or positive financial impact per day?

(5) Is there a traffic management plan in place that directs how to manage a vehicle back-up at the SR 175 Bridge? And if there is a plan, what procedures are in place to increase public safety and reduce traffic delays at the Bridge? Any additional information provided on these topics is welcome.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Gary S. Heyer as listed in **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: June 13, 2006.

Larry L. Hereth,

Rear Admiral, U. S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E6–10048 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Chapter 1

Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area

ACTION: Notice of fourth meeting.

Notice is hereby given, in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), of the fourth meeting of the Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area.

DATES: The Committee will meet on Monday, July 31, 2006 in the Golden Gate Room, Building A, Fort Mason Center in San Francisco. The meeting will begin at 3:30 p.m. This, and any subsequent meetings, will be held to assist the National Park Service in potentially developing a special regulation for dogwalking at Golden Gate National Recreation Area.

The proposed agenda for this meeting of the Committee may contain the following items; however, the Committee may modify its agenda during the course of its work. The Committee will provide for a public comment period during the meeting.

1. Agenda review.
2. Approval of May 15 meeting summary.
3. Updates and announcements.
4. Report from first Technical Subcommittee meeting.
5. Discussion of Interests Assessment Template.
6. Public comment.
7. Adjourn.

To request a sign language interpreter for a meeting, please call the park TDD line (415) 556–2766, at least a week in advance of the meeting. Please note that Federal regulations prohibit pets in public buildings, with the exception of service animals; please leave pets at home.

FOR FURTHER INFORMATION CONTACT: Go to the NPS Planning, Environment and Public Comment (PEPC) Web site, *http://www.parkplanning.nps.gov/goga* and select Negotiated Rulemaking for Dog Management at GGNRA or call the Dog Management Information Line at 415–561–4728.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. The Committee was established pursuant to the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570). The purpose of the Committee is to consider developing a special regulation for dogwalking at Golden Gate National Recreation Area. Interested persons may provide brief oral/written comments to the Committee during the Public Comment period of the meeting or file written comments with the GGNRA Superintendent.

Dated: June 20, 2006.

Loran Fraser,

Chief, Office of Policy.

[FR Doc. E6–10013 Filed 6–23–06; 8:45 am]

BILLING CODE 4312–FN–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2006–0286; FRL–8188–5]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri for maintaining the ozone standard in Kansas City.

DATES: Comments on this proposed action must be received in writing by July 26, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2006–0286 by one of the following methods:

1. *http://www.regulations.gov:* Follow the online instructions for submitting comments.

2. E-mail: *algoe-eakin.amy@epa.gov.*

3. Mail: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. Hand Delivery or Courier. Deliver your comments to: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin at 913 551–7942, or by e-mail at *algoe-eakin.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register,** EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant 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 action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register.**

Dated: June 15, 2006.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 06–5624 Filed 6–23–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2006–0365; FRL–8188–3]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Kansas for updating the maintenance plan to maintain the ozone standard in Kansas City.

DATES: Comments on this proposed action must be received in writing by July 26, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2006–0365 by one of the following methods:

1. *http://www.regulations.gov:* Follow the online instructions for submitting comments.

2. E-mail: *kneib.gina@epa.gov.*

3. Mail: Gina Kneib, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. Hand Delivery or Courier. Deliver your comments to: Gina Kneib, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Gina Kneib at (913) 551–7078, or by e-mail at *kneib.gina@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register,** EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant 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 action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register.**

Dated: June 15, 2006.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 06–5622 Filed 6–23–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 040506143–6016–02. I.D. 101205B]

RIN 0648–AS36

Endangered Fish and Wildlife; Proposed Rule to Implement Speed Restrictions to Reduce the Threat of Ship Collisions with North Atlantic Right Whales

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement speed restrictions on vessels 65 ft (19.8 m) or greater in overall length in certain locations and at certain times of the year along the east coast of the U.S. Atlantic seaboard. The purpose of this proposed rule is to reduce the likelihood of deaths and serious injuries to endangered North Atlantic right whales that result from collisions with ships. These measures are part of NMFS' Ship Strike Reduction Strategy to help recover the North Atlantic right whale. NMFS is requesting comments on the proposed regulations.

DATES: Written comments must be received at the appropriate address or facsimile (fax) number (see **ADDRESSES**) no later than 5 p.m. local time on August 25, 2006.

ADDRESSES: Written comments should be sent to: Chief, Marine Mammal Conservation Division, Attn: Right Whale Ship Strike Strategy, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via email to shipstrike.comments@noaa.gov or to the Federal eRulemaking portal: *http://www.regulations.gov* (follow instructions for submitting comments).

Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in this notice of proposed rulemaking, should also be submitted in writing to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and to David Rostker, OMB, by e-mail at *David_Rostker@omb.eop.gov* or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Gregory Silber, Ph.D., Fishery Biologist, Office of Protected Resources, NMFS, at (301) 713–2322 x152.

SUPPLEMENTARY INFORMATION:

Background

The North Atlantic right whale (*Eubalaena glacialis*) was severely depleted by commercial whaling and, despite protection from commercial harvest since 1935, has not recovered. The population is believed to be at or less than 300 individuals, making it one of the most critically endangered large whale species in the world.

North Atlantic right whales occur in coastal and nearshore waters off the eastern United States and Canada, areas also used by fishing and other maritime activities that adversely affect the species. Deaths from collisions with ships and entanglement in fishing gear are significant impediments to the recovery of the species. Knowlton and Kraus (2001) documented 41 right whale deaths from 1970 to 1997, with at least 29 attributed to human activities. In the period 1997 to 2001, human-caused mortality and serious injury to North Atlantic right whales from ship strikes and fishery entanglements was an estimated average of 2.0 per year (Waring *et al.*, 2004). Kraus *et al.* (2005) indicated that the overall mortality rate increased between 1980 and 1998 to a level of at least four percent per year, a rate at which the survival of this species is not sustainable. Deaths from human-related activities are believed to be the principal reason for a declining adult survival rate (Caswell *et al.*, 1999) and the lack of recovery in the species.

One of the greatest known causes of deaths of North Atlantic right whales from human activities is ship strikes (Kraus, 1990; Knowlton and Kraus, 2001; NMFS, 2005). Waring *et al.* (2004) reported that 12 known right whale ship strike deaths occurred between 1991 and 2001; Kraus *et al.* (2005) reported 19 known ship strike deaths from 1986 to present. Three of these (possibly a fourth) occurred since March 2004 (Kraus *et al.*, 2005). The actual number of deaths is almost certainly higher than those documented as some deaths go undetected or unreported, and in many cases it is not possible to determine the cause of death from recovered carcasses.

Another factor in slowed recovery has been inconsistent reproduction. Calf production has been highly variable. Since 1980, the number of calves has ranged from 1–31 per year, an annual average of 12.8. However, since 2000, calf production has averaged more than 20 calves per year. Although recent calf production is encouraging, the number of births still is not sufficient to compensate for the number of adult deaths over the past two decades (Kraus *et al.*, 2005). Of particular significance is the recent loss of breeding females, the most important demographic component of the population.

For the North Atlantic right whale population to recover, death and injury from human activities, in particular those resulting from interactions with vessels because this is the greatest source of known deaths, must be reduced. The recently revised North Atlantic Right Whale Recovery Plan (NMFS, 2005) identified reduction or elimination of deaths and injuries from ship strikes among its highest priorities, and indicated that developing and implementing an effective strategy to reduce the threat was essential to recovery of the species.

Summary of Right Whale Protection Measures

Right whales are protected under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). The Northern right whale, which includes both the North Atlantic and North Pacific right whales, was listed as endangered under the Endangered Species Conservation Act in June 1970 (35 FR 8495), the precursor to the ESA. The species was subsequently listed as endangered under the ESA in 1973, and designated as depleted under the MMPA.

The ESA gives authority to the Secretary of Commerce (Secretary) for protecting most endangered marine species, including right whales. The ESA also provides authority to the Secretary to develop and implement recovery plans for endangered species. The Northern Right Whale Recovery Team completed a Final Recovery Plan for the Northern Right Whale in December 1991 (NMFS, 1991). A revised Recovery Plan for the North Atlantic Right Whale (*Eubalaena glacialis*) was completed in 2005 (NMFS, 2005).

NMFS, in collaboration with other agencies and organizations, has taken a number of steps to reduce the threat of ship strikes to North Atlantic right whales. Much of this activity involves limiting vessel approach to right whales, increasing the awareness of mariners using U.S. east coast ports about the vulnerability of right whales to ship strikes, and providing right whale sighting locations to mariners. A summary of activities follows.

Right Whale Minimum Approach Regulation: On February 13, 1997, NMFS published a regulation (62 FR 6729), prohibiting all approaches within 500 yards (460m) of any right whale, whether by vessel, aircraft or other means. The goal was to limit disturbance of right whales.

Right Whale Sighting Networks: Beginning in 1993 in waters off the U.S. southeast coast, and in 1997 off the coast of New England, NMFS has participated in, or supported, an extensive program of aircraft surveys for right whales. Surveys are flown over northeast U.S. waters year round on virtually every day weather permits. Surveys cover peak right whale abundance periods in Cape Cod Bay (principally between January and May) and in the Great South Channel (between March and July). Sighting information is also provided by U.S. Coast Guard (USCG) vessel operators, research and other ships operated by NMFS, the Commonwealth of Massachusetts, and other sources. NMFS assembles the reports, and "alerts" are disseminated to mariners via an automated facsimile system, USCG Broadcast Notices to Mariners, broadcasts over NOAA Weather Radio, Army Corps of Engineers (ACOE) Cape Cod Canal Traffic Controllers, and postings on several web pages. Shipping agents, pilots and port authorities disseminate the information to inbound and outbound shipping traffic. Further information on this program can be found at: *http://rwhalesightings.nefsc.noaa.gov/.*

In the southeastern United States, the survey program is a cooperative effort by the U.S. Navy (USN), USCG, ACOE, and the States of Georgia and Florida. Sighting location information is gathered and disseminated by the USN through a number of media, including USCG Broadcast Notice to Mariners, NAVTEX (the USCG international

communication system), and NOAA Weather Radio.

Mandatory Ship Reporting System (MSRS): established in July 1999, the MSRS requires all commercial ships 300 gross tons or greater to report into a shore-based station when entering two key right whale aggregation areas, one each in waters off the U.S. northeastern and southeastern coasts. The U.S. northeast system operates year round; the U.S. southeast system is in effect from November 15 to April 15, when right whales aggregate in these waters. The MSRS requires mariners to report such things as entry location, destination, and ship speed. Reporting prompts an automated return message providing right whale sighting locations and information on how collisions can be avoided, thereby providing information on right whales directly to mariners as they enter right whale habitat. A compilation of incoming reports also provides NMFS with a means to obtain information on ship traffic volume, routes, and speed to assist in identifying measures to reduce future ship strikes (see, for example, Ward-Geiger *et al.*, 2005). The program is jointly funded by the USCG and NMFS, and administered primarily by the USCG. Further information can be found at: *http://www.nmfs.noaa.gov/pr/shipstrike/msr/*

Updating Navigational Aids and Publications: The *U.S. Coast Pilot* is a set of regionally-specific references on marine environmental conditions, navigation hazards, and regulations. Currently, captains of commercial vessels 1600 gross tons and above are required to carry the *Coast Pilot* when operating in U.S. waters. Since 1997, NMFS has provided updated information for U.S. eastern seaboard *Coast Pilot* guides, including information on the status of right whales, times and areas that they occur, threats posed by ships, the MSRS, and advice on measures mariners can take to reduce the likelihood of hitting right whales. In 2005, NMFS began including ship speed advisories (to transit at 12 knots or less). Similarly, NOAA navigational charts are routinely updated as they are reprinted to include right whale advisories.

NOAA provides current information on right whales to National Imagery and Mapping Agency's (NIMA) *Notice to Mariners*. This publication, in addition to NIMA's *Sailing Directions*, provides guidance for mariners traveling in international waters. These publications are updated annually. Similar language has been provided to the United Kingdom's *Admiralty Publications*.

Right Whale Recovery Plan Implementation Teams: Following completion of the 1991 Right Whale Recovery Plan, NMFS established Recovery Plan Implementation Teams, comprised of federal and state agencies and other organizations, to advise NMFS on actions to aid in the recovery of the species. Many of the Teams' activities have centered on reducing ship strikes. Both the Northeast and Southeast Implementation Teams were instrumental in developing and operating the aircraft survey programs described above. In addition, the Teams have developed and disseminated right whale material to mariners including brochures, placards, and training videos. The Teams have also funded various studies and have been an important conduit for information to and from the shipping industry and between Federal agencies.

Conservation Actions by Federal Agencies: Through consultations under section 7(a) (2) of the ESA, Federal agencies conducting ship operations have modified vessel operating procedures. For example, the USCG is, among other things, providing protected species training for USCG personnel and posting lookouts when operating in areas where right whales occur, issuing notices to mariners about right whale sighting locations, issuing guidance to its vessel operators to proceed with caution and at the "slowest safe speed" in the vicinity of right whales, and supporting NMFS emergency efforts in responding to right whale strandings.

In addition to actions taken as a result of ESA section 7 consultations, the USN has made efforts to limit interactions between its vessels and whales, which include issuing advisories to its fleets to "use extreme caution and use slow safe speed" when near right whales, limiting vessel transits through right whale habitat when not adversely affecting a vital mission, and posting trained marine mammal lookouts.

As a result of its numerous ESA consultations, ACOE operators and contractors in waters off Georgia and Florida post trained whale lookouts and avoid nighttime transits. During periods of low light or limited visibility, ACOE dredges are required to slow to 5 knots or less when operating in areas where whales have been sighted. In addition, NMFS requested that ACOE Cape Cod Canal Traffic Controllers notify mariners using the Canal about right whales; as of March 2004, Controllers alert ships' masters of right whale locations when right whales are detected in areas where Canal traffic may transit.

In addition, in 2005, NMFS contacted all relevant Federal agencies and asked that vessels proceed at 12 knots or less when in right whale habitat. Most have voluntarily complied when vital missions are not compromised.

The Need for Additional Action

Despite conservation efforts developed and undertaken by agencies, stakeholders, partners and industry throughout the 1990s, right whale deaths from ship strikes continue. NMFS believes that existing measures have not been sufficient to reduce the threat of ship strikes or improve chances for recovery (for example, a study of mariner compliance with NOAA-issued speed advisories in the Great South Channel reported that 95 percent of ships tracked (38 out of 40) did not slow down or route around areas in which right whale sightings occurred (Moller *et al.*, 2005)). Accordingly, NMFS determined that further action was required. This led to the development of NMFS Ship Strike Reduction Strategy.

Development of a Ship Strike Reduction Strategy

NMFS convened a series of over 20 stakeholder meetings between May 1999 and April 2001 along the eastern seaboard from Boston, MA to Jacksonville, FL to discuss ways to reduce ship strikes. These discussions culminated in a report on management options for addressing the threat (Russell, 2001).

Ship Strike Working Group: NMFS formed an internal Working Group in November 2001 to develop a strategy to reduce ship strike mortality to right whales. To this end, the group reviewed all relevant information pertaining to ship strikes, including the distribution and occurrence of known ship strikes; data on right whale distribution, aggregations, and migrations; vessel traffic patterns; recommendations from stakeholder meetings and the management options report; and legal precedents and authorities. The group met 11 times from February to October 2002. It identified well over 100 measures, both regulatory and non-regulatory, for reducing the threat of ship strikes and assessed their feasibility and effectiveness with regard to conservation of right whales, as well as the projected impact on industry. The group completed its draft Right Whale Ship Strike Reduction Strategy (Strategy) in January 2003. Since that time, NMFS has presented the Strategy at a number of stakeholder and public meetings. A number of summary documents providing justification and background for the Strategy are posted at *http://www.nero.noaa.gov/shipstrike/*.

Elements of the Strategy

NOAA's Strategy consists of five elements for reducing the threat of ship strikes. Elements 1–4 are non-regulatory and are not addressed by this proposed rulemaking. Only portions of element 5 – operational measures for recreational and commercial mariners – are the subject of this proposed rulemaking.

In short, the elements are: (1) continue ongoing conservation and research activities to reduce the threat of ship strikes; (2) develop and implement additional mariner education and outreach programs; (3) conduct ESA section 7 consultations, as appropriate, with Federal agencies that operate or authorize the use of vessels in waters inhabited by right whales; (4) develop a Right Whale Conservation Agreement with the Government of Canada; and (5) establish new operational measures for commercial and recreational mariners. The latter includes establishing vessel speed restriction by regulation and establishing certain routing measures. A brief description of each the five elements of the Strategy follows.

Element 1. Continue ongoing research and conservation activities: NMFS intends to continue its existing right whale conservation activities related to ship strikes, and the Strategy is not intended to supplant those programs. While these activities alone are not adequate to sufficiently reduce the threat of ship strikes, they do have conservation value. This program is described in "Summary of Right Whale Protection Measures" above.

Element 2. Mariner education and outreach programs: Mariner awareness is a key component to reducing this threat. And, while indications are that the maritime community is increasingly aware of the problem, NMFS intends to develop and implement a comprehensive education and outreach program for mariners and the general boating public which highlights the severity of the ship strike problem and provides steps that can be taken to reduce the threat. This work is underway. NMFS has developed a comprehensive list of tasks to raise mariner awareness that targets all segments of the recreational and commercial shipping industries, other agencies, and the general public. Tasks include developing curricula for maritime training academies, providing training modules for captain re-licensing, providing advice on voyage planning for domestic and foreign-flagged vessels, and ensuring all east coast pilots have material to distribute to inbound ships. Key groups such as the Right Whale Recovery Plan Implementation Teams and others are assisting in reviewing, prioritizing, and performing the tasks.

Element 3. Conduct ESA Section 7 consultations: Because of the special missions of Federal agencies vessels owned or operated by, or under contract to, federal agencies would be exempt from the proposed regulations. This exemption is not intended to relieve Federal agencies of their responsibilities under the ESA, including the requirements of section 7. NMFS will use ESA section 7 consultations to analyze and mitigate impacts of vessel activities authorized, funded or carried out by Federal agencies. To that end, NMFS will review actions (including those subject to the conditions of existing Biological Opinions) involving vessel operations of federal agencies (e.g., the ACOE, Environmental Protection Agency, Maritime Administration, Military Sealift Command, Minerals Management Service, NOAA Corps, USCG, and USN) and determine whether to recommend initiation or re-initiation of section 7 consultation to ensure those activities are not jeopardizing the continued existence of North Atlantic right whales or destroying or adversely modifying their critical habitat.

Element 4. Development of right whale agreement with Canada: Similar conservation issues exist in both U.S. and Canadian waters. In this regard, NOAA intends, with the appropriate federal agency or agencies, to initiate the negotiation of a bilateral Conservation Agreement with Canada to ensure that, to the extent possible, protection measures are consistent across the border and as rigorous as possible in their protection of right whales. Although specific language of such an agreement has not been identified, NOAA has already communicated the need for an agreement and cooperative efforts to Canadian officials.

Element 5. New operational measures for commercial and recreational mariners: NMFS has developed a set of vessel operational measures. Some operational measures would be implemented through regulation and are the subject of this proposed rulemaking (see Proposed Regulations below). However, several will not require regulations.

Non-Regulatory Operational Measures

Port Access Route Studies and Recommended Routes: NOAA has proposed establishing recommended shipping routes for vessels entering or departing the ports of Jacksonville, FL, Fernandina, FL, and Brunswick, GA, and in Cape Cod Bay. Recognizing the need for analysis of the routes, NMFS asked the USCG to conduct a Port Access Route Study (PARS). NMFS's intent was to ensure navigational safety in the routes by providing them to USCG for analysis and public comment. Subsequently, Congress made the same request under the Coast Guard and Maritime Transportation Act enacted in August 2004, and requested that the USCG provide a report to Congress within 18 months. The USCG announced its intent to initiate a PARS in the **Federal Register** (70 FR 8313, February 18, 2005), indicating the geographic description of the areas under study, explaining the contemplated actions and their possible impacts, and inviting public comment. The PARS report is expected in February 2006.

PARS are conducted under the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223) to provide safe access routes in designating necessary fairways and traffic separation schemes. They are conducted for such things as the designation of recommended routes and anchorage/no anchorage areas. In so doing, a PARS considers ship traffic density and vessel traffic characteristics, types of measures, conflict with existing measures, and environmental hazard concerns. With regard to the PARS on proposed routes in Cape Cod Bay and the ports of Jacksonville, Fernandina, and Brunswick, NMFS and the USCG met regularly to exchange information and to work collaboratively on the analysis.

If the USCG's PARS report of the routes determines that the proposed shipping routes are free of navigational and environmental hazards, recommended routes in Cape Cod Bay and those southeastern U.S. ports are intended to be established. A range of routes is being considered and the exact locations of the routes have not been determined; much depends on the outcome of the PARS report. Again, that action is not addressed in this proposed rulemaking. After recommended routes have been established, NMFS intends to monitor mariner use of the routes. If the routes are not used routinely, consideration will be given to making them mandatory through regulation.

Shifting the Boston Traffic Separation Scheme (TSS): NOAA also intends to propose a reconfiguration of the TSS servicing Boston, MA. Reconfiguration of the TSS was also analyzed by the USCG's PARS. Analysis by NOAA's National Marine Sanctuaries Office indicates that an approximate 12 degree shift in the axis of the northern leg of the TSS and narrowing the two traffic

lanes of the TSS by approximately 1/2 nautical mile (nm) (.93 km) each would avoid known aggregation locations of right and humpback whales, yielding an estimated 58–percent reduction in the risk of ship strikes to right whales, while also reducing ship strike risk to other endangered large whale species by an estimated 81 percent. The proposed change in the TSS was developed after the development of NMFS's Ship Strike Reduction Strategy, however, it is fully consistent with the purpose and framework of the Strategy. The action requires proposing the change to, and endorsement by, the International Maritime Organization (IMO). A proposal would have to be submitted by the United States in April 2006.

Area to be Avoided: In addition to the above routing measures, the Strategy proposes the creation of an IMO Area To Be Avoided (ATBA), for all ships 300 gross tons and greater, in the waters of the Great South Channel. Such a proposal would have to be submitted to, and adopted by, IMO. A description and map of the ATBA can be found in NOAA's Advance Notice of Proposed Rulemaking (69 FR 30857; June 1, 2004).

Advance Notice of Proposed Rulemaking (ANPR) and Public Participation

The elements of the Strategy, and the vessel operational measures being proposed here, were described in the **Federal Register** as an ANPR on June 1, 2004 (69 FR 30857). The ANPR provided for a 60–day comment period. During that time (and subsequent extensions of the comment period), NMFS convened five public meetings in Boston, MA; New York/New Jersey; Wilmington, NC; Jacksonville, FL; and Silver Spring, MD. Public comments were provided at these meetings and transcripts of oral comments are available from NMFS (see for Further Information Contact).

NMFS extended the ANPR comment period to November 15, 2004 (September 13, 2004; 69 FR 55135), to allow for additional meetings to maximize public input, to determine concerns regarding practical considerations involved in implementing the Strategy, and to determine if NMFS was considering an appropriate range of alternatives. NOAA held 11 stakeholder meetings during the extended comment period in: Baltimore, MD; Boston, MA; Jacksonville, FL; Morehead City, NC; Newark, NJ; New Bedford, MA; New London, CT; Norfolk, VA; Portland, ME; Savannah, GA; and Silver Spring, MD.

Stakeholder meetings were attended by 142 individuals representing 40 companies (shipping, passenger vessel, towing, cruise ship servicing); 13 industry associations (regional, national, and international); 12 Federal (maritime operating and regulatory) and state agencies; seven pilots' associations; one labor union; one marine architect company; 10 states and city port authorities; six environmental organizations; two newspapers; five academic or private institutions; and three U.S. Senate and House of Representative staff. Presentations made at these meetings, summary reports of the meetings, a list of the attendees, the ANPR, public comments, and background materials are provided at *http://www.nero.noaa.gov/shipstrike.*

Comments and Responses to Comments on the ANPR

NMFS received 5,288 comments on the June 1, 2004, ANPR from governmental entities, individuals, and organizations. They were received in the form of e-mails, letters, website submissions, correspondence from action campaigns (e-mail and U.S. postal mail), faxes, and phone calls. Of those, 88 contained substantive comments. All comments have been compiled and posted at *http://www.nmfs.noaa.gov/pr/shipstrike.* Here we address issues that directly relate to the measures in this proposed rulemaking.

Vessel Speed Restrictions: We received a number of comments and questions on NMFS's proposal to use speed restrictions in the range of 10–14 knots as a means to reduce the occurrence of ship strikes. Many comments were supportive of speed restrictions and encouraged NOAA to use the lower limit of the range. Other comments questioned the value of such restrictions in protecting whales from ship strikes.

NOAA's proposed use of speed restrictions to reduce ship strikes is based on several types of evidence. An examination of all known ship strikes indicates vessel speed is a principal factor. Records of right whale ship strikes (Knowlton and Kraus, 2001) and large whale ship strike records (Laist *et al.*, 2001; Jensen and Silber, 2003) have been compiled. In assessing records in which vessel speed was known, Laist *et al.* (2001) found "a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision." The authors concluded that most deaths occurred when a vessel was traveling in excess of 13 knots.

In perhaps the most complete summary to date, Jensen and Silber (2003) detailed 292 records of known or probable ship strikes of all large whale species from 1975 to 2002. Of these, vessel speed at the time of collision was reported for 58 cases. Operating speeds of vessels that struck various species of large whales ranged from 2 51 knots with an average speed of 18.1 knots. The majority (79 percent) of these strikes occurred at speeds of 13 knots or greater. When the 58 reports are grouped by speed, the greatest number of vessels were traveling in the ranges of 13 15 knots, followed by speed ranges of 16 18 knots, and 22–24 knots, respectively (Jensen and Silber 2003).

Of the 58 cases, 19 (32.8 percent) resulted in serious injury (as determined by blood in water, propeller gashes or severed tailstock, and fractured skull, jaw, vertebrae, hemorrhaging, massive bruising or other injuries noted during necropsy) to the whale and 20 (34.5 percent) resulted in death. Therefore, in total, 39 (67.2 percent) ship strikes in which ship speed was known serious injury or death resulted. The average vessel speed that resulted in serious injury or death was 18.6 knots. Using a total of 64 records of ship strikes in which vessel speed was known, Pace and Silber (2005) tested speed as a predictor of the probability of a whale death or serious injury. The authors concluded that there was strong evidence that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 percent to 75 percent as vessel speed increased from 10 to 14 knots, and exceeded 90 percent at 17 knots. In a related study, Vanderlaan and Taggert (in review) analyzed all published historical data on vessels striking large whales. Looking at cases where a strike occurred, the authors found that the probability that a strike would result in lethal rather than non-lethal injury ranged from 20 percent at 9 knots, to 80 percent at 15 knots, to 100 percent at 21 knots or greater. NMFS assumes that the conclusions from pooled data on all known large whale ship strikes also apply to right whales ship strikes specifically.

Pace and Silber (2005) also examined the distribution of speeds at which known ship strikes occurred versus the speeds of ships reporting into the MSRS, which were considered representative of speeds that ships travel in general. They found that the two distributions were significantly different. That is, these data suggest that vessels that struck whales were going faster than ships tend to travel in general.

There are only two definitive strikes to right whales where associated vessel speed is known with absolute certainty. One incident occurred on July 6, 1991, when a right whale calf was killed east of the Delaware Bay by a ship traveling at 22 knots. A second right whale, a juvenile, was killed on January 5, 1993, between Mayport and Fort Pierce, Florida by an 82–ft. (24.9 m) vessel operating at 15 knots. A third collision that may have involved a right whale occurred in the winter of 1972–73 east of Boston, Massachusetts. A bulbous bow container ship traveling at 21–23 knots collided with an unidentified whale, killing it. Laist *et al.* (2001) listed this case as a possible right whale. In November 2004, a Federal vessel traveling 12 knots struck a large whale outside the mouth of the Chesapeake Bay. Although not linked definitively to the strike, a dead adult right whale washed ashore in North Carolina shortly thereafter with massive injuries.

In addition, computer simulation modeling studies (Clyne, 1999; Knowlton *et al.*, 1995) found that the hydrodynamic forces that pull whales toward the vessel hull increase with increased speed.

Similar studies of the occurrence and severity of strikes relative to vessel speed have been reported in other species. Laist and Shaw (2005) examined the effectiveness of boat speed restrictions to limit the number of Florida manatee deaths, in particular as it related to enforcement of restrictions. They summarized the locations and circumstances of 38 known manatee deaths occurring between 1986 and 2005, and found that deaths were lower or non-existent in locations where enforcement efforts were greatest. The paper concluded that "speed restrictions can be effective in reducing collision risks with manatees if they are well developed and enforced" and stated that "similar measures may be useful for other marine mammal species vulnerable to collision impacts to vessels (e.g., North Atlantic right whales).

The relationship between increasing vehicle speed and wildlife mortality is not limited to marine environments. The link between terrestrial wildlife mortality and vehicle speed has been documented in numerous species (Gunther *et al.*, 1998; Knapp *et al.*, 2004; Groot Bruinderink and Hazebroek, 1996). The use of speed restrictions has also been successfully implemented in endangered terrestrial species such as the Florida Panther (Schaefer *et al.*, 2003) and Florida Key deer (Calvo and Silvy, 1996) to protect depleted species from death by vehicle strikes.

Precedents for Speed Restrictions: In several geographic regions and for varying purposes, ship speed restrictions have been imposed. The National Park Service established a 13 knot speed limit for vessels 262 ft (80 m) or greater, in Glacier Bay National Park on a year-round basis to reduce the likelihood of ship strikes to humpback whales (National Park Service, 2003). In Florida state waters, the U.S. Fish and Wildlife Service imposes speed restrictions on vessels in certain areas to protect manatees.

In addition, State pilots require that vessels slow their port approach speeds ranging from 5–10 knots so a pilot can board a vessel. And, the Port of Los Angeles requests that every vessel entering or leaving the Port reduce its speed to 12 knots to reduce smog forming emissions. Ships have voluntarily observed this speed limit since 2002.

The USCG has required vessel speed restrictions at various times and locations, primarily to enhance national security (e.g., 66 FR 53712; 67 FR 41337; 68 FR 2201). For example, in one rule (66 FR 53712) the USCG required vessels 300 gross tons or greater to travel at speeds of eight knots or less in the vicinity to Naval Station Norfolk. Based on comments that speeds of eight knots might adversely affect large vessel maneuverability, the USCG increased the limit to 10 knots (68 FR 35173).

Ships' Maneuverability: Several commenters indicated that large ships would lose steerage at low speeds. Based on conversations with shipping industry representatives and the USCG regulations mentioned above, NMFS believes that most ocean going vessels maintain steerage at speeds of 10 knots and greater. In addition, we note the USCG has implemented ship speed restrictions in some river and port entrances ranging from five to ten knots (see, for example, 68 FR 66753; 67 FR 41337; 68 FR 2201; and 66 FR 53712). Based on this information and absent evidence to the contrary, NMFS believes that ships operating under the proposed regulations will be able to maintain maneuverability, but requests further comment on this topic.

Economic Burden to Vessel Operators: A number of comments were received regarding the potential economic impacts to commercial vessel operators arising from the proposed regulations. Economic impacts are addressed in the Draft Environmental Impact Statement, Regulatory Impact Review, and Regulatory Flexibility Act analysis.

Notice of Intent to Prepare a Draft Environmental Impact Statement

NMFS published a Notice of Intent (NOI) to prepare a Draft Environmental Impact Statement (DEIS) on June 22, 2005 (70 FR 36121). In the notice, NMFS invited public comment on the various alternatives and solicited information bearing on the National Environmental Policy Act (NEPA) analyses. In conjunction with preparation of the DEIS, NMFS held a number of meetings along the eastern seaboard to discuss potential economic impacts of the proposed rule. Further, public comment was also solicited through the USCG's PARS of several suggested recommended routes. The DEIS will be made available for public comment.

In sum, NMFS encouraged public comment through an ANPR, a NOI, and now proposed rulemaking and the DEIS. As a result, NMFS has conducted numerous public meetings, held several rounds of discussions with various segments of the shipping community and other stakeholders, and described the content and purpose of the ship strike reduction program in various public forums.

Proposed Rulemaking

Current efforts to reduce occurrence of North Atlantic right whale deaths and serious injury from ship strikes have not been sufficient to alter the trajectory of this species toward extinction. The regulatory measures proposed here are part of NOAA's Ship Strike Reduction Strategy. They are designed to significantly reduce the likelihood and severity of collisions with right whales while also minimizing adverse impacts on ship operations.

NOAA is proposing these regulations pursuant to its rulemaking authority under MMPA section 112(a) (16 U.S.C. 1382(a)), and ESA 11(f) (16 U.S.C. 1540(f)). These proposed regulations also are consistent with the purpose of the ESA "to provide a program for the conservation of [...] endangered species" and "the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species [...] and shall utilize their authorities in furtherance of the purposes of [the ESA]." 16 U.S.C. 1531(b), (c). Some provisions of the proposed regulations differ from the ANPR based on comments received and additional analysis by NMFS.

Requirements and Applicability

Speed Restrictions: NMFS proposes to establish vessel speed restrictions in the areas identified below. NMFS's

proposed rulemaking will impose vessel speed restrictions of 10 knots or less. However, NMFS also invites comments on vessel speed restrictions of 12 knots or less, and 14 knots or less, in light of data, summarized here and in the D°IS, about the additional reduction in risk to the right whale population and increased costs of incrementally stricter speed limits. The proposed regulations seek to reduce the likelihood and severity of ship strikes through restrictions on vessel speed. Given the lower costs of relatively higher speed limits under the same mix of management measures (preferred alternative 6 in the D°IS), comments should address the degree to which the lower speed limits will serve this purpose.

Vessels Subject to Proposed Rule: These proposed regulations apply to all vessels subject the jurisdiction of the United States 65 ft (19.8 m) and greater in overall length, except U.S. vessels owned or operated by, or under contract to, the Federal Government; and all other vessels 65 ft (19.8 m) and greater in overall length entering or departing a port or place under the jurisdiction of the United States. NMFS examined sizes of vessels involved in known North Atlantic right whale ship strike deaths to determine vessel size classes that should be subject to the requirements. Available data indicate that most lethal collisions are caused by large vessels (Laist *et al.*, 2001; Jensen and Silber, 2003). In this proposed rulemaking, NMFS proposes 65 ft (19.8m) as the vessel size threshold for speed restrictions. NMFS is aware that right whale collisions can occur with vessels smaller than 65 ft (19.8 m) and result in serious injury or death. Sixty-five feet (19.8m) is a size threshold recognized in the maritime community and commonly used in maritime regulations to distinguish between motorboats and larger vessels, of which the latter are subject to additional regulatory requirements (e.g., Automatic Identification System (AIS) requirements; International Navigational Rules Act, Rules of the Road sections).

Exemption of Federal vessels: The proposed regulations described herein will not apply to vessels owned or operated by, or under contract to, Federal agencies. This exemption would also extend to foreign sovereign vessels when they are engaging in joint exercises with the U.S. Department of the Navy. NMFS believes that the national security, navigational, and human safety missions of some agencies may be compromised by mandatory vessel speed restrictions. As noted above, however, this exemption would not relieve Federal agencies of their obligations under the ESA, including section 7. NMFS will be reviewing Federal actions involving vessel operations to determine where ESA section 7 consultations would be appropriate. NMFS also requests all Federal agencies to voluntarily observe the conditions of the proposed regulations when and where their missions are not compromised.

Regional and Seasonal Implementation of the Speed Restrictions: Due to regional differences in right whale distribution and behavior, oceanographic conditions, and ship traffic patterns, NMFS's proposed speed restrictions would apply only in certain areas and at certain times of the year, or under certain conditions. These are roughly divided into: (a) waters off the Southeast U.S. coast, (b) waters off the U.S. mid-Atlantic coast, (c) waters off the northeast U.S. coast, and (d) dynamically managed areas. These proposed regulations were developed to be consistent with right whale movement, distribution, and aggregation patterns. The timing, duration, and geographic extent of the speed restrictions have been tightly defined to take into account the biological data while also minimizing potential impacts to ship operations.

Southeast United States (SEUS)

Waters off the SEUS coast are a vital aggregation area for North Atlantic right whales, and reducing impacts from human activities in this area is essential to the species' recovery. Mature females and their calves, key reproductive components of the population, use these shallow, relatively benign waters in winter. The loss of one of these individuals represents a significant impact to the recovery of the population. In addition, certain behavior patterns of cow/calf pairs (e.g. relatively greater amounts of time at the surface due to limited diving ability and agility of the calf) make them particularly susceptible to ship collisions. The area also hosts substantial ship traffic.

SEUS Operational Measure: NMFS proposes to restrict vessel speed (see above) from November 15 to April 15 each year in the area bounded by: the shoreline, 31°27′N. lat. (i.e., the northern edge of the MSRS boundary) to the north, 29°45′N. lat. to the south, and 80°51.6′W. long. (i.e., the eastern edge of the MSRS boundary) (Fig. 1). This area corresponds to the calving/nursery area off Georgia/Florida.

Mid-Atlantic Region of the U.S. (MAUS)

The MAUS is used heavily by right whales migrating to and from calving/nursery areas in the SEUS and feeding grounds off the northeastern U.S. coast and Canada. Satellite tagging data, opportunistic sighting data, and historical records of right whale takes in the commercial whaling industry indicate that right whales often occur within 30 nm (56 km) of the coast and in waters less than 25 fathoms. Ship traffic entering ports in this area, or transiting through it, crosses the whales' north-south migratory path. Two right whale calves were found dead in the mid-Atlantic region in 2001 and there is a high probability that these deaths were caused by ship strikes. A dead mature female right whale was observed floating off Virginia (subsequently stranded on the coast of North Carolina in 2004) and almost certainly died as a result of a vessel collision.

MAUS Operational Measure

NMFS proposes to restrict vessel speed from November 1 through April 30 each year around each of the port or bay entrances identified below and the designated area around Block Island Sound. The areas are defined as the waters within a 30 nm area with an epicenter located at the midpoint of the COLREG demarcation line crossing the entry into the following designated ports or bays (Fig. 2):

(a) Ports of New York/New Jersey;

(b) Delaware Bay (Ports of Philadelphia and Wilmington);

(c) Entrance to the Chesapeake Bay (Ports of Hampton Roads and Baltimore);

(d) Ports of Morehead City and Beaufort, NC;

(e) Port of Wilmington, NC;

(f) Port of Georgetown, SC;

(g) Port of Charleston, SC; and

(h) Port of Savannah, GA.

At Block Island Sound, the designated area is a box with a 30–nm width extending south and east of the mouth of the Sound (reference points: Montauk Point and the western end of Martha's Vineyard) (Fig. 2).

Northeast United States (NEUS)

Right whales occupy and forage in four distinct areas in the NEUS: Cape Cod Bay; the area off Race Point (at the northern end of Cape Cod); the Great South Channel (extending south and east of Cape Cod); and the northern Gulf of Maine (Fig. 3).

Right whales feed in Cape Cod Bay in winter and spring. Right whale food resources in Cape Cod Bay wane by the end of April, causing right whales to

leave the area in search of resources elsewhere. At that time, many of these whales travel to the Great South Channel, where they are found in large aggregations in spring and early summer. Before entering the Great South Channel, right whales commonly transit or reside in other nearby areas; these include Stellwagen Bank, areas to the east of Stellwagen Bank, and the northern end of the Provincetown Slope (the area on the ocean side of Cape Cod that extends to the Great South Channel). The Boston Traffic Separation Scheme (TSS) concentrates ship traffic through this region, and hundreds of ships' transits occur here annually (Ward-Geiger *et al.*, 2005). Therefore, right whales are vulnerable to ship strikes in these areas.

The Great South Channel is one of the most important habitats for right whales. Right whales aggregate in the Channel in spring and early summer to feed on dense prey patches. In some years, more than one-third of the North Atlantic right whale population can be found in this area, and it is likely that well over half the population feeds in, or at least passes through, this area during the course of the year. Some individually identified right whales observed in the Great South Channel are seen rarely or not at all in other areas, further indicating the importance of this area to the population. For much of the time in the Great South Channel, whale distribution overlaps with those of commercial ship traffic, exposing them to risk of collision.

Right whales use the Gulf of Maine in summer and fall, primarily observed as feeding or socializing aggregations, or en route to aggregation areas in Canadian waters. However, whale occurrence in this area often is not consistently or predictably in high densities. Moreover, vessel traffic in this area, other than transits into Portland, ME, does not exhibit predictable patterns.

Cape Cod Bay Operational Measures: NMFS proposes to restrict vessel speed from January 1 - May 15 each year throughout all of Cape Cod Bay. The proposed area consists of all waters in Cape Cod Bay, extending to all shorelines of the Bay, with a northern boundary of 42°12′ N. lat. (Fig. 3).

Off Race Point: NMFS proposes to restrict vessel speed from March 1 to April 30 each year in a box approximately 50 nm by 50 nm to the north and east of Cape Cod, MA (Fig. 3). The proposed area consists of all waters bounded by straight lines connecting the following points in the order stated:

N. Lat.	W. Long.
42°30′	70°30′
42°30′	69°45′
41°40′	69°45′
41°40′	69°57′
42°04.8′	70°10′
42°12′	70°15′
42°12′	70°30′
42°30′	70°30′

Great South Channel: NMFS proposes to restrict vessel speed from April 1 to July 31 in the Great South Channel (Fig 3). The proposed area consists of all waters bounded by straight lines connecting the following points in the order stated:

N. Lat.	W. Long.
42°30′	69° 45′
42°30′	67°27′
42°09′	67°08.4′
41°00′	69°05′
41°40′	69°45′
42°30′	69°45′

Atlantic Ocean

The specific speed limit areas proposed above are based on known recurring North Atlantic right whale aggregations and behavioral patterns in those particular areas and times of year. These areas are tightly bounded both temporally and spatially based on predictable right whale movement and occurrence as well as existing vessel traffic patterns. However, right whales also occur at other, less predictable, times and locations when, for example, food resources are present. Right whale prey concentrations are ephemeral; their occurrence is dictated by a confluence of oceanographic conditions that may vary annually. As a result, right whale aggregations may occur outside the specific NEUS, MAUS, and SEUS areas and times described above. In addition, certain right whale behavior patterns may increase the chance of a fatal strike. Actively feeding or socializing right whales are highly focused on the activity and perhaps less aware of oncoming ships. Other social group types or activities may also render right whales vulnerable to ship strikes. For example, mother calf pairs may be at risk due to the limited swimming or diving ability of the calf. And, right whales lingering in the vicinity of shipping lanes or high vessel traffic areas are susceptible to ship strikes. Therefore, NMFS proposes to restrict vessel speed in areas or times outside the above-mentioned seasonal restrictions when whale groups are sighted.

Dynamic Management Areas

NMFS proposes to establish temporary "dynamic management areas" (DMAs) in areas where right whales occur outside the SEUS, MAUS, and NEUS areas described above or during such times both within as well as outside these areas when the seasonal management measures are not operational. Designation of such an area would be triggered by (a) a concentration of three or more right whales, or (b) one or more whales within a Traffic Separation Scheme (TSS), designated shipping lane, or within a Mid-Atlantic 30 nm port entrance zone and the whales show no evidence of continued coast-wise transiting (e.g., they appear to be non-migratory or feeding). In the designated area, mariners will have the option to traverse at a speed no greater than 10 knots, or route around the area.

NMFS' decision to trigger a DMA and the size of the DMA will be based a number of considerations, including, but not limited to: the experience, training and qualifications of the person(s) sighting the right whale(s); the reliability of the sighting; and the aggregation and behavior of whales. In addition to these considerations, NMFS will also consider criteria developed by Clapham and Pace (2001), which provided a description and analysis of triggering criteria for temporary fisheries closures, to help determine the size of the DMA. Those criteria suggest that for each individual sighting event, NMFS will plot the sighting and draw a circle with a radius of at least 2.8 nm around the sighting. The radius would emanate from the geographic center of all whales included in the sighting event. This radius would be adjusted for the number of whales such that a density of 0.04 whales per square nm (i.e., a density of 4 whales per 100 square nm) is maintained. That is, the radius would be 2.8 nm for a single right whale, 3.9 nm for two whales, 4.8 nm for three whales, etc. In addition, a larger circular zone will be designated that will extend an additional 15 nm beyond the core area to allow for possible whale movement.

A DMA will remain in effect for 15 days from the date of the initial designation and automatically expire after that period if NMFS does not modify the duration of the DMA. The period may be changed if subsequent surveys within the 15–day period demonstrate that: (a) whales are no longer present in the zone, in which case the DMA zone will expire immediately upon providing notice of this determination; or (b) the

aggregation has persisted (as indicated by subsequent sightings in the same zone), in which case NMFS would extend the period for an additional 15 days from the date of the most recent sighting in the zone.

NMFS would notify ship operators of a DMA, including location(s), dimensions, and dates, through publication in the **Federal Register**, actual notice through USCG broadcast notice to mariners and other commonly used marine communication channels (e.g., NOAA Weather Radio alerts, and any available media outlets). NMFS is considering making DMAs effective from the date specified in the actual notice (USCG broadcast notice to mariners) of the DMA and seeks comment on that proposal as well.

While DMAs can be a logistical challenge and may involve a heavy resource commitment (i.e., due to the need for extensive aircraft surveys, flights to verify sighting locations, and infrastructure to process and issue the restrictions and monitor compliance), they allow NMFS to minimize the size of the seasonally managed areas as well as the time when these seasonal management measures are operational, while allowing for real-time protection of right whales by establishing protection measures in areas where right whales appear unexpectedly.

Evaluation of the Effectiveness and Enhancing the Rigor of the Measures

The success of this program is vital to the recovery of the species. Therefore, NMFS will monitor the effectiveness of the ship strike reduction measures and consider implementing larger seasonally managed areas, further reducing ship speed, or other measures if appropriate.

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Classification

This proposed rule has been determined to be economically significant for purposes of Executive Order 12866.

Based on the most recently available data, the annual direct and indirect economic impacts are estimated to be $116 million for the preferred alternative at the 10 knot speed restriction. This estimate is based on the following direct economic impacts: shipping industry vessels ($49.4 million), cumulative effect of multi-port strings ($5.8 million), rerouting of southbound coastwise shipping ($2.5 million), commercial fishing vessels ($1.0 million), charter fishing vessels ($1.2 million), passenger ferries ($5.6 million), whale watching vessels ($0.9 million); it also includes the indirect economic impact of port diversions ($49.7 million). The estimated annual economic impact exceeds $100 million. Therefore, the proposed rule would be considered an economically significant regulatory action for the purposes of E.O. 12866.

NMFS estimates of the costs of this propoed rule focus on direct economic costs to ships and the indirect costs to ports of diverted ship traffic and do not include the costs to passengers for the additional time spent in transit. NMFS requests comment on these costs as well.

The benefits of this proposed rule would be the reduction of right whale ship strikes. Data suggest that there is an average of about two known ship strikes per year with at least one resulting in death. The actual number of ship strike related deaths is almost certainly higher than those documented as some deaths go undetected or unreported. This rule will reduce the risk of both ship strikes and ship strike mortality.

In the DEIS, NMFS analyzed the costs of a series of alternatives to the rule, including three different speed limits for each alternative set of management measures. This analysis is summarized in the Regulatory Impact Analysis. Under the preferred alternative, NMFS estimated the costs of a 12 knot speed restriction to be $62.4 million annually and a 14 knot speed restriction to be $34.6 million annually. NMFS believes that these alternative speed limits would not be as effective in reducing the risks of ship strikes as a 10 knot speed limit.

Endangered Species Act consultation under section 7 will be completed prior to the issuance of any final rule.

NMFS has prepared a Draft Environmental Impact Statement (D°IS) pursuant to the requirements of the National Environmental Policy Act. Notice of Availability of the D°IS will be published in the **Federal Register**.

Pursuant to the Regulatory Flexibility Act, NMFS prepared the following Initial Regulatory Flexibility Analysis (IRFA).

IRFA

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. This IRFA analyzes the proposed alternatives and other alternatives described in the preamble to the rule and does not address alternatives previously considered and subsequently dismissed in the DEIS. There are no recordkeeping or reporting requirements associated with this proposed rule. There most likely will be a compliance cost or benefit associated with changes in fuel consumption from speed restrictions measures. These changes are likely to be small given that they would occur only in a 20–30 nm (37–55.6 km) area. However, given the heterogeneous characteristics of the many types, lengths, gross tonnages, and horsepower equivalents of vessels impacted by this rule, it is not possible to make this estimate on a vessel, firm, or aggregate basis.

As discussed below, NMFS believes that there may be disproportionate economic impacts among types of small entities within the same industry as well as between large and small entities of different vessel types occurring within different industries. While the economic impacts discussed in this IRFA would reflect the impact on the typical vessel within each classification, NMFS recognizes that there may be variation of impacts among different vessels within each classification from the implementation of this proposed rule. NMFS recognizes that there may be disproportionate impacts between or among vessels servicing different areas or ports. However, there is no hard data or evidence to indicate that this is the case. In addition, changes in annual revenues are used as a proxy for changes in profitability since cost data is not readily available. For the most part, NMFS does not expect any small entity to cease operation as a result of this rulemaking, regardless of the alternative implemented by the agency. There are, however, two cases where small entities might cease operation if no adjustments are made to the composition of their operations. They include small entities comprised entirely of fast-speed ferry services and fast-speed whale watching vessels. Without the ability to pick up the increased demand for regular-speed ferry or regular-speed whale watching trips as a result of temporary cessation of high-speed vessel operations whenever a DMA is in place, these entities might cease operations under any alternative containing DMAs. The economic impacts of the proposed rule as it relates to small entities are as follows.

Description of Affected Small Entities

There are seven industries directly affected by this proposed rulemaking as follows: commercial shipping, high-speed passenger ferries, regular-speed passenger ferries, high-speed whale watching vessels, regular-speed whale watching vessels, commercial fishing vessels, and charter fishing vessels. This analysis uses size standards prescribed by the Small Business Administration (SBA). Specifically, for international and domestic shipping operators, the SBA size standard for a small business is 500 employees or less. The same threshold applies for international cruise operators and domestic ferry service operators. For whale watching operators and charter fishing commercial fish harvesters, the SBA threshold is $6.0 million of average annual receipts. For commercial fishing operators, the SBA threshold is $3.5 million of average annual receipts. The number of small entities affected by the proposed rule-making by industry are as follows: 372 commercial shipping vessels of various classifications, 33 passenger ships, 345 commercial fishing vessels, 40 charter fishing vessels, 9 high-speed passenger ferries, 8 regular-speed passenger ferries, 3 high-speed whale watching vessels and 5 regular-speed whale watching vessels.

Economic Impacts

Proposed Alternative (Right Whale Ship Strike Reduction Strategy)

The proposed alternative is comprised of management measures that would define specific areas on a seasonal basis and requires vessels to reduce speed to avoid right whale strikes. In addition, the proposed alternative would implement dynamic management areas (DMAs) on a case-by-case basis outside of designated areas specified in this proposed rule. In addressing the speed reduction option, NMFS analyzed impacts of a speed restriction of 10, 12, and 14 knots.

The proposed option of a speed restriction of 10 knots would reduce annual revenues to vessels as follows. Commercial shipping 0.18 percent of annual receipts, passenger cruise vessels 0.20 percent, high-speed passenger ferries 9.8 percent, regular-speed passenger ferries 7.9 percent, high-speed whale watching vessels 8.3 percent, regular-speed whale watching vessels

3.8 percent, commercial fishing vessels 0.4 percent, charter fishing vessels 8.9 percent.

At a speed of 12 knots, all vessels defined as small entities, with the exception of high-speed passenger ferries and high-speed whale-watching vessels, show less adverse economic impact than the proposed option ranging from less than 0.1 percent of annual receipts for commercial fishing vessels to 5.2 percent for regular-speed passenger ferries. The economic impact to high-speed passenger ferries and whale-watching vessels are estimated to be the same as the proposed option, 9.8 percent and 8.3 percent, respectively.

For the 14–knot option, with the exception of the high-speed passenger ferries and high-speed whale-watching vessels which incur the same economic impact as compared with the proposed option, 9.8 percent and 8.3 percent, all vessels show less adverse economic impacts than the proposed option from less than 0.1 percent reduction in annual receipts for commercial fishing vessels to 2.6 percent for regular-speed passenger ferries.

Based on this analysis, NMFS concludes that operators of regular-speed passenger ferries, regular-speed whale-watching vessels, and charter fishing vessels would prefer either the 12- or 14–knot options. However, NMFS' scientists and other independent scientists have determined that a higher speed restriction increases likelihood of a ship striking a right whale. Furthermore, scientists have shown that only a small percentage of ship strikes occur at 10 knots, and those that do usually result in injury rather than death. Therefore, among the three speed restriction options, the 10–knots option would afford the preferred option for right whale recovery and from a biological standpoint, a speed restriction of either 12 or 14 knots are not preferred options for protecting the critically endangered right whale.

NMFS concludes that there would be disproportionate impacts from implementation of this proposed option between the group consisting of passenger ferries, high-speed whale watching vessels, and charter fishing vessels and all other types of vessels included in this IRFA. In addition, NMFS has determined that there may be disproportionate impacts between large commercial shipping and large passenger vessels, such as Chevron, Maersk, Carnival Cruise Lines, etc., and the group consisting of passenger ferries, high-speed whale watching vessels, and charter fishing vessels. This conclusion is based on the assumption these large vessels would be less adversely affected than their companion small commercial and shipping vessels which were found to be adversely affected, on average, by the 0.18 percent for the 10–knot speed restriction, whereas, reductions to revenues for small passenger ferries, high-speed whale watching vessels, and charter fishing vessels would range from 7.9 percent to 9.8 percent.

No-Action Alternative

The no-action option would be preferable to all small entities, particularly to all passenger ferries, high-speed whale watching vessels, and charter fishing vessels. This determination is based on the fact that the reduction in annual revenues as a percentage of total revenue for these three classes of vessels under the proposed alternative and proposed speed restriction would exceed approximately 8 percent annually.

Dynamic Management Areas (DMA) Only Alternative

One alternative considered in the DEIS is the use of DMAs as described in the preamble, excluding all other options that are part of the proposed rule. NMFS has determined that this alternative would be preferable to small businesses as compared to the proposed alternative because vessels would not be required to reduce speeds in seasonally managed areas as described in the preamble. Vessels would simply be required to follow speed restrictions for shorter time frames in a smaller DMA in response to right whale sightings. However, relying solely on this alternative would not afford the needed protection to right whales. This measure calls for being able to identify right whale aggregations in order to trigger DMAs, but as identification of right whale aggregations is not always possible in practice, relying on this measure would have only a minor, positive effect on right whale population size and may not reduce ship strikes sufficiently to promote population recovery. In addition, relying on this alternative would impose substantial costs on government resources in terms of the monitoring and assessment activities needed to implement the DMAs.

Speed Restrictions in Designated Areas Only Alternative

An alternative considered in this proposed rule is the use of speed restrictions in designated areas that are more extensive than those prescribed in the proposed rule. The designated areas considered under this alternative are both larger in size and would extend for a greater length of time, with the exception of those located in the southeastern part of the United States where speed restriction would be in place for a shorter length of time. This would require vessels to travel at slower speed for a greater period of time and throughout a greater range, which may cause greater adverse economic impacts to small entities when compared to the proposed alternative. However, this alternative does not attempt to route ships away from high-density areas of right whales through identified shipping lanes. Furthermore, right whales that are sighted outside of these areas are not protected under this alternative because DMAs are not included. Therefore, as a stand-alone measure, this alternative is less likely to aid the recovery of the right whale population when compared to the proposed alternative.

Use of Recommended Shipping Routes Alternative

This alternative would simply designate recommended shipping lanes away from areas where right whales are known to congregate without any other measures. NMFS has not yet designated port access routes; therefore the economic impact of this alternative on small entities is indeterminate at this time. If, in the future, NMFS decides to implement this alternative, an IRFA will be conducted when all port access routes are known and analyzed. This alternative would not provide sufficient protection to effectively reduce the occurrence and severity of ship strikes because right whales still may occur in the designated lanes; therefore it is also less likely to aid in the recovery of right whale populations when compared with the proposed alternative.

"Combination of Alternatives" Alternative

This alternative combines the more restrictive designated areas, DMAs, and recommended shipping routes (the previous three alternatives considered in this IRFA). Impacts to small entities are expected to be greater under this alternative when compared to the proposed alternative, due to the use of designated areas that are generally greater in size and greater in length of time as compared to those prescribed in the proposed alternative. Therefore, NMFS has determined that this alternative will be less preferable to small businesses since it has more adverse economic impacts. This alternative would provide a higher level of protection to the right whale population since it would reduce the amount and/or severity of ship strikes

when compared with the proposed alternative.

List of Subjects in 50 CFR Part 224

Endangered marine and anadromous species.

Dated: June 21, 2006.

James W. Balsiger,

Acting Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 224 is proposed to be amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for 50 CFR Part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

2. In part 224, a new § 224.105 is added to read as follows:

§ 224.105 Speed restrictions to protect North Atlantic right whales.

(a) The following restrictions apply to: all vessels subject to the jurisdiction of the United States greater than or equal to 65 ft (19.8 m) in overall length, except those owned or operated by, or under contract to, Federal agencies; and all other vessels greater than or equal to 65 ft (19.8 m) in overall length entering or departing a port or place under the jurisdiction of the United States. These restrictions do not apply to foreign sovereign vessels engaging in joint exercises with the U.S. Department of the Navy.

(1) *Southeast U.S.:* Vessels shall travel at a speed of 10 knots or less during the period of November 15 to April 15 each year in the area bounded by: the shoreline, 31°27′N lat., 29°45′N lat., and 80°51.6′W long.

(2) *Mid-Atlantic U.S.:* Vessels shall travel 10 knots or less in the period November 1 to April 30 each year.

(i) Within a 30–nautical mile (nm) (55.6 km) radius (as measured from COLR°G delineated coast lines and the center point of the port entrance) (Fig. 2) at the

(A) Ports of New York/New Jersey;

(B) Delaware Bay (Ports of Philadelphia and Wilmington);

(C) Entrance to the Chesapeake Bay (Ports of Hampton Roads and Baltimore);

(D) Ports of Morehead City and Beaufort, NC;

(E) Port of Wilmington, NC;

(F) Port of Georgetown, SC;

(G) Port of Charleston, SC; and

(H) Port of Savannah, GA; and

(ii) In Block Island Sound, in the area with a 30–nm (55.6 km) width extending south and east of the mouth of the Sound (reference points: Montauk Point and the western end of Martha's Vineyard) (Fig. 2).

(3) *Northeast U.S.:*

(i) In Cape Cod Bay, MA: Vessels shall travel at a speed of 10 knots or less during the period of January 1 to May 15 in Cape Cod Bay, in an area that includes all waters of Cape Cod Bay, extending to all shorelines of the Bay, with a northern boundary of 42°12′ N. lat. (Fig. 3).

(ii) Off Race Point: Vessels shall travel at a speed of 10 knots or less during the period of March 1 to April 30 each year in waters bounded by straight lines connecting the following points in the order stated (Fig. 3):

N. Lat.	W. Long.
42°30′	70°30′
42°30′	69°45′
41°40′	69°45′
41°40′	69°57′
42°04.8′	70°10′
42°12′	70°15′
42°12′	70°30′
42°30′	70°30′

(iii) *Great South Channel:* Vessels shall travel at a speed of 10 knots or less during the period of April 1 to July 31 each year in all waters bounded by straight lines connecting the following points in the order stated (Fig. 3):

N. Lat.	W. Long.
42°30′	69° 45′
42°30′	67°27′
42°09′	67°08.4′
41°00′	69°05′
41°40′	69°45′
42°30′	69°45′

(4) *Atlantic Ocean:* At all times of the year and in all waters along the Atlantic seaboard, including the entire U.S. °xclusive °conomic Zone, that are not otherwise specified in the regulations above, a dynamic management area will be designated when NMFS determines that there exists

(i) A concentration of three or more right whales, or

(ii) One or more right whales within a Traffic Separation Scheme, designated shipping lane, or within a Mid-Atlantic 30 nm port entrance zone which show no evidence of continued coast-wise transiting. Upon such a determination, NMFS will establish an area, which will be adjusted for the number of right whales in the sighting such that a density of no more than 0.04 right whales per square nm is maintained within an inner circle. A larger circle will be designated to extend 15 nm (27.8 km) from the perimeter of the circle around each core area. NMFS will require mariners in that area to travel at speeds of 10 knots or less. Notice of the specific location of the area will be published in the **Federal Register**. Restrictions within the area will be in effect for 15 days from the initial designation or lifted by subsequent publication in the **Federal Register**. At the conclusion of the 15–day period the area will expire automatically, unless extended.

(b) It is unlawful under this section:

(1) For any vessel subject to the jurisdiction of the United States to violate any speed restriction established in paragraph (a) of this section; or

(2) For any vessel entering or departing a port or place under the jurisdiction of the United States to violate any speed restriction established in paragraph (a) of this section.

BILLING CODE 3510–22–S

Figure 1. Southeast United States.

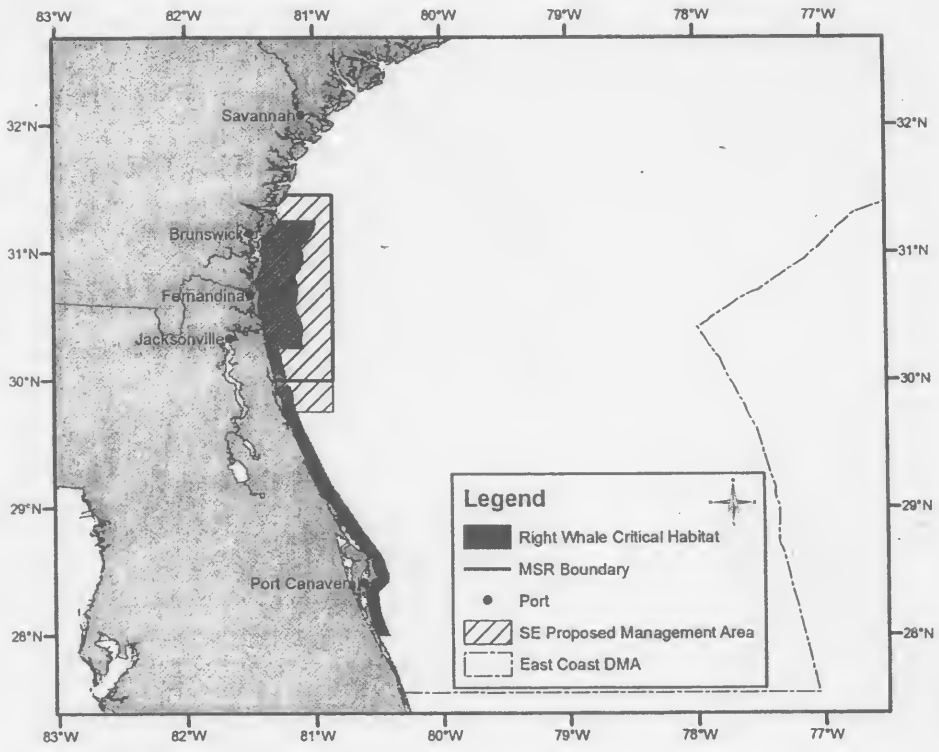


Figure 2. Mid-Atlantic United States.

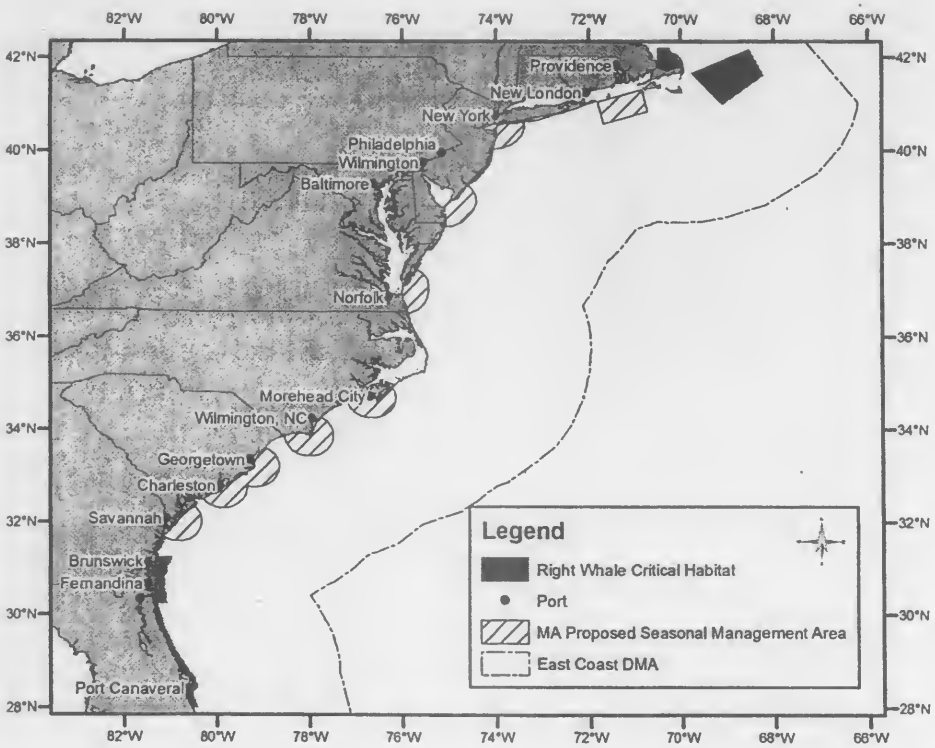
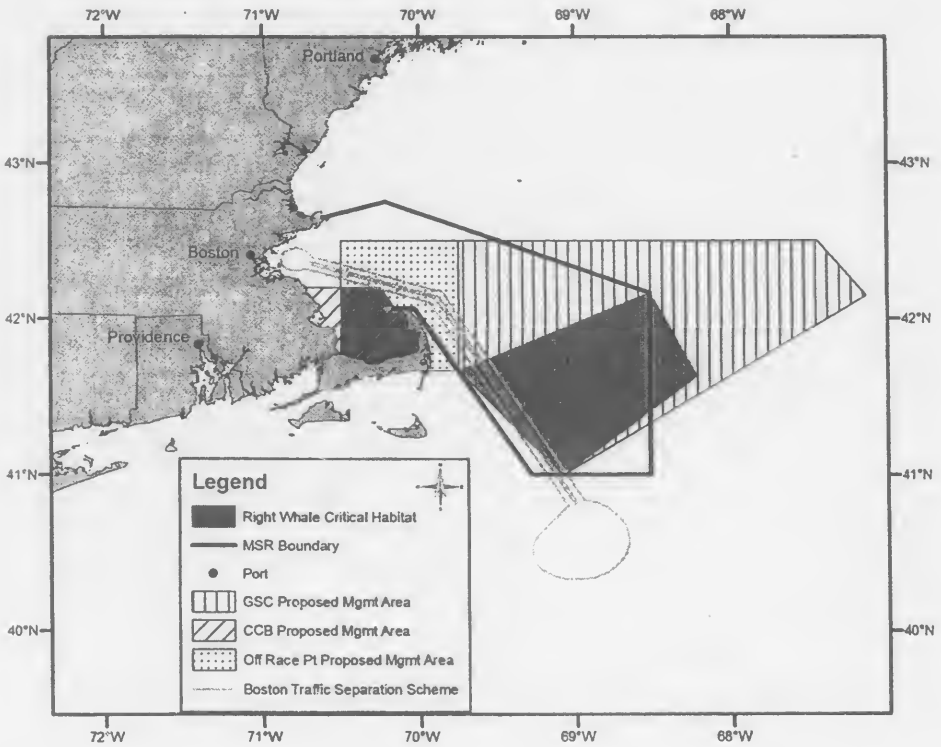


Figure 3. Northeast United States.



[FR Doc. 06–5669 Filed 6–23–06; 8:45 am]
BILLING CODE 3510–22–C

Figure 2. Mid-Atlantic United States.

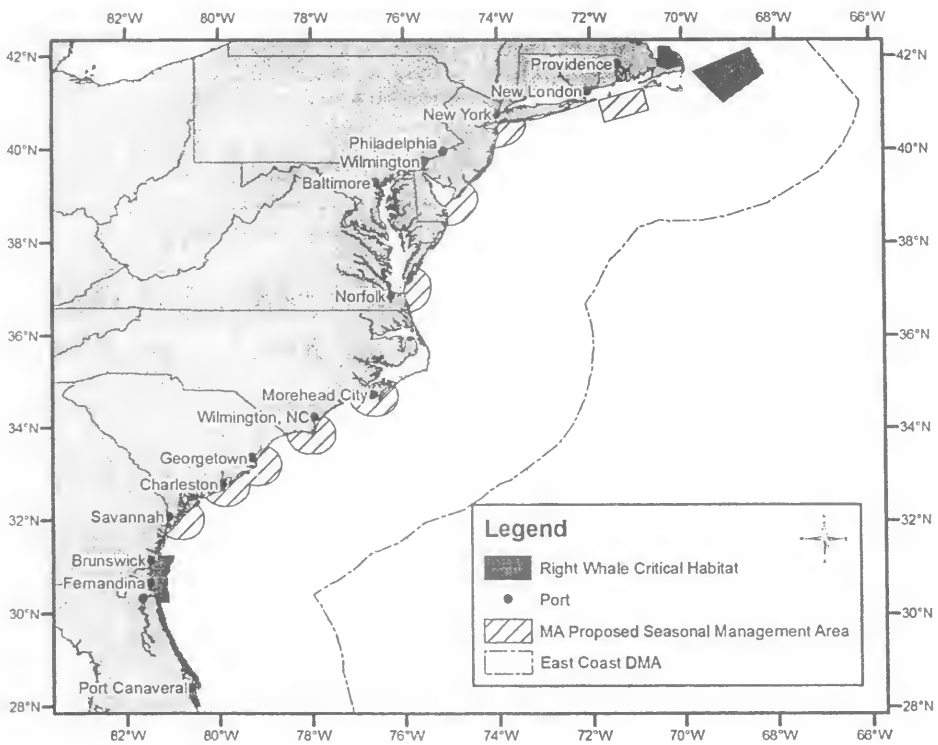
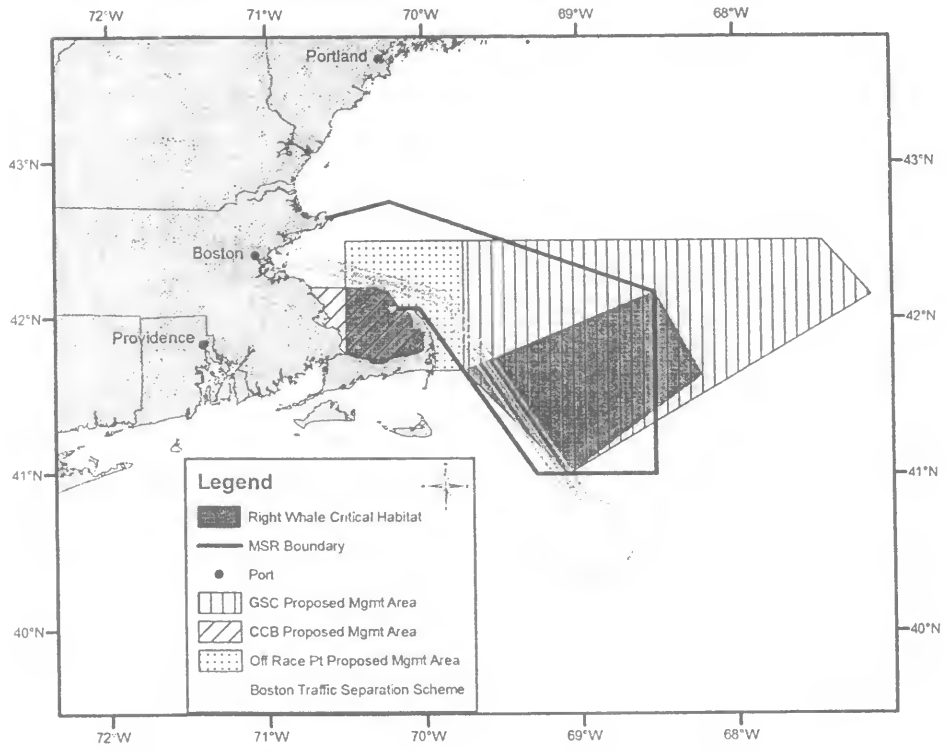


Figure 3. Northeast United States.



[FR Doc. 06–5669 Filed 6–23–06; 8:45 am]
BILLING CODE 3510–22–C

Notices

Federal Register
Vol. 71, No. 122
Monday, June 26, 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

Submission for OMB Review; Comment Request

June 20, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Electronic Mailing List Subscription Form—Nutrition and Food Safety.

OMB Control Number: 0518–0036.

Summary of Collection: The National Agricultural Library's Food Information Team (FIT) currently maintains several on-line "discussion groups." This voluntary " Electronic Mailing List Subscription Form" gives individuals working in the area of nutrition and food safety an opportunity to participate in these groups. Data collected using this form will help FIT determine a person's eligibility to participate in these discussion groups. The authority for the National Agricultural Library (NAL) to collect this information is contained in the CFR, title 7, volume 1, part 2, and subpart K, § 2.65(92).

Need and Use of the Information: NAL will collect the name, e-mail address, job title, job location, mailing address and telephone number in order to approve subscriptions for nutrition and food safety on-line discussion groups. Failure to collect this information would inhibit NAL's ability to provide subscription services to these discussion groups.

Description of Respondents: State, Local or Tribal Government; Individuals or households; Federal Government; Not-for-profit institutions

Number of Respondents: 1,000.

Frequency of Responses: Reporting: Monthly; Annually.

Total Burden Hours: 17.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–9981 Filed 6–23–06; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 21, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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Natural Resources Conservation Service

Title: Long Term Contracting.

OMB Control Number: 0578–0013.

Summary of Collection: The Long Term Contracting regulations at 7 CFR part 630, and the Conservation program regulations at 7 CFR parts 624, 631, 701, 702, 752 and 1465 set forth the basic policies, program provisions, and eligibility requirements for owners and operators to enter into and carry out long-term conservation program contracts with technical assistance under the various programs. These programs authorize Federal technical and financial long term cost sharing assistance for conservation treatment with eligible land users and entities. The financial assistance is based on a conservation plan that is made a part of

an agreement or contract for a period of no less than 5 years to not more than 15 years. Under the terms of the agreement, the participant agrees to apply, or arrange to apply, the conservation treatment specified in the conservation plan. In return for this agreement, Federal cost-share payments are made to the land user, or third party, upon successful application of the conservation treatment.

Need and Use of the Information: Natural Resource and Conservation Service (NRCS) will collect information on cost sharing and technical assistance, making land use changes and install measures to conserve, develop and utilize soil, water, and related natural resources on participants land. NRCS uses the information to ensure the proper utilization of program funds, including application for participation, easement, and application for payment.

Description of Respondents: Individuals or households; Farms; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 37,504.

Frequency of Responses: Reporting; Annually, Other (As required).

Total Burden Hours: 25,231.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–10023 Filed 6–23–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0086]

National Poultry Improvement Plan; General Conference Committee Meeting and Biennial Conference

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of meetings of the General Conference Committee of the National Poultry Improvement Plan and of the Biennial Conference.

DATES: The General Conference Committee will meet on September 7, 2006, from 8 a.m. to 11 a.m. The Biennial Conference will meet on September 8, 2006, from 8 a.m. to 5 p.m., and on September 9, 2006, from 8 a.m. to noon.

ADDRESSES: The meetings will be held at the Red Lion Hotel on the River, 909 N. Hayden Island Drive, Portland, OR.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1498 Klondike Road, Suite 101, Conyers, GA 30094; (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health. In addition, the Committee assists the Department in planning, organizing, and conducting the NPIP Biennial Conference.

Topics for discussion at the upcoming meetings include:

1. H5/H7 low pathogenic avian influenza (LPAI) program for commercial layers, broilers, and turkeys;

2. Compartmentalization of notifiable avian influenza free zones;

3. H5/H7 LPAI program for raised-for-release upland gamebird flocks;

4. Evaluation of rapid detection assays for Salmonella;

5. Evaluation of antigen detection assays for avian influenza; and

6. Modification of the current H5/H7 LPAI monitored program for commercial poultry flocks and slaughter premises.

The meetings will be open to the public. The sessions held on September 8 and 9, 2006, will include delegates to the NPIP Biennial Conference. However, due to time constraints, the public will not be allowed to participate in the discussions during either of the meetings. Written statements on meeting topics may be filed with the Committee before or after the meetings by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT.** Written statements may also be filed at the meetings. Please refer to Docket No. APHIS–2006–0086 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act. (5 U.S.C. App. 2).

Done in Washington, DC, this 20th day of June 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–10020 Filed 6–23–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Presentation of Project Proposals, (5) Status of the Mill Creek Project, (6) How to Allocate Final Funding, (7) Chairman's Perspective, (8) General Discussion, (9) Next Agenda.

DATES: The meeting will be held on July 13, 2006 from 9 a.m. and end approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Tricia Christofferson, Acting DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by July 11, 2006 will have the opportunity to address the committee at those sessions.

Dated: June 20, 2006.

Tricia Christofferson,

Acting Designated Federal Official.

[FR Doc. 06–5647 Filed 6–23–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Alpine County, CA, Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Alpine County Resource Advisory Committee (RAC) will meet on Thursday, July 27, 2006 at 18:00 at the Diamond Valley School for business meetings. The purpose of the meeting is to discuss issues relating to implementing the Secure Rural Schools and Community Self-Determination Act of 2000 (Payment to States) and expenditure of Title II funds. The meetings are open to the public.

DATES: Thursday, July 27, 2006 at 18:00 hours.

ADDRESSES: The meeting will be held at the Diamond Valley School, 35 Hawkside Drive, Markleeville, California 96120. Send written comments to Franklin Pemberton, Alphine County RAC coordinator, c/o USDA Forest Service, Humboldt-Toiyabe N.F., Carson Ranger District 1536 So. Carson Street, Carson City, NV 89701.

FOR FURTHER INFORMATION CONTACT: Alpine Co. RAC Coordinator, Franklin Pemberton at (775)–884–8150; or Gary Schiff, Carson District Ranger and Designated Federal Officer, at (775)–884–8100, or electronically to *fpemberton@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring urban and community forestry matters to the attention of the council may file written statements with the Council staff before and after the meeting.

Dated: June 14, 2006.

Edward Monnig,

Forest Supervisor, Humboldt-Toiyabe N.F.

[FR Doc. 06–5654 Filed 6–23–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne County Resource Advisory Committee will meet on June 19, 2006 at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to hear 17 presentations made by project proponents. The committee will also review requests for grant extensions and/or changing the focus of approved projects.

DATES: The meeting will be held June 19, 2006, from 12 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Pat Kaunert, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370 (209) 532–3671; E-mail *pkaunert@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Presentation of primarily Forest Service project submittals by project proponents; (2) Consideration of requests for grant extensions and/or changing previously submitted projects; (3) Pulic comment on meeting proceedings. This meeting is open to the public.

Dated: June 9, 2006.

Tom Quinn,

Forest Supervisor.

[FR Doc. 06–5662 Filed 6–23–06; 8:45 am]

BILLING CODE 3410–ED–M

Department of Agriculture

Natural Resources Conservation Service

Tongue River Watershed, Cavalier and Pembina Counties, ND

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c)of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tongue River Watershed, Cavalier and Pembina Counties, North Dakota.

FOR FURTHER INFORMATION CONTACT: James E. Schmidt, Assistant State Conservationist for Water Resources, Natural Resources Conservation Service, 220 E. Rosser Avenue, Bismarck, North Dakota, at (701) 530–2074.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, J.R. Flores, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is to bring Tongue River Watershed Structure M–4 into compliance with current State and Federal dam design and safety criteria; to continue to provide flood protection and to reduce the risk of loss of human life. The planned works of improvement include rehabilitating and upgrading Renwick Dam by installing a roller compacted concrete auxiliary spillway, raising the top of the dam, and modifying the principal spillway to allow a one foot rise to the permanent pool to provide for sediment storage for the extended life of the structure. A two lane access road connecting recreation facilities on the north side of the lake to Icelandic State Park Headquarters on the south side of the park will be constructed on the upstream side of the embankment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting James E. Schmidt, Assistant State Conservationist for Water Resources at (701) 530–2074.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

James E. Schmidt,

Assistant State Conservationist for Water Resources.

Finding of No Significant Impact for Tongue River Watershed Cavalier and Pembina Counties, North Dakota

Introduction

The Tongue River Watershed is a federally assisted action authorized for planning under Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of Supplement No. 2 of the watershed plan for the purpose of rehabilitating Renwick Dam 9 (Structure M–4) under Public Law 106–472. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public

review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 220 E. Rosser Ave., P.O. Box 1458, Bismarck, North Dakota 58502–1458.

Recommended Action

Proposed is the rehabilitation of aging flood water retarding structure (M–4) in the Tongue River Watershed (Renwick Dam). This structure will provide flood control for downstream farms, cropland, roads, bridges, and the city of Cavalier. The structure will control 93,300 acres of drainage area. The recommended plan consists of constructing a roller compacted concrete (RCC) spillway through the existing dam with the park entrance road, on the face of the dam, on the upstream side. The RCC spillway's purpose is to convey the design flood runoff safely through the reservoir without overtopping the earthen embankment. A roller compacted concrete spillway is similar to conventional concrete, yet its material properties allow it to be worked and hauled by traditional earth moving equipment. The embankment will be partially excavated to design grades for construction of a 500-foot-wide auxiliary RCC spillway. The RCC spillway will be constructed as a broad-crested weir. Material excavated from the embankment to construct the spillway will be used as earth-fill to construct a dike in the existing auxiliary spillway and to raise the top of the embankment.

Effects of Recommended Action

The recommended action protects flood damages to building, transportation services land, crops, prime farmland, and the city of Cavalier. The economic and social well-being of the residents within and downstream of the watershed will remain intact. Renwick Dam provides an important recreation opportunity for the region. The recommended plan will meet the sponsor's objectives of bringing Renwick Dam into compliance with the current dam safety and flood insurance criteria, maintaining the current 100-year floodplain, and addressing the resource concerns identified by the public. As designed, Renwick Dam will meet all current NRCS and State of North Dakota dam safety and performance standards.

Studies were completed by both private contractors and State and Federal Agency personnel to evaluate the watershed water coming into and out of the Renwick and Senator Young Dams. Land cover surveys were completed to determine the need for additional land treatment practices in the watershed. A detailed study was completed to determine the existing depth of sediment load in the Renwick Reservoir. Also studied was the impact sediment disturbance would have on the reservoir fishery and other aquatic life. The study revealed Renwick Reservoir sediment pool is estimated to be 50–60 percent full. A water quality/sediment survey conducted in September 2003, indicated between 115 and 150 acre feet of sediment in the pool.

Preliminary investigations within the project area revealed no cultural or historic properties within the project area. Land disturbance has occurred through development of the area around the structure with the recreation area on the north side of the reservoir, and disturbance during the actual construction of the structure in the early 1960s. A summary of the project accompanied by maps and aerial photographs was provided to the North Dakota State Historic Preservation Office (SHPO) on August 31, 2001, with a request for concurrence. A passive concurrence from the North Dakota SHPO has been received. The probability of discovering a new site is low, but if there is a significant cultural resource discovery during construction, appropriate notice will be made by NRCS to the SHPO and the Tribal Historic Preservation Office (THPO). Consultation and coordination have been and will continue to be used to ensure the provisions of Section 106 of Public Law 89–665 have been met and to include provisions of Public Law 89–523, as amended by Public Law 93–291. NRCS will take action as prescribed in NRCS GM 420, Part 401, to protect or recover any significant cultural resources discovered during construction.

Threatened or endangered species may occasionally be present in the watershed but the project will have no adverse impacts on these species. Consultation with the U.S. Fish and Wildlife Service was completed.

No wilderness areas are in the watershed.

Scenic values will be temporarily decreased at the construction site. Once construction is complete, vegetation will enhance the site to its preconstruction condition.

No significant adverse environmental impacts will result from installations except for minor inconveniences to local residents during construction.

Alternatives

The planned action is the most practical means of reducing the high hazard dam problems. No significant adverse environmental impacts will result from installation of the measures. No other practical alternative achieved the economical, environmental, or social needs of the watershed land users or project sponsors. The no action alternative will not alleviate the dam from being a high hazard structure. The decommissioning of the dam will allow for severe flooding. The RCC auxiliary spillway with the park entrance on top of the Dam will meet the sponsor's needs, but the RCC auxiliary spillway with the park entrance on the upstream side of the dam face was chosen to be more economically feasible to the sponsors.

Consultation and Public Participation

Formulation of the alternative plan process for Renwick Dam began with formal discussions with the sponsors. At a special meeting held on March 6, 2001, NRCS conveyed State law and policy associated with high hazard dams. The National Dam Safety Inspection Reports of 1978, 1983, 1987, and 1991 listed Renwick Dam in the high hazard category for potential loss of life in the event of failure. Sponsors received information about agency policy associated with Public Law 106–472, The Small Watershed Rehabilitation Amendments of 2000, and related alternative plans of action.

As a result of these discussions, the sponsors submitted an application on March 14, 2001, to NRCS requesting assistance for rehabilitation of Renwick Dam under the provisions of Public Law 106–472.

A public meeting was held on April 16, 2002, to assess proposed measures and their potential impact on resources of concern. As a result of this meeting, fifteen items of concern were identified.

A meeting and field tour with the North Dakota Interagency Committee was held on June 18–19, 2002, to assess proposed measures and their potential impact on resources of concern.

A site visit with the NRCS National Water Management Center (NWMC) Staff, NRCS Planning Staff, and an engineer review team was held October 7, 8, and 9, 2002, to exchange a wide variety of ideas for the design.

The sponsors recognized the complexity of the project and on May 22, 2003, initiated and adopted a Watershed Management Council (WMC). The WMC membership is made up of one representative from each local organization, and city and county political authorities within the surrounding Cavalier and Pembina watershed area. Through detailed analysis and consultation it was agreed, an increase of the permanent pool by

one foot would be necessary to maintain the same volume as that above the sediment pool. Removal of sediment was determined to be an unreasonable component of any proposed action due to a lack of safe disposal sites, high risk of not meeting Clean Water Act laws, and unpredictable costs per unit volume of sediment removed. It was also determined the volumes of sediment proposed to be removed would have little to no benefit towards flood storage and reducing the amount of rehabilitation work required to bring the structure into compliance with the Federal Dam Safety Program. Eleven alternatives were considered with all eleven being analyzed of having a one foot rise above the current elevation. All these alternatives were considered in the evaluation process by NRCS, project sponsors, Federal, State, and county agencies who were involved in part or all of the planning processes related to Supplement No. 2, the proposed rehabilitation of Flood Water Retarding Structure M–4.

Conclusion

The environmental assessment summarized above indicates this Federal action will not cause significant local, regional, or National impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact Statement for the Tongue River Watershed (Renwick Dam), Supplement No. 2 is not required.

Dated: June 15, 2006.

James E. Schmidt,

Assistant State Conservationist for Water Resources.

[FR Doc. E6–10015 Filed 6–23–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta from Italy: Final Results of the Ninth Countervailing Duty Administrative Review and Notice of Revocation of Order, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 6, 2006, the U.S. Department of Commerce ("the Department") published in the **Federal Register** its preliminary results of the administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 2004, through December 31, 2004. *See Certain Pasta From Italy: Preliminary Results of the Ninth Countervailing Duty Administrative Review and Notice of Intent to Revoke Order, In Part*, 71 FR 17440 (April 6, 2006) ("*Preliminary Results*"). We preliminarily found that the countervailing duty rates during the period of review ("POR") for all of the producers/exporters under review are less than 0.5 percent and are, consequently, zero or *de minimis*. We did not receive any comments on our preliminary results, and we have made no revisions. The final net subsidy rates for the reviewed companies are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: June 26, 2006.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3534 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published a countervailing duty order on certain pasta ("pasta" or "subject merchandise") from Italy. *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 38544 (July 24, 1996). On July 1, 2005, the Department published a notice of "Opportunity to Request Administrative Review" of this countervailing duty order for calendar year 2004, the POR. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 38099 (July 1, 2005). On July 28, 2005, we received a request for review from Pastificio Laporta S.a.s ("Laporta"). On July 29, 2005, we received requests for reviews from the following four producers/exporters of subject merchandise: Pastificio Antonio Pallante S.r.l. ("Pallante"), Corticella Molini e Pastifici S.p.a. ("Corticella")/ Pasta Combattenti S.p.a. ("Combattenti") (collectively, "Corticella/Combattenti"), Atar S.r.l. ("Atar"), and Moline e Pastificio Tomasello S.r.l. ("Tomasello"). On August 1, 2005, we received a request for review and a request for revocation from Pasta Lensi S.r.l. ("Pasta Lensi").[1] (*See* the "Partial Revocation" section, below.) In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on August 29, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 51009 (August 29, 2005).

On August 31, 2005, we issued countervailing duty questionnaires to the Commission of the European Union, the Government of Italy ("GOI"), Pallante, Corticella/Combattenti, Pasta Lensi, Tomasello, Laporta, and Atar. We received all responses to our questionnaire in October 2005. We issued supplemental questionnaires to the respondents in November 2005, and we received responses to our supplemental questionnaires in November and December 2005.

On September 15, 2005, Laporta withdrew its request for review. On September 29, 2005, Tomasello withdrew its request for review. On October 25, 2005, Pallante withdrew its request for review. Based on withdrawals of the requests for review, we rescinded this administrative review for Laporta, Tomasello, and Pallante. *See Certain Pasta from Italy: Notice of Partial Rescission of Countervailing Duty Administrative Review*, 70 FR 59723 (October 13, 2005) (rescinding review for Laporta); *Certain Pasta from Italy: Notice of Partial Rescission of Countervailing Duty Administrative Review*, 70 FR 61788 (October 26, 2005) (rescinding review for Tomasello); and *Certain Pasta from Italy: Notice of Partial Rescission of Countervailing Duty Administrative Review*, 70 FR 69515 (November 16, 2005) (rescinding review for Pallante). We have instructed U.S. Customs and Border Protection ("CBP") to liquidate any entries from Pallante, Laporta, and Tomasello during the POR and to assess countervailing duties at the rate that was applied at the time of entry.

In accordance with 19 CFR 351.222(f)(2)(ii) and 351.307(b)(1)(iii), we verified information submitted by the GOI for Pasta Lensi, Atar, Corticella, and Combattenti in Rome, Italy on February 13–15, 2006. *See* "Verification of the Questionnaire Responses of the Government of Italy in the 9th Administrative Review," (March 31, 2006). We verified information submitted by Pasta Lensi in Verolanuova, Italy on February 17 and 20, 2006. *See* "Verification of the Questionnaire Responses of Pasta Lensi S.r.l. in the 9th Administrative Review," dated March 31, 2006.

Since the publication of the *Preliminary Results*, we invited interested parties to submit briefs or

[1] Pasta Lensi is the successor-in-interest to IAPC Italia S.r.l. *See Notice of Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews: Certain Pasta from Italy*, 68 FR 41553 (July 14, 2003).

request a hearing. The Department did not conduct a hearing in this review because none was requested, and no briefs were received.

Period of Review

The period for which we are measuring subsidies, or POR, is January 1, 2004, through December 31, 2004.

Scope of the Order

Imports covered by the order are shipments of certain non–egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, Bioagricoop S.r.l., QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.l. In addition, based on publicly available information, the Department has determined that, as of August 4, 2004, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricert S.r.l. are also excluded from this order. *See* Memorandum from Eric B. Greynolds to Melissa G. Skinner, dated August 4, 2004, which is on file in the Department's Central Records Unit ("CRU") in Room B–099 of the main Department building. In addition, based on publicly available information, the Department has determined that, as of March 13, 2003, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Instituto per la Certificazione Etica e Ambientale (ICEA) are also excluded from this order. *See* Memorandum from Audrey Twyman to Susan Kuhbach, dated February 28, 2006, entitled "Recognition of Instituto per la Certificazione Etica e Ambientale (ICEA) as a Public Authority for Certifying Organic Pasta from Italy" which is on file in the Department's Central Records Unit ("CRU") in Room B–099 of the main Department building.

The merchandise subject to review is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, which is on file in the CRU.

(2) On July 30, 1998, the Department issued a scope ruling finding that multipacks consisting of six one–pound packages of pasta that are shrink–wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach to Barbara P. Sidari, dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti–circumvention investigation of Barilla S.r.l. ("Barilla"), an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997. *See Initiation of Anti–Circumvention Inquiry on Antidumping Duty Order on Certain Pasta From Italy*, 62 FR 65673 (December 15, 1997). On October 5, 1998, the Department issued its final determination that, pursuant to section 781(a) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA"), effective January 1, 1995 ("the Act"), circumvention of the antidumping order on pasta from Italy was occurring by reason of exports of bulk pasta from Italy produced by Barilla that subsequently were repackaged in the United States into packages of five pounds or less for sale in the United States. *See Anti–Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self–initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, which is available in the CRU.

(5) On April 27, 2000, the Department self–initiated an anti–circumvention inquiry to determine whether Pastificio Fratelli Pagani S.p.A.'s importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti–Circumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000). On September 19, 2003, we published an affirmative finding of the anti–circumvention inquiry. *See Anti–Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003).

Partial Revocation

On August 1, 2005, Pasta Lensi requested revocation of the countervailing duty order as it pertains to its sales. Under section 751(d)(1) of the Act, the Department "may revoke, in whole or in part" a countervailing duty order upon completion of a review. Although Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is set forth under 19 CFR 351.222. Under 19 CFR 351.222(c)(3)(i), in determining whether to revoke a countervailing duty order in part, the Secretary will consider: (A) whether one or more exporters or producers covered by the order have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years; (B) whether, for any exporter or producer that the Secretary previously has determined to have received any net countervailable subsidy on the subject merchandise, the exporter or producer agrees in writing to their immediate reinstatement in the

order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, has received any net countervailable subsidy on the subject merchandise; and (C) whether the continued application of the countervailing duty order is otherwise necessary to offset subsidization.

A request for revocation of an order in part must address these four elements, per 19 CFR 351.222(e)(2)(iii), in writing: (A) The company's certification that it has not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years; (B) the company's certification that it will not apply for or receive any net countervailable subsidy on the subject merchandise from any program the Secretary has found countervailable; (C) the company's certification that during each of the consecutive years, the company sold the subject merchandise to the United States in commercial quantities; and (D) the company's agreement in writing to their immediate reinstatement in the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, has received any net countervailable subsidy on the subject merchandise.

We find that the request from Pasta Lensi meets all of the criteria under 19 CFR 351.222. Pasta Lensi's revocation request includes the necessary certifications in accordance with 19 CFR 351.222(e)(2)(iii). With regard to the criteria of 19 CFR 351.222(e)(2)(iii)(A), our final results show that Pasta Lensi did not receive countervailable subsidies during the POR and, therefore, the net subsidy rate for Pasta Lensi is zero. *See* "Final Results of Review" section, below. In addition, Pasta Lensi had zero net subsidy rates in the four previous administrative reviews in which it was involved. *See Certain Pasta from Italy: Final Results of the Eighth Countervailing Duty Administrative Review*, 70 FR 37084 (June 28, 2005), covering the period January 1, 2003, through December 31, 2003; *Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review*, 69 FR 70657 (December 7, 2004), covering the period January 1, 2002, through December 31, 2002; *Certain Pasta from Italy: Final Results of the Sixth Countervailing Duty Administrative Review*, 68 FR 48599 (August 14, 2003), covering the period January 1, 2001, through December 31, 2001; and Certain Pasta from Italy: Final Results of the Fifth Countervailing Duty Administrative Review, 67 FR 52452 (August 12, 2002), covering the period January 1, 2000, through December 31, 2000.

Based on our examination of the data submitted by Pasta Lensi, we find that Pasta Lensi qualifies for revocation of the order pursuant to 19 CFR 351.222(c)(3) and 351.222(e)(2)(iii). Therefore, we are revoking the order, in part, with respect to pasta from Italy produced and exported by Pasta Lensi.

Final Results of Review

Neither the petitioners nor respondents commented on the preliminary results, and we found that no changes were warranted. Therefore, we have made no changes to the net countervailable subsidy rates for the POR.

In accordance with 19 CFR 351.221(b)(5), we calculated an individual subsidy rate for Atar and Corticella/Combattenti. Pasta Lensi had no countervailable subsidies. Listed below are the programs we examined in the review and our findings with respect to each of these programs. For a complete analysis of the programs found to be countervailable, and the basis for the Department's determination, *see Preliminary Results*.

Producer/Exporter	Net Subsidy Rate
Pasta Lensi S.r.l.	0.00 percent
Corticella Molini e Pastifici S.p.a./Pasta Combattenti S.p.a.	0.12 percent (de minimis)
Atar S.r.l.	0.20 percent (de minimis)

I. Program Determined to be Countervailable

A. Export Marketing Grants Under Law 304/90 --------- 0.12 percent
Note: applies to Corticella/Combattenti only.

B. Social Security Reductions and Exemptions

- Sgravi (Article 44 of Law 448/01) -- -------- 0.20 percent
Note: applies to Atar only.

II. Programs Determined to be Not Countervailable

A. Social Security Reductions and Exemptions - Sgravi (Law 407/90, Law 223/91, Law 337/90, and Article 120 of Law 388/00)
B. Brescia Chamber of Commerce Fairs and Exhibition Grants
C. Tremonti Law 383/01 (Formerly Law 357/94 and 489/94)

III. Programs Determined to Not be Used

A. Industrial Development Grants Under Law 488/92
B. Industrial Development Loans Under Law 64/86
C. European Regional Development Fund Grants
D. Law 236/93 Training Grants
E. Law 1329/65 Interest Contributions (Sabatini Law) (Formerly Lump–Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy)
F. Development Grants Under Law 30 of 1984
G. Law 908/55 Fondo di Rotazione Iniziative Economiche (Revolving Fund for Economic Initiatives) Loans
H. Industrial Development Grants Under Law 64/86
I. Law 317/91 Benefits for Innovative Investments

J. Brescia Chamber of Commerce Training Grants
K. Ministerial Decree 87/02
L. Law 10/91 Grants to Fund Energy Conservation

M. Export Restitution Payments
N. Export Credits Under Law 227/77
O. Capital Grants Under Law 675/77
P. Retraining Grants Under Law 675/77
Q. Interest Contributions on Bank Loans Under Law 675/77
R. Preferential Financing for Export Promotion Under Law 394/81
S. Urban Redevelopment Under Law 181

T. Industrial Development Grants under Law 183/76
U. Interest Subsidies Under Law 598/94
V. Duty–Free Import Rights
W. European Social Fund Grants
X. Law 113/86 Training Grants
Y.European Agricultural Guidance and Guarantee Fund
Z. Law 341/95 Interest Contributions on Debt Consolidation Loans (Formerly Debt Consolidation Law 341/95)
AA. Interest Grants Financed by IRI Bonds

BB. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (PRISMA)

IV. Programs Determined To Have Been Terminated

A. Regional Tax Exemptions Under IRAP

B. VAT Reductions Under Laws 64/86 and 675/55
C. Corporate Income Tax (IRPEG) Exemptions

D. Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77
E. Export Marketing Grants Under Law 304/90
F. Tremonti Law 383/01

The calculations will be disclosed to the interested parties in accordance with 19 CFR 351.224(b).

Because the countervailing duty rates for all of the above–noted companies are either less than 0.5 percent and, consequently, *de minimis*, or zero, we will instruct CBP to liquidate entries of these companies during the period January 1, 2004, through December 31, 2004, without regard to countervailing duties in accordance with 19 CFR 351.106(c). The Department will issue appropriate instructions directly to CBP within 15 days of publication of these final results of this review.

For all other companies that were not reviewed (except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.L., which are excluded from the order), the Department has directed CBP to assess countervailing duties on all entries between January 1, 2004, and December 31, 2004, at the rates in effect at the time of entry.

We are revoking the order, in part, with respect to pasta from Italy produced and exported by Pasta Lensi. In accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for pasta produced and exported by Pasta Lensi that was entered, or withdrawn from warehouse, for consumption on or after January 1, 2005, and will instruct CBP to refund any cash deposits for such entries.

Since the countervailable subsidy rates for Corticella/Combattenti and Atar are *de minimis*, the Department will instruct CBP to continue to suspend liquidation of entries, but to collect no cash deposits of estimated countervailing duties for the above–noted companies on all shipments of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

For all non–reviewed firms (except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.L., which are excluded from the order), we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company–specific or all–others rate applicable to the company. These rates shall apply to all non–reviewed companies until a review of a company assigned these rates is requested.

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 20, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–10030 Filed 6–23–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060806C]

Small Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities Related to the Delta IV/Evolved Expendable Launch Vehicle at Vandenberg Air Force Base, CA

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with the provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to The Boeing Company (Boeing) to take small numbers of marine mammals, by Level B harassment, incidental to harbor activities related to the Delta IV/Evolved Expendable Launch Vehicle (EELV) at south Vandenberg Air Force Base, CA (VAFB).

DATES: Effective June 21, 2006, to June 20, 2007.

ADDRESSES: A copy of the IHA and the application are available by writing to 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. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (See **FOR FURTHER INFORMATION CONTACT**) or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, (301) 713–2289, ext. 166 or Monica DeAngelis, (562) 980–3232.

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, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have no more than 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 taking 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 for certain categories of 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 small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must determine whether to issue the authorization with appropriate conditions.

Summary of Request

On February 28, 2006, NMFS received an application from Boeing requesting an authorization for the harassment of small numbers of Pacific harbor seals (*Phoca vitulina richardsi*) and California sea lions (*Zalophus californianus*) incidental to harbor activities related to the Delta IV/EELV, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation operations. In addition, northern elephant seals (*Mirounga angustirostris*) may also be incidentally harassed but in even smaller numbers. Incidental Harassment Authorizations (IHAs) were previously issued to Boeing in 2002 (67 FR 36151), 2003 (68 FR 36540), 2004 (69 FR 29696), and 2005 (70 FR 30697). No work and, therefore, no monitoring was conducted under the 2005 IHA. The harbor where activities will take place is on south VAFB approximately 2.5 mi (4.02 km) south of Point Arguello, CA and approximately 1 mi (1.61 km) north of the nearest marine mammal pupping site (i.e., Rocky Point).

Additional background relating to this application and the scope of the activities is set forth in the proposed notice (71 FR 26069, May 3, 2006) and is not repeated here. The activities to be conducted have not changed between the notice of the proposed activities and this final notice announcing the issuance of the IHA.

Specified Activities

Delta Mariner off-loading operations and associated cargo movements will occur a maximum of 3 times per year, each of which is estimated to take approximately between 14 and 18 hours in good weather.

To accommodate the *Delta Mariner*, the harbor will need to be dredged, removing approximately 3,000 to 5,000 cubic yards of sediment per dredging. Dredge operations, from set-up to tear-down, would continue 24-hours a day for 3 to 5 weeks. Sedimentation surveys have shown that initial dredging indicates that maintenance dredging should be required annually or twice per year, depending on the hardware delivery schedule.

A more detailed description of the work proposed for 2006/2007 is contained in the re-application which is available upon request (see **ADDRESSES**) and in the Final US Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSR International, 2001).

Comments and Responses

On May 3, 2006 (71 FR 26069), NMFS published a notice of receipt of application of an IHA on MBNMS's request to take marine mammals, by harassment, incidental to harbor activities related to the Delta IV/EELV, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation and requested comments, information and suggestions concerning the request. During the 30-day public comment period, NMFS received one comment.

Comment: The commenter opposed the issuance of permits to allow killing of marine mammals.

Response: NMFS does not believe that the authorized activities will result in the death of any marine mammals, nor does this IHA authorize any marine mammal mortality.

Marine Mammals Affected by the Activity

The marine mammal species likely to be harassed incidental to harbor activities at south VAFB are the Pacific harbor seal, California sea lion, and northern elephant seal, which haul out in the area where these activities are conducted. None of the haul-out areas near these activities are used for breeding, molting, or mating. A more detailed discussion of the status of these stocks and their occurrence at VAFB, as well as other marine mammal species that occur at VAFB, was included in the notice of the proposed IHA (71 FR 26069, May 3, 2006).

Potential Effects of Activities on Marine Mammals

The primary impacts to marine mammals from these activities are expected to be short-term behavioral reactions in response to the acoustic and visual stimuli produced by the heavy machinery used. NMFS anticipates that no injury will result from these actions. A discussion of the sound levels produced by the equipment, behavioral reactions of marine mammals to loud noises or looming visual stimuli, and some specific observations of the response of marine mammals to this activity gathered during previous monitoring were presented in the proposed IHA (71 FR 26069, May 3, 2006) and will not be repeated here. For a further discussion of the anticipated effects of the planned activities on pinnipeds in the area, please refer to the application, NMFS 2005 Environmental Assessment (EA) and ENSR International's 2001 Final EA.

Numbers of Marine Mammals Expected to be Harassed

Boeing estimates that a maximum of 43 harbor seals per day may be hauled out near the south VAFB harbor, with a daily average of 21 seals sighted when tidal conditions were favorable during previous dredging operations in the harbor. Considering the maximum and average number of seals hauled out per day, assuming that the seals may be seen twice a day, and using a maximum total of 73 operating days in 2006–2007, NMFS estimates that a maximum of 767 to 1570 Pacific harbor seals may be subject to Level B harassment out of a total estimated population of 31,600. These numbers are small relative to this population size (2.4 - 5.0 percent).

During wharf modification activities, a maximum of six California sea lions were seen hauling out in a single day. Based on the above-mentioned calculation, NMFS believes that a maximum of 219 California sea lions may be subject to Level B harassment out of a total estimated population of 240,000. These numbers are small relative to this population size (less than 0.1 percent). Up to 10 northern elephant seals (because they may be in nearby waters) may be subject to Level B harassment out of a total estimated population of 101,000. These numbers are small relative to this population size (less than 0.01 percent).

Possible Effects of Activities on Marine Mammal Habitat

The anticipated negative effects of dredging and kelp mitigation (short-term increase in noise and sedimentation) will be short-term and are not expected to result in a loss or modification to the habitat used by Pacific harbor seals, California sea lions, or northern elephant seals that haul out near the south VAFB harbor. Additional details were provided in the proposed IHA (71 FR 26069, May 3, 2006).

Possible Effects of Activities on Subsistence Needs

There are no subsistence uses for pinnipeds in California waters, and thus, there are no anticipated effects on subsistence needs.

Mitigation

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities Boeing and/or its designees will undertake the following marine mammal mitigating measures:

(1) If activities occur during nighttime hours, lighting will be turned on before dusk and left on the entire night to avoid startling pinnipeds at night;

(2) Activities will be initiated before dusk;

(3) Construction noises must be kept constant (i.e., not interrupted by periods of quiet in excess of 30 minutes) while pinnipeds are present;

(4) If activities cease for longer than 30 minutes and pinnipeds are in the area, start-up of activities will include a gradual increase in noise levels;

(5) A NMFS-approved marine mammal observer will visually monitor the pinnipeds on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of Boeing's activities (see Monitoring); and

(6) To the extent possible, the *Delta Mariner* and accompanying vessels will enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks. The vessel will reduce speed 1.5 to 2 knots (2.8–3.7 km/hr) once the vessel is within 3 mi (4.83 km) of the harbor. The vessel will enter the harbor stern first, approaching the wharf and mooring dolphins at less than 0.75 knot (1.4 km/hr).

Monitoring

As part of its 2002 application, Boeing provided a proposed monitoring plan for assessing impacts to harbor seals from the activities at south VAFB harbor and for determining when mitigation measures should be employed. NMFS proposes the same plan for this IHA.

A NMFS-approved and VAFB-designated biologically trained observer will monitor the area for pinnipeds during all harbor activities. During nighttime activities, the harbor area will be illuminated, and the monitor will use a night vision scope. Monitoring activities will consist of:

(1) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities;

(2) Conducting and recording observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are low enough for pinnipeds to haul out (2 ft, 0.61 m, or less); and

(3) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

Monitoring results from previous years of these activities have been reviewed and incorporated into the analysis of potential effects in this document, as well as the take estimates.

Reporting

Boeing will notify NMFS 2 weeks prior to initiation of each activity. After each activity is completed, Boeing will provide a report to NMFS within 90 days. This report will provide dates and locations of specific activities, details of seal behavioral observations, and estimates of the amount and nature of all takes of seals by harassment or in other ways. In addition, the report will include information on the weather, the tidal state, the horizontal visibility, and the composition (species, gender, and age class) and locations of haul-out group(s). In the unanticipated event that any marine mammal is injured or killed as a result of these activities, Boeing or its designee shall report the incident to NMFS immediately.

Endangered Species Act

This action will not affect species listed under the Endangered Species Act (ESA) that are under the jurisdiction of NMFS. VAFB formally consulted with U.S. Fish and Wildlife Service (FWS) in 1998 on the possible take of southern sea otters during Boeing's harbor activities at south VAFB. A Biological Opinion was issued in August 2001, which concluded that the proposed activities were not likely to jeopardize the continued existence of the southern sea otter. The activities covered by this IHA are analyzed in that Biological Opinion, and this IHA does not modify the action in a manner that was not previously analyzed.

National Environmental Policy Act

In 2001, the USAF prepared an Environmental Assessment (EA) for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base. In 2005, NMFS prepared an EA supplementing the information contained in the USAF EA and issued a Finding of No Significant Impact (FONSI) on the issuance of an IHA for Boeing's harbor activities in accordance with section 6.01 of the National Oceanic and Atmospheric Administration Administrative Order (NAO) 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). The proposed activity is within the scope of NMFS'2005 EA and FONSI.

Conclusions

NMFS has issued an IHA to Boeing for harbor activities related to the Delta IV/EELV to take place at south VAFB over a 1-year period, contingent upon adherence to the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has determined that the impact of harbor activities related to the Delta IV/EELV at VAFB (transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation) will result in the Level B Harassment of small numbers of Pacific harbor seals, California sea lions, and northern elephant seals. The effects of Boeing's harbor activities are expected to be in the form of short-term and localized behavioral changes and no take by injury or death is anticipated or authorized. NMFS has further determined that these takes will have a negligible impact on the affected marine mammal species and stocks and will not have an unmitigable adverse impact on the availability of such marine mammal species and stocks for subsistence uses.

Authorization

NMFS has issued an IHA to take marine mammals, by Level B harassment, incidental to conducting harbor activities at VAFB to Boeing for a 1-year period, provided the mitigation, monitoring, and reporting requirements are undertaken.

Dated: June 19, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–10044 Filed 6–23–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2006–0014]

Changes to Practice for Petitions in Patent Applications To Make Special and for Accelerated Examination

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) has established procedures under which the examination of a patent application may be accelerated. Under one of these procedures, the USPTO will advance an application out of turn for examination if the applicant files a grantable petition to make special under the accelerated examination program. The USPTO is revising its procedures for applications made special under the accelerated examination program with the goal of completing examination within twelve months of the filing date of the application. The USPTO is similarly revising the procedures for other petitions to make special, except those based on applicant's health or age or the recently announced Patent Prosecution Highway (PPH) pilot program between the USPTO and the Japan Patent Office.

DATES: *Effective Date:* The change in practice in this notice applies to

petitions to make special filed on or after August 25, 2006.

FOR FURTHER INFORMATION CONTACT: Pinchus Laufer, Detailee, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–7726, or by facsimile at (571) 273–7726. Comments concerning petition to make special practice may be sent by electronic mail message over the Internet addressed to *MPEPFeedback@uspto.gov*, or submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450.

Any inquiries concerning electronic filing of the application should be directed to the Electronic Business Center (EBC) at (866) 217–9197. Any inquiries concerning a specific petition to make special should be directed to the appropriate Technology Center Special Program Examiner.

SUPPLEMENTARY INFORMATION: New patent applications are normally taken up for examination in the order of their United States filing date. The USPTO has a procedure for requesting accelerated examination under which an application will be advanced out of turn for examination if the applicant files a petition to make special with the appropriate showing. *See* 37 CFR 1.102 and *Manual of Patent Examining Procedure* § 708.02 (VIII) (8th ed. 2001) (Rev. 3, August 2005) (MPEP). The USPTO is revising its procedures for applications made special under the accelerated examination program with the goal of completing examination within twelve months of the filing date of the application. *See* Part VIII (subsection The Twelve-Month Goal) for more information.

The USPTO is similarly revising the procedures for other petitions to make special, except those based on applicant's health or age or the PPH pilot program. Specifically, other petitions to make special (*i.e.*, petitions based on: manufacture, infringement, environmental quality, energy, recombinant DNA, superconductivity materials, HIV/AIDS and cancer, countering terrorism, and biotechnology applications filed by small entities (*see* MPEP § 708.02)) will be processed and examined using the revised procedure for accelerated examination. Thus, all petitions to make special, except those based on applicant's health or age or the PPH pilot program, will be required to comply with the requirements of petitions to make special under the accelerated examination program that are set forth in this notice.

Any petition to make special, other than those based on applicant's health or age or the PPH pilot program, filed on or after the effective date must meet the requirements set forth in this notice. Applications filed before the effective date will not be eligible for the revised accelerated examination program. Until the effective date, applicant may file a petition to make special in an application filed before the effective date by complying with the previous guidelines and requirements in MPEP § 708.02 (I–II, and V–XII). A petition to make special filed after the effective date will only be granted if it is based upon applicant's health or age or is under the PPH pilot program, or if it complies with the requirements set forth in this notice. See Part VIII, for more information on eligibility.

Part I. Requirements for Petitions to Make Special under Accelerated Examination: A new application may be granted accelerated examination status under the following conditions:

(1) The application must be filed with a petition to make special under the accelerated examination program accompanied by either the fee set forth in 37 CFR 1.17(h) or a statement that the claimed subject matter is directed to environmental quality, energy, or countering terrorism. *See* 37 CFR 1.102(c)(2). Applicant should use form PTO/SB/28 for filing the petition.

(2) The application must be a non-reissue utility or design application filed under 35 U.S.C. 111(a).

(3) The application, petition, and required fees must be filed electronically using the USPTO's electronic filing system (EFS), or EFS-Web. If the USPTO's EFS and EFS-Web are not available to the public during the normal business hours for these systems at the time of filing the application, applicant may file the application, other papers and fees by mail accompanied by a statement that EFS and EFS-Web were not available during the normal business hours, but the final disposition of the application may occur later than twelve months from the filing of the application. *See* Part VIII (subsection The Twelve-Month Goal) for more information.

(4) At the time of filing, the application must be complete under 37 CFR 1.51 and in condition for examination. For example, the application must be filed together with the basic filing fee, search fee, examination fee, and application size fee (if applicable), and an executed oath or declaration under 37 CFR 1.63. *See* Part VIII (subsection Conditions for Examination) for more information.

(5) The application must contain three or fewer independent claims and twenty or fewer total claims. The application must also not contain any multiple dependent claims. By filing a petition to make special under the accelerated examination program the applicant is agreeing not to separately argue the patentability of any dependent claim during any appeal in the application. Specifically, the applicant is agreeing that the dependent claims will be grouped together with and not argued separately from the independent claim from which they depend in any appeal brief filed in the application (37 CFR 41.37(c)(1)(vii)). The petition must include a statement that applicant will agree not to separately argue the patentability of any dependent claim during any appeal in the application. See form PTO/SB/28.

(6) The claims must be directed to a single invention. If the USPTO determines that all the claims presented are not directed to a single invention, applicant must make an election without traverse in a telephonic interview. The petition must include a statement that applicant will agree to make an election without traverse in a telephonic interview. See form PTO/SB/28.

(7) The applicant must be willing to have an interview (including an interview before a first Office action) to discuss the prior art and any potential rejections or objections with the intention of clarifying and possibly resolving all issues with respect to patentability at that time. The petition must include a statement that applicant will agree to have such an interview when requested by the examiner. See form PTO/SB/28.

(8) At the time of filing, applicant must provide a statement that a preexamination search was conducted, including an identification of the field of search by United States class and subclass and the date of the search, where applicable, and for database searches, the search logic or chemical structure or sequence used as a query, the name of the file or files searched and the database service, and the date of the search.

(A) This preexamination search must involve U.S. patents and patent application publications, foreign patent documents, and non-patent literature, unless the applicant can justify with reasonable certainty that no references more pertinent than those already identified are likely to be found in the eliminated source and includes such a justification with this statement.

(B) This preexamination search must be directed to the claimed invention and

encompass all of the features of the claims, giving the claims the broadest reasonable interpretation.

(C) The preexamination search must also encompass the disclosed features that may be claimed. An amendment to the claims (including any new claim) that is not encompassed by the preexamination search or an updated accelerated examination support document (*see* item 9) will be treated as not fully responsive and will not be entered. *See* Part IV (Reply by Applicant) for more information.

(D) A search report from a foreign patent office will not satisfy this preexamination search requirement unless the search report satisfies the requirements set forth in this notice for a preexamination search.

(E) Any statement in support of a petition to make special must be based on a good faith belief that the preexamination search was conducted in compliance with these requirements. *See* 37 CFR 1.56 and 10.18.

(9) At the time of filing, applicant must provide in support of the petition an accelerated examination support document.

(A) An accelerated examination support document must include an information disclosure statement (IDS) in compliance with 37 CFR 1.98 citing each reference deemed most closely related to the subject matter of each of the claims.

(B) For each reference cited, the accelerated examination support document must include an identification of all the limitations in the claims that are disclosed by the reference specifying where the limitation is disclosed in the cited reference.

(C) The accelerated examination support document must include a detailed explanation of how each of the claims are patentable over the references cited with the particularity required by 37 CFR 1.111(b) and (c).

(D) The accelerated examination support document must include a concise statement of the utility of the invention as defined in each of the independent claims (unless the application is a design application).

(E) The accelerated examination support document must include a showing of where each limitation of the claims finds support under the first paragraph of 35 U.S.C. 112 in the written description of the specification. If applicable, the showing must also identify: (1) Each means- (or step-) plus-function claim element that invokes consideration under 35 U.S.C. 112, ¶ 6; and (2) the structure, material, or acts in the specification that correspond to each means- (or step-) plus-function claim element that invokes consideration under 35 U.S.C. 112, ¶ 6. If the application claims the benefit of one or more applications under title 35, United States Code, the showing must also include where each limitation of the claims finds support under the first paragraph of 35 U.S.C. 112 in each such application in which such support exists.

(F) The accelerated examination support document must identify any cited references that may be disqualified as prior art under 35 U.S.C. 103(c) as amended by the Cooperative Research and Technology Enhancement (CREATE) Act (Pub. L. 108–453, 118 Stat. 3596 (2004)).

Part II. Decision on Petition To Make Special: Applicant will be notified of the decision by the deciding official. If the application and/or petition does not meet all the prerequisites set forth in this notice for the application to be granted special status (including a determination that the search is deemed to be insufficient), the applicant will be notified of the defects and the application will remain in the status of a new application awaiting action in its regular turn. In those instances in which the petition or accelerated examination support document is defective in one or more requirements, applicant will be given a single opportunity to perfect the petition or accelerated examination support document within a time period of one month (no extensions under 37 CFR 1.136(a)). This opportunity to perfect a petition does not apply to applications that are not in condition for examination on filing. *See* Part VIII (subsection Condition for Examination). If the document is satisfactorily corrected in a timely manner, the petition will then be granted, but the final disposition of the application may occur later than twelve months from the filing date of the application. Once a petition has been granted, prosecution will proceed according to the procedure set forth below.

Part III. The Initial Action on the Application by the Examiner: Once the application is granted special status, the application will be docketed and taken up for action expeditiously (*e.g.*, within two weeks of the granting of special status). If it is determined that all the claims presented are not directed to a single invention, the telephone restriction practice set forth in MPEP § 812.01 will be followed. Applicant must make an election without traverse during the telephonic interview. If applicant refuses to make an election without traverse, or the examiner cannot reach the applicant after a reasonable effort, the examiner will treat the first claimed invention (the invention of claim 1) as constructively elected without traverse for examination. Continuing applications (*e.g.*, a divisional application directed to the non-elected inventions) will not automatically be given special status based on papers filed with the petition in the parent application. Each continuing application must on its own meet all requirements for special status.

If the USPTO determines that a possible rejection or other issue must be addressed, the examiner will telephone the applicant to discuss the issue and any possible amendment or submission to resolve such issue. The USPTO will not issue an Office action (other than a notice of allowance) unless either: (1) An interview was conducted but did not result in the application being placed in condition for allowance; or (2) there is a determination that an interview is unlikely to result in the application being placed in condition for allowance. Furthermore, prior to the mailing of any Office action rejecting the claims, the USPTO will conduct a conference to review the rejections set forth in the Office action.

If an Office action other than a notice of allowance or a final Office action is mailed, the Office action will set a shortened statutory period of one-month or thirty-days, whichever is longer. No extensions of this shortened statutory period under 37 CFR 1.136(a) will be permitted. Failure to timely file a reply will result in abandonment of the application. *See* Parts V and VI for more information on post-allowance and after-final procedures.

Part IV. Reply by Applicant: A reply to an Office action must be limited to the rejections, objections, and requirements made. Any amendment that attempts to: (1) Add claims which would result in more than three independent claims, or more than twenty total claims, pending in the application; (2) present claims not encompassed by the preexamination search (*see* item 8 of Part I) or an updated accelerated examination support document (*see* next paragraph); or (3) present claims that are directed to a nonelected invention or an invention other than previously claimed in the application, will be treated as not fully responsive and will not be entered. *See* Part VIII (subsection Reply Not Fully responsive) for more information.

For any amendment to the claims (including any new claim) that is not encompassed by the accelerated examination support document in Part I, item 9, applicant is required to provide an updated accelerated examination

support document that encompasses the amended or new claims at the time of filing the amendment. Failure to provide such updated accelerated examination support document at the time of filing the amendment will cause the amendment to be treated as not fully responsive and not to be entered. *See* Part VIII (subsection Reply Not Fully Responsive) for more information. Any IDS filed with an updated accelerated examination support document must also comply with the requirements of 37 CFR 1.97 and 1.98.

Any reply or other papers must be filed electronically via EFS-Web so that the papers will be expeditiously processed and considered. If the papers are not filed electronically via EFS-Web, or the reply is not fully responsive, the final disposition of the application may occur later than twelve months from the filing of the application.

Part V. Post-Allowance Processing: The mailing of a notice of allowance is the final disposition for purposes of the twelve-month goal for the program. In response to a notice of allowance, applicant must pay the issue fee within three months from the date of mailing of the Notice of Allowance and Fee(s) Due (form PTOL–85) to avoid abandonment of the application. In order for the application to be expeditiously issued as a patent, the applicant must also: (1) Pay the issue fee (and any outstanding fees due) within one month from the mailing date of the form PTOL–85; and (2) not file any post-allowance papers that are not required by the USPTO (*e.g.*, an amendment under 37 CFR 1.312 that was not requested by the USPTO).

Part VI. After-Final and Appeal Procedures: The mailing of a final Office action or the filing of a notice of appeal, whichever is earlier, is the final disposition for purposes of the twelve-month goal for the program. Prior to the mailing of a final Office action, the USPTO will conduct a conference to review the rejections set forth in the final Office action (*i.e.*, the type of conference conducted in an application on appeal when the applicant requests a pre-appeal brief conference). In order for the application to be expeditiously forwarded to the Board of Patent Appeals and Interferences (BPAI) for a decision, applicant must: (1) Promptly file the notice of appeal, appeal brief, and appeal fees; and (2) not request a pre-appeal brief conference. A pre-appeal brief conference would not be of value in an application under a final Office action because the examiner will have already conducted such a conference prior to mailing the final Office action. During the appeal process, the application will be treated in accordance with the normal appeal procedures. The USPTO will continue to treat the application special under the accelerated examination program after the decision by the BPAI.

Any after-final amendment, affidavit, or other evidence filed under 37 CFR 1.116 or 41.33 must also meet the requirements set forth in Part IV (Reply by Applicant). If applicant files a request for continued examination (RCE) under 37 CFR 1.114 with a submission and fee, the submission must meet the reply requirements under 37 CFR 1.111 (*see* 37 CFR 1.114(c)) and the requirements set forth in Part IV (Reply by Applicant). The filing of the RCE is a final disposition for purposes of the twelve-month goal for the program. The application will retain its special status and remain in the accelerated examination program. Thus, the examiner will continue to examine the application in accordance with the procedures set forth in Part III and any subsequent replies filed by applicant must meet the requirements of Part IV. The goal of the program will then be to reach a final disposition of the application within twelve months from the filing of the RCE.

Part VII. Proceedings Outside the Normal Examination Process: If an application becomes involved in proceedings outside the normal examination process (*e.g.*, a secrecy order, national security review, interference, or petitions under 37 CFR 1.181–1.183), the USPTO will treat the application special under the accelerated examination program before and after such proceedings. During those proceedings, however, the application will not be accelerated. For example, during an interference proceeding, the application will be treated in accordance with the normal interference procedures and will not be treated under the accelerated examination program. Once any one of these proceedings is completed, the USPTO will process the application expeditiously under the accelerated examination program until it reaches final disposition, but that may occur later than twelve months from the filing of the application.

Part VIII. More Information:

Eligibility: Any non-reissue utility or design application filed under 35 U.S.C. 111(a) on or after the effective date of this program is eligible for the revised accelerated examination program. The following types of filings are not eligible for this revised accelerated examination program: Plant applications, reissue applications, applications entering the national stage from an international application after compliance with 35 U.S.C. 371, reexamination proceedings, RCEs under 37 CFR 1.114 (unless the application was previously granted special status under the program), and petitions to make special based on applicant's health or age or under the PPH pilot program. Rather than participating in this revised accelerated examination program, applicants for a design patent may participate in the expedited examination program by filing a request in compliance with the guidelines set forth in MPEP § 1504.30. *See* 37 CFR 1.155.

Form: Applicant should use form PTO/SB/28 for filing a petition to make special, other than those based on applicant's health or age or the PPH pilot program. The form is available on EFS-Web and on the USPTO's Internet Web site at *http://www.uspto.gov/web/forms/index.html.*

Conditions for Examination: The application must be in condition for examination at the time of filing. This means the application must include the following:

(A) Basic filing fee, search fee, and examination fee, under 37 CFR 1.16 (*see* MPEP section 607(I)),

(B) Application size fee under 37 CFR 1.16(s) (if the specification and drawings exceed 100 sheets of paper) (*see* MPEP section 607(II));

(C) An executed oath or declaration in compliance with 37 CFR 1.63;

(D) A specification (in compliance with 37 CFR 1.52) containing a description (37 CFR 1.71) and claims in compliance with 37 CFR 1.75;

(E) A title and an abstract in compliance with 37 CFR 1.72;

(F) Drawings in compliance with 37 CFR 1.84;

(G) Electronic submissions of sequence listings in compliance with 37 CFR 1.821(c) or (e), large tables, or computer listings in compliance with 37 CFR 1.96, submitted via the USPTO's electronic filing system (EFS) in ASCII text as part of an associated file (if applicable);

(H) Foreign priority claim under 35 U.S.C. 119(a)–(d) identified in the executed oath or declaration or an application data sheet (if applicable);

(I) Domestic benefit claims under 35 U.S.C. 119(e), 120, 121, or 365(c) in compliance with 37 CFR 1.78 (*e.g.*, the specific reference to the prior application must be submitted in the first sentence(s) of the specification or in an application data sheet, and for any benefit claim to a non-English language provisional application, the application must include a statement that: (a) An English language translation, and (b) a statement that the translation is

accurate, have been filed in the provisional application) (if applicable);

(J) English language translation under 37 CFR 1.52(d), a statement that the translation is accurate, and the processing fee under 37 CFR 1.17(i) (if the specification is in a non-English language);

(K) No preliminary amendments present on the filing date of the application; and

(L) No petition under 37 CFR 1.47 for a non-signing inventor.

Furthermore, if the application is a design application, the application must also comply with the requirements set forth in 37 CFR 1.151–1.154.

Applicant should also provide a suggested classification, by class and subclass, for the application on the transmittal letter, petition, or an application data sheet as set forth in 37 CFR 1.76(b)(3) so that the application can be expeditiously processed.

The petition to make special will be dismissed if the application omits an item or includes a paper that causes the Office of Initial Patent Examination (OIPE) to mail a notice during the formality review (*e.g.*, a notice of incomplete application, notice to file missing parts, notice to file corrected application papers, notice of omitted items, or notice of informal application). The opportunity to perfect a petition (Part II) does not apply to applications that are not in condition for examination on filing.

Reply Not Fully Responsive: If a reply to a non-final Office action is not fully responsive, but a *bona fide* attempt to advance the application to final action, the examiner may provide one month or thirty-days, whichever is longer, for applicant to supply the omission or a fully responsive reply. No extensions of this time period under 37 CFR 1.136(a) will be permitted. Failure to timely file the omission or a fully responsive reply will result in abandonment of the application. If the reply is not a *bona fide* attempt or it is a reply to a final Office action, no additional time period will be given. The time period set forth in the previous Office action will continue to run.

Withdrawal From Accelerated Examination: There is no provision for "withdrawal" from special status under the accelerated examination program. An applicant may abandon the application that has been granted special status under the accelerated examination program in favor of a continuing application, and the continuing application will not be given special status under the accelerated examination program unless the continuing application is filed with a petition to make special under the accelerated examination program. The filing of an RCE under 37 CFR 1.114, however, will not result in an application being withdrawn from special status under the accelerated examination program.

The Twelve-Month Goal: The objective of the accelerated examination program is to complete the examination of an application within twelve months from the filing date of the application. The twelve-month goal is successfully achieved when one of the following final dispositions occurs: (1) The mailing of a notice of allowance; (2) the mailing of a final Office action; (3) the filing of an RCE; or (4) the abandonment of the application. The final disposition of an application, however, may occur later than the twelve-month timeframe in certain situations (*e.g.*, an IDS citing new prior art after the mailing of a first Office action). *See* Part VII for more information on other events that may cause examination to extend beyond this twelve-month time frame. In any event, however, this twelve-month timeframe is simply a goal. Any failure to meet the twelve-month goal or other issues relating to this twelve-month goal are neither petitionable nor appealable matters.

Paperwork Reduction Act: This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this notice has been reviewed and previously approved by OMB under OMB control number 0651–0031. The Office has submitted a Change Worksheet to OMB for review of form PTO/SB/28 Petition to Make Special Under the Accelerated Examination.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

Section 708.02 of the *Manual of Patent Examining Procedure* will be revised in due course to reflect this change in practice.

Dated: June 20, 2006.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E6–10022 Filed 6–23–06; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designation under the Textile and Apparel Commercial Availability Provisions of the United States Caribbean Basin Trade Partnership Act (CBTPA)

June 21, 2006.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Designation.

EFFECTIVE DATE: June 26, 2006.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain 100 percent cotton, yarn-dyed, 3- or 4-thread twill weave, flannel fabrics, of combed, ring spun single yarns, of the specifications detailed below, classified in subheading 5208.43.0000 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in products in Categories 340, 341, and 350, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The CITA hereby designates products in Categories 340, 341, and 350 that are both cut and sewn or otherwise assembled in one or more eligible CBTPA beneficiary countries from such fabrics, as eligible for quota free and duty free treatment under the textile and apparel commercial availability provisions of the CBTPA and eligible under HTSUS subheading 9820.11.27 to enter free of quota and duties, provided that all other fabrics in the referenced apparel articles are wholly formed in the United States from yarns wholly formed in the United States.

FOR FURTHER INFORMATION CONTACT: Maria K. Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482 3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of CBERA, as added by Section 211(a) of the CBTPA; Presidential Proclamation 7351 of October 2, 2000; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The commercial availability provision of the CBTPA provides for duty free and quota free treatment for apparel articles that are both cut (or knit to shape) and sewn or otherwise assembled in one or more beneficiary CBTPA country from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely

manner and certain procedural requirements have been met. In Presidential Proclamation 7351, the President proclaimed that this treatment would apply to apparel articles from fabrics or yarn designated by the appropriate U.S. government authority in the **Federal Register**. In Executive Order 13191, the President authorized CITA to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner.

On February 7, 2006, the Chairman of CITA received a petition from Sandler, Travis, and Rosenberg, P.A., on behalf of B*W*A, alleging that certain 100 percent cotton, yarn-dyed 3- or 4-thread twill weave, flannel fabrics, of combed, ring spun single yarns, of the specifications detailed below, classified in HTSUS subheading 5208.43.0000, for use in woven cotton shirts, blouses, and dressing gowns, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested quota and duty free treatment under the CBTPA for woven cotton shirts, blouses, and dressing gowns that are both cut and sewn or otherwise assembled in one or more CBTPA beneficiary countries from such fabrics. On February 13, 2006, CITA requested public comment on the petition. See **Request for Public Comment on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA)** (71 FR 7542). On March 1, 2006, CITA and the U.S. Trade Representative (USTR) offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On March 22, 2006 the U.S. International Trade Commission provided advice on the petition.

Based on the information and advice received and its understanding of the industry, CITA determined that the fabrics set forth in the petition cannot be supplied by the domestic industry in commercial quantities in a timely manner. On April 7, 2006, CITA and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and the advice obtained. A period of 60 calendar days since this report was submitted has expired.

CITA hereby designates as eligible for preferential treatment under HTSUS subheading 9820.11.27, products in Categories 340, 341, and 350, that are both cut and sewn or otherwise assembled in one or more eligible CBTPA beneficiary countries, from certain 100 percent cotton, 3- or 4-thread twill weave, flannel fabrics, of yarn-dyed, combed, and ring spun single yarns, of the specifications detailed below, classified in HTSUS subheading 5208.43.0000 not formed in the United States. The referenced apparel articles are eligible provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States, subject to the special rules for findings and trimmings, certain interlinings and de minimis fibers and yarns under section 211(b)(2)(A)(vii) of the CBTPA, and that such articles are imported directly into the customs territory of the United States from an eligible CBTPA beneficiary country.

Specifications:

Fiber Content:	100% Cotton
Weight:	98- 150 g/m2
Thread Count:	39 - 66 warp ends per centimeter; 27 - 39 filling picks per centimeter
Yarn Number:	84 - 86 average warp and filling, ring spun, combed
Weave:	3- or 4-thread twill
Finish:	Of yarns of different colors; dyed with fiber reactive dyes; plaids, checks and stripes, napped on both sides and pre-shrunk.

An "eligible CBTPA beneficiary country" means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)) and which has been the subject of a finding, published in the **Federal Register**, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) and resulting in the enumeration of such country in U.S. note 1 to subchapter XX of Chapter 98 of the HTSUS.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E6–10032 Filed 6–23–06; 8:45 am]

BILLING CODE 3510–DS–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0031, Procurement Contracts

AGENCY: Commodity Futures Trading Commission

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission ("the Commission") is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on requirements relating to information collected to assist the Commission in soliciting and awarding contracts.

DATES: Comments must be submitted on or before August 25, 2006.

ADDRESSES: Comments may be mailed to Steven A. Grossman, Office of Finance Management, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Steven A. Grossman, (202) 418–5192; FAX (202) 418–5529; e-mail: *sgrossman@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality of, usefulness, and clarify of the information to be collected; and
- Ways to eliminate the burden of collection of information on those who are to respond, including through use of appropriate electronic, mechanical, or

other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Procurement Contracts, OMB Control No. 3038–0031—Extension

The information collection consists of procurement activities relating to solicitation, amendments to solicitations, requests for quotations, construction contracts, awards of contracts, performance bonds, and payment information for individuals (vendors) or contracts engaged in providing supplies or services.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
182	Annually	182	2	364

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: June 15, 2006.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 06–5661 Filed 6–23–06; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0150]

Federal Acquisition Regulation; Submission for OMB Review; Small Disadvantaged Business Procurement Credit Programs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0150).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension and revision of a currently approved information collection requirement concerning small business procurement credit programs. A request for public comments was published in the **Federal Register** at 71 FR 16563 on April 3, 2006. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of thepublic burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before July 26, 2006.

ADDRESSES: Submit comments including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT≤ Rhonda Cundiff, Contract Policy Division, GSA, (202) 501–0044.

SUPPLEMENTARY INFORMATION:

A. Purpose

This FAR requirement concerning small disadvantaged procurement credit programs implements the Department of Justice proposal to reform affirmative action in Federal procurement, which was designed to ensure compliance with the constitutional standards established by the Supreme Court. The credits include price evaluation factor targets and certifications.

B. Annual Reporting Burden

Number of Respondents: 7,900.
Responses Per Respondent: 9.11.
Total Responses: 72,000.
Average Burden Hours Per Response: 2.32.
Total Burden Hours: 167,370.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0150, Small Disadvantaged Business Procurement Credit Programs, in all correspondence.

Dated: June 14, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

[FR Doc. 06–5560 Filed 6–23–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF ENERGY

Bonneville Power Administration

Lyle Falls Fish Passage Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of floodplain and wetlands involvement.

SUMMARY: This notice announces BPA's intention to prepare an EIS on proposed improvements to the Lyle Falls Fishway in Klickitat County, near Lyle, Washington. The improvements would ease fish passage to upstream high quality habitat in the Klickitat Basin and improve capabilities to trap and handle adult fish. The project is designed to meet state and Federal fish passage criteria for all salmonid species, including mid-Columbia steelhead, which are listed as threatened under the Endangered Species Act.

This action may involve floodplains and wetlands located in Klickitat County, Washington. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and will design this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment and a floodplain statement of findings will be included in the EIS being prepared for

the proposed project in accordance with the National Environmental Policy Act.

DATES: Written comments are due to the address below no later than: July 26, 2006. Comments may also be made at an EIS scoping meeting to be held on July 11, 2006 at the address below.

ADDRESSES: Comments and suggestions on the proposed scope of the Draft EIS, and requests to be placed on the project mailing list, may be mailed to Bonneville Power Administration, Public Affairs Office—DKC–7, P.O. Box 14428, Portland, OR, 97293–4428. Or, you may fax them to (503) 230–3285; submit them on-line at *http://www.bpa.gov/comment*; or e-mail them to *comment@bpa.gov*. You may also call us toll-free with your comments at (800) 622–4519. Please reference the Lyle Falls Fish Passage Project with your comments.

On Tuesday, July 11, 2006, a scoping meeting will be held from 7 p.m. to 9 p.m. at the Lyle Lions Community Center, 5th Street and State Highway 14, Lyle, Washington. At this meeting, we will provide information about the project, including maps, and have members of the project team available to answer questions. We look forward to accepting oral and written comments offered on the project.

We also invite interested parties to attend a site visit that is planned for 3 p.m., Tuesday, July 11, 2006, to view the proposed project site. To get to the project site from State Highway 14 in the town of Lyle, take Route 142 north for about two miles, then turn west onto Fishers Hill Road. Cross the Klickitat River and follow the road for less than one-fourth mile. Make a right onto an unpaved road and proceed about seven hundred feet. There will be signs provided to help direct traffic.

FOR FURTHER INFORMATION, CONTACT: Carl J. Keller, Environmental Project Manager, Bonneville Power Administration, KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number (800) 622–4519; fax number (503) 230–5699; e-mail address *cjkeller@bpa.gov*.

SUPPLEMENTARY INFORMATION:

Background: BPA is a federal power marketing agency that markets power from many of the federal dams in the Columbia River Basin, and has a duty to protect, mitigate, and enhance fish affected by the construction and operation of those dams. The Yakama Nation, through the Northwest Power Planning and Conservation Council, has proposed that BPA fund the reconstruction of the existing fish passage facility as part of those mitigation responsibilities. The proposed project in on the Klickitat River in Klickitat County, Washington in T3N, R12E, west half of Section 25 and east half of Section 26. The location is about two miles upriver of the confluence of the Klickitat River with the Columbia River. Currently the Lyle Falls Fishway does not meet federal and state fish passage criteria for migrating adult salmon. Design flows in the existing fishway result in poor attraction flows throughout the year, and significantly reduced attraction flows during periods of low river discharge (August—September). During these periods of low flows the natural falls become an even greater obstruction to salmon and steelhead, resulting in lowered passage above Lyle Falls.

Proposed Action: The proposed action is to improve and expand the Lyle Falls Fishway. The project would be designed to safely and effectively allow adult fish to move through the existing Lyle Falls into the upper reaches of the Klickitat River, and would improve the adult trapping capabilities at the fishway. Improvements would include reconstructing and lengthening the fishway and trash racks, upgrading the adult trapping facility, and adding a Passive Integrated Transponder (PIT) tag detector and video monitor. The adult trap would facilitate the collection of fish for monitoring and broodstock purposes.

Process to Date: The Yakama Nation has proposed the project to support its fish passage and fish conservation initiatives. At a meeting held in March 2006, the Northwest Power and Conservation Council recommended that BPA fund the preparation of an EIS to focus on fish passage and monitoring at Lyle Falls.

Alternatives Proposed for Consideration: BPA has identified two alternatives for examination in the DEIS. They are the proposed action, described above, and no action. We will use the no-action alternative to explore the environmental impacts of not improving the existing ladder and passage facilities at Lyle Falls. We will also consider in the Draft EIS other reasonable alternatives presented to us during the scoping process.

Public Participation and Identification of Environmental Issues: BPA has established a 30-day scoping period during which interested and affected landowners, concerned citizens, tribes, special interest groups, government agencies, and any other interested parties are invited to comment on the scope of the proposed EIS. Scoping will help BPA ensure that a full range of issues related to this proposal is addressed in the EIS, and also will help identify significant or potentially significant impacts that may result from the proposed project. Environmental issues identified to date include potential conflicts with the Klickitat Wild and Scenic River designation, use of explosives during construction, impacts to archaeological and historic resources, impacts to threatened and endangered species, and water quality impacts.

When completed, the Draft EIS will be circulated for public and agency review and comment; BPA will hold at least one public comment meeting for the Draft EIS. BPA will consider and respond in the Final EIS to comments received on the Draft EIS. BPA's subsequent decision will be documented in a publicly available Record of Decision.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on June 20, 2006.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. E6–9999 Filed 6–23–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 14, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06–99–000.

Applicants: Tor Power, LLC; Tyr Energy, LLC; Lincoln Generating Facility, LLC; Green Country Energy, LLC.

Description: Tyr Energy, LLC, Green Country Energy, LLC et al. submit an amendment to their application to provide a description of their reorganization.

Filed Date: 06/06/2006.

Accession Number: 20060609–0045.

Comment Date: 5 p.m. Eastern Time on Friday, June 23, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER02–298–003; EL05–111–000.

Applicants: Thompson River Co-Gen, LLC.

Description: Thompson River Co-Gen, LLC submits its revised updated market power analysis to include the generation power market screens.

Filed Date: 05/30/2006.

Accession Number: 20060606–0453.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 20, 2006.

Docket Numbers: ER03–534–002.
Applicants: Ingenco Wholesale Power, L.L.C.
Description: Ingenco Wholesale Power, LLC submits its triennial market power update analysis pursuant to Commission order issued 3/24/03.
Filed Date: 04/27/2006.
Accession Number: 20060427–5031.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 21, 2006.

Docket Numbers: ER03–774–003.
Applicants: Eagle Energy Partners I, L.P.
Description: Eagle Energy Partners I, LP submits its updated power market analysis pursuant to the Commission's order issued 6/11/03.
Filed Date: 06/12/2006.
Accession Number: 20060614–0110.
Comment Date: 5 p.m. Eastern Time on Monday, July 3, 2006.

Docket Numbers: ER03–796–004.
Applicants: Katahdin Paper Company LLC.
Description: Katahdin Paper Co LLC submits its triennial market power analysis in compliance with Commission's order.
Filed Date: 06/12/2006.
Accession Number: 20060614–0109.
Comment Date: 5 p.m. Eastern Time on Monday, July 3, 2006.

Docket Numbers: ER04–805–005.
Applicants: Wabash Valley Power Association, Inc.
Description: Wabash Valley Power Association Inc submits its notice of non-material change in status in compliance with the requirements adopted by FERC in Order 652.
Filed Date: 05/30/2006.
Accession Number: 20060602–0332.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 20, 2006.

Docket Numbers: ER05–1502–003.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp submits its compliance filing pursuant to FERC's 5/12/06 Order.
Filed Date: 06/12/2006.
Accession Number: 20060614–0112.
Comment Date: 5 p.m. Eastern Time on Monday, July 3, 2006.

Docket Numbers: ER06–436–001.
Applicants: Avista Corporation.
Description: Avista Corporation submits Non-Conforming Agreements under its OATT, Volume 8 consisting of twelve Network Integration Transmission Service Agreements with Bonneville Power Administration.
Filed Date: 06/09/2006.
Accession Number: 20060614–0080.
Comment Date: 5 p.m. Eastern Time on Friday, June 30, 2006.

Docket Numbers: ER06–723–002.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp submits its revised Interim Reliability Requirements Program pursuant to FERC's 5/12/06 Order.
Filed Date: 06/12/2006.
Accession Number: 20060614–0111.
Comment Date: 5 p.m. Eastern Time on Monday, July 3, 2006.

Docket Numbers: ER06–731–002.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits revisions to Module D of its OAT&EM Tariff.
Filed Date: 06/08/2006.
Accession Number: 20060612–0215.
Comment Date: 5 p.m. Eastern Time on Thursday, June 29, 2006.

Docket Numbers: ER06–959–001.
Applicants: Vermont Electric Cooperative, Inc.
Description: Vermont Electric Cooperative, Inc. submits a letter clarifying its 5/24/06 letter and a list of the tariffs that should be withdrawn, pursuant to Commission's amendment to section 201(f) of the Federal Power Act.
Filed Date: 05/26/2006.
Accession Number: 20060526–5008.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 21, 2006.

Docket Numbers: ER06–1118–000.
Applicants: ECP Energy, LLC.
Description: ECP Energy, LLC submits an application for order accepting initial tariff, waiving regulations and granting blanket approvals.
Filed Date: 06/08/2006.
Accession Number: 20060612–0216.
Comment Date: 5 p.m. Eastern Time on Thursday, June 29, 2006.

Docket Numbers: ER06–1119–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Co submits First Revised Sheet 130 et al to Rate Schedule FERC 14, Reliability Must Run Service Agreement with California Independent System Operator Corp.
Filed Date: 06/08/2006.
Accession Number: 20060614–0071.
Comment Date: 5 p.m. Eastern Time on Thursday, June 29, 2006.

Docket Numbers: ER06–1120–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc supplements its 3/10/06 filing with signature pages, Original Sheet Number 39.
Filed Date: 06/08/2006.
Accession Number: 20060614–0072.
Comment Date: 5 p.m. Eastern Time on Thursday, June 29, 2006.

Docket Numbers: ER06–1121–000.
Applicants: American Electric Power Service Corporation; Ohio Power Company.
Description: Ohio Power Co submits its notice of cancellation of its Amended Interconnection Agreement and Operation Agreement, Second Revised Service Agreement 433, Electric Tariff Third Revised Volume 6, with Lawrence Energy Center, LLC.
Filed Date: 06/09/2006.
Accession Number: 20060614–0073.
Comment Date: 5 p.m. Eastern Time on Friday, June 30, 2006.

Docket Numbers: ER06–1122–000.
Applicants: High Trail Wind Farm, LLC.
Description: High Trail Wind Farm, LLC submits a petition for order accepting market-based rate schedule for filing and granting waivers and blanket approvals.
Filed Date: 06/09/2006.
Accession Number: 20060614–0074.
Comment Date: 5 p.m. Eastern Time on Friday, June 30, 2006.

Docket Numbers: ER06–1123–000.
Applicants: American Electric Power System; Ohio Power Company.
Description: Ohio Power Co submits its notice of cancellation of its Amended Interconnection Agreement and Operation Agreement, Second Revised Service Agreement 516, Electric Tariff Third Revised Volume 6, with Lawrence Energy Center, LLC.
Filed Date: 06/09/2006.
Accession Number: 20060614–0075.
Comment Date: 5 p.m. Eastern Time on Friday, June 30, 2006.

Docket Numbers: ER06–1124–000.
Applicants: Kentucky Utilities Company.
Description: Kentucky Utilities Co submits a request for an extension of its contract term for an Interconnection Agreement with Eastern Kentucky Power Cooperative.
Filed Date: 06/09/2006.
Accession Number: 20060614–0090.
Comment Date: 5 p.m. Eastern Time on Friday, June 30, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern

Time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–9978 Filed 6–23–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Desert Southwest Customer Service Region-Rate Order No. WAPA–127

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Order Concerning Network Integration Transmission and Ancillary Services Rates.

SUMMARY: The Deputy Secretary of Energy confirmed and approved Rate Order No. WAPA–127 and Rate Schedules PD–NTS2 and INT–NTS2, placing rates for Network Integration Transmission Service (Network Service) for the Parker-Davis Project (PDP) and the Pacific Northwest-Pacific Southwest Intertie Project (Intertie) of the Western Area Power Administration (Western) into effect on an interim basis. The Deputy Secretary of Energy also confirmed Rate Schedules DSW–SD2, DSW–RS2, DSW–FR2, DSW–EI2, DSW–SPR2, and DSW–SUR2, placing ancillary services rates from the PDP, Boulder Canyon Project (BCP), Central Arizona Project (CAP), and that part of the Colorado River Storage Project (CRSP) located in the Western Area Lower Colorado (WALC) Balancing Authority and Transmission Operations Area (BATO) into effect on an interim basis. The provisional rates will be in effect until the Federal Energy Regulatory Commission (Commission) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repay power investment and irrigation aid, within the allowable periods.

DATES: Rate Schedules DSW–SD2, DSW–RS2, DSW–FR2, DSW–EI2, DSW–SPR2, DSW–SUR2, PD–NTS2, and INT–NTS2 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after July 1, 2006, and will be in effect until the Commission confirms, approves, and places the rate schedules in effect on a final basis through June 30, 2011, or until the rate schedules are superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457; (602) 605–2442, e-mail *jmurray@wapa.gov*.

SUPPLEMENTARY INFORMATION: The Secretary of Energy approved Rate Schedules DSW–SD1, DSW–RS1, DSW–FR1, DSW–EI1, DSW–SPR1, DSW–SUR1, PD–NTS1, and INT–NTS1 for the Desert Southwest Region (DSWR) network service for PDP and Intertie, and ancillary services for the WALC BATO on May 3, 1999 (Rate Order No. WAPA–84, 64 FR 25323, May 11, 1999). The Commission confirmed and approved the rate schedules on January 20, 2000, in FERC Docket No. EF99–5041–000, (90 FERC 62,032). Approval for Rate Schedules DSW–SD1, DSW–RS1, DSW–FR1, DSW–EI1, DSW–SPR1, DSW–SUR1, PD–NTS1, and INT–NTS1 covered 5 years beginning on April 1, 1999, and ending on March 31, 2004. These rate schedules were extended by a series of Rate Orders through September 30, 2006, with the most recent Rate Order being Rate Order No. WAPA–129 (71 FR 16572, April 3, 2006). The rate schedules were extended to accommodate the Desert Southwest Region (DSWR) Multi-System Transmission Rate (MSTR) process. An MSTR has not been approved. However, Western plans to seek approval of an MSTR for short-term and non-firm transactions in the future.

The provisional formula for Network Service in Rate Schedules PD–NTS2 and INT–NTS2 will be the same as the existing formula rates for Network Service under Rate Schedules PD–NTS1 and INT–NTS1.

The existing transmission rates include costs for Scheduling, System Control, and Dispatch Services. The transmission provisional formula rates include the costs of these services.

Rate Schedules DSW–SD2, DSW–RS2, DSW–FR2, DSW–EI2, DSW–SPR2, and DSW–SUR2 supersede Rate Schedules DSW–SD1, DSW–RS1, DSW–FR1, DSW–EI1, DSW–SPR1, and DSW–SUR1, respectively. Spinning Reserve and Supplemental Reserve ancillary services are being updated slightly to reflect minor changes.

Under Schedule DSW–SD2, Scheduling, System Control, and Dispatch Service (Scheduling Service), the rate is applied on a per tag basis. The rate is calculated in two major steps. First, the yearly costs associated with capital improvements are determined and divided by the number of tags issued during the previous year. Second, the average labor cost per tag is determined and added to the capital cost per tag. This methodology differs from the previous methodology in that it is based on tags rather than schedules and a single rate is applied to all transactions. These changes were made because the tag was not used as a billing unit when the rates under Rate Order No. WAPA–84 were developed.

Under Schedule DSW–RS2, Reactive Supply and Voltage Control Service from Generation Sources (Voltage Support Service), the rate is determined by dividing the revenue requirement for the service by the reservations for the service. The revenue requirement for the service is one minus the power factor (1 − PF) times the combined generation

revenue requirement of the PDP, BCP, and CRSP. The previous methodology used the factor $(1 - PF^2)$ to determine the Voltage Support revenue requirement for BCP and PDP.

Under Schedule DSW–FR2, Regulation and Frequency Response Service (Regulation Service), the rate for standard loads is determined using the revenue requirement for the service divided by the load in the WALC BATO requiring the service. The revenue requirement for the service is the product of the generation capacity that is used for regulation times the capacity rate of the Project, plus any regulation purchases the transmission provider must make. This total is multiplied by a use factor, which takes into consideration the customer load in the WALC BATO. The denominator in the equation and the load in the BATO requiring the service include a portion of the CRSP load and the DSWR load.

Long-term Regulation Service is not available from DSWR resources. However, if necessary, DSWR will purchase long-term regulation service on a pass-through cost basis on the open market for a charge that covers the cost of procuring and supplying the service. Short-term Regulation Service will be supplied from DSWR resources if such resources are available. Under Rate Schedule DSW–FR1, Western offered this service for short-term sales, but set the charge equal to the capacity rate of the Project supplying the service rather than basing the charge on a formula. The provisional methodology is being used because existing technology gives Western the ability to measure Regulation Service more accurately than when the previous rate was developed.

Non-conforming loads are volatile loads (such as those associated with certain smelters and arc furnaces) that can require a BATO to acquire significant amounts of generation capacity for regulation. Such non-conforming loads require separate metering of their moment-to-moment load values to accurately calculate their effects on the system and will not be covered under the provisional Regulation Service rate.

DSWR defines a non-conforming load as either a single plant or site with a regulation capacity requirement of 5 megawatts (MW) or greater on a recurring basis and a capacity requirement that is equal to 10 percent or greater of its average load. Regulation Service for non-conforming loads, as determined by Western, must be delineated in a service agreement and charged an amount that includes the cost to procure the service and the additional cost required to monitor and supply this service.

Rate Schedule DSW–EI2, Energy Imbalance Service, establishes a bandwidth to differentiate the settlement percentage required for deviations between scheduled and actual load. That portion of the customer's energy imbalance that is within the bandwidth will be settled with a one to one return of energy. In lieu of an energy settlement, Western, at its discretion, can use a financial settlement equal to a weighted index price (described below) times the energy.

The bandwidth for on-peak is plus or minus 1.5 percent of the customer's load with a minimum of 5 MW for either over-delivery or under-delivery. The off-peak bandwidth is plus 1.5 percent to negative 3 percent of a customer's load with a minimum of 2 MW for over-delivery and 5 MW for under-delivery.

For that portion of the customer's energy imbalance that is outside the bandwidth during on-peak hours, the settlement is 110 percent of the energy imbalance for under-deliveries and 90 percent of the energy imbalance for over-deliveries. In lieu of an energy settlement, Western, at its discretion, can use a financial settlement equal to 110 percent of a weighted index price for under-deliveries and 90 percent of a weighted index price for over-deliveries.

For that portion of the customer's energy imbalance that is outside the bandwidth during the off-peak hours, the settlement is 110 percent of the energy imbalance for under-deliveries. However, for over-deliveries in the off-peak hours, the settlement is 60 percent of the energy imbalance. In lieu of an energy settlement, Western, at its discretion, can use a financial settlement equal to 110 percent of a weighted index price for under-deliveries, and for over-deliveries, 60 percent of either a weighted index price or a WALC weighted sales price, whichever is the lesser. In the event that Western accepts a financial settlement, the index used to calculate the settlement will be posted on the Open Access Same-Time Information System (OASIS) at the beginning of each fiscal year. The index will be the Dow Jones Palo Verde average monthly index or an index identified on the OASIS at the beginning of each fiscal year. Settlement for the hourly deviations will occur on a monthly basis.

The provisional rate methodology differs from the previous methodology in that previously, DSWR used the Commission pro-forma methodology to define the service. Under the provisional rate, the bandwidth was increased to equitably treat customers that do not have generation capabilities. The settlement for over-deliveries during the off-peak hours is set at 60 percent of the energy imbalance to discourage over-deliveries at a time when WALC has the least amount of load in the BATO. The 100 mills per kilowatthour penalty established in the pro-forma methodology was replaced with the percent of an index in the provisional methodology to reflect the volatility of the energy market.

Under Schedule DSW–SPR2, Operating Reserves-Spinning Reserve Service (Spinning Service) is not available from DSWR resources on a long-term firm basis. If a customer cannot self-supply or purchase this service from another provider, Western may obtain the Spinning Service on the open market on a pass-through cost basis for a charge that covers the cost of procuring the service. The transmission customer will be responsible for the transmission service to get this Spinning Service to the destination.

Under Schedule DSW–SUR2, Operating Reserves-Supplemental Reserve Service (Supplemental Service) is not available from DSWR resources on a long-term firm basis. If a customer cannot self-supply or purchase this service from another provider, Western may obtain Supplemental Service on the open market on a pass-through cost basis for a charge that covers the cost of procuring the service. The transmission customer will be responsible for the transmission service to get this Supplemental Service to the destination.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Under Delegation Order Nos. 00–037.00 and 00–001.00B, 10 CFR part 903, and 18 CFR part 300, I hereby confirm, approve, and place Rate Order No. WAPA–127, the provisional network service for the PDP and Intertie systems, and for ancillary services from the PDP, BCP, and that part of the CRSP located in the WALC BATO into effect on an interim basis. The new Rate Schedules DSW–SD2, DSW–RS2, DSW–

FR2, DSW–EI2, DSW–SPR2, DSW–SUR2, PD–NTS2, and INT–NTS2, will be submitted promptly to the Commission for confirmation and approval on a final basis.

Dated: June 13, 2006.

Clay Sell,

Deputy Secretary.

Department of Energy, Deputy Secretary

In the Matter of: Western Area Power Administration Rate Adjustment for the Desert Southwest Customer Service Region

[Rate Order No. WAPA–127]

Order Confirming, Approving, and Placing the Desert Southwest Customer Service Region Network Integration Transmission and Ancillary Services Rates Into Effect on an Interim Basis

This rate was established in accordance with section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Acronyms and Definitions

As used in this Rate Order, the following acronyms and definitions apply:

12-CP: 12-month coincident peak average.

Administrator: The Administrator of the Western Area Power Administration.

Ancillary Services: Those services necessary to support the transfer of electricity while maintaining reliable operation of the transmission system in accordance with standard utility practice.

BATO: Balancing Authority and Transmission Operations area. Formerly referred to as a Control Area.

BCP: Boulder Canyon Project.

CAP: Central Arizona Project.

Capacity: The electric capability of a generator, transformer, transmission circuit, or other equipment. It is expressed in kilowatts.

Capacity Rate: The rate which sets forth the charges for capacity. It is expressed in $ per kilowattmonth.

Commission: Federal Energy Regulatory Commission.

CROD: Contract rate of delivery. The maximum amount of capacity made available to a preference customer for a period specified under a contract.

CRSP: Colorado River Storage Project.

CRSP MC: The CRSP Management Center of Western.

Customer: An entity with a contract that is receiving service from Western's DSWR or CRSP MC.

DOE: United States Department of Energy.

DOE Order RA 6120.2: An order outlining power marketing administration financial reporting and ratemaking procedures.

DSWR: The Desert Southwest Region of Western.

Energy: Measured in terms of the work it is capable of doing over a period of time. It is expressed in kilowatthours.

FERC: The Commission (to be used when referencing Commission Orders).

Firm: A type of product and/or service available at the time requested by the customer.

FRN: **Federal Register** notice.

FY: Fiscal year; October 1 to September 30.

Integrated Projects: The resources and revenue requirements of the Collbran, Dolores, Rio Grande, and Seedskadee projects blended together with the CRSP to create the SLCA/IP resources and rate.

Intertie: Pacific Northwest-Pacific Southwest Intertie Project.

kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

kWh: Kilowatthour—the electrical unit of energy that equals 1,000 watts in 1 hour.

kWmonth: Kilowattmonth—the electrical unit of the monthly amount of capacity.

Load: The amount of electric power or energy delivered or required at any specified point(s) on a system.

Merchant Function: A power marketing function within the CRSP MC and DSWR that balances loads and resources for the CRSP MC, DSWR, other regions within Western, and customers, and purchases and sells energy on the open market.

mill: A monetary denomination of the United States that equals one tenth of a cent or one thousandth of a dollar.

mills/kWh: Mills per kilowatthour—the unit of charge for energy.

MW: Megawatt—the electrical unit of capacity that equals 1 million watts or 1,000 kilowatts.

Non-firm: A type of product and/or service not always available at the time requested by the customer.

O&M: Operation and Maintenance.

OASIS: Open Access Same-Time Information System—provides access to information on transmission pricing and availability for potential transmission customers.

OATT: Open Access Transmission Tariff.

PDP: Parker-Davis Project.

Power: Capacity and energy.

Project Use Power: Capacity and energy reserved for Federal Reclamation project use and irrigation pumping for PDP, CAP, and SLCA/IP under Reclamation Law.

Provisional Rate: A rate that has been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary.

PRS: Power Repayment Study.

Rate Brochure: A document explaining the rationale and background for the rate proposal contained in this Rate Order.

Reclamation: United States Department of the Interior, Bureau of Reclamation.

Reclamation Law: A series of Federal laws. Viewed as a whole, these laws create the originating framework under which Western markets power.

Revenue Requirement: The revenue required to recover annual expenses (such as O&M, purchase power, transmission service expenses, interest, and deferred expenses) and repay Federal investments, and other assigned costs.

SCADA: Supervisory Control and Data Acquisition.

SLCA/IP: Salt Lake City Area Integrated Projects—The resources and revenue requirements of the Collbran, Dolores, Rio Grande, and Seedskadee projects blended together with the CRSP to create the SLCA/IP resources and rate.

Supporting Documentation: A compilation of data and documents

that support the Rate Brochure and the rate proposal.

WALC: Western Area Lower Colorado BATO, operated by DSWR.

Western: United States Department of Energy, Western Area Power Administration.

Effective Date

The new interim rates will take effect on the first day of the first full billing period beginning on or after July 1, 2006, and will remain in effect until June 30, 2011, pending approval by the Commission on a final basis.

Public Notice and Comment

Western followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, in developing these rates. The steps Western took to involve interested parties in the rate process were:

1. The rate adjustment process began June 14, 2005, when Western mailed a notice announcing informal customer meetings to all DSWR customers and interested parties.

2. Western held an informal meeting on June 27, 2005, in Phoenix, Arizona. At this informal meeting, Western explained the rationale for the rate adjustment, presented rate designs and methodologies, and answered questions.

3. A **Federal Register** notice, published on October 12, 2005 (70 FR 59335), announced the proposed rates for DSWR, began a public consultation and comment period, and announced the public information and public comment forums.

4. On October 21, 2005, Western mailed letters to all DSWR customers and interested parties transmitting the **Federal Register** notice and announcing the posting of the Brochure for Proposed Rates on the DSWR Web site.

5. On November 2, 2005, beginning at 1 p.m., Western held a public information forum at the DSWR office in Phoenix, Arizona. Western provided detailed explanations of the proposed rates and answered questions. Western provided documentation and informational handouts.

6. On November 29, 2005, beginning at 1 p.m., Western held a public comment forum at the DSWR Office in Phoenix, Arizona to give the public an opportunity to comment for the record. One individual spoke at this meeting.

7. On December 12, 2005, Western sent letters to all DSWR customers and interested parties clarifying answers to several questions from customers attending the public information forum and an informational request from a customer at the public comment forum.

8. Western received one comment letter during the consultation and comment period, which ended January 10, 2006. All formally submitted comments have been considered in preparing this Rate Order.

Comments

Written comments were received from the Navajo Agricultural Products Industry, New Mexico.

Representatives of Utility Strategies Consulting Group, Arizona, and Salt River Project, Arizona, made oral comments at either the public information forum or the public comment forum.

Project Description

Parker-Davis Project

The PDP was formed by consolidating two projects, Davis Dam and Parker Dam, under terms of the Act of May 28, 1954. Parker Dam and Powerplant, which created Lake Havasu 155 miles below Hoover Dam on the Colorado River, was authorized by the Rivers and Harbors Act of August 30, 1935. Reclamation constructed the project partly with funds advanced by the Metropolitan Water District (MWD) of Southern California, which now diverts nearly 1.2 million acre-feet of water each year by pumping it from Lake Havasu. The cooperative contract for construction and operation of Parker Dam was executed in 1933, under which MWD receives half of the capacity and energy from four generating units. The Federal share of the Parker Powerplant capacity, as determined by Reclamation, is 54,000 kW.

Power generated from the PDP is marketed to customers in Nevada, Arizona, and California. Excluding project use, the marketing criteria provide for marketing 185,530 kW of capacity in the winter season and 242,515 kW of capacity in the summer season. Customers receive 1,703 kWh per kW in the winter season and 3,441 kWh per kW in the summer season. Excluding project use, total marketable energy is 316 million kWh in the winter season and 835 million kWh in the summer season.

A portion of the resource marketed is reserved for United States use, but is not presently needed. This portion (9,460 kW of capacity and associated energy in the winter season and 16,030 kW of capacity and associated energy in the summer season) is withdrawable from existing customers upon two years' written notice. Existing PDP firm power contracts have been extended to September 30, 2028. About 72 percent of PDP firm energy sales are made to 5 of the 46 customers, with about 50 percent of the energy marketed to customers in Arizona.

Pacific Northwest-Pacific Southwest Intertie Project

The Intertie was authorized by section 8 of the Pacific Northwest Power Marketing Act of August 31, 1964. Originally, the Intertie was to be a combined alternating current (AC) and direct current (DC) system, which was to connect the Pacific Northwest with the Desert Southwest. As authorized, the overall project was to be a cooperative construction venture between Federal and non-Federal entities.

Due to delays in construction funding, the estimated in-service date of the Intertie was revised to the point that interest by potential users waned. These events resulted in the indefinite postponement of DC line construction. Consequently, the facilities constructed provide only AC transmission service.

Western's portion of the Intertie consists of two parts—a northern portion and a southern portion. The northern portion is administered by Western's Sierra Nevada Region and is incorporated, for repayment and operation, with the Central Valley Project. The northern portion consists of a 94-mile, 500-kV transmission line from Malin Substation in Oregon to Round Mountain to Cottonwood Substation in California.

The southern portion of the Intertie is administered by Western's Desert Southwest Region and is treated as a separate stand-alone project for repayment and operational purposes. It consists of a 238-mile, 345-kV transmission line from Mead Substation in Nevada to Liberty Substation in Arizona; a 19-mile, 230-kV transmission line from Liberty to Westwing Substation in Arizona; a 22-mile, 230-kV transmission line from Westwing to Pinnacle Peak Substation in Arizona; and two segments that came on-line in April 1996: the 256-mile Mead-Phoenix 500-kV AC Transmission Line between Marketplace Substation in Nevada and Perkins Substation in Arizona and the 202-mile Mead-Adelanto 500-kV AC Transmission Line between Marketplace in Nevada and the existing Adelanto Switching Substation in southern California.

Boulder Canyon Project

Hoover Dam, the highest and third largest concrete dam in the United States, sits on the Colorado River along the Arizona/Nevada border. Lake Mead, the reservoir formed behind Hoover

Dam, is the nation's largest man-made reservoir. It can hold a 2-year supply of the average flow from the Colorado River with its storage capacity of 27.38 million acre-feet.

Power from the BCP is marketed as long-term contingent capacity with associated energy. The contingent capacity and associated energy are available as long as, among other restrictions, sufficient water in the reservoir allows for release of water to meet water delivery obligations. If sufficient power to support the customer capacity entitlements is not available, each customer's capacity entitlement is temporarily reduced. Customers are entitled to receive 4.527 billion kWh of energy (associated with contingent capacity) each year. If generation at Hoover Powerplant is insufficient, Western can purchase energy to make up the shortfall at the individual customer's request on a pass-through cost basis.

Project power is sold in three states: Arizona, California, and Nevada. About 56 percent of BCP energy sales revenue comes from California customers. Of the Boulder Canyon Project's 15 customers, 11 are municipalities. These municipalities provide only 28 percent of the revenue. Four customers account for 82 percent of the power revenue from the project: the MWD of Southern California, Colorado River Commission of Nevada, Arizona Power Authority, and the Los Angeles Department of Water and Power. Existing power contracts for the BCP expire on September 30, 2017.

Central Arizona Project

The CAP is one of three related water development projects that make up the Colorado River Basin Project; the others are the Dixie and the Upper Basin Projects. The CAP was developed for Arizona and western New Mexico; the Dixie Project for southeastern Utah; and the Upper Basin Project for Colorado and New Mexico.

Congress authorized the project in 1968 to improve water resources in the Colorado River Basin. Segments of the 1968 authorization allowed Federal participation in the Navajo Generating Station, which has three coal-fired steam electric generating units for a combined capacity of 2,250 MW. The rate methodology for Network Integration Transmission Service over CAP 115-kV and 230-kV transmission lines went into effect on January 1, 2001, and has been revised effective January 1, 2006 through December 31, 2010, Rate Order WAPA–124 (71 FR 1533, January 10, 2006).

Salt Lake City Area/Integrated Projects

The SLCA/IP consists of the CRSP, Rio Grande, and Collbran Projects. The CRSP includes two participating projects that have power facilities: the Dolores and Seedskadee Projects. Western integrated the Rio Grande and Collbran Projects with CRSP for marketing and ratemaking purposes on October 1, 1987. The goals of integration were to increase marketable resources and to simplify contract and rate development and project administration by creating one rate and assuring repayment of the Projects' costs. All Integrated Projects maintain their individual identities for financial accounting and repayment purposes, but their revenue requirements are integrated into one SLCA/IP PRS for ratemaking.

Power Repayment Studies

Western prepares a separate PRS for PDP, Intertie, BCP, and SLCA/IP and a transmission rate study for CAP each FY to determine if revenues will be sufficient to repay, within the required time, all costs assigned to the respective projects. Repayment criteria are based on law, policies, including DOE Order RA 6120.2, and authorizing legislation.

The PRS for PDP and Intertie yield revenue requirements that are used to calculate firm transmission rates in DSWR. The PRS for PDP, BCP, and SLCA/IP are used to determine part of the revenue requirements for the ancillary services.

Network Integration Transmission Service

Under Rate Schedules PD–NTS2 and INT–NTS2, the methodology for calculating the customer's monthly charge is the product of the transmission customer's load-ratio share times one-twelfth (1/12) of the annual transmission revenue requirement. The load-ratio share will be based on the network customers' hourly load coincident with appropriate power or system monthly transmission system peak, which will be calculated on a rolling 12–CP basis. The transmission system peak includes the sum of capacity reserved for point-to-point transmission and the average 12–CP monthly system peak for network transmission service.

The monthly hour of the system peak is determined as the hour that the sum of the network customers' metered loads is the greatest. The firm point-to-point transmission reservations include the OATT firm point-to-point reservations, the PDP Firm Electric Service (FES) contract rates of delivery, the pre-OATT Firm Transmission Service, and the SLCA/IP FES with delivery points on the PDP.

Ancillary Services

Six ancillary services will be offered by DSWR, two of which (Scheduling, System Control, and Dispatch Service; and Reactive Supply and Voltage Control Service) are required to be purchased from the WALC BATO. The remaining four ancillary services are Regulation and Frequency Response Service, Energy Imbalance Service, Spinning Reserve Service, and Supplemental Reserve Service. These four services will be offered either from the BATO, or the DSWR or CRSP Merchant Function, and may be taken from WALC, self-provided, or provided by another party acceptable to Western. Sales of Regulation and Frequency Response, Energy Imbalance, Spinning Reserve, and Supplemental Reserve Services from WALC power resources are limited since Western has allocated all of its power resources to preference entities under long-term commitments. Western will determine the availability and type of Ancillary Services based on excess resources available when the service is requested.

The provisional rates for Ancillary Services are designed to recover only the costs associated with providing the service(s). The costs for providing Scheduling, System Control, and Dispatch Service are included in the appropriate existing and provisional transmission services rates.

Existing and Provisional Rates

Various levels of difference exist between the existing and provisional Ancillary Service rates due to changes in the provisional rate methodologies. The provisional Scheduling, System Control, and Dispatch Ancillary Service methodology differs from the existing methodology in its assessment of charges by tags instead of by schedules, and the elimination of multiple rates distinguished by inter-bus transfers and new versus existing schedules. The difference in the rates is shown in Table 1.

TABLE 1.—SCHEDULING, SYSTEM CONTROL, AND DISPATCH SERVICE

Existing		Provisional	
Description	Rates	Description	Rates
DSW–SD1	Per Schedule per Day	DSW–SD2	Per Tag.
Existing No SCADA programming or Intra-bus Transfer.	$54.99	All applicable transactions	$18.55.
Existing No SCADA programming requires Intra-bus Transfer.	$73.05.		
New Schedule w/SCADA no Inter-bus Transfer.	$51.10.		
New Schedule w/SCADA and Intra-bus Transfer.	$75.26.		

The Reactive Supply and Voltage Control Service uses a slightly different multiplier (1–PF versus 1–PF^2) and removes the entities with generation agreements to supply Voltage Support to WALC from the denominator. The effect of these changes on the provisional rate is shown in Table 2.

TABLE 2.—REACTIVE SUPPLY AND VOLTAGE CONTROL SERVICE

Existing		Provisional	
Description	Rates	Description	Rates
DSW–RS1	$/kWmonth	DSW–RS2	$/kWmonth.
All applicable transactions	$0.05	All applicable transactions	$0.043.
If resources are not available	Market Rates + 10%	Non-conforming Loads	Cost to procure and monitor.

The Regulation and Frequency Response Service is similar to the existing methodology in that it highlights the lack of DSWR resources available to supply this service on a long-term basis but instead of using the capacity rate of the project for short-term sales, as with the existing methodology, it specifies a rate based on the revenue requirement for the service divided by the load requiring the service. The rate schedule for the provisional rates defines non-conforming loads and spells out the requirement that services for these loads will be charged an amount that includes regulation purchased on the open market plus the cost to procure and monitor the service. The comparison of the existing rate to the provisional rate is shown in Table 3.

TABLE 3.—REGULATION AND FREQUENCY RESPONSE SERVICE

Existing		Provisional	
Description	Rates	Description	Rates
DSW–FR1	mills/kWh	DSW–FR2	mills/kWh.
If available from DSWR Resources	Capacity charge of supplying project.	If available for short term sales	0.2049.
		Non-conforming loads	Cost to procure and monitor.

The methodology for the Energy Imbalance Service for the provisional rate differs from the existing rate in several key ways: The bandwidth differs for on and off peak, the minimum load differs for over- and under-deliveries, and the settlement is based on a market index rather than a penalty. The index will be the Dow Jones Palo Verde Index unless modified as posted on the OASIS. Table 4 shows these differences specifically.

TABLE 4.—ENERGY IMBALANCE SERVICE

Description	Existing	Provisional	
		On/off peak	
Bandwidth	+/–1.5%	On	+/–1.5%.
Minimum	3 MW		5 MW.
Bandwidth	+/–1.5%	Off	+1.5% to –3%.
Minimum	3 MW		2 MW (Over Delivery).
			5 MW (Under Delivery).
Energy Within Bandwidth	No Penalty (Return 100% of Energy).	On	100% of Weighted Index Price.

TABLE 4.—ENERGY IMBALANCE SERVICE—Continued

Description	Existing	Provisional	
		On/off peak	
		Off	100% of Weighted Index Price (Under Delivery).
Energy Outside Bandwidth	100 mills/kWh + Return of Energy.	On	110% of Weighted Index Price (Under Delivery). 90% of Weighted Index Price (Over Delivery).
		Off	110% of Weighted Index Price (Under Delivery). The lesser of 60% of Weighted Index Price or WALC Weighted Sales Price (Over Delivery).

The Spinning and Supplemental Reserve Services under the provisional rate methodology does not differ from the previous rate methodology, except that the charge associated with procuring and supplying the service is the capacity rate of the Project supplying the service under the existing methodology and cost to procure the service on the open market under the provisional rate methodology.

Ancillary Services Discussion

Ancillary services are necessary to provide basic transmission service and to capture the costs associated with undertaking a transmission transaction within a BATO. To this end, DSWR will provide ancillary services, subject to provisions in Western's OATT. The provisional rates for these services are designed to recover all costs incurred for each service.

The annual generation costs included in the development of the revenue requirement consist of operation and maintenance expenses, administrative and general expenses, and interest and principal capital payments. The annual PRS is the primary tool utilized to derive the revenue requirement to be recovered from the ancillary services. Additional tools include meter and SCADA data, and power flow studies.

Currently, DSWR is offering the following ancillary services: (1) Scheduling, System Control, and Dispatch Service; (2) Reactive Supply and Voltage Control Service; (3) Regulation and Frequency Response Service; (4) Energy Imbalance Service; (5) Spinning Reserve Service; and 6) Supplemental Reserve Service. The existing rates will expire September 30, 2006.

The provisional rates and descriptions for the six ancillary services are:

PROVISIONAL ANCILLARY SERVICES RATES

Ancillary service type	Ancillary service description	Provisional rate
Scheduling, System Control, and Dispatch	Required to schedule the movement of power through, out of, within, or into a control area.	Included in appropriate transmission rates.
Reactive Supply and Voltage Control	Reactive power support provided from generation facilities that is necessary to maintain transmission voltages within acceptable limits of the system.	$0.043/kWmonth.
Regulation and Frequency Response	Generation provided to match resources and loads on a real-time continuous basis.	0.2049 mills/kWh[1].
Regulation for Non-conforming loads	Volatile loads-regulation capacity >5 MW on a regular basis and regulation capacity requirement > 10 percent of average load.	Cost to procure and monitor the load.
Energy Imbalance	Provided when a difference occurs between the scheduled and actual delivery of energy to a load located in the WALC BATO.	Bandwidth = +or−1.5% of load for On-peak and +1.5% and −3% for Off-peak. Within bandwidth 100% of energy.[2] Outside of bandwidth, On-peak 110% of energy (Under del) 90% of energy (Over del).[3] Outside of bandwidth, Off-peak 110% of energy (Under del) 60% of energy (Over del).[4]
Spinning Reserve	Needed to serve load immediately in the event of a system contingency.	Not available for long term sales.[5]
Supplemental Reserve	Needed to serve load in the event of a system contingency; however, it is not available immediately to serve load, but rather within a short period of time.	Not available for long term sales.[6]

[1] Not available for long term. DSWR will provide from available resources short term for rate shown.
[2] Western, at its discretion, can accept a financial payment equal to a weighted index price of the imbalance energy. Index will be Dow Jones Palo Verde index or as modified by posting on the OASIS.
[3] 110% of weighted index or 90% of weighted index.
[4] 110% of index price or the lesser of the index price or WALC weighted sales times 60%.
[5] DSWR will purchase on the open market on a pass-through cost basis plus cost associated with purchase as appropriate or provide from available resources short term for market price of service.
[6] DSWR will purchase on the open market on a pass-through cost basis plus cost associated with purchase as appropriate or provide from available resources short term for market price of service.

Comments

Comments and responses regarding ancillary service rates, paraphrased for brevity when not affecting the meaning of the statements, are discussed below. Direct quotes from comment letters are used for clarification where necessary. Responses to the two oral comments were included in the December 12, 2005, customer letter and are not in this document.

Comment: A customer stated that their organization was "in the early stages of developing and coordinating an energy demand schedule" and requested that Western not impose the "imbalance penalty charges."

Response: DSWR included the penalties in the energy imbalance service to encourage customers to accurately estimate their loads when requesting schedules. The penalties are also designed to reduce the opportunity for an entity to reduce its energy costs by using DSWR's resources. This practice will help Western provide BATO services at the lowest possible cost.

Availability of Information

Information about this rate adjustment, including PRSs, comments, letters, memorandums, and other supporting material made or kept by Western and used to develop the provisional rates, is available for public review in the Desert Southwest Regional Office, Western Area Power Administration, 615 South 43rd Avenue, Phoenix, Arizona.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Submission to the Federal Energy Regulatory Commission

The interim rates herein confirmed, approved, and placed into effect, together with supporting documents, will be submitted to the Commission for confirmation and final approval.

Order

In view of the foregoing and under the authority delegated to me, I confirm and approve on an interim basis, effective July 1, 2006, Rate Schedules PD–NTS2, and INT–NTS2 for the Parker-Davis Project (PDP) and the Pacific Northwest-Pacific Southwest Intertie Project, and Rate Schedules DSW–SD2, DSW–RS2, DSW–FR2, DSW–EI2, DSW–SPR2, and DSW–SUR2, for the PDP, the Boulder Canyon Project (BCP), the Central Arizona Project (CAP), and that part of the Colorado River Storage Project located in the WALC Balancing Authority and Transmission Operations Area of the Western Area Power Administration. The rate schedules shall remain in effect on an interim basis pending the Commission's confirmation and approval of them or substitute rates on a final basis through June 30, 2011.

Dated: June 13, 2006.

Clay Sell,
Deputy Secretary.

Rate Schedule PD–NTS2; Attachment H–1 to Tariff (Supersedes Rate Schedule PD–NTS1)

United States Department of Energy, Western Area Power Administration

Network Integration Transmission Service on the Parker-Davis Project

Effective

The first day of the first full billing period beginning on or after July 1, 2006, through June 30, 2011.

Available

In the area served by the Parker-Davis Project (PDP) transmission facilities.

Applicable

To Network Integration Transmission Service (Network Service) customers where capacity and energy are supplied to the PDP transmission system from designated resources, transmitted subject to the availability of the transmission capacity, and delivered, less losses, to designated points of delivery on the PDP system specified in the network service agreement.

Character and Conditions of Service

Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by the network service agreement.

Monthly Rate

Network Service Charge: Each Contractor shall be billed an amount based on the contractor's load ratio share times one-twelfth of the PDP annual revenue requirement. The load ratio share will be determined by the contractor's coincidental peak load averaged with the coincidental peak loads of the previous 11 months divided by the average PDP system peak for the same time period.

Revenue Requirement

The projected annual revenue requirement allocated to transmission for FY 2006 for the PDP is $32,826,345. Based on updated financial and load data, a recalculated revenue requirement will go into effect on October 1 of each year during the effective rate schedule period.

Adjustment for Ancillary Services

Network Service is offered under Western's Open Access Transmission Tariff and contractors are responsible for all ancillary services set forth in the applicable rate schedules specified in the customer's network service agreement.

Adjustment for Losses

Capacity and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the network service agreement.

Modifications

The Desert Southwest Customer Service Region may modify the charges for Network Service upon written notice to the transmission customer. Any change to the charges to the transmission customer for Network Service shall be as set forth in a revision to this rate schedule promulgated under applicable Federal laws, regulations, and policies, and made part of the applicable network service agreement.

Rate Schedule INT–NTS2; Schedule H–2 to Tariff (Supersedes Rate Schedule INT–NTS1)

United States Department of Energy, Western Area Power Administration, Desert Southwest Customer Service Region

Network Integration Transmission Service on the Pacific Northwest-Pacific Southwest Intertie Project

Effective

The first day of the first full billing period beginning on or after July 1, 2006, through June 30, 2011.

Available

Within the marketing area serviced by the Pacific Northwest-Pacific Southwest Intertie Project (Intertie) transmission facilities.

Applicable

To Network Integration Transmission Service (Network Service) customers where capacity and energy are supplied to the Intertie from designated resources, transmitted subject to the availability of the transmission capacity, and delivered, less losses, to designated points of delivery on the Intertie system specified in the network service agreement.

Character and Conditions of Service

Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by the network service agreement.

Monthly Rate

Network Service Charge: Each contractor shall be billed an amount based on the contractor's load ratio share times one-twelfth of the Intertie annual revenue requirement. The load ratio share will be determined by the contractor's coincidental peak load averaged with the coincidental peak loads of the previous 11 months divided by the average Intertie system peak for the same time period.

Revenue Requirement

The projected annual revenue requirement allocated to transmission for FY 2006 for the Intertie is $22,742,569. Based on updated financial and load data, a recalculated revenue requirement will go into effect on October 1 of each year during the effective rate schedule period.

Adjustments for Ancillary Services

Network Service is offered under the Open Access Transmission Tariff and contractors are responsible for all ancillary services set forth in the applicable rate schedules specified in the customer's network service agreement.

Adjustments for Losses

Capacity and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the network service agreement.

Modifications

The Desert Southwest Customer Service Region may modify the charges for Network Service upon written notice to the transmission customer. Any change to the charges to the transmission customer for Network Service shall be as set forth in a revision to this rate schedule promulgated under applicable Federal laws, regulations, and policies and made part of the applicable network service agreement.

Rate Schedule DSW–SD2; Schedule 1 to Tariff (Supersedes Rate Schedule DSW–SD1)

United States Department of Energy, Western Area Power Administration, Desert Southwest Customer Service Region

Scheduling, System Control, and Dispatch Service

Effective

The first day of the first full billing period beginning on or after July 1, 2006, through June 30, 2011.

Available

In the area served by the Western Area Lower Colorado (WALC) Balancing Authority and Transmission Operations area (BATO).

Applicable

To transactions with entities not taking transmission service in WALC. For entities taking transmission service from Western in the WALC BATO, the Scheduling, System Control, and Dispatch Service (Scheduling Service) charge is included in the transmission rate.

Character of Service

Scheduling Service is required to schedule the movement of power through, out of, within, or into the WALC BATO.

Formula Rate

The charges for Scheduling Service are to be based on the following formula rate where the Rate per Tag equals: Annual Capital Cost per Tag + Hourly Labor Rate X Average Time to Execute Tag

Rate

The rate charged for the Scheduling Service is $18.55 per tag. This rate is based on FY 2004 financial and load data, and will be in effect July 1, 2006, through September 30, 2006. Based on updated financial and load data, a recalculated rate will go into effect on October 1 of each year during the effective rate period.

The Desert Southwest Customer Service Region's charge for Scheduling Service may be modified upon written notice to the customer and any change to the charges for the service shall be as set forth in a revision to this rate schedule promulgated under applicable Federal laws, regulations, and policies and made part of the applicable service agreement.

Rate Schedule DSW–RS2; Schedule 2 to Tariff (Supersedes Rate Schedule DSW–RS1)

United States Department of Energy, Western Area Power Administration, Desert Southwest Customer Service Region

Reactive Supply and Voltage Control From Generation Sources Service

Effective

The first day of the first full billing period beginning on or after July 1, 2006, through June 30, 2011.

Available

In the area served by the Western Area Lower Colorado (WALC) Balancing Authority and Transmission Operations Area (BATO).

Applicable

To all customers in the WALC BATO taking transmission service under the

Open Access Transmission Tariff. The customer must purchase this service from WALC, unless the entity has a separate generation agreement to supply Reactive Supply and Voltage Control from Generation Sources Service (Voltage Support Service) to WALC.

Character of Service

Voltage Support Service is needed to maintain transmission voltages on all transmission facilities within acceptable limits. To accomplish this, generation facilities under the control of the WALC BATO are operated to produce or absorb reactive power.

Formula Rate

The charges for Voltage Support Service are based on the following formula rate.

$$\text{WALC Voltage Support Rate} = \frac{\text{Revenue Requirement for Service}}{\text{Transmission Reservations Requiring Service}}$$

The revenue requirement for the service is the sum of the service for each generation project in WALC determined by multiplying the generation revenue requirement by one minus the power factor for the supplying plants.

WALC Transmission Reservations are the total firm point-to-point reservations minus reservations by entities with generation agreements to supply Voltage Support Service to WALC.

Rate:

The rate to be in effect July 1, 2006, through September 30, 2006, is:

Monthly: $0.043/kWmonth.
Weekly: 9.92 mills/kWweek.
Daily: 1.42 mills/kWday.
Hourly: 0.059 mills/kWh.

This rate is based on the above formula and on FY 2004 financial and calendar year 2004 load data, and will be in effect July 1, 2006, through September 30, 2006. Based on updated financial and load data, a recalculated rate will go into effect on October 1 of each year during the effective rate period.

The Desert Southwest Customer Service Region (DSWR) charges for Voltage Support Service may be modified upon written notice to the customer. Any change to the charges for Voltage Support Service shall be as set forth in a revision to this rate schedule promulgated under applicable Federal laws, regulations, and policies and made part of the applicable service agreement. DSWR shall charge the customer in accordance with the rate then in effect.

Rate Schedule DSW–FR2; Schedule 3 to Tariff (Supersedes Rate Schedule DSW–FR1)

United States Department of Energy, Western Area Power Administration, Desert Southwest Customer Service Region

Regulation and Frequency Response Service

Effective

The first day of the first full billing period beginning on or after July 1, 2006, through June 30, 2011.

Available

In the area served by the Western Area Lower Colorado (WALC) Balancing Authority and Transmission Operations Area (BATO).

Applicable

To all customers with standard loads in the WALC BATO taking this service under the Open Access Transmission Tariff. Customers with non-conforming loads will be charged differently as stated below. A non-conforming load is defined as a single plant or site with a regulation capacity requirement of 5 megawatts (MW) or greater on a recurring basis and whose capacity requirement is equal to 10 percent or greater of its average load.

Character of Service

Regulation and Frequency Response Service (Regulation Service) is necessary to provide for the continuous balancing of resources, generation, and interchange with load, and for maintaining scheduled interconnection frequency at sixty cycles per second (60 Hz). Regulation Service is accomplished by committing on-line generation whose output is raised or lowered, predominantly through the use of automatic generating control equipment, as necessary to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the transmission provider. The transmission customer must either purchase this service from the WALC BATO, or make alternative comparable arrangements satisfactory to Western to meet its Regulation Service requirements.

Formula Rate

The charges for Regulation Service are based on the following formula rate.

$$\text{DSWR Regulation Rate} = \frac{\text{Revenue Requirement for the Service}}{\text{Load Requiring the Service}}$$

Where:

Revenue requirement for the service is the product of the generation capacity for the regulation times the capacity rate of supplying projects, plus any regulation purchases the transmission provider must make, multiplied by a use factor; and Load requiring the service is the sum of the loads in the WALC BATO.

Rate

The rate to be in effect July 1, 2006, through September 30, 2006, is:

0.2049 mills/kWh.

Regulation Service for non-conforming loads, as determined by Western, must be delineated in a service agreement and charged an amount which includes the cost to procure the service and the additional amount required to monitor and supply this service.

This rate is based on the above formula and on FY 2004 financial and load data, and will be in effect July 1, 2006, through September 30, 2006. Based on updated financial and load data, a recalculated rate will go into effect on October 1 of each year during the effective rate period.

The DSWR charges for Regulation Service may be modified upon written

notice to the customer. Any change to the charges for regulation shall be as set forth in a revision to this rate schedule promulgated under applicable Federal laws, regulations, and policies and made part of the applicable service agreement. The DSWR shall charge the customer in accordance with the rate then in effect.

Rate Schedule DSW–EI2; Schedule 4 to Tariff (Supersedes Rate Schedule DSW–EI1)

United States Department of Energy, Western Area Power Administration, Desert Southwest Customer Service Region

Energy Imbalance Service

Effective

The first day of the first full billing period beginning on or after July 1, 2006, through June 30, 2011.

Available

In the area served by the Western Area Lower Colorado (WALC) Balancing Authority and Transmission Operations Area (BATO).

Applicable

To all customers receiving Energy Imbalance Service from the Desert Southwest Customer Service Region (DSWR) for the WALC.

Character of Service

Provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within the WALC BATO. The transmission customer and customers on non-Western transmission systems within WALC BATO must either obtain this service from WALC, or make alternative comparable arrangements to satisfy its energy imbalance service obligation. The transmission customer must either purchase this service from the WALC BATO, or make alternative comparable arrangements satisfactory to Western to meets its Energy Imbalance Service requirements.

Formula Rate

Bandwidth: The WALC has established a deviation bandwidth for on-peak of plus or minus 1.5 percent of the customer's load with a minimum of 5 MW either over or under delivery and an off-peak bandwidth of 1.5 percent to a negative 3 percent of a customer's load with a minimum of 2 MW over delivery and 5 MW under delivery.

Within the bandwidth: For Energy Imbalance within the bandwidth for both on-peak and off-peak, settlement between the customer and Western will be 100 percent of the Energy Imbalance. In lieu of an energy settlement, Western, at its discretion, may accept a financial payment equal to a weighted index price (described below) of the energy.

Outside the bandwidth: For that portion of the customer's energy imbalance that is outside the bandwidth during on-peak hours, the settlement is 110 percent of the energy imbalance for under-deliveries and 90 percent of the energy imbalance for over-deliveries. In lieu of an energy settlement, Western, at its discretion, may accept a financial settlement equal to 110 percent of a weighted index price for under-deliveries and 90 percent of a weighted index price for over-deliveries.

For that portion of the customer's energy imbalance that is outside the bandwidth during the off-peak hours, the settlement is 110 percent of the energy imbalance for under-deliveries and 60 percent of the energy imbalance for over-deliveries. In lieu of an energy settlement, Western, at its discretion, may accept a financial settlement equal to 110 percent of a weighted index price for under-deliveries and for over-deliveries 60 percent of either a weighted index price or a WALC weighted sales price, whichever is the least. If Western uses a financial settlement for transactions, the index used to calculate the settlement will be the Dow Jones Palo Verde average monthly index or an index identified on the OASIS at the beginning of each fiscal year. Settlement for the hourly deviations will occur on a monthly basis.

The energy imbalance service compensation may be modified upon written notice to the customer. Any change to the customer compensation for energy imbalance service shall be as set forth in a revision to this schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement. The DSWR shall charge the customer in accordance with the rate then in effect.

Rate Schedule DSW–SPR2; Schedule 5 to Tariff (Supersedes Rate Schedule DSW–SPR1)

United States Department of Energy, Western Area Power Administration, Desert Southwest Customer Service Region

Operating Reserve—Spinning Reserve Service

Effective

The first day of the first full billing period beginning on or after July 1, 2006, through June 30, 2011.

Available

In the area served by the Western Area Lower Colorado (WALC) Balancing Authority and Transmission Operations Area (BATO).

Applicable

To all customers receiving Spinning Reserve Service from the Desert Southwest Customer Service Region (DSWR) for the WALC BATO.

Character of the Service

Spinning reserve service (Spinning Service) is needed to serve load immediately in the event of a system contingency. Spinning Service may be provided by generating units that are on-line and loaded at less than maximum output. The transmission customer must either purchase this service from the Western WALC BATO, or make alternative comparable arrangements satisfactory to Western to meet its Spinning Service requirements.

Formula Rate

Spinning Service will not be available from DSWR resources on a long-term basis. If a customer cannot self-supply or purchase this service from another provider, Western may obtain the Spinning Service on a pass-through cost basis at market price plus a charge that covers the cost of procuring and supplying the service. The transmission customer will be responsible for the transmission service to get Spinning Service to the designated point of delivery.

Cost for Spinning Service = market price + cost to procure service.

Rate Schedule DSW–SUR2; Schedule 6 to Tariff (Supersedes Rate Schedule DSW–SUR2)

United States Department of Energy, Western Area Power Administration, Desert Southwest Customer Service Region

Operating Reserve—Supplemental Reserve Service

Effective

The first day of the first full billing period beginning on or after July 1, 2006, through June 30, 2011.

Available

In the area served by the Western Area Lower Colorado (WALC) Balancing Authority and Transmission Operations Area (BATO).

Applicable

To all customers receiving supplemental reserve service from the Desert Southwest Customer Service Region (DSWR) for the WALC BATO.

Character of the Service

Supplemental Reserve Service (Supplemental Service) is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load. Supplemental Service may be provided by generating units that can be synchronized to the system within 10 minutes and loaded within 30 minutes. The transmission customer must either purchase this service from the WALC BATO, or make alternative comparable arrangements satisfactory to Western to meet its Supplemental Service requirements. The charges for Supplemental Service are referred to below.

Formula Rate

Supplemental Service will not be available from DSWR resources on a long-term basis. If a customer cannot self-supply or purchase this service from another provider, Western may obtain the Supplemental Service on a pass-through cost basis at market price plus a charge that covers the cost of procuring and supplying the service. The transmission customer will be responsible for the transmission service to get Supplemental Service to the designated point of delivery.

Cost for Supplemental Service = market price + cost to procure service.

[FR Doc. E6–10000 Filed 6–23–06; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 21, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Ohnward Bancshares Inc., Maquoketa, Iowa; to acquire 100 percent of the voting shares of United Security Financial Corporation, Cedar Rapids, Iowa, and thereby indirectly acquire United Security Savings Bank, F.S.B., Cedar Rapids, Iowa, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, June 21, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–10018 Filed 6–23–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-06–06BI]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have 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. Written comments should be received within 60 days of this notice.

Proposed Project

Determining Stakeholder Awareness and Use of Products Developed by the Evaluation of Genomic Applications in Practice and Prevention (EGAPP) Project—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP)/Office of Genomics and Disease Prevention (OGDP) Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The success of the Human Genome Project has led to increasingly rapid translation of genomic information into clinical applications. Genetic tests for about 1,200 diseases have been developed, with more than 900 currently available for clinical testing. Most are used for diagnosis of rare genetic diseases, but a growing number have population-based applications, including carrier identification, predictive testing for inherited risk for common diseases, and pharmacogenetic testing for variation in drug response. These tests have the potential for broad public health impact. Currently, most genetic testing offered in the United States does not involve the use of U.S. Food and Drug Administration (FDA) approved test kits. Tests are developed as in-house or "home brew" assays and marketed by laboratories as clinical laboratory services with limited oversight. A number of issues have been raised about the current status of genetic testing implementation, including the need to develop evidence to establish efficacy and cost-effectiveness before tests are commercialized. There is also an increasingly urgent need for timely and reliable information that allows health professionals to distinguish genetic tests that have demonstrated validity and utility in clinical practice.

Recommendations on the development of safe and effective genetic tests have been produced by advisory panels (e.g. Task Force on Genetic Testing, Secretary's Advisory Committee on Genetic Testing), professional organizations, and clinical experts since 1995. However, a

coordinated approach for effectively translating genomic applications into clinical practice and health policy is still needed. In response to this need, CDC's Office of Genomics and Disease Prevention (OGDP) initiated the EGAPP Project in fall 2004. The ultimate goal of the project is to develop and evaluate a coordinated, systematic process for assessing genetic tests and other genomic applications in transition from research to clinical and public health practice. To support this goal, an independent, non-federal, multidisciplinary EGAPP Working Group was established in April, 2005. The roles of the Working Group are to prioritize and select genomic applications for evaluation, establish methods and processes, monitor progress of commissioned evidence reports, and develop conclusions and recommendations based on the evidence. The knowledge and experience gained through the project will be used to inform the development of a sustainable process for assessing the safety and efficacy of emerging genetic tests.

We are proposing an evaluation research activity to assess outcomes of the EGAPP Project. The study will be conducted in collaboration with outside consultants who will work with CDC to design the study, collect data for the study, conduct data analyses, and develop written reports of results.

The purpose of this evaluation research activity is to collect information on the value and impact of the EGAPP process and the products developed and disseminated (e.g., evidence reviews, published evidence summaries, published Working Group recommendations, informational messages) by surveying members of four key stakeholder groups identified for the EGAPP pilot project. The four key stakeholder groups selected are: Healthcare providers (e.g., physicians, mid-level practitioners, nurses), policy makers, healthcare payers (e.g., health plans, insurers) and purchasers (e.g., organizations purchasing healthcare), and consumers. Surveying of consumers will be targeted to advocacy and disease-specific support groups and OGDP Web site visitors.

Surveys will be administered during four survey periods staggered at intervals of six months. Feedback from healthcare providers and payers suggests that they are the most interested and ready to receive and use EGAPP products (e.g., evidence reports and Working Group recommendations). Therefore, they will be the subjects of *Survey 1* (about 6 months after release of products) and *Survey 3* (one year later). Consumers, policy makers, and healthcare purchasers are expected to receive and be impacted by information developed by EGAPP later. Therefore, these groups will be the subjects of *Survey 2* (6 months after Survey 1) and *Survey 4* (one year later).

The second mechanism for identifying participants will be through the EGAPP Web site. During specified periods of time, individuals accessing the Web site will be asked to participate. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondent	Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Healthcare Providers:					
Primary Care Providers	Healthcare Provider Survey	385	1	10/60	64
Specialists		385	1	10/60	64
Genetic Counselors		200	1	10/60	33
Mid-level Practitioners		385	1	10/60	64
Nurses		385	1	10/60	64
Targeted Consumers	General Survey	770	1	10/60	128
Healthcare Payers	Policy/Payer Survey	100	1	10/60	17
Policy Makers	Policy Survey	50	1	10/60	8
Healthcare Purchasers	Purchase Survey	31	1	10/60	5
Total Burden					447

Dated: June 20, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–10003 Filed 6–23–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–05CJ]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have 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. Written comments should be received within 60 days of this notice.

Proposed Project

Colorectal Cancer Screening Demonstration Program—New—Division of Cancer Prevention and Control (DCPC), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC, DCPC is requesting approval to collect individual patient-level screening, diagnostic, and treatment data in association with a new colorectal cancer screening demonstration program. DCPC is funding 5 cooperative agreements from fiscal year (FY) 2005–2008 for implementation of new colorectal cancer (CRC) demonstration programs. These 3-year demonstration programs are designed to increase population-based CRC screening among persons 50 years and older with low income and inadequate or no health insurance coverage in a geographically defined area.

Colorectal Cancer (CRC) is the second leading cause of cancer-related deaths in the United States, following lung cancer. Based on scientific evidence which indicates that regular screening is effective in reducing CRC incidence and mortality, regular CRC screening is now recommended for average-risk persons with one or a combination of the following tests: Fecal occult blood testing (FOBT), flexible sigmoidoscopy, colonoscopy, and/or double-contrast barium enema (DCBE). Fecal immunochemical testing (FIT) is considered an acceptable alternative to FOBT. In the absence of evidence indicating a single most effective test, selected programs will be able to choose which screening test(s) they will use from the above list of recommended tests.

All funded programs will be required to submit patient-level data on CRC screening and diagnostic services provided as part of this demonstration project. This information will be used to assess the quality and appropriateness of the services delivered.

Programs that receive CDC funding to provide screening and diagnostic services will collect individual patient-level data to capture demographic information, clinical services and outcomes, and submit these data to CDC on a quarterly basis. While CDC funds will not be used for treatment, programs will need to monitor treatment and document that patients are receiving appropriate treatment services. Submitted data must contain no patient identifiers.

All programs will additionally submit annual cost data to CDC to be used to monitor cost and cost-effectiveness over the 3-year program period.

The additional burden to these respondents will be small, since CDC will only select programs that are already performing some CRC screening, and will therefore already be collecting these types of data. Data collection for both patient-level and cost data will continue over the 3 years of the demonstration programs.

In the burden table below, two data collection forms will be used: Patient-level clinical data collection forms and cost data collection forms. The data will be collected from the 5 cooperative agreement recipients, i.e., the respondents. The estimated number of responses represents the number of patients receiving clinical services per recipient program, one report per patient per quarterly reporting period (estimated at 70 patients per program per quarter). This would result in an estimated annualized burden for the quarterly reports of 583 hours. Additionally, respondents will report annual cost data. For reporting the annual cost data, the respondents will submit only one report each for the entire year.

There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Form type	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Quarterly patient-level clinical data	5	280	25/60	583
Annual cost data	5	1	25/60	2
Total				585

Dated: June 20, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–10024 Filed 6–23–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–06BJ]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have 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. Written comments should be received within 60 days of this notice.

Proposed Project

Experiment in Mapping Behavioral Risk Factors Surveillance Survey (BRFSS) Data—NEW—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this study is to design and implement a Web-based interview examining the differential effectiveness of presenting BRFSS data in two different mapping formats, choropleth versus isopleth maps. Traditionally, geospatial data are presented in choropleth maps, where defined geographic units, such as county or state boundaries, are filled with a uniform color or pattern. Choropleth maps present data as geographic areas shaded with intensity proportional to the data values associated with those areas. Such maps are appropriate for data that have been scaled or normalized. Alternatively, geospatial data can be displayed using isopleth maps, in which the data are not aggregated to pre-defined geographic units, but instead are "smoothed" across adjacent geographic boundaries. Such maps may show county or state boundaries, but different categories of data are not defined by these geographic units. Little empirical research has examined the differential effectiveness of choropleth versus isopleth maps. In particular, researchers know little about how the two different mapping techniques affect the user's ability to extract information from the map.

The Web-based interview will present both choropleth and isopleth maps displaying BRFSS data in seven color categories. To maintain a low survey burden for each participant, the instrument will include only 4 questions for each of 10 maps. The interview will also include additional questions about respondent's preferences for map types and background characteristics. The survey instrument will be comprised of 50 items, including the 40 map questions, 4 questions about users' preferences for different map formats, and 6 questions about their educational and professional background and demographic characteristics. Analysis of the data will assess 4 key areas to determine which type of map is ideal for presenting BRFSS data:

1. Rate retrieval
2. Pattern recognition
3. Ease of understanding
4. User preferences

The results of these analyses will be presented in a final report to be submitted to the CDC. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
Experiment in Mapping BRFSS Data	400	1	30/60	200
Total				200

Dated: June 19, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–10025 Filed 6–23–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–05BL]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have 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. Written comments should be received within 60 days of this notice.

Proposed Project

Worksheet for Medical Conditions among Refugees and Immigrants—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Clearance is being requested for a "Worksheet for Medical Conditions among Refugees and Immigrants" for state and local health refugee coordinators to identify specific medical conditions of public health importance in newly arrived refugees and immigrants.

CDC requests notification of specific medical conditions listed on the worksheet, including Class A and B health conditions not recognized overseas, and substantial discrepancies in the overseas and U.S. based medical evaluations. Section 412 of the Immigration and Nationality Act (INA) (8 U.S.C. 1522(b)(4)) authorizes the Secretary of Health and Human Services Department of Health and Human Services (DHHS) to: (A) Assure that an adequate number of trained staff are available at the location at which the refugees enter the United States to assure that all necessary medical

records are available and in proper order; (B) provide for the identification of refugees who have been determined to have medical conditions affecting public health and requiring treatment; (C) assure that State or local health officials at the resettlement destination of each refugee within the United States are promptly notified of the refugee's arrival and provided with all applicable medical records; and (D) provide for such monitoring of refugees identified under subparagraph (B) as will insure that they receive appropriate and timely treatment. The Secretary, DHHS, shall develop and implement methods for monitoring and assessing the quality of medical screening and related health services provided to refugees awaiting resettlement in the United States. On July 3, 2003, the Secretary, DHHS, delegated to the Director, CDC, the authority to re-delegate the authorities vested in the Secretary, DHHS, under section 412(b)(4) of the INA (8 U.S.C. 1522(b)(4)), as amended hereafter.

The Division of Global Migration and Quarantine (DGMQ), CDC, is responsible for monitoring the performance and quality of the required overseas medical examinations of refugees and immigrants applying for permanent residence in the United States, and notifying state and local public health officials of the arrival of all refugees and immigrants who have Class A and B health conditions, (as defined in 42 CFR 34.2) to facilitate the recommended follow-up evaluation in the U.S. Currently, the Department of State uses medical examination forms DS 2053, 3024, 3025, and 3026, under OMB control number 1405–0113, to conduct the overseas medical evaluation of refugees and immigrants. This type of communication and data exchange with local partners has been critical in identifying medical conditions among refugees that require overseas interventions. Completing the worksheet and furnishing the requested information is essential. Accurate information will allow important public health functions and follow-up of significant health events to be performed in preventing the spread of a disease. Respondents include state and local health departments. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
State and local health agencies	50	100	5/60	417
Total				417

Dated: June 20, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–10026 Filed 6–23–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–06BH]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have 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. Written comments should be received within 60 days of this notice.

Proposed Project

Performance Measures of the Cooperative Agreement Readiness Assessment Tool (CARAT) for the CDC Division of State and Local Readiness (DSLR)—New—Coordinating Office of Terrorism Preparedness and Emergency Response (COTPER), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CARAT is a program performance monitoring tool developed by DSLR's Outcome Monitoring and Evaluation Branch in cooperation with CDC subject matter experts and external partners. The nomenclature to differentiate CARAT's data collection (reporting) periods is: CARAT-Annual, CARAT-Semi-annual, and CARAT-Quarterly. CARAT-Semi-annual and CARAT-Quarterly are independent subsets of CARAT-Annual reports. Specifically, the data collected will be used to monitor grantees' performance as it relates to the goals and intent of the cooperative agreement, and to determine the technical assistance that may be needed, specific to each grantee. Additionally, the data will be used to report the program's readiness status as well as prepare individual and aggregate readiness reports for: Congress, State departments, Federal agencies and officials as necessary.

Cooperative agreement recipients will report their data to the Division of State and Local Readiness in the Center for Terrorism Preparedness and Emergency Response at CDC through the State and Local Preparedness Program Management Information System (SLPPMIS). This system uses a secure web browser-based technology for data entry and data management. The data will be collected and entered by administrative/management personnel from each cooperative agreement recipient. The table below shows the estimated annual burden in hours to collect and report data. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Title	Number of respondents	Number of responses/ respondent	Burden per response (in hrs.)	Total burden (hours)
DSLR–SLPMISS Application/Annual Survey	62	1	23	1426
DSLR–SLPMISS Application/Semi-annual Survey (1 per year)*	62	1	18	1116
DSLR–SLPMISS Application/Quarterly Survey (4 per year)	62	4	4	992
Total				3534

*Once per year between the annual survey.

Dated: June 20, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–10027 Filed 6–23–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Decision To Evaluate a Petition To Designate a Class of Employees at the Los Alamos National Laboratory, Los Alamos, NM, To Be Included in the Special Exposure Cohort

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at the Los Alamos National Laboratory, Los Alamos, New Mexico, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Los Alamos National Laboratory.

Location: Los Alamos, New Mexico.

Job Titles and/or Job Duties: All workers potentially exposed to radioactive lanthanum at the Technical Area 10 Bayo Canyon facility, TA–35 (Ten Site), or TA–1, buildings Sigma, H, and U.

Period of Employment: September 1, 1944 through July 18, 1963.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. E6–10001 Filed 6–23–06; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Decision To Evaluate a Petition To Designate a Class of Employees at the S–50 Oak Ridge Thermal Diffusion Plant, Oak Ridge, TN, To Be Included in the Special Exposure Cohort

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at the S–50 Oak Ridge Thermal Diffusion Plant, Oak Ridge, Tennessee, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: S–50 Oak Ridge Thermal Diffusion Plant.

Location: Oak Ridge, Tennessee.

Job Titles and/or Job Duties: All workers.

Period of Employment: 1944 through 1951.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. E6–10002 Filed 6–23–06; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recruitment of Sites for Assignment of Corps Personnel

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: General notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that the listing of entities, and their Health Professional Shortage Area (HPSA) scores, that will receive priority for the assignment of National Health Service Corps (NHSC) personnel (Corps Personnel, Corps members) for the period July 1, 2006 through June 30, 2007 is posted on the NHSC Web site at *http://nhsc.bhpr.hrsa.gov/resources/fedreg-hpol/*. This list specifies which entities are eligible to receive assignment of Corps members who are participating in the NHSC Scholarship Program, the NHSC Loan Repayment Program, and Corps members who have become Corps members other than pursuant to contractual obligations under the Scholarship or Loan Repayment Programs. Please note that not all vacancies associated with sites on this list will be for Corps members, but could be for individuals serving an obligation to the NHSC through the Private Practice Option.

Eligible HPSAs and Entities

To be eligible to receive assignment of Corps personnel, entities must: (1) Have a current HPSA designation by the

Shortage Designation Branch in the Office of Workforce Evaluation and Quality Assurance, Bureau of Health Professions, Health Resources and Services Administration; (2) enter into an agreement with the State agency that administers Medicaid, accept payment under Medicare and the State Children's Health Insurance Program, see all patients regardless of their ability to pay, and use and post a discounted fee plan; and (3) be determined by the Secretary to have (a) a need and demand for health manpower in the area; (b) appropriately and efficiently used Corps members assigned to the entity; (c) general community support for the assignment of Corps members; (d) made unsuccessful efforts to recruit; and (e) a reasonable prospect for sound fiscal management by the entity with respect to Corps members assigned there. Priority in approving applications for assignment of Corps members goes to sites that (1) provide primary, mental, and/or oral health services to a HPSA of greatest shortage; (2) are part of a system of care that provides a continuum of services, including comprehensive primary health care and appropriate referrals or arrangements for secondary and tertiary care; (3) have a documented record of sound fiscal management; and (4) will experience a negative impact on its capacity to provide primary health services if a Corps members is not assigned to the entity.

Entities that receive assignment of Corps personnel must assure that (1) the position will permit the full scope of practice and that the clinician meets the credentialing requirements of the State and site; and (2) the Corps member assigned to the entity is engaged in full-time clinical practice at the approved service location for a minimum of 40 hours per week with at least 32 hours per week in the ambulatory care setting. Obstetricians/gynecologists, certified nurse midwives (CNMs), and family practitioners who practice obstetrics on a regular basis, are required to engage in a minimum of 21 hours per week of outpatient clinical practice. The remaining hours, making up the minimum 40-hour per week total, include delivery and other clinical hospital-based duties. For all Corps personnel, time spent on-call does not count toward the 40 hours per week. In addition, sites receiving assignment of Corps personnel are expected to (1) report to the NHSC all absences in excess of the authorized number of days (up to 35 work days or 280 hours per contract year); (2) report to the NHSC any change in the status of an NHSC clinician at the site; (3) provide the time and leave records, schedules, and any related personnel documents for NHSC assignees (including documentation, if applicable, of the reason(s) for the termination of an NHSC clinician's employment at the site prior to his or her obligated service end date); and (4) submit a Uniform Data System (UDS) report. This system allows the site to assess the age, sex, race/ethnicity of, and provider encounter records for, its user population. The UDS reports are site specific. Providers fulfilling NHSC commitments are assigned to a specific site or, in some cases, more than one site. The scope of activity to be reported in UDS includes all activity at the site(s) to which the Corps member is assigned.

Evaluation and Selection Process

In approving applications for the assignment of Corps members, the Secretary shall give priority to any such application that is made regarding the provision of primary health services to a HPSA with the greatest shortage. For the program year July 1, 2006–June 30, 2007, HPSAs of greatest shortage for determination of priority for assignment of Corps personnel will be defined as follows: (1) Primary care HPSAs with scores of 14 and above are authorized for the assignment of Corps members who are primary care physicians, family nurse practitioners (NPs) and physician assistants (PAs) participating in the Scholarship Program; (2) primary care HPSAs with scores of 12 and above are authorized for the assignment of Corps members who are CNMs participating in the Scholarship Program; (3) mental health HPSAs with scores of 19 and above are authorized for the assignment of Corps members who are psychiatrists participating in the Scholarship Program; (4) dental HPSAs with scores of 19 and above are authorized for the assignment of Corps members who are dentists participating in the Scholarship Program; and (5) HPSAs (appropriate to each discipline) with scores of 17 and above are authorized for priority assignment of Corps members who are participating in the Loan Repayment Program. HPSAs with scores below 17 will be eligible to receive assignment of Corps personnel participating in the Loan Repayment Program only after assignments are made of those Corps members matching to those HPSAs receiving priority for placement of Corps members through the Loan Repayment Program (*i.e.*, HPSAs scoring 17 or above). Placements made through the Loan Repayment Program in HPSAs with scores 16 or below will be made by decreasing HPSA score, and only to the extent that funding remains available. All sites on the list are eligible sites for individuals wishing to serve in an underserved area but who are not contractually obligated under the Scholarship or Loan Repayment Program. A listing of HPSAs and their scores is posted at *http://hpsafind.hrsa.gov/*.

Sites qualifying for automatic primary care and dental HPSA designations have been scored and may be authorized to receive assignment of Corps members if they meet the criteria outlined above and their HPSA scores are above the stated cutoffs. If there are any sites on the list with an unscored HPSA designation, they are authorized for the assignment of Corps personnel participating in the Loan Repayment Program only after assignments are made of those Corps members matching to scored HPSAs and only to the extent that funding remains available. When these HPSAs receive scores, these sites will then be authorized to receive assignment of Corps members if they meet the criteria outlined above and their newly assigned scores are above the stated cutoffs.

The number of new NHSC placements through the Scholarship and Loan Repayment Programs allowed at any one site are limited to the following:

(1) Primary Health Care.

(a) Loan Repayment Program—no more than 2 physicians (MD or DO); and no more than a combined total of 2 NPs, PAs, or CNMs

(b) Scholarship Program—no more than 2 physicians (MD or DO); and no more than a combined total of 2 NPs, PAs, or CNMs

(2) Dental.

(a) Loan Repayment Program—no more than 2 dentists and 2 dental hygienists

(b) Scholarship Program—no more than 1 dentist

(3) Mental Health.

(a) Loan Repayment Program—no more than 2 psychiatrists (MD or DO); and no more than a combined total of 2 clinical or counseling psychologists; licensed clinical social workers, licensed professional counselors, marriage and family therapists, or psychiatric nurse specialists

(b) Scholarship Program—no more than 1 psychiatrist

Application Requests, Dates and Address

The list of HPSAs and entities that are eligible to receive priority for the placement of Corps personnel may be updated periodically. Entities that no longer meet eligibility criteria, including HPSA score, will be removed from the priority listing. Entities interested in being added to the high priority list

must submit an NHSC Recruitment and Retention Assistance Application to: National Health Service Corps, 5600 Fishers Lane, Room 8A–08, Rockville, MD 20857, fax 301–594–2721. These applications must be submitted on or before the deadline date of March 30, 2007. Applications submitted after this deadline date will be considered for placement on the priority placement list in the following program year. Any changes to this deadline will be posted on the NHSC Web site at *http://nhsc.bhpr.hrsa.gov.*

Entities interested in receiving application materials may do so by calling the HRSA call center at 1–800–221–9393. They may also get information and download application materials from: *http://nhsc.bhpr.hrsa.gov/applications/rraa.cfm.*

Additional Information

Entities wishing to provide additional data and information in support of their inclusion on the proposed list of HPSAs and entities that would receive priority in assignment of Corps members, must do so in writing no later than July 26, 2006. This information should be submitted to: Susan Salter, Chief, Site Identification and Application Branch, Division of National Health Service Corps, 5600 Fishers Lane, Room 8A–08, Rockville, MD 20857. This information will be considered in preparing the final list of HPSAs and entities that are receiving priority for the assignment of Corps personnel.

Paperwork Reduction Act: The Recruitment & Retention Assistance Application has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0230.

The program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: June 16, 2006.

Elizabeth M. Duke,

Administrator.

[FR Doc. E6–9974 Filed 6–23–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revised information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Crisis Counseling Program for Immediate Services Program, which provides funding in response to a State request for crisis counseling assistance for a Presidentially-declared disaster.

SUPPLEMENTARY INFORMATION: Section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Act), Public Law 93–288, as amended, authorizes the President to provide financial assistance to state and local governments for professional counseling services to victims of major disasters in order to relieve mental health problems caused or aggravated by a major disaster or its aftermath. Under the provisions of section 416 of the Act, FEMA issued the Crisis Counseling Assistance and Training Regulations (44 CFR 206.171). Section 416 of the Act is the authority under which the President has designated the Department of Health and Human Services, through the Center for Mental Health Services (CMHS), to coordinate with FEMA in administering the Crisis Counseling Assistance and Training Program (CCP). FEMA and CMHS, Substance Abuse and Mental Health Services Administration, Department of Health and Human Services have signed an interagency agreement under which CMHS provides technical assistance and consultation to States applying for CCP funding.

Collection of Information

Title: Crisis Counseling Assistance and Training Program—Immediate Services Program.

Type of Information Collection: Revisions of a Currently Approved Collection.

OMB Number: 1660–0085.

Form Numbers: None.

Abstract: FEMA requires that the State complete an ISP Standard Application for CCP that includes the following: (i) The geographical areas within the designated disaster area for which services will be provided; (ii) An estimate of the number of disaster victims requiring assistance; (iii) A description of the state and local resources and capabilities, and an explanation of why these resources cannot meet the need; (iv) A description of response activities from the date of the disaster incident to the date of application; (v) A plan of services to be provided to meet the identified needs; and (vi) A detailed budget, showing the cost of proposed services separately from the cost of reimbursement for any eligible services provided prior to application.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours:

ANNUAL BURDEN HOURS

Project/activity (survey, form(s), focus group, etc.)	No. of respondents (A)	Frequency of responses (B)	Burden hours per respondent (C)	Annual responses (A×B)	Total annual burden hours (A×B×C)
CCP/ISP Application	56	1	40	19	760
Narrative Final Reporting	56	1	10	19	190
Training	56	1	32	30	960
Total	.....	.....	82	.....	1,910

Estimated Cost: The annualized cost to respondents using wage rate catergories is estimated to be $70,841.90. This is based on an average of 19 Immediate Services grants being awarded during a fiscal year and an

annual total burden of 1,910 hours for one State Disaster Mental Health coordinator at $37.09 per hour. There is no other program cost to respondents for this information collection. FEMA/CMHS provide annual technical assistances, CCP trainings and workshops for State representatives. The total cost for FEMA and CMHS Immediate Services Program Federal staff salaries is estimated to be $57,439.92. There is no other government program cost involved with this information collection.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments must be submitted on or before August 25, 2006.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, 500 C Street, SW., Room 316,Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Victoria Childs, Program Specialist, Recovery Branch, (202) 646–3844 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA–Information-Collections@dhs.gov.*

Dated: June 21, 2006.

John A. Sharetts-Sullivan,

Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–10028 Filed 6–23–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Individual and Family Grant (IFG) and the Individuals and Households Program—Other Needs Assistance (IHP–ONA).

OMB Number: 1660–0018.

Abstract: This collection of information is essential to the effective monitoring and management of the IFG/IHP–ONA Program by FEMA Regional Office staff who have oversight responsibility of ensuring that the State perform and adhere to FEMA regulations and policy guidance. The collection involves completion of the following FEMA Forms (FF): FF 76–27; FF 76–28; FF 76–29; 76–32; FF 76–34; and FF 76–38.

Affected Public: Federal, State, Local or Tribal Governments.

Number of Respondents: 40.

Estimated Time per Respondent: 7.33 hours for completion of all forms with allocated response time for individual forms as follows: FF 76–27, 15 minutes; FF 76–28, 5 minutes; FF 76–29, 30 minutes; 76–32, 30 minutes; FF 76–34, 4 hours; and FF 76–38, 2 hours.

Estimated Total Annual Burden Hours: 301 Hours.

Frequency of Response: Once for all forms except FF 76–28 which is completed occasionally.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Nathan Lessor, Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before July 26, 2006.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: June 15, 2006.

John A. Sharetts-Sullivan,

Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–10029 Filed 6–23–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4922–N–17]

Privacy Act of 1974; Proposed System of Records

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Establish two new Privacy Act Systems of Records.

SUMMARY: The Department of Housing and Urban Development (HUD) proposes to establish two new record systems to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new systems of records are: Debt Collection and Asset Management System (DCAMS) and Title I Insurance System (TIIS). The primary purpose of DCAMS is to collect and maintain data needed to support activities related to the collection and servicing of various HUD/FHA debts. It contains information on individuals who have debts resulting from default on HUD/FHA insured Title I loans and from other HUD/FHA loan programs. The Title I Insurance System is used to collect and maintain the data necessary to support activities related to the servicing of loans insured under the Title I program. It contains information on individuals who have made loans insured under HUD's Title I program.

DATES: *Effective Date:* This action shall be effective July 26, 2006 unless comments are received which will result in a contrary determination.

Comments Due Date: July 26, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding

this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.
Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, 451 Seventh St., SW., Room P8001, Washington, DC 20410, Telephone Number (202) 708–2374. (This is not a toll-free number.) A telecommunication device for hearing and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended notice is given that HUD proposes to establish two new systems of records identified as The Debt Collection and Asset Management System (DCAMS) and Title I Insurance System (TIIS).

Title 5 U.S.C. 552a(e)(4) and (11) provides that the public be afforded a 30-day period in which to comment on the new systems of records.

The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Reform pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, "Federal Responsibilities for Maintaining Records About Individuals," July 25, 1994; 59 FR 37924.

Authority: 5 U.S.C. 552a, 88 Stat. 1896; 342 U.S.C. 3535(d).

Dated: June 21, 2006.

Bajinder N. Paul,

Deputy Chief Information Officer for IT Operations.

HUD/HS–54

SYSTEM NAME:

Title I Insurance System (TIIS).

SYSTEM LOCATION:

Mainframe in HUD Headquarters, 451 7th Street SW., Suite P–7110, Washington, DC 20410. Records in HUD's Financial Operations Center, 52 Corporate Circle, Albany, New York 12203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals include persons who have made loans insured under HUD's Title I program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains data fields pertaining to borrowers' names, addresses, and Social Security Numbers. The system also contains data fields for records relating to payment and other financial account data such as loan balance; loan origination information such as date and amount of loan; date of default; and account statuses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining TIIS and the records it contains is established under the regulations implementing the Title I loan program, viz., 24 CFR 201.1 through 200.63. HUD's statutory authority for implementing the regulations supporting HUD programs is found at 42 U.S.C 3532(a) and (b) and at 12 U.S.C. 1701(a) and (c).

PURPOSES:

The primary purpose of TIIS is to collect and maintain the data necessary to support activities related to the servicing of loans insured under the Title I program. Servicing activities include maintaining records pertaining to lenders' insurance premiums and processing claims for loss submitted by participating lenders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 522a(b), records may also be disclosed routinely to other users under the following circumstances:

1. Records may be disclosed to individuals under contract, cooperative agreement, or working agreement with HUD to assist the Department in fulfilling its statutory financial and asset management responsibilities.

2. Records may be disclosed during the course of an administrative proceeding, where HUD is a party, to an Administrative Law Judge and to the interested parties to the extent necessary for conducting the proceeding.

3. Records may be disclosed to the Department of Justice for litigation purposes associated with the representation of HUD or other Federal agency before the courts.

4. Records may be disclosed to a confidential source to the extent necessary to assist the Office of the Inspector General or the Government Accounting Office in an investigation or audit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically in computer hardware devices and in hard copy in file cabinets or other secure storage units.

RETRIEVABILITY:

Records may be retrieved by computer search via the name of the borrower, name of the lender, or loan case number and, for a limited number of records, manually by loan case number.

SAFEGUARDS:

Records are maintained in a secure computer network and in locked file cabinets in office space with controlled access.

RETENTION AND DISPOSAL:

Computer records for all active cases are available online in TIIS. Computer records on inactive cases retired from the system are removed from the TIIS online files and retained in batch files. Certain records are copied onto microfiche. Computer records for inactive cases that have been purged from the system are not retained in a batch file. The financial histories for these cases have been printed to microfiche. Records stored in paper files for inactive cases are retained in a Federal Records Center. Records are disposed of and archived in a manner that is consistent with the applicable official HUD Records Disposition Schedules and guidelines.

SYSTEM MANAGER AND ADDRESS:

Lester J. West, Director, HUD, Financial Operations Center, 52 Corporate Circle, Albany, New York 12203.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them, or those seeking access to such records, should address inquiries to the Project Manager of OHHLHC–CIEF, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Suite P–7110, Washington, DC 20410. Written requests must include the full name, current address, and telephone number of the individual making the request, including a description of the requester's relationship to the information in question. The System Manager will accept inquiries from individuals seeking notification of whether the system contains records pertaining to them.

CONTESTING RECORD PROCEDURES:

The procedures for requesting amendment or correction of records appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

The insured lenders and loan servicing companies provide the information for the records stored on TIIS.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

HUD/HS–55

SYSTEM NAME:

Debt Collection and Asset Management System (DCAMS), which consists of two sister systems identified as F71 and F71A.

SYSTEM LOCATION:

Mainframe maintained in HUD Headquarters, 451 7th Street, SW., Suite P–7110, Washington, DC 20410. Records management performed by HUD's Financial Operations Center, 52 Corporate Circle, Albany, New York 12203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals who have debts resulting from default on HUD/FHA-insured Title I loans and from other HUD/FHA loan programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains data fields pertaining to defaulted borrowers that include defaulted borrowers' names, addresses, Social Security Numbers, and phone numbers. The system also contains data fields for records relating to payment and other financial account data such as debt balance; loan origination information such as date and amount of loan; date of default; and collection and account statuses. The system also contains narrative remarks (called Case Remarks) that may include notes pertaining to discussions with defaulted borrowers and other parties; information obtained from public and court records, such as assessed property values, lien histories, case information from probate, state, and bankruptcy courts; and employer information for defaulted borrowers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

HUD is granted the authority in 24 CFR 17.60 through 17.170 to collect on claims for money or property arising out of the program activities of the Department. HUD's statutory authority for collecting and managing claims is found at 5 U.S.C. 5514, 28 U.S.C. 2672, and 31 U.S.C. 3711, 3716–18, and 3721. The implementing regulations pertaining to HUD's debt collection activities and collection and use of personal data to support those activities are found at 24 CFR 17.60 through 17.170.

PURPOSES:

The primary purpose of DCAMS is to collect and maintain the data necessary to support activities related to the collection and servicing of various HUD/FHA debts. Debt collection and servicing activities include sending both automated and manually generated correspondence; making official phone calls; reporting consumer data to the credit bureaus; supporting collection initiatives, such as wage garnishment, offset of federal payments, pursuit of judgments, and foreclosure; and supporting defensive litigation related to foreclosure and actions to quiet title.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 522a(b), records may also be disclosed routinely to other users under the following circumstances:

1. Records may be disclosed to individuals under contract, cooperative agreement, or working agreement with HUD to assist the Department in fulfilling its statutory financial and asset management responsibilities.

2. Records may be disclosed during the course of an administrative proceeding, where HUD is a party, to an Administrative Law Judge and to the interested parties to the extent necessary for conducting the proceeding.

3. Records may be disclosed to the Department of Justice for litigation purposes associated with the representation of HUD or other Federal agency before the courts.

4. Records may be disclosed to the Department of Treasury who provides collection services for HUD.

5. Records may be provided to the national credit bureaus for credit reporting purposes.

6. Records may be disclosed to a confidential source to the extent necessary to assist the Office of the Inspector General or the Government Accounting Office in an investigation or audit.

7. Records may be disclosed to employers to effect wage garnishment.

8. Records may be disclosed in asset sale transactions to third party debt purchasers.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically in computer hardware devices and in hard copy in file cabinets or other secure storage units.

RETRIEVABILITY:

Records may be retrieved by computer search via the name, address, or Social Security Number of the defaulted borrower and manually by combination of account number and name of primary defaulted borrower.

SAFEGUARDS:

Records are maintained in a secure computer network and in locked file cabinets in office space with controlled access.

RETENTION AND DISPOSAL:

Computer records for all active cases are available online in DCAMS. Computer records on inactive cases retired from the system are removed from the DCAMS online files and retained in batch files. The case remarks for these cases remain available online. Some reports can be generated based on the information stored in the batch files. Computer records for inactive cases that have been purged from the system are not retained in a batch file. The financial histories for these cases have been printed to microfiche. No other reports are available for purged cases. Records stored in paper files for inactive cases are retained in a Federal Records Center. Records are disposed of and archived in a manner that is consistent with the applicable official HUD Records Disposition Schedules and guidelines.

SYSTEM MANAGER AND ADDRESS:

Lester J. West, Director, HUD, Financial Operations Center, 52 Corporate Circle, Albany, New York 12203.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them, or those seeking access to such records, should address inquiries to the Project Manager of OHHLHC–CIEF, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Suite P–7110, Washington, DC 20410. Written requests must include the full name, current address, and telephone number of the

individual making the request, including a description of the requester's relationship to the information in question. The System Manager will accept inquiries from individuals seeking notification of whether the system contains records pertaining to them.

CONTESTING RECORD PROCEDURES:

The procedures for requesting amendment or correction of records appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Information may be collected from a variety of sources, including HUD, other Federal, state, and local agencies, public records, credit reports, and HUD-insured lenders and other program participants.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E6–10079 Filed 6–26–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Information; Opportunity for Public Comment

AGENCY: National Park Service, Department of the 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 a new collection (OMB # 1024–XXXX).

DATES: Public comments on this notice will be accepted on or before August 25, 2006 to be assured of consideration.

ADDRESSES: Send comments to: Cherri Espersen, Outdoor Recreation Planner, Rivers, Trails and Conservation Assistance Program, National Park Service, 1849 C Street, NW., (Org Code 2235), Washington, DC 20240. E-mail: *Cherri_Espersen@nps.gov*. Phone: (202) 354–6900, Fax: (202) 371–5179.

FOR FURTHER INFORMATION CONTACT: Charlie Stockman, Acting Chief, Rivers, Trails and Conservation Assistance Program, National Park Service, 1849 C Street, NW. (Org Code 2235), Washington, DC 20240. E-mail: *Charlie_Stockman@nps.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Application Guidelines for the Rivers, Trails, and Conservation Assistance Program.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: New collection.

Description of Need: The National Park Service (NPS) provides assistance to communities to conserve their local natural resources and develop new close-to-home outdoor recreation opportunities through the Rivers, Trails, and Conservation Assistance (RTCA) Program. RTCA staff work in urban, rural, and suburban communities to help applicants to conserve rivers, preserve open space, and develop trails and greenways. This notice is provided to make potential applicants aware of the RTCA Program and how they can apply for technical assistance through the program. RTCA provides a variety of assistance, but does not provide direct grants.

The proposed information collections impose no data collection or recordkeeping burden on the potential respondents. Responding to the proposed collections is voluntary and is based on data that the respondents already collect and/or personal opinion. Public comments are invited on this new collection.

Application Guidelines

It is recommended that potential applicants contact our regional program staff to discuss their interests and seek guidance before applying. Applications for RTCA assistance are competitively evaluated by our regional offices. Projects are locally-requested and led and should include significant public involvement and outreach. Projects should also include the commitment, cooperation and cost-sharing of all partners. RTCA assistance is for one year and may be renewed for a second year if warranted.

Application Letters (One to Three Pages) Should Include the Following Information

1. Contact Information

Please provide information about the initial project partner(s), including name of a primary contact, organization, address, phone, fax, and e-mail. Designate a lead project partner.

2. Project Description and Anticipated Results

- Provide the name of the project and project location.
- Identify what populations in your community will be served by the project.
- Describe briefly the anticipated results of the project and why the project is important.
- Identify anticipated on-the-ground results: For example, resources created, conserved, enhanced or made available to the public—the number of river miles improved by restoration projects; the number of river miles conserved with enhanced protection status; the number of multi-use trail miles created; the number of acres of parkland created; the number of acres of wildlife habitat restored.
- Describe the related important natural, cultural, historic, scenic, and recreational resources within the project area.
- Describe other expected accomplishments: For example, an increased community commitment to stewardship, a new conservation organization, or the development of a concept plan for a trail.
- Outline background or prior activity on the project (if any), the current status, and a proposed schedule for completion.

3. Commitment for Public Involvement

Describe the type and level of public involvement you anticipate during the development of this project.

4. Roles, Resources, and Contributions

- Describe the kind of technical assistance or role you are seeking from the RTCA program.
- Describe the roles and contributions of all project partners listed in part 1 above.
- Identify other types of resources available for the implementation of your project.

5. Support for the Project

- Describe the support you anticipate from interested stakeholders, such as public agencies, nonprofit organizations, and landowners.
- Support letters from elected officials, community leaders, and cooperating organizations are strongly recommended.

Related Strategic Initiative (optional)

Describe how the project:

—Provides physical connections among resources;

—Includes an NPS area as an actively involved project partner;

—Includes both natural resource conservation and outdoor recreation;
—Partners with a health organization.

The national deadline for projects set to start the following fiscal year (which runs from October 1 to September 30) is August 1. Final project selection is generally completed in early November after passage of the Federal budget.

For more information on the RTCA Program and how to apply for assistance, please visit our national Web site at *http://www.nps.gov/rtca* or call us at 202–354–6900. Contact information for all of our regional offices is available on the RTCA Web site under "Contact Us." 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 estimate; (3) ways to enhance the quality, utility, and clarity of the information being 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.

Description of Respondents: This is a notice to any federal, state or local agency, tribe, non-profit organization, or citizens' group that might be interested in receiving assistance from the RTCA program.

Estimated Average Number of Respondents: 250.

Estimated Average Number of Responses: 250.

Estimated Average Burden Hours per Response: 4 hours.

Frequency of Response: One time per request for assistance.

Estimated Annual Reporting Burden: 1,000 hrs.

Dated: May 23, 2006.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 06–5658 Filed 6–23–06; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Submission of Study Package to Office of Management and Budget; Opportunity for Public Comment

AGENCY: Department of the Interior; National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service invites comments on a proposed new collection of information (1024–xxxx).

The OMB has up to 60 days to approve or disapprove the requested information collection, but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments within 30 days of the date on which this notice is published in the **Federal Register.**

The National Park Service published the 60-day **Federal Register** notice to solicit comments on this proposed information collection on Friday, September 2, 2005 on pages 52443–52444.

The National Park Service Volunteers-In-Parks (VIP) program (Pub. L. 91–357) is collecting information from volunteers in the form of a survey for the purposes of evaluating the program and its effectiveness.

DATES: Public comments on the proposed Information Collection Request (ICR) will be accepted for July 26, 2006.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior, (OMB #1024–xxxx) Office of Information and Regulatory Affairs, OMB, by fax at 202–395–6566, or by electronic mail at *oira_docket@omb.eop.gov.* Please also send a copy of your comments to Joy M. Pietschmann, National Park Service, Servicewide Volunteer Program Coordinator, 1849 C Street, NW., 2450, Washington, DC 20240, or e-mail: *joy_pietschmann@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Joy M. Pietschmann, phone: 202–513–7141, fax: 202–371–6662, or at the address above. You are entitled to a copy of the entire ICR package free-of-charge.

There were no public comments received as a result of publishing in the **Federal Register** a 60-day Notice of Intention to Request Clearance of Information Collection for this survey. However, comments were solicited from the following professionals associated with volunteerism and volunteer administration:

Tom Benjamin, President, EASI (Environmental Alliance for Senior Involvement).

Betty Stallings, Volunteerism Consultant, BBS (Building Better Skills), Author of the 60-minute Module Series on volunteer management customized by the NPS for the VIP program.

Katie Campbell, Certified Volunteer Administrator, Volunteerism Consultant, and former Executive Director of AVA (Association of Volunteer Administration).

John Throop, Executive Director of AVA.

Robb Hampton, Director, NPLD (National Public Lands Day).

Gail Cunningham, Vice President, Managing Director, Great American Cleanup (Keep America Beautiful).

Nancy Macduff, Volunteerism Consultant, Macduff/Buff Associates.

Christopher Toppe, Senior Social Scientist, Points of Light Foundation.

Solicited comments from experts in the field of volunteerism indicate that the 60-day notice is clear and to the point. This assessment is long overdue and it can yield invaluable information that can help ensure the sustainability of volunteer involvement within the National Park Service. A wide range of variables is urged as part of the data collection. Long-term and short-term volunteers have different perspective and it's important to survey a wide variety of people. To address these points, the National Park Service will be surveying a completely random selection made from over 22,900 volunteer names collected servicewide and will be cutting the data by region work category, and volunteer program size. This will also address another's comment on the need to match the survey sample to the demographic sample of the current VIP program. A concern was also expressed about the volunteer survey being the only source of information contributing to this program assessment and that it is important to hear from those who are the recipients of the volunteers' efforts. The National Park Service has also surveyed its paid staff prior to this notice to gather this opinions of the volunteer program and its operation. Through its Social Science program, the National Park Service surveys its visitors and other customers regularly who also benefit from volunteer services. Additional comments include: The burden hour estimate seems reasonable and accurate. Utilizing both the survey and then subsequent focus groups will yield both qualitative and quantitative results. Utilizing electronic survey tools will ensure the highest possible response rate and will minimize staff time for tabulating the results. The addition of focus groups will provide additional information that may not be captured with a survey tool. This dual approach makes sense and is realistic in terms of staff resources. In response to the latter, the National Park Service will not be conducting the focus groups and interviews immediately after this information collection is complete but, rather, will seek approval and

pursue that process at a latter time when additional funding is available.

SUPPLEMENTARY INFORMATION: *Title:* Volunteers-In-Parks Program Assessment.

Bureau Form Number: None.

OMB Number: 1024–xxxx.

Expiration Date: To be requested.

Type of Request: Request for new clearance.

Description of Need: This survey is needed to survey NPS volunteers to assess the Volunteers-In-Parks (VIP) program effectiveness. The NPS VIP program is authorized by the Volunteers in the Parks Act of 1969 as originally enacted was Public Law 91–357. Volunteering is an American tradition that over the years has made an immeasurable contribution to communities, organizations, and individuals throughout the country. Volunteers are vital to the success of the National Park Service. The Volunteers-In-Parks program can accept and use voluntary help and services from the public, in a way that is mutually beneficial to the NPS and the volunteer. In FY2005, 137,000 volunteers donated 5.2 million hours of service to their national parks at a value of $91.2 million. VIPs come from every state and many different countries to help preserve and protect America's natural and cultural heritage for the enjoyment of this and future generations. Over the past 35 years, this program has consistently grown to become one of the government's largest, most successful volunteer programs. Between FY2003 and 2004, the program experienced its biggest increase in history. The number of VIPs increased by 14% and the number of hours by 11%. In order to effectively manage the increasing trend of volunteerism in the National Park Serivce, it is imperative that the organization assesses its strengths and weaknesses and determines methods for improved efficiency. A servicewide volunteer program assessment has not been conducted to date. Both paid staff and volunteers will be surveyed during this process to collect information about the current status and needs of the program. Recommendations for improvements will be made based on the findings. This process will not only aid in creating a improved, streamlined program, but may also serve as a model for other Federal agencies.

Automated data collection: There will be an opportunity to provide this information electronically through a designated, secure Web site.

Description of respondents: National Park Service Volunteers-In-Parks.

Estimated average number of respondents: Approximately 8,966 respondents.

Estimated average burden hours per response: 2 minutes for everyone to open and consider taking the survey, 10 minutes for those taking the survey, 3 minutes to return/submit the completed survey, and 3 minutes for respondents to the follow-up telephone mini survey.

Frequency of response: 1 time per respondent.

Estimated annual reporting burden: 1,661 hours.

Dated: June 1, 2006.

Leonard E. Stowe,

NPS Information Collection Clearance Officer.

[FR Doc. 06–5659 Filed 6–23–06; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, Chesapeake and Ohio Canal National Historical Park.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission will be held at 9:30 a.m., on Friday, July 21, 2006, at the U.S. Fish and Wildlife Service National Conservation Training Center, 698 Conservation Way, Shepherdstown, West Virginia.

DATES: Friday, July 21, 2006.

ADDRESSES: U.S. Fish and Wildlife Service National Conservation Training Center, 698 Conservation Way, Shepherdstown, West Virginia.

FOR FURTHER INFORMATION CONTACT: Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740, telephone (301) 714–2202.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows: Mrs. Sheila Rabb Weidenfeld, Chairperson; Mr. Charles J. Weir, Mr. Barry A. Passett, Mr. Terry W. Hepburn, Ms. JoAnn M. Spevacek, Mrs. Mary E. Woodward, Mrs. Donna Printz, Mrs. Ferial S. Bishop, Ms. Nancy C. Long, Mrs. Jo Reynolds, Dr. James H. Gilford, Brother James Kirkpatrick, Mr. George F. Lewis, Jr., Mr. Charles D. McElrath, Ms. Patricia Schooley, and Mr. Jack Reeder.

Topics that will be presented during the meeting include:

1. Update on park operations.
2. Update on major construction/development projects.
3. Update on partnership projects.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park. Minutes of the meeting will be available for public inspection six weeks after the meeting at Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

Dated: May 23, 2006.

Kevin D. Brandt,

Superintendent, C&O Canal National Historical Park.

[FR Doc. 06–5657 Filed 6–23–06; 8:45 am]

BILLING CODE 4310–6V–M

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of July 29, 2006 Meeting.

SUMMARY: This notice sets forth the date of the July 29, 2006 meeting of the Flight 93 Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on July 29, 2006 from 3 p.m. to 4:30 p.m. additionally, the Commission will attend the Flight 93 Memorial Task Force meeting the same day from 1 p.m. to 2:30 p.m., which is also open to the public.

Location: The meeting will be held at the Somerset County Courthouse, Courtroom #1; 2nd floor; 111 East Union Street, Somerset, Pennsylvania 15501. The Flight 93 Memorial Task Force meeting will be held in the same location.

Agenda

The July 29, 2006 Commission meeting will consist of:

(1) Opening of Meeting and Pledge of Allegiance.

(2) Review and Approval of Minutes from April 29, 2006.

(3) Reports from the Flight 93 Memorial Task Force and National Park Service. Comments from the public will be received after each report and/or at the end of the meeting.

(4) Old Business.

(5) New Business.

(6) Public Comments.

(7) Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501. 814.443.4557.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501.

Dated: June 8, 2006.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. 06–5660 Filed 6–23–06; 8:45 am]

BILLING CODE 4312–25–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–487]

In the Matter of Certain Agricultural Vehicles and Components Thereof; Remand of Investigation to Presiding Administrative Law Judge; Rescission of General Exclusion Order and Certain Cease and Desist Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to remand the above-captioned investigation to the presiding administrative law judge ("ALJ") for proceedings consistent with the March 30, 2006, judgment of the U.S. Court of Appeals for the Federal Circuit in *Bourdeau Bros., Inc.* v. *International Trade Commission*, 444 F.3d 1317 (Fed. Cir. 2006). The Commission has also determined to rescind the general exclusion order and certain cease and desist orders issued in the investigation.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3090. Copies of nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 13, 2003, based on a complaint filed by Deere & Company ("Deere") of Moline, Illinois. 68 FR 7388 (February 13, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain agricultural vehicles and components thereof by reason of infringement and dilution of U.S. Registered Trademarks Nos. 1,254,339; 1,502,103; 1,503,576; and 91,860.

On August 27, 2003, the Commission issued notice that it had determined not to review Order No. 14, granting complainant's motion to amend the complaint and notice of investigation to add U.S. Trademark Registration No. 2,729,766.

On November 14, 2003, the Commission issued notice that it had determined not to review Order No. 29, granting complainant's motion for summary determination that complainant had met the technical prong of the domestic industry requirement.

Twenty-four respondents were named in the Commission's notice of investigation. Several of these were terminated from the investigation on the basis of consent orders. Several other respondents were found to be in default.

On January 13, 2004, ALJ issued his final initial determination ("ID") finding a violation of section 337. He also recommended the issuance of remedial orders. Two groups of respondents petitioned for review of the ID. Complainant and the Commission investigative attorney ("IA") filed oppositions to those petitions.

On March 30, 2004, the Commission issued notice that it had decided not to review the ID and set a schedule for written submissions on remedy, the public interest, and bonding. Complainant, respondents, and the IA timely filed such submissions.

After consideration of the relevant portions of the record in this investigation, including the ALJ's recommended determination, the written submissions on remedy, public interest, and bonding, and the replies thereto, the Commission determined to issue (1) a general exclusion order prohibiting the unlicensed entry for consumption of European version self-propelled forage harvesters manufactured by or under the authority of Deere & Co. which infringe any of the asserted trademarks, (2) a limited exclusion order prohibiting the unlicensed entry for consumption of European version telehandlers manufactured by or under the authority of Deere & Co. which infringe any of the asserted trademarks, (3) a limited exclusion order prohibiting the unlicensed entry for consumption of agricultural tractors which infringe one or more of U.S. Registered Trademarks Nos. 1,254,339; 1,502,103; and 1,503,576, (4) cease and desist orders to respondents Davey-Joans Tractor & Chopper Supermarket, Bourdeau Bros., Co-Ag LLC, J & T Farms, OK Enterprises, and Stanley Farms, prohibiting activities concerning the importation and sale of European version self-propelled forage harvesters manufactured by or under the authority of Deere & Co. which would constitute infringement of any of the asserted trademarks, and (5) cease and desist orders to respondents SamTrac Tractor & Equipment, Pacific Avenue Equipment, Task Master Equipment LLC/Tractors Etc., China America Imports, and Lenar Equipment, LLC prohibiting activities concerning the importation and sale of agricultural tractors which would constitute infringement of one or more of U.S. Registered Trademarks Nos. 1,254,339; 1,502,103; and 1,503,576.

The Commission also determined that the public interest factors enumerated in section 337(d) did not preclude the issuance of the aforementioned remedial orders and that the bond during the Presidential review period should be 90 percent of the entered value of the articles in question.

On September 14, 2004, certain respondents, including Bourdeau Bros., Sunova Implement Co., and OK Enterprises appealed the Commission's final determination to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit"). On March 30, 2006, the Federal Circuit issued its decision in

the appeal, vacating and remanding the Commission's final determination as it related to Deere European version self-propelled forage harvesters. *Bourdeau Bros. Inc.* v. *International Trade Commission*, 444 F.3d 1317 (Fed. Cir. 2006). The Court issued its mandate on May 22, 2006.

Upon consideration of this matter, the Commission has determined to (1) rescind the general exclusion order relating to Deere European version self-propelled forage harvesters issued in this investigation on May 14, 2004, and (2) rescind the cease and desist orders relating to Deere European version self-propelled forage harvesters issued in this investigation on May 14, 2004, and directed to Davey-Joans Tractor & Chopper Supermarket, Bourdeau Bros., Co-Ag LLC, J & T Farms, OK Enterprises, and Stanley Farms. The remaining remedial orders issued in this investigation remain in force. The Commission has also determined to remand the investigation to the presiding administrative law judge for proceedings consistent with the March 30, 2006, judgment of the *Federal Circuit in Bourdeau Bros., Inc.* v. *International Trade Commission*, 444 F.3d 1317 (Fed. Cir. 2006), including the issuance of a final initial determination on violation with respect to the subject gray market imports of Deere European version self-propelled forage harvesters.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, the Administrative Procedure Act, and part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

Issued: June 20, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–9973 Filed 6–23–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–538]

In the Matter of Certain Audio Processing Integrated Circuits and Products Containing Same; Notice of Commission Decision To Remand a Portion of an Initial Determination Finding a Violation of Section 337, and To Extend the Target Date for Completion of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to remand a portion of the investigation to the presiding administrative law judge ("ALJ"). The Commission has also determined to extend the target date for completion of the investigation until September 15, 2006.

FOR FURTHER INFORMATION CONTACT: Steven W. Crabb, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5432. Copies of the public version of the ALJ's initial determination ("ID") and all other nonproprietary documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 18, 2005, based on a complaint filed on behalf of SigmaTel, Inc. ("complainant") of Austin, Texas. 70 FR 20172. The complaint alleged violations of section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of certain audio processing integrated circuits and products containing same by reason of infringement of claim 10 of U.S. Patent No. 6,137,279 ("the '279 patent"), which was subsequently terminated pursuant to complainant's motion, and claim 13 of U.S. Patent No. 6,633,187 ("the '187 patent"). *Id.* The notice of investigation named Actions Semiconductor Co. of Guangdong, China ("Actions") as the only respondent.

On June 9, 2005, the ALJ issued an ID (Order No. 5) granting complainant's motion to amend the complaint and notice of investigation to add allegations of infringement of the previously asserted patents and to add an allegation of a violation of section 337 by reason of infringement of claims 1, 6, 9, and 13 of U.S. Patent No. 6,366,522 ("the '522 patent"). That ID was not reviewed by the Commission.

On October 13, 2005, the ALJ issued an ID (Order No. 9) granting complainant's motion to terminate the investigation as to the '279 patent. On October 31, 2005, the Commission determined not to review the ID.

On October 31, 2005, the ALJ issued an ID (Order No. 14) granting complainant's motion for summary determination that the importation requirement of section 337 has been satisfied. On November 1, 2005, the ALJ issued an ID (Order No. 15) granting complainant's motion for summary determination that complainant has satisfied the economic prong of the domestic industry requirement of section 337 for the patents in issue. Those IDs were not reviewed by the Commission.

On March 20, 2006, the ALJ issued his final ID and recommended determination on remedy and bonding. The ALJ concluded that there was a violation of section 337. Specifically, he found that claim 13 of the '187 patent was valid and infringed by Actions' accused product families 207X, 208X, and 209X. The ALJ also determined that claims 1, 6, 9, and 13 of the '522 patent were valid and infringed by Actions' accused product families 208X and 209X.

On April 3, 2006, respondent Actions petitioned for review of portions of the final ID. On April 10, 2006, complainant SigmaTel and the Commission investigative attorney ("IA") filed responses in opposition to the petition for review.

On April 17, 2006, respondent Actions filed a motion for leave to file a reply to complainant SigmaTel's response to Actions' petition for review. On April 19, 2006, complainant SigmaTel filed a motion in opposition to Actions' motion. The Commission determined to deny Actions' motion for leave to file a reply.

On May 5, 2006, the Commission determined to review the ALJ's construction of a claim limitation of the '522 patent, infringement of the '522 patent, and whether SigmaTel met the technical prong of the domestic industry requirement in regard to the '522 patent. 71 FR 27512 (May 11, 2006). The Commission also determined to review the ALJ's claim construction of the term "memory" in claim 13 of the '187 patent. *Id.* The Commission declined to review the remainder of the ID. *Id.*

On May 15, 2006, the IA filed its brief on the issues under review and on remedy, the public interest, and bonding. On May 16, 2006, both SigmaTel and Actions filed briefs on the

issues under review and on remedy, the public interest, and bonding.

On May 17, 2006, SigmaTel filed a motion to strike portions of Actions' initial brief concerning the issues under review or in the alternative for an extension of two days to respond. On May 19, 2006, Actions filed an opposition to SigmaTel's motion to strike. Also on May 19, 2006, the Chairman of the Commission granted the motion for the two-day extension, thus rendering the motion to strike moot.

On May 24, 2006, all parties filed responses to the initial briefs concerning the issues under review and on remedy, the public interest, and bonding.

Having examined the record of this investigation, including the ALJ's final ID and the submissions of the parties, the Commission has (1) determined to reverse the ALJ's construction of the claim phrase "produce the system clock control signal and power supply control signal based on a processing transfer characteristic of the computation engine" and provide as its own construction that both the system clock control signal and the power supply control signal are required to be produced during operation of the integrated circuit such that the voltage and the frequency of the integrated circuit are adjusted based on a processing transfer characteristic, but that the processing transfer characteristic is not determined in any particular manner; (2) determined to remand this investigation in part to the ALJ for the purpose of determining whether the accused products utilizing the version 952436 firmware infringe the '522 patent under the Commission's claim construction; (3) determined with respect to the accused products that do not use the version 952436 firmware, that the ALJ made sufficient findings to find infringement of the asserted claims of the '522 patent under our claim construction, and to adopt his findings with respect to those products; (4) determined that SigmaTel's 35XX products satisfy the technical prong of the domestic industry requirement with regard to the '522 patent under the Commission's claim construction; (5) determined to delete the term "firmware" from the ALJ's construction of the claim term "memory" in claim 13 of the '187 patent; (6) determined to defer addressing issues relating to remedy, public interest, and bonding, for both the '187 patent and the '522 patent until after the ALJ issues his initial determination on remand regarding the '522 patent; and (7) determined to extend the target date in the investigation until September 15, 2006.

Further, the Commission has determined not to consider Actions' discussion in its submissions on the issues under review with respect to the '187 patent because this discussion is outside the scope of the Commission's review.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.45 and 210.51 of the Commission's Rules of Practice and Procedure (19 CFR 210.45, 210.51).

Issued: June 19, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–9972 Filed 6–23–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–309–A–B and 731–TA–696 (Second Review)]

Pure and Alloy Magnesium From Canada and Pure Magnesium From China

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the countervailing duty orders on pure and alloy magnesium from Canada would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

With respect to China, revocation of the antidumping duty order on pure magnesium would be likely to lead to continuation or recurrence of material injury to an industry in the Untied States within a reasonably foreseeable time.

Background

With respect to Canada, the Commission instituted the reviews on July 1, 2005 (70 FR 38199) and determined on October 4, 2005 that it would conduct full reviews (70 FR 60108, October 14, 2005). With respect to China, the Commission instituted the review on September 1, 2005 (70 FR 52122) and determined on December 5, 2005 that it would conduct a full review (70 FR 75483, December 20, 2005). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on January 12, 2006 (71 FR 2065). The hearing was held in Washington, DC, on April 25, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on June 26, 2006. The views of the Commission are contained in USITC Publication 3859 (June 2006), entitled *Pure and Alloy Magnesium from Canada and Pure Magnesium from China: Investigation Nos. 701–TA–309–A–B and 731–TA–696 (Second Review).*

Issued: June 21, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–5668 Filed 6–23–06; 8:45 am]

BILLING CODE 7020–02–M

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–678, 679, 681, and 682 (Second Review)]

Stainless Steel Bar From Brazil, India, Japan, and Spain

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* June 20, 2006.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. On June 5, 2006, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (71 FR 34391, June 14, 2006). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the reviews will be placed in the nonpublic record on September 19, 2006, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on October 12, 2006, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 5, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 6, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in camera no later than 7 business days prior to the date of the hearing.

Written submissions. Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is September 29, 2006. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is October 23, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before October 23, 2006. On November 21, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 27, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 20, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–10034 Filed 6–23–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Annual

Firearms Manufacturing and Exportation Report Under 18 U.S.C. Chapter 44, Firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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. The proposed 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 25, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Charlayne Armentrout, Enforcement Programs and Services, Room 5250, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—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 a currently approved collection.

(2) *Title of the Form/Collection:* Annual Firearms Manufacturing and Exportation Report Under 18 U.S.C. Chapter 44, Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5300.11. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Federal Government, State, local, or tribal government. ATF collects this data for the purpose of witness qualifications, congressional investigations, court decision and disclosure and furnishing information to other Federal agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,500 respondents will complete a 45 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,125 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 20, 2006.

Lynn Bryant,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. E6–9979 Filed 6–23–06; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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. The proposed 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 25, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Thomas McDermott, Firearms Enforcement Branch, Room 7400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—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 a currently approved collection.

(2) *Title of the Form/Collection:* Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF REC 5000/2. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control Law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 50

respondents will take 15 minutes per line entry and that 26 entries will be made per year per respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 325 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 20, 2006.

Lynn Bryant,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. E6–9980 Filed 6–23–06; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[AAG/A Order No. 009–2006]

Privacy Act of 1974; System of Records

AGENCY: Drug Enforcement Administration, DOJ.

ACTION: New system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, notice is given that the Department of Justice (DOJ) proposes to establish a new Drug Enforcement Administration (DEA) system of records entitled, "El Paso Intelligence Center (EPIC) Seizure System (ESS)" DOJ/DEA–022. ESS incorporates two previous systems of records, the Clandestine Laboratory Seizure System notice, Justice/DEA–002, last published in the **Federal Register** January 27, 2003 (68 FR 3894), and the Automated Intelligence Records System (Pathfinder), last published in the **Federal Register** November 26, 1990 (55 FR 49182), for the purpose of combining both previously existing systems into a single collection of records.

DATES: In accordance with the requirements of 5 U.S.C. 552a(e)(4) and (11), the public is given a 30 day period in which to comment. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, has 40 days in which to conclude its review of the system. Therefore please submit any comments by August 7, 2006.

ADDRESSES: The public, OMB and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400 National Place Building), facsimile number 202–307–1853.

FOR FUTHER INFORMATION CONTACT: Mary E. Cahill 202–307–1823.

SUPPLEMENTARY INFORMATION: This system of records is established in connection with the EPIC Open Connectivity Project that implements as a major component of this system the EPIC Portal. The EPIC Portal is designed to allow vetted users electronic access to data maintained in this system that was previously available to authorized users under the previously approved system notices for the Clandestine Laboratory Seizure System notice (Justice/DEA–002) and the Automated Intelligence Records System notice (Justice/DEA–INS–111). Under the previous protocol, authorized law enforcement personnel contacted EPIC directly with their requests for information. EPIC provided information from available databases to the requester. The use of the EPIC Portal under this system will allow authorized law enforcement personnel to query the ESS by means of a secure internet connection. A principal purpose of ESS is to ensure that law enforcement entities can more effectively investigate, disrupt and deter criminal activities. ESS furthers this purpose by providing a single point of entry to vetted users to submit a request for information from relevant data sources available to the ESS. Results obtained through a search of ESS databases are provided in near real time to the user. Both previously existing systems will continue to operate in parallel with this system for as long as is necessary to migrate existing data and users. At a date to be determined after the successful migration of data and users into this new system, the previously existing systems will be cancelled.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: June 19, 2006.

Lee J. Lofthus,

Acting Assistant Attorney General for Administration.

DEPARTMENT OF JUSTICE/DEA–022

SYSTEM NAME:

EPIC Seizure System (ESS).

SYSTEM CLASSIFICATION:

Sensitive But Unclassified.

SYSTEM LOCATION:

Department of Defense, Defense Information Systems Agency (DISA), Booz Allen Hamilton (contractor), 5201 Leesburg Pike, Suite 400, Falls Church, VA 22041, and Department of Justice, Drug Enforcement Administration, El Paso Intelligence Center, 11339 SSG Sims Street, El Paso, TX 79908–8098.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Categories consist of individuals identified or referenced in the course of investigations relating to:

(a) The illicit manufacture, distribution, sale or possession of, or trafficking in controlled substances;

(b) The illicit manufacture, distribution, sale or possession of, or trafficking in or alteration of identification documents, merchant mariner licenses and/or merchant mariner documents;

(c) Reports of lost, stolen or fraudulent use of identification documents;

(d) Businesses, vessels, and aircraft possibly associated with terrorism;

(e) Crewman desertions or stowaways;

(f) Movement of drugs, weapons, aliens or other contraband using vessels, commercial and/or non-commercial aircraft, or vehicles;

(g) Tactical boarding of vessels suspected of smuggling drugs, weapons, aliens, or other contraband into the United States.

2. Categories also consist of individuals identified or referenced in requests for information:

(a) In support of U.S. Coast Guard and other law enforcement personnel conducting routine boardings;

(b) On crew lists of in-bound vessels that are 96 hours in advance of arrival to the United States;

(c) On personnel lists for individuals associated with work on or around Government or Government-contracted vessels;

(d) On personnel lists for individuals working in or around U.S. waterways, piers, and bridges;

(e) On pilots, passengers, owners, businesses and aircraft in support of Customs and Border Protection granting permission for aircraft to fly over the nearest Port of Entry;

(f) On Civil Air Patrol pilots supporting Drug Enforcement Administration or Immigration and Customs Enforcement operations;

(g) On reported stolen aircraft.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of:

(1) Personal identification and location data which may include name (including aliases and similar sounding names), occupation(s), race, sex, date and place of birth, height, weight, hair color, eye color, citizenship, nationality/

ethnicity, alien status, addresses, and other miscellaneous identifying information, including, for example, telephone, passport, drivers license, vehicle registration, and Social Security numbers;

(2) Multi-source drug intelligence data;

(3) Counter-drug enforcement information, including identification, location, arrest, and prosecution of persons involved in the illicit trade or trafficking, and other activities and civil proceedings related to such enforcement activities;

(4) Information related to organizations involved in the illicit trade in controlled substances either in the United States or internationally;

(5) Reports of arrests;

(6) Information on stolen aircraft;

(7) Public and other information including personal identification and location data which may include name, date and place of birth, social security numbers, addresses and other miscellaneous identifying information, including, for example, telephone numbers, drivers license, and vehicle registration obtained from commercial databases;

(8) Public and other information obtained from Federal warrants issued by United States Marshals Service;

(9) Vessel and aircraft data;

(10) Information relating to terrorist incidents;

(11) Other information involving the illicit possession, manufacture, sale, purchase, and transport of controlled substances; and

(12) Information involving the illicit manufacture, distribution, sale or possession of, trafficking in or alteration of identification documents, forged merchant mariner licenses and/or merchant mariner documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Comprehensive Drug Abuse Prevention and Control Act of 1970 (83 Stat. 1236), Reorganization Plan No. 2 of 1973, the Omnibus Crime Control and Safe Streets Act, (Pub. L. 90–351, as amended), and the Single Convention on Narcotic Drugs (18 U.S.C. 1407). Additional authority is derived from Treaties, Statutes, Executive Orders, Presidential Proclamations, and Attorney General Directives.

PURPOSE OF THE SYSTEM:

Records in this system are used to provide investigative and public health and safety information for the Drug Enforcement Administration, and other law enforcement agencies, in the discharge of their law enforcement duties and responsibilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Pursuant to the Privacy Act, 5 U.S.C. 552a(b)(3), relevant records or any relevant facts derived therefrom may be disclosed:

(a) To Federal, state, local, tribal and foreign law enforcement agencies to facilitate the investigation and prosecution of illegal drug trafficking activities.

(b) To law enforcement individuals and organizations in the course of investigations where necessary to elicit information pertinent to counter-drug, counter-terrorism, weapons, alien, and drug-money investigations.

(c) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(d) To a former employee of the Department for purposes of: Responding to an official inquiry by a Federal, state, or local government entity or professional licensing authority in accordance with applicable regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(e) To the news media and the public, complying with 28 CFR 50.2 when applicable, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(f) To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, local, territorial, tribal, or foreign) where the information is relevant to the recipient entity's law enforcement responsibilities.

(g) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

(h) To the National Archives and Records Administration (NARA) for purposes of management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(i) In an appropriate proceeding before a court or administrative or adjudicative body when records are determined by the Department of Justice to be arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(j) To agencies of the U.S. Intelligence Community.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored in electronic media via a configuration of personal computer, client/server, and mainframe systems architecture. Computerized records are maintained on hard disk, floppy diskettes, compact discs, magnetic tape, and/or optical disks. The records are stored on computer both at the contractor site and at the El Paso Intelligence Center, El Paso, Texas. Paper files are stored as follows: (1) In a secure file room with controlled access; (2) in locked file cabinets; and/or (3) in other appropriate GSA approved security containers.

RETRIEVABILITY:

Records may be retrieved by reference to an individual's name or personal identifier.

SAFEGUARDS:

Both electronic and paper records are safeguarded in accordance with DOJ rules and policy governing automated systems security and access. These safeguards include the maintenance of technical equipment in restricted areas, and the required use of individual passwords and user identification codes to access the system. The system is protected by both physical security methods and dissemination and access controls. Protection of the automated information system is provided by physical, procedural and electronic means.

RETENTION AND DISPOSAL:

Records in this system will be retained and disposed of in accordance with records schedules approved by the National Archives and Records Administration (NARA) for the constituent systems of records, Justice/DEA–002 and Justice/DEA–INS–111. A separate schedule for the retention and disposal of records for Justice/DEA–022 will be submitted to NARA for approval.

SYSTEM MANAGER AND ADDRESS:

Director, El Paso Intelligence Center, 11339 SSG Sims Street, El Paso, Texas 79912–8098.

NOTIFICATION PROCEDURES:

Inquiries should be addressed to Freedom of Information and Records Section, Drug Enforcement Administration, Washington, DC 20537.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in accordance with 28 CFR part 16 to the Freedom of Information Act (FOIA)/Privacy Act (PA) Section, Headquarters, Drug Enforcement Administration, Washington, DC 20537 or to the System Manager, with the envelope and letter clearly marked 'Privacy Access Request.' The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury and dated. Some information may be exempt from access to certain provisions as described in the section entitled 'Exemptions Claimed for the System.' An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request according to the Record Access Procedures listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information is not subject to amendment. Some information may be exempt from contesting record procedures as described in the section entitled 'Exemptions Claimed for the System.' An individual who is the subject of a record in this system may seek amendment of those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

(1) DEA intelligence and investigative records; (2) reports, investigative and intelligence reports from other participating and associated Federal, state, local, territorial, tribal, and foreign member agencies; (3) records and reports of foreign law enforcement and regulatory agencies; and (4) records from commercial databases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2) and (3), (e)(5) and (e)(8); and (g), of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k). A determination as to exemption shall be made at the time a request for access or amendment is received. Proposed rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and are published in today's **Federal Register**.

[FR Doc. E6–9977 Filed 6–23–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,890]

Narragansett Jewelry, Inc.; DBA C & J Jewelry Co., Inc. and Including Narragansett Creations; DBA Crest Craft, Inc.; Providence, RI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 23, 2006, applicable to workers of C & J Jewelry Co., Inc., Providence, Rhode Island. The notice was published in the **Federal Register** on April 12, 2006 (71 FR 18772).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of sterling silver jewelry.

New information provided by the State shows that the correct name of the subject firm is Narragansett Jewelry, Inc., DBA C & J Jewelry Co., Inc., and including Narragansett Creations, DBA Crest Craft, Inc. Information also shows that workers separated from employment at the subject firm had their wages reported under separate unemployment insurance (UI) tax accounts for Narragansett Jewelry, DBA C and J Jewelry, and including Narragansett Creations, DBA Crest Craft, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Narragansett Jewelry, DBA C & J Jewelry Co., Inc., and including Narragansett Creations, DBA Crest Craft, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–58,890 is hereby issued as follows:

All workers of Narragansett Jewelry, DBA C & J Jewelry Co., Inc., and including Narragansett Creations, DBA Crest Craft, Inc., Providence, Rhode Island, who became totally or partially separated from employment on or after February 22, 2005, through March 23, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of June 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–9995 Filed 6–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,444]

Ericsson Inc.; Brea, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 23, 2006 in response to a worker petition which was filed by a company official on behalf of workers at Ericsson Inc., Brea, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 30th day of May, 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–9991 Filed 6–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,301]

Marineland; Moorpark, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 1, 2006 in response to a worker petition filed by a company official on behalf of workers at Marineland, Moorpark, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of May, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–9989 Filed 6–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,937]

Rexam, Inc.; D/B/A Precise Technology; North Versailles, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter dated May 5, 2006, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on April 6, 2006, and published in the **Federal Register** on April 18, 2006 (71 FR 19900).

The initial investigation resulted in a negative determination based on the finding that imports of injection molded products did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 14th of June, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–9988 Filed 6–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,377]

St. John Knits Inc.; Santa Ana, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 12, 2006 in response to a petition filed by a state agency representative on behalf of workers St. John Knits in Santa Ana, California.

The petitioning group of workers is covered by an active certification, TA–W–55,790 which expires on November 8, 2006. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 1st day of June 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–9994 Filed 6–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,450]

Theramatrix Physical Therapy & Services, Inc.; Workers at Ford Motor Company; Atlanta Assembly Plant; Hapeville, GA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 24, 2006 in response to a worker petition filed on behalf of workers at TheraMatrix Physical Therapy & Services, Inc., workers at Ford Motor Company, Atlanta Assembly Plant, Hapeville, Georgia.

The Department issued a negative determination (TA–W–59,345) applicable to the petitioning group of workers on May 22, 2006. On examination of the current petition, it has been determined to be a duplicate of the previous petition (TA–W–59,345). Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 31st day of May, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–9992 Filed 6–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 6, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 6, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade

Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 16th day of June 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 6/5/06 and 6/9/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
59507	Tower Automotive (IUE)	Greenville, MI	06/05/06	05/22/06
59508	Arrow Electronics Inc. (Wkrs)	Englewood, CO	06/05/06	05/30/06
59509	Spencer Products (State)	Walnut Ridge, AR	06/05/06	05/31/06
59510	Avondale Mills (State)	Sylacauga, AL	06/05/06	06/02/06
59511	Avondale Mills Inc. (State)	Augusta, GA	06/05/06	06/02/06
59512	Royal Precision Inc. (State)	Torrington, CT	06/05/06	06/02/06
59513	Robert Bosch Tool Corporation (Comp)	Elizabethtown, KY	06/05/06	06/05/06
59514	Bob Barker Co. Inc. (Comp)	Fuquay-Varina, NC	06/05/06	06/01/06
59515	Avondale Mills Inc. (State)	Graniteville, SC	06/05/06	06/02/06
59516	Delta Consolidated Industries (State)	Jonesboro, AR	06/06/06	06/05/06
59517	Advanced Electronics, Inc. (State)	Boston, MA	06/06/06	06/05/06
59518	Orion America Inc. (Comp)	Princeton, IN	06/06/06	06/05/06
59519	Pixley Richards Inc. (Wkrs)	Wyoming, MI	06/06/06	05/31/06
59520	Lee Mah Electronics (Wkrs)	San Francisco, CA	06/06/06	06/02/06
59521	Dora L. International (State)	Los Angeles, CA	06/06/06	06/05/06
59522	InterBrew USA, LLC (Wkrs)	Latrobe, PA	06/06/06	06/05/06
59523	Simkins Industries, Inc. (State)	New Haven, CT	06/06/06	06/05/06
59524	Chardon Rubber Company (The) (Comp)	Alliance, OH	06/06/06	06/02/06
59525	Securitas Secuirty Services USA (State)	Grand Junction, CO	06/06/06	06/05/06
59526	Compex Legal Services (Wkrs)	Asheville, NC	06/07/06	06/02/06
59527	MAG, Incorporated (Wkrs)	El Paso, TX	06/07/06	06/02/06
59528	Alexvale Furniture Company Inc. (Comp)	Taylorsville, NC	06/07/06	06/06/06
59529	Transocean Products Inc. (Comp)	Salem, OR	06/07/06	06/06/06
59530	Johnson Controls Inc. (Comp)	Holland, MI	06/07/06	06/07/06
59531	Prostolite Wire Corporation (State)	Tifton, GA	06/07/06	06/07/06
59532	Hardwick Knitted Fabrics (State)	New York, NY	06/07/06	05/24/06
59533	Yakima Resources, LLC (Union)	Yakima, WA	06/08/06	06/07/06
59534	Pictorial Engraving Co. Inc. (Comp)	Charlotte, NC	06/08/06	06/07/06
59535	Water Pik Technologies, Inc. (State)	Fort Collins, CO	06/08/06	06/07/06
59536	Tokui Inc. (Comp)	Coldwater, MI	06/08/06	06/05/06
59537	Maxtor Corp./MMC Technology (Comp)	San Jose, CA	06/09/06	06/08/06
59538	Crefton Industries (State)	City of Industries, CA	06/09/06	06/08/06
59539	Safeco Insurance (Wkrs)	Seattle, WA	06/09/06	06/07/06
59540	Unifi Inc. (Comp)	Yadkinville, NC	06/09/06	06/07/06

[FR Doc. E6–9997 Filed 6–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,455]

Universal Leaf Tobacco Co.; Danville, VA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 24, 2006 in response to a worker petition filed on behalf of workers at Universal Leaf Tobacco Co., Danville, Virginia.

The petitioning group of workers is covered by an earlier petition (TA–W–59,370) filed on May 10, 2006 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 31st day of May 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–9993 Filed 6–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,231]

Waterbury Rolling Mills; Olin Corporation; Waterbury, CT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 18, 2006 in response to a worker petition filed by a company official on behalf of workers at Waterbury Rolling Mills, Olin Corporation, Waterbury, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 31st day of May, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–9990 Filed 6–23–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,074]

Western Graphics Corporation Including On-Site Leased Workers of Personnel Source and Quality Cleaning Service; Eugene, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 30, 2006, applicable to workers of Western Graphics Corporation, including on-site leased workers of Personnel Source, Eugene, Oregon. The notice was published in the **Federal Register** on April 17, 2006 (71 FR 19755).

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of colored posters.

New information shows that a leased worker of Quality Cleaning Service was employed on-site at the Eugene, Oregon location of Western Graphics Corporation.

Based on these findings, the Department is amending this certification to include a leased worker of Quality Cleaning Service working on-site at Western Graphics Corporation, Eugene, Oregon.

The intent of the Department's certification is to include all workers employed at Western Graphics Corporation, Eugene, Oregon who was adversely affected by increased imports.

The amended notice applicable to TA–W–59,074 is hereby issued as follows:

All workers of Western Graphics Corporation, including on-site leased workers of Personnel Source and Quality Cleaning Service, Eugene, Oregon, who became totally or partially separated from employment on or after March 21, 2005, through March 30, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of June 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–9996 Filed 6–23–06; 8:45 am]

BILLING CODE 4510–30–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53942A; File No. SR–Amex–2006–38]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Locked Markets

June 20, 2006.

Correction

In FR Document No. 06–5372 beginning on page 34404 for Wednesday, June 14, 2006, the 34 Release number was incorrectly stated. The correct number is 34–53942.

Nancy M. Morris,

Secretary.

[FR Doc. 06–5640 Filed 6–23–06; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54014; File No. SR–CBOE–2006–01]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Regarding a Disaster Recovery Facility

June 19, 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 January 3, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On June 2, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange submits this proposed rule change regarding the operation of a remote business facility in order to preserve the Exchange's ability to trade options in the event the Exchange's trading floor becomes inoperable or otherwise unavailable.

The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.com*), at the CBOE's Office of the Secretary, 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 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Exchange Rule 6.18, which would allow for the operation of the DRF. The DRF would only be used in the event a disaster or other unusual circumstance renders the CBOE trading floor inoperable. The purpose of the DRF is to allow CBOE members to operate remotely in a screen-based only environment until the Exchange's trading floor is again available. There would be no open-outcry trading at the DRF. CBOE's Hybrid trading platform would be used for trading through the DRF minus the open-outcry component of the Hybrid platform. Thus, electronic orders would continue to be received by the Exchange and processed and/or executed in the manner they would be handled by the Hybrid System today.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, CBOE made minor revisions to the proposed rule text and clarified certain details of its proposal.

CBOE would announce prior to the commencement of trading on the DRF all classes that would be traded on the DRF. Priority would be afforded to classes that are exclusively listed on CBOE. All classes traded via the DRF would be subject to all applicable Hybrid System rules relating to the electronic component of Hybrid trading and non-trading rules of the Exchange would continue to be applicable. The Exchange represents that those rules in their current form will enable the operation of the DRF. The Exchange also represents that it is able to conduct appropriate surveillance for trading activity on the DRF and that procedures are in place to conduct appropriate surveillance (a document detailing such procedures will be forwarded to the Commission for review under separate cover).

As mentioned above, rules governing the general use of the DRF would be contained in proposed Exchange Rule 6.18. That rule provides, among other things, that members shall take such action as instructed by the Exchange to accommodate the Exchange's ability to trade options via the DRF. The Exchange is currently working with members to establish appropriate connectivity to the DRF. As part of this process, members electing to establish connectivity to the DRF must test with the Exchange to ensure the connection to the DRF is functional. Connectivity procedures are available to all interested members. The Exchange represents that there is already sufficient member connectivity to ensure that the DRF, if activated, could operate in a meaningful manner.

Exchange Rule 6.18 also provides that, to the extent system capacity restricts the ability of all members from quoting on the DRF, the Exchange shall have authority to designate the members that will be allowed to submit quotations on the DRF (all members would still be able to send in orders to the DRF). In such cases, priority shall be afforded to members that made markets in the products trading on the DRF throughout the calendar quarter preceding the use of the DRF. Additional members and/or member organizations shall be allowed to make markets on the DRF based upon their total contract volume effected on the Exchange during the preceding calendar quarter. Unless otherwise authorized by the Exchange, there would be a one streaming quotation per product limit for each member organization quoting on the system and its associated persons.

Lastly, this Exchange Rule 6.18 does not preclude the Exchange from trading options, in the event the trading floor is rendered inoperable, pursuant to Exchange Rule 6.16 (Back-up Trading Arrangements).

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with the Securities Exchange Act of 1934 (the "Act")[4] and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change, as amended, is consistent with section 6(b)(1)[6] in that it will allow the Exchange the capacity to carry out the purposes of the Act (by allowing the Exchange to continue trading if the trading floor becomes inoperable). The proposed rule change, as amended, is also consistent with section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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 solicited or received with respect to the proposed rule change.

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 the CBOE consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

[4] 15 U.S.C. 78a *et seq.*

[5] 15 U.S.C. 78(f)(b).

[6] 15 U.S.C. 78(f)(b)(1).

[7] 15 U.S.C. 78(f)(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CBOE–2006–01 and should be submitted on or before July 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E6–9982 Filed 6–23–06; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54015; File No. SR–NASD–2006–067]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify NASD Rule 7010(c)(2) To Allow NASD Members To Receive Transaction Credits for Automated Executions in Tape B Securities on an Estimated Monthly Basis

June 19, 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 30, 2006, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. Nasdaq has filed the proposal as a "non-controversial" rule change 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.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the methodology for distributing transaction credits under NASD Rule 7010(c)(2). Nasdaq will implement the proposed rule change with respect to invoices to be distributed on or about June 10, 2006. The text of the proposed rule change is available at NASD and at the Commission and at *http://www.nasdaq.com/about/RuleFilings2006.stm.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to modify its current transaction credit program applicable to liquidity providers for automated executions in Tape B securities.[6] Under the proposal, NASD members would be eligible to receive transaction credit payments on an estimated, monthly basis for quotes and orders posted by such members in Tape B securities that are executed by inbound marketable orders through ITS/CAES, Inet or Brut. Nasdaq is proposing the change as a competitive response to NYSE Arca, which instituted a similar estimated monthly credit program for Tape B securities last year.[7]

Currently, members that earn credits for such transactions receive them on a quarterly basis, after Nasdaq has received its share of market data revenue for Tape B from the Consolidated Tape Association ("CTA") Plan. Under this proposal for estimated payments, members would be able to receive their share of credits, based on an estimate, on a monthly basis before the quarterly revenues from the CTA Plan are paid to Nasdaq. A member's estimated monthly amounts will be calculated by using the tape credit percentage specified in NASD Rule 7010(c)(2) (currently 50%) and applying such percentage to the estimated value of the member's trading activity. Nasdaq will, however, hold back a percentage of the estimated credit until Nasdaq receives payment for its share of market data revenue for the quarter, in order to ensure that it does not provide credits to market participants in excess of its actual obligations. The held-back percentages would be credited through a true-up calculation after Nasdaq receives its share of market data revenue for the quarter. Nasdaq expects the holdback percentage to be about 10%, but may vary it from month to month as needed to ensure that estimated payments do not exceed actual obligations. In accordance with Nasdaq's credit policies, all credits will be applied to outstanding balances due to Nasdaq from members before any direct payments are made.

As an example, assume a firm is liquidity provider for 100,000 trades during each month of a quarter. If Nasdaq estimates that each trade will generate $1.00 in market data revenue under the CTA Plan, the firm's estimate for each month of the quarter would be $50,000 (100,000 × $1.00 × 0.50), from which Nasdaq would hold back $5,000 ($50,000 × 0.10). Therefore, the firm would be credited $45,000 each month. Assume that after the end of the quarter, the payments received from the plan amount to $0.95 per trade. At that time, Nasdaq would determine that the firm's actual credit for each month of the quarter was $47,500 (100,000 × $0.95 × 0.50) and Nasdaq would provide a true-up credit of $2,500 for each month (the actual of $47,500 less the estimated credit of $45,000) for a total quarterly true-up of $7,500.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[8] in general, and with section 15A(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposed rule change allows all NASD members eligible to receive transaction credits for providing liquidity to support executions in Tape B securities to receive credits on an estimated monthly basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

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[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] Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] Tape B securities include securities that are listed for trading on the American Stock Exchange and certain other securities that are deemed to be eligible for such listing.

[7] Securities Exchange Act Release No. 51990 (August 15, 2005), 70 FR 49351 (August 23, 2005) (SR–PCX–2005–16).

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has asked that the Commission waive the 30-day operative delay contained in Rule 19b–4(f)(6)(iii) under the Act.[12] The Commission believes such waiver is consistent with the protection of investors and the public interest, for it will allow Nasdaq to modify the methodology for distributing transaction credits under NASD Rule 7010(c)(2) in such a way as to remain competitive within the marketplace. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

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–NASD–2006–067 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–067. 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 also will be available for inspection and copying at the principal office of NASD. 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–NASD–2006–067 and should be submitted on or before July 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E6–9983 Filed 6–23–06; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54008; File No. SR–NYSE–2006–43]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Section 902.02 of the Listed Company Manual To Exempt Companies Transferring From NYSE Arca From Initial Listing Fees and the Annual Fee for the Year of Such Transfer

June 16, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 7, 2006, the New York Stock Exchange LLC (the "NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NYSE. 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

NYSE proposes to amend Section 902.02 of its Listed Company Manual ("Manual") to provide that there shall be no initial listing and no prorated annual fee payable with respect to the first partial calendar year of listing for any company listed on NYSE Arca, Inc. ("NYSE Arca") that transfers the listing of its primary class of common shares to the Exchange. The text of the proposed rule change is available at the Commission, at NYSE, and at *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

New York Stock Exchange, Inc. and Archipelago Holdings, Inc. merged on March 7, 2006, leading to the creation of a new public holding company, NYSE Group, Inc. ("NYSE Group"). As a result of the merger, NYSE Group is the ultimate parent of two national securities exchanges, the Exchange and NYSE Arca.[3]

NYSE Group expects that companies that do not yet meet the Exchange's initial listing criteria will list first on NYSE Arca and will subsequently transfer their listing to the Exchange if and when they qualify to do so. Consistent with this approach, the Exchange proposes to amend Section 902.02 of the Manual to grant companies transferring the listing of their primary class of common shares to the Exchange from NYSE Arca a waiver of the Exchange's initial listing fees and the prorated annual listing fee payable in connection with the first partial calendar year of listing on the Exchange. The Exchange believes this is appropriate as companies transferring to the Exchange from NYSE Arca will already have paid annual continued listing fees to NYSE Arca for the calendar year in which they transfer, as well as the initial listing fee payable under NYSE Arca's rules at the time of initial listing on NYSE Arca. In addition, the Exchange notes that NYSE Regulation performs listed company regulation for both the Exchange and NYSE Arca, including a substantial review of companies upon original listing. Companies transferring from NYSE Arca will be subjected to the same rigorous regulatory review as any other applicant for listing on the Exchange. However, the Exchange expects that, on average, the review of companies transferring from NYSE Arca to the Exchange will be less costly than the review of a transfer from the Nasdaq National Market ("Nasdaq") or the American Stock Exchange, as NYSE Regulation will already have performed a substantial review of any NYSE Arca listed company and will be able to rely on that prior work as a baseline in qualifying the company for listing on the Exchange.

The primary purpose of the proposed fee waiver is to assist in the development of NYSE Arca as a listing market. NYSE Group intends to build NYSE Arca into an alternative listing venue for companies whose only realistic listing option is currently Nasdaq because they do not meet the Exchange's own listing standards due to their small size or insufficient operating history. NYSE Arca intends to adopt a new set of listing standards with thresholds broadly comparable to those of Nasdaq and expects to compete directly with Nasdaq for initial public offerings that do not qualify for the Exchange. However, NYSE Group recognizes that, as a new market, NYSE Arca will initially face difficulties in attracting new listings. NYSE Group believes that NYSE Arca's affiliation with the Exchange through their common parent is highly attractive to companies considering listing on NYSE Arca. Companies whose ultimate objective is to list on the Exchange can associate themselves with NYSE Group by listing on NYSE Arca at the time of their initial public offerings. NYSE Group believes that many companies will consider this preferable to listing initially on Nasdaq and then transferring to the Exchange upon achieving the Exchange's listing standards and that the Exchange's proposed fee waiver will appeal to companies considering listing on NYSE Arca because of its association with the Exchange. By increasing NYSE Arca's attractiveness as a listing venue, the Exchange believes the fee waiver will lead to greater competition for new listings, as it will help NYSE Arca become a viable alternative to Nasdaq, which does not currently have any meaningful competition for new listings that do not qualify for the Exchange. NYSE Group is willing to forego the listing fee revenues from NYSE Arca transfers because it believes that a significant market opportunity exists for NYSE Arca to compete successfully with Nasdaq. However, NYSE Group does not wish to waive transfer fees for transfers from all other markets as it views initial listing fees as an important source of revenue. If the Exchange decides to reimpose these fees with respect to transfers from NYSE Arca in the future, it will do so by filing a proposed rule change with the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(4)[4] and 6(b)(5) of the Act[5] that an exchange have rules that (i) provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and (ii) are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and are not designed to permit unfair discrimination between issuers. The Exchange believes that the proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory. The Exchange expects that, on average, the review of companies transferring from NYSE Arca to the Exchange will be less costly than the review of a transfer from Nasdaq or the American Stock Exchange, as NYSE Regulation will already have performed a substantial review of any NYSE Arca listed company and will be able to rely on that prior work as a baseline in qualifying the company for listing on the Exchange. The Exchange believes that, by making NYSE Arca a more attractive listing venue, the proposed fee waiver will assist NYSE Arca in competing with Nasdaq for listings and is therefore designed to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received by NYSE.

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 the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, 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,

[3] *See* Securities Exchange Act Release No. 53382 (SR–NYSE–2005–77) (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (approving organizational changes in connection with the merger).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78f(b)(5).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–43. 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–43 and should be submitted on or before July 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Nancy M. Morris,

Secretary.

[FR Doc. E6–9984 Filed 6–23–06; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54013; File No. SR–NYSE–2006–17]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval To Amendment No. 2, Relating to Listing and Trading Shares of the iShares GSCI Commodity Indexed Trust Under New Rules 1300B and 1301B, et seq.

June 16, 2006.

On March 7, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to adopt rules that would provide for and govern the trading of Commodity Trust Shares, including shares ("Shares") of the iShares® GSCI® Commodity—Indexed Trust ("Trust"). On March 24, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on April 24, 2006.[3] On June 15, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission received one comment letter.[5] On May 12, 2006, the Exchange filed a response to those comments.[6] This order approves the proposed rule change, as amended by Amendment No. 1. Simultaneously, the Commission provides notice of filing of Amendment No. 2, grants accelerated approval of Amendment No. 2, and solicits comments from interested persons on Amendment No. 2.

I. Description of Proposal

The NYSE proposes to adopt rules that would provide for and govern the trading of Commodity Trust Shares. A Commodity Trust Share is defined as

> A security that: (a) Is issued by a trust ("Trust") which (i) is a commodity pool that is managed by a commodity pool operator registered as such with the Commodity Futures Trading Commission, and (ii) which holds positions in futures contracts on a specified commodity index, or interests in a commodity pool which, in turn, holds such positions; (b) when aggregated in some specified minimum number may be surrendered to the Trust by the beneficial owner to receive positions in futures contracts on a specified index and cash or short term securities.

Proposed NYSE Rule 1300B(a). In addition, Proposed NYSE Rule 1301B sets forth guidelines for specialists in Commodity Trust Shares and other products whose price is based, in whole or in part, on: (a) The price of a commodity or commodities; (b) any futures contracts or other derivatives based on a commodity or commodities; or any indexed based on either (a) or (b), above.

Pursuant to Proposed NYSE Rule 1300B, *et seq.*, the Exchange proposes to list and trade Shares, which fall within the definition of Commodity Trust Shares (as mentioned above) and are linked to the performance of the GSCI Total Return Index ("Index" or "GSCI–TR").

Description of the Shares

The Shares will constitute units of beneficial interest representing fractional undivided beneficial interests in the net assets of the Trust (described below). The performance of the Shares is designed to correspond generally to the performance of the Index before payment of the Trust's and the Investing Pool's expenses and liabilities. The investment objective of the Trust is for the performance of the Shares to correspond to the performance of the Index before payment of the Trust's and Investing Pool's expenses and liabilities. As discussed below, the value of the Index reflects the value of an investment in the Goldman Sachs Commodity Index ("GSCI"), a production-weighted index of the prices of a diversified group of futures contracts on physical commodities, together with a Treasury bill rate of interest that could be earned on funds committed to the trading of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 53659 (April 17, 2006), 71 FR 21074 ("Notice").

[4] In Amendment No. 2, the Exchange states that: (1) The Sponsor (defined below) has informed the Exchange that the Trustee (also defined below) for the Trust will make the net asset value ("NAV") for the Trust available to all market participants at the same time; (2) if the NAV is not disseminated to all market participants at the same time, the Exchange will halt trading in the Shares; and (3) if the NAV is not disseminated to all market participants at the same time, the Exchange will immediately contact the Commission staff to discuss measures that may be appropriate under the circumstances.

[5] *See* letter from Kevin Rich, Director and Chief Executive Officer, DB Commodity Services LLC ("DB"), to Nancy M. Morris, Secretary, Commission, dated March 17, 2006 ("Rich Letter"). That letter is available for review on the Commission's Web site at: *http://www.sec.gov/comments/sr-nyse-2006-17/srnyse200617-1.pdf.*

[6] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy M. Morris, Secretary, Commission, dated May 12, 2006 ("Yeager Letter"). That letter also is available for review on the Commission's Web site at: *http://www.sec.gov/comments/sr-nyse-2006-17/myeager051206.pdf.*

underlying futures contracts of the GSCI.

Substantially all of the assets of the Trust consist of its holdings of the limited liability company interests ("Investing Pool Interests") of iShares® GSCI Commodity-Indexed Investing Pool LLC ("Investing Pool").[7] In turn, the Investing Pool holds long positions in futures contracts on the GSCI Excess Return Index ("CERFs"), which are listed on the Chicago Mercantile Exchange ("CME").

The Investing Pool will hold long positions in CERFs, which are cash-settled futures contracts listed on the CME that have a term of approximately five years after listing and whose settlement at expiration is based on the value of the GSCI Excess Return Index ("GSCI–ER") at that time. The Investing Pool will also hold cash or Short-Term Securities[8] to post as margin to collateralize the Investing Pool's CERF positions.[9] The Investing Pool will earn interest on the assets used to collateralize its holdings of CERFs.

Each CERF is a contract that provides for cash settlement, at expiration, based upon the final settlement value of the GSCI–ER at the expiration of the contract multiplied by a fixed dollar multiplier. The final settlement value is determined for this purpose. Accordingly, a position in CERFs provides the holder with the positive or negative return on the GSCI–ER during the period in which the position is held. On a daily basis, most market participants with positions in CERFs are obligated to pay, or entitled to receive, cash (known as "variation margin") in an amount equal to the change in the daily settlement level of the CERF from the preceding trading day's settlement level (or, initially, the contract price at which the position was entered into). Specifically, if the daily settlement price of the contract increases over the previous day's price, the seller of the contract must pay the difference to the buyer, and if the daily settlement price is less than the previous day's price, the buyer of the contract must pay the difference to the seller. Trading of CERFs commenced on the CME Globex electronic trading platform effective March 12, 2006, for trade date March 13, 2006. CERFs are listed and traded separately from the GSCI futures contracts and options on futures contracts.

Management of the Trust and Investing Pool

Both the Trust and the Investing Pool are commodity pools managed by the Sponsor. The Sponsor is registered as a commodity pool operator with the Commodity Futures Trading Commission ("CFTC"),[10] and its primary business function is to act as Sponsor and commodity pool operator of the Trust and manager of the Investing Pool ("Manager"). As Manager, the Sponsor will serve as commodity pool operator of the Investing Pool and be responsible for its administration. The Manager will arrange for and pay the costs of organizing the Investing Pool. The Manager has delegated some of its responsibilities for administering the Investing Pool to the Administrator, Investors Bank & Trust Company, which in turn, has employed the Investing Pool Administrator and the Tax Administrator (Pricewaterhouse Coopers) to maintain various records on behalf of the Investing Pool.

The advisor to the Investing Pool ("Advisor") is Barclays Global Fund Advisors, a California corporation and an indirect subsidiary of Barclays Bank PLC. The Advisor will invest all of the Investing Pool's assets in long positions in CERFs and post margin in the form of cash or Short-Term Securities to collateralize the CERF positions (as discussed below). Any cash that the Investing Pool accepts as consideration from the Trust for Investing Pool Interests will be used to purchase additional CERFs, in an amount that the Advisor determines will enable the Investing Pool to achieve investment results that correspond with the Index, and to collateralize the CERFs. The Advisor will not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in value of any of the commodities represented by the GSCI or the positions or other assets held by the Investing Pool.

The trustee of the Trust ("Trustee") is Barclays Global Investors, N.A., a national banking association affiliated with the Sponsor. The Trustee is responsible for the day-to-day administration of the Trust. Day-to-day administration includes: (i) Processing orders for the creation and redemption of Baskets (as described below); (ii) coordinating with the Manager of the Investing Pool the receipt and delivery of consideration transferred to, or by, the Trust in connection with each issuance and redemption of Baskets; and (iii) calculating the net asset value of the Trust on each Business Day.[11] The Trustee has delegated these responsibilities to the Trust Administrator, Investors Bank & Trust Company, a banking corporation that is not affiliated with the Sponsor or the Trustee.

The Exchange states that neither the Trust nor the Investing Pool will engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the value of CERFs or securities posted as margin.

Related Indices

The GSCI, the GSCI–ER, and the Index are administered, calculated, and published by Goldman, Sachs & Co. ("Index Sponsor"),[12] a subsidiary of The Goldman Sachs Group Inc. The Index Sponsor is a broker-dealer.[13] The index values for the three indexes, the Index, the GSCI, and the GSCI–ER, are updated and disseminated at least every 15 seconds by one or more major market data vendors during the time the Shares trade on the Exchange.[14] The settlement prices for the three indexes are also widely disseminated by one or more major market data vendors.

a. GSCI Index

The GSCI, upon which the Index is based, is a proprietary index on a production-weighted basket of principal physical commodities that satisfy specified criteria. The GSCI reflects the level of commodity prices at a given time and is designed to be a measure of the performance over time of the markets for these commodities. The Exchange states that the commodities represented in the GSCI are those

[7] Investing Pool Interests are the only securities in which the Trust may invest.

[8] "Short-Term Securities" means U.S. Treasury Securities or other short-term securities and similar securities, in each case that are eligible as margin deposits under the rules of the CME.

[9] The Investing Pool will satisfy the 100% margin requirement by depositing with the Clearing FCM cash or Short-Term Securities with a value equal to 100% of the value of each long position in CERFs. As a result of these arrangements, the Investing Pool will be subject to substantially greater initial margin requirements than other market participants buying a CERF, but it will not be required to pay any additional amounts to its FCM as variation margin if the value of the CERFs declines.

[10] Neither the Trust nor the Investing Pool is an investment company registered under the Investment Company Act of 1940.

[11] The Trust Registration Statement defines "Business Day" as any day (1) on which none of the following occurs: (a) The NYSE is closed for regular trading, (b) the CME is closed for regular trading, or (c) the Federal Reserve transfer system is closed for cash wire transfers, or (2) the Trustee determines that it is able to conduct business.

[12] *See* telephone conversation between Michael Cavalier, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Commission, on April 13, 2006 ("April 13 Telephone Conversation").

[13] *Id.*

[14] *See* telephone conversation between Michael Cavalier, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Commission, on June 1, 2006 (" June 1 Telephone Conversation").

physical commodities on which active and liquid contracts are traded on trading facilities in major industrialized countries. The commodities included in the GSCI are weighted, on a production basis, to reflect the relative significance (in the view of the Index Sponsor, in consultation with its Policy Committee described below) of those commodities to the world economy. The fluctuations in the level of the GSCI are intended generally to correlate with changes in the prices of those physical commodities in global markets.

The contracts to be included in the GSCI® must satisfy several sets of eligibility criteria established by the Index Sponsor.[15] First, the Index Sponsor identifies those contracts that meet the general criteria for eligibility. Second, the contract volume and weight requirements are applied and the number of contracts is determined, which serves to reduce the list of eligible contracts. At that point, the list of designated contracts for the relevant period is complete.

The value of the GSCI® on any given day is equal to the total dollar weight of the GSCI® divided by a normalizing constant that assures the continuity of the GSCI® over time. The total dollar weight of the GSCI® is the sum of the dollar weight of each index component. The dollar weight of each such index component on any given day is equal to:

- The daily contract reference price,
- Multiplied by the appropriate contract production weights ("CPWs"), and
- During a roll period, the appropriate "roll weights" (discussed below).[16]

These factors, along with the contract daily return for each Index component, are described in more detail in the Notice. Additionally, this information is publicly available each business day on the Index Sponsor's Web site at *http://www.gs.com/gsci*[17] and the relevant futures exchanges, and/or from major market data vendors. However, if the volume of trading in the relevant contract, as a multiple of the production levels of the commodity, is below specified thresholds, the CPW of the contract is reduced until the threshold is satisfied. This is designed to ensure that trading in each contract is sufficiently liquid relative to the production of the commodity.

The composition of the GSCI® is reviewed on a monthly basis by the Index Sponsor and, if the multiple of any contract is below the prescribed threshold, the composition of the GSCI is reevaluated, based on the criteria and weighting procedures.[18] This procedure is undertaken to allow the GSCI® to shift from contracts that have lost substantial liquidity into more liquid contracts during the course of a given year.[19] As a result, it is possible that the composition or weighting of the GSCI® will change on one or more of these monthly Valuation Dates. In addition, regardless of whether any changes have occurred during the year, the Index Sponsor reevaluates the composition of the GSCI® at the conclusion of each year, based on the above criteria. Other commodities that satisfy such criteria, if any, will be added to the GSCI®. Commodities included in the GSCI® which no longer satisfy such criteria, if any, will be deleted.

The Index Sponsor has established a Policy Committee to assist it with the operation of the GSCI®.[20] The principal purpose of the Policy Committee is to advise the Index Sponsor with respect to, among other things, the calculation of the GSCI®, the effectiveness of the GSCI® as a measure of commodity futures market performance, and the need for changes in the composition or the methodology of the GSCI®. The Policy Committee acts solely in an advisory and consultative capacity. All decisions with respect to the composition, calculation and operation of the GSCI® and the Index are made by the Index Sponsor.[21]

b. The GSCI–TR Index

The Index, to which the performance of the Shares is linked, was established in May of 1991. The GSCI–TR reflects the return of the GSCI–ER, together with the return on specified U.S. Treasury securities that are deemed to have been held to collateralize a hypothetical long position in the futures contracts comprising the GSCI.[22]

c. The GSCI–ER

The GSCI–ER, to which the performance of the CERFs held by the Investing Pool is linked, was also established in May of 1991. The GSCI–ER is calculated based on the same commodities included in the GSCI, and it reflects the returns that are potentially available through a rolling[23]

[15] *See* GSCI® Manual at *http://www.gs.com/gsci*. Goldman, Sachs & Co. is the Index Sponsor for both the Index and the GSCI®. *See* April 13 Telephone Conversation.

[16] If the price is not made available or corrected by 4 p.m. New York time, the Index Sponsor, if it deems such action to be appropriate under the circumstances, will determine the appropriate daily contract reference price for the applicable futures contract in its reasonable judgment for purposes of the relevant GSCI® calculation. If such actions by the Index Sponsor are implemented on more than a temporary basis, the Exchange will contact the Commission staff and, as necessary, file a proposed rule change pursuant to Rule 19b–4, seeking Commission approval to continue to trade the Shares. Unless approved for continued trading, the Exchange would commence delisting proceedings. *See* "Continued Listing Criteria," *infra*; telephone conversation between Florence E. Harmon, Senior Special Counsel, Commission; John Carey, Assistant General Counsel, Exchange; and Michael Cavalier, Assistant General Counsel, Exchange, on April 10, 2006 ("April 10 Telephone Conversation").

[17] The CPWs are available in the GSCI® manual on the GSCI® Web site (*http://www.gs.com/gsci*) and are published on Reuters. The roll weights are not published but can be determined from the rules in the GSCI Manual. *See* telephone conversation between Florence E. Harmon, Senior Special Counsel, Commission, and John Carey, Assistant General Counsel, Exchange, on May 18, 2006 ("May 18 Telephone Conversation").

[18] The Index Sponsor, Goldman, Sachs & Co. ("Goldman Sachs"), which calculates and maintains the GSCI® and the Index, is a broker-dealer. Therefore, appropriate firewalls must exist around the personnel who have access to information concerning changes and adjustment to an index and the trading personnel of the broker-dealer. Accordingly, the Exchange states that the Index Sponsor has represented that it: (i) Has implemented and maintained procedures reasonably designed to prevent the use and dissemination by personnel of the Index Sponsor, in violation of applicable laws, rules and regulations, of material non-public information relating to changes in the composition or method of computation or calculation of the Index; and (ii) periodically checks the application of such procedures as they relate to such personnel of the Index Sponsor directly responsible for such changes. In addition, the Policy Committee members are subject to written policies with respect to material, non-public information. *See* telephone conversation between Florence E. Harmon, Senior Special Counsel, Commission; John Carey, Assistant General Counsel, Exchange; and Michael Cavalier, Assistant General Counsel, Exchange, on April 14, 2006 ("April 14 Telephone Conversation II") and May 18 Telephone Conversation.

[19] *See also* "Contract Expirations" in Notice, *supra*, note 3.

[20] The component selections for the GSCI® would obviously affect the Index. *See* telephone conversation between Florence E. Harmon, Senior Special Counsel, Commission, and Michael Cavalier, Assistant General Counsel, Exchange, on April 12, 2006 ("April 12 Telephone Conversation").

[21] The Exchange states that the Index Sponsor has represented that the Policy Committee members are subject to written policies with respect to material, non-public information. *See* telephone conversation between Florence E. Harmon, Senior Special Counsel, Commission, and Michael Cavalier, Assistant General Counsel, Exchange, on May 15, 2006 ("May 15 Telephone Conversation").

[22] The Exchange states that it recently listed and is trading another derivative product, the Barclays iPath Exchange-Traded Notes, whose return is based on the GSCI–TR. *See* Securities Exchange Act Release No. 53849 (May 22, 2006), 71 FR 30706 (May, 30, 2006) (SR–NYSE–2006–20). The description of the GSCI–TR in regards to that product is comparable as that herein because it states that the GSCI–TR reflects the "excess returns" that are potentially available through an unleveraged investment in the contracts comprising the GSCI, which is in effect the GSCI–ER. *See* telephone conversation between Florence E. Harmon, Senior Special Counsel, Commission, and Michael Cavalier, Assistant General Counsel, Exchange, on June 14, 2006 ("June 14 Telephone Conversation").

[23] Futures contracts have scheduled expirations, or delivery months. As one contract nears

uncollaterized investment in the contracts comprising the GSCI.[24]

d. Calculation of Related Indexes

The Index Sponsor makes the official calculations of the GSCI®, the GSCI–TR, and the GSCI–ER (collectively, "Related Indexes"). While the intraday and closing values of the Related Indexes are calculated by Goldman Sachs, a broker-dealer, a number of factors provide for the independent verification of these intraday and closing values.[25] The calculation methodology is public and transparent, and the factors included in the Index calculation, such as the CPWs, are available in the GSCI Manual found on GSCI's Web site at *http://www.gs.com/gsci* and are published on Reuters; the roll weights are not published but can be determined from the rules in the GSCI Manual.[26] This calculation is performed continuously and is reported on Reuters page GSCI® and will be updated on Reuters at least every 15 seconds during business hours on each day on which the offices of the Index Sponsor in New York City are open for business (a "GSCI Business Day").[27] The settlement price for the Index is also reported on Reuters page GSCI® on each GSCI Business Day between 4 p.m. and 6 p.m., New York time. The intraday and settlement prices for the Index and GSCI–ER are also reported on Bloomberg page GSCIER (index).

In the event that the Exchange is open for business on a day that is not a GSCI Business Day, the Exchange will not permit trading of the Shares on that day.[28]

Margin and Its Impact on Return

The Investing Pool will deposit margin with a value equal to 100% of the value of each CERF position at the time it is established. Interest paid on the collateral deposited as margin, net of expenses, will be reinvested by the Investing Pool or, at the Trustee's discretion, may be distributed from time to time to the Shareholders. The Investing Pool's profit or loss on its CERF positions should correlate with increases and decreases in the value of the GSCI–ER, although this correlation will not be exact.

The Exchange states that differences between the returns of the Investing Pool and the Index may be based on, among other factors, any differences between the return on the assets used by the Investing Pool to collateralize its CERF positions and the U.S. Treasury rate used to calculate the return component of the Index, timing differences, differences between the weighting of the Investing Pool's proportion of assets invested in CERFs versus the Index, and the payment of expenses and liabilities by the Investing Pool. The Trust's net asset value will reflect the performance of the Investing Pool, its sole investment.

Valuation of CERFs; Computation of Trust's Net Asset Value

On each Business Day on which the NYSE is open for regular trading, as soon as practicable after the close of regular trading of the Shares on the NYSE (normally, 4:15 p.m., New York time), the Trustee will determine the NAV of the Trust and per share as of that time.

The Trustee will value the Trust's assets based upon the determination by the Manager, which may act through the Investing Pool Administrator, of the NAV of the Investing Pool. The Manager will determine the NAV of the Investing Pool as of the same time that the Trustee determines the NAV of the Trust.

The Manager will value the Investing Pool's long position in CERFs on the basis of that day's announced CME settlement price for the CERF. The value of the Investing Pool's CERF position (including any related margin) will equal the product of: (i) The number of CERF contracts owned by the Investing Pool and (ii) the settlement price on the date of calculation. If there is no announced CME settlement price for the CERF on a Business Day, the Manager will use the most recently announced CME settlement price unless the Manager determines that that price is inappropriate as a basis for evaluation. The daily settlement price for the CERF is established by the CME shortly after the close of trading in Chicago at 2:40 p.m. New York time on each trading day.[29]

Once the value of the CERFs and interest earned on any assets posted as margin and any other assets of the Investing Pool has been determined, the Manager will subtract all accrued expenses and liabilities of the Investing Pool as of the time of calculation in order to calculate the net asset value of the Investing Pool. The Manager, or the Investing Pool Administrator on its behalf, will then calculate the value of the Trust's Investing Pool Interest and provide this information to the Trustee.

Once the value of the Trust's Investing Pool Interests have been determined and provided to the Trustee, the Trustee will subtract all accrued expenses and other liabilities of the Trust from the total value of the assets of the Trust, in each case as of the calculation time. The resulting amount is the NAV of the Trust. The Trustee will determine the NAV per Share by dividing the NAV of the Trust by the

expiration it becomes necessary to close out the position in that delivery month and establish a position in the next available delivery month. This process is referred to as "rolling" the position forward.

[24] In the event the Trust utilizes any index that is a successor to or similar to the GSCI–ER or the GSCI–TR, the Exchange will file a proposed rule change pursuant to Rule 19b–4 under the Act. Such filing would address, among other things, the characteristics of the successor or substitute index and the Exchange's surveillance procedures applicable to such index. Unless approved for continued trading, the Exchange would commence delisting proceedings. *See* "Continued Listing Criteria," *infra*. Telephone conversation between Michael Cavalier, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Commission, on April 10, 2006 ("April 10 Telephone Conference").

The Exchange will also file a proposed rule change pursuant to Rule 19b–4 if GSCI substantially changes either the Index component selection methodology or the weighting methodology. In addition, the Exchange will file a proposed rule change pursuant to Rule 19b–4 whenever GSCI adds a new component to the Index using pricing information from a market with which the Exchange does not have a previously existing information sharing agreement or switches to using pricing information from such a market with respect to an existing component when such component constitutes more than 10% of the weight of the Index. Unless approved for continued trading, the Exchange would commence delisting proceedings. *See* "Continued Listing Criteria," *infra*. April 10 Telephone Conference.

[25] The Index Sponsor calculates the level of the Related Indexes intraday and at the end of the day. The intraday calculation is based on feeds of real-time data relating to the underlying commodities and updates intermittently approximately every 15 seconds. In the GSCI market, trades are quoted or settled against the end-of-day value, not against the value at any other particular time of the day. With respect to the end-of-day closing level of the index, the Index Sponsor uses independent feeds from at least two vendors for each of the underlying commodities in the index to verify closing prices and limit moves. A number of commodities market participants independently verify the correctness of the disseminated intraday Index value and closing Index value. Additionally, the closing Index values are audited by a major independent accounting firm. *See* May 18 Telephone Conference.

[26] *See id.*

[27] Thus, this intraday index value of the Index (and the GSCI® and GSCI–ER) will be updated and disseminated at least every 15 seconds by a major market data vendor during the time the Shares trade on the Exchange. April 13 Telephone Conference. The intraday information with respect to the Index (and GSCI® and GSCI–ER) reported on Reuters is derived solely from trading prices on the principal trading markets for the various Index components. For example, the Index currently includes contracts traded on ICE Futures and the LME, both of which are located in London and consequently have trading days that end several hours before those of the U.S.-based markets on which the rest of the Index components are traded. During the portion of the New York trading day when ICE Futures and LME are closed, the last reported prices for Index Components traded on ICE Futures or LME are used to calculate the intraday Index information disseminated on Reuters.

[28] *See* "Calculation of the Index," *infra*.

[29] *See* April 10 Telephone Conference.

number of Shares outstanding at the time the calculation is made.

The NAV for each Business Day on which the NYSE is open for regular trading will be distributed through major market data vendors and will be published online at *http://www.iShares.com*, or any successor thereto. The Trust will update the NAV as soon as practicable after each subsequent NAV is calculated. The Trust will disseminate the NAV per Share to all market participants at the same time.

Creation and Redemption Process

Creation and redemption of interests in the Trust, and the corresponding creation and redemption of interests in the Investing Pool, will generally be effected through transactions in "exchanges of futures for physicals," or "EFPs." EFPs involve contemporaneous transactions in futures contracts and the underlying cash commodity or a closely related commodity. In a typical EFP, the buyer of the futures contract sells the underlying commodity to the seller of the futures contract in exchange for a cash payment reflecting the value of the commodity and the relationship between the price of the commodity and the related futures contract. According to the Registration Statement, in the context of CERFs, CME rules permit the execution of EFPs consisting of simultaneous purchases (sales) of CERFs and sales (purchases) of Shares. This mechanism will generally be used by the Trust in connection with the creation and redemption of Baskets. Specifically, it is anticipated that an "Authorized Participant" (defined below) requesting the creation of additional Baskets typically will transfer CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) to the Trust in return for Shares.

The Trust will simultaneously contribute to the Investing Pool the CERFs (and any cash or securities) received from the Authorized Participant in return for an increase in its Investing Pool Interests. If an EFP is executed in connection with the redemption of one or more Baskets, an Authorized Participant will transfer to the Trust the Basket of Shares being redeemed, and the Trust will transfer to the Authorized Participant CERFs, cash, or Short-Term Securities. In order to obtain the CERFs, cash or Short-Term Securities to be transferred to the Authorized Participant, the Trust will redeem an equivalent portion of its interest in the Investing Pool Interests.

The Trust will offer and redeem Shares on a continuous basis on each business day, but only in Baskets consisting of 50,000 Shares. Baskets will be typically issued only in exchange for an amount of CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) equal to the Basket Amount for the Business Day on which the creation order was received by the Trustee. Similarly, Baskets will be redeemed only in exchange for an amount of CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) equal to the Basket Amount on the Business Day the redemption request is received by the Trustee. The Basket Amount for a Business Day will have a per Share value equal to the NAV as of such day. However, creation and redemption orders received by the Trustee after 2:40 p.m., New York time, will be treated as received on the next following Business Day. The Trustee will notify the Authorized Participants of the Basket Amount on each Business Day prior to the opening of the Exchange. Additional information about the creation and redemption process is set forth in the Notice.

Dissemination of Information Relating to the Shares, Trust Holdings, and Related Indices

The Web site for the Trust (*http://www.iShares.com*), which will be publicly accessible at no charge, will contain the following information: (i) The prior Business Day's NAV and the reported closing price; (ii) the mid-point of the bid-ask price in relation to the NAV as of the time the NAV is calculated (the "Bid-Ask Price"); (iii) calculation of the premium or discount of such price against such NAV; (iv) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (v) the prospectus; (vi) the holdings of the Trust, including CERFs, cash and Treasury securities; (vii) the Basket Amount; and (viii) other applicable quantitative information. The Exchange on its Web site at *http://www.nyse.com* will include a hyperlink to the Trust's Web site at *http://www.iShares.com*.

As described above, the NAV for the Trust [30] will be calculated and disseminated daily.[31] The NYSE also intends to disseminate, during NYSE trading hours for the Trust on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Value (as discussed below), recent NAV, and Shares outstanding. The Exchange will also make available on *http://www.nyse.com* daily trading volume, closing prices, and the NAV.

Real-time information is available about the Trust's holdings in the Investing Pool. Various data vendors and news publications publish futures prices and data. Futures quotes and last sale information for the commodities underlying the Index and the CERFs are widely disseminated through a variety of major market data vendors worldwide, including Bloomberg and Reuters. In addition, complete real-time data for such futures, including the CERFs, is available by subscription from Reuters and Bloomberg. The futures exchanges on which the underlying commodities and CERFs trade also provide delayed futures information on current and past trading sessions and market news generally free of charge on their respective Web sites. The specific contract specifications for the futures contracts are also available from the futures exchanges on their Web sites, as well as other financial informational sources.

As stated above, a major market data vendor will disseminate at least every 15 seconds (during the time that the Shares trade on the Exchange) updated index values for the GSCI, the Index, and the GSCI–ER.[32] Daily settlement values for the GSCI, the Index, and the GSCI–ER are also widely disseminated.[33]

Indicative Value

In order to provide updated information relating to the Trust for use by investors, professionals, and other persons, the Exchange will disseminate through the facilities of Consolidated Tape Association ("CTA") an updated Indicative Value on a per Share basis as calculated by Bloomberg. The Indicative Value will be disseminated at least every 15 seconds from 9:30 a.m. to 4:15 p.m. New York time. The Indicative

[30] *See* telephone conversation between Florence E. Harmon, Senior Special Counsel, Commission, and Michael Cavalier, Assistant General Counsel, Exchange, on June 15, 2006 ("June 15 Telephone Conversation") (authorizing change from "Fund" to "Trust").

[31] In Amendment No. 2, the Exchange states that the NAV will be distributed to all market participants at the same time.

[32] *See* June 1 Telephone Conversation. The value of a Share may accordingly be influenced by non-concurrent trading hours between the NYSE and the various futures exchanges on which the futures contracts based on the Index commodities are traded. While the Shares will trade on the NYSE from 9:30 a.m. to 4:15 p.m. New York time, the Notice lists the trading hours for each of the Index commodities underlying the futures contracts.

[33] *See* April 13 Telephone Conference.

Value will be calculated based on the cash and collateral in a Basket Amount divided by 50,000, adjusted to reflect the market value of the investments held by the Investing Pool, *i.e.*, CERFs.[34] The Indicative Value will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and the close of trading on the NYSE at 4:15 p.m. New York time.

When the market for futures trading for each of the Index commodities is open, the Indicative Value can be expected to closely approximate the value per Share of the Basket Amount. However, during NYSE trading hours when the futures contracts have ceased trading, spreads and resulting premiums or discounts may widen, and, therefore, increase the difference between the price of the Shares and the NAV of the Shares. Indicative Value on a per Share basis disseminated during NYSE trading hours should not be viewed as a real time update of the NAV, which is calculated only once a day. The Exchange believes that dissemination of the Indicative Value provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with the Shares trading on the Exchange or creation or redemption of the Shares.

Continued Listing Criteria

Under the applicable continued listing criteria, the Shares may be delisted as follows: (i) Following the initial twelve-month period beginning upon the commencement of trading of the Shares, there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days; (ii) the value of the Index ceases to be calculated or available on at least a 15-second basis from a source unaffiliated with the Sponsor, the Trust or the Trustee; (iii) the Indicative Value ceases to be available on at least a 15-second delayed basis; (iv) the NAV of the Shares is not distributed to all market participants at the same time; [35] or (v) such other event shall occur or condition exist that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. In addition, the Exchange will remove Shares from listing and trading upon termination of the Trust.

Additionally, the Exchange will file a proposed rule change pursuant to Rule 19b–4 under the Act,[36] seeking approval to continue trading the Shares and unless approved, the Exchange will commence delisting the Shares if:

- The Index Sponsor substantially changes either the Index component selection methodology or the weighting methodology;
- If a new component is added to the Index (or pricing information is used for a new or existing component) that constitutes more than 10% of the weight of the Index with whose principal trading market the Exchange does not have a comprehensive surveillance sharing agreement; [37] or
- If a successor or substitute index is used in connection with the Shares. The filing will address, among other things the listing and trading characteristics of the successor or substitute index and the Exchange's surveillance procedures applicable thereto.

Similarly, the Manager of the Investing Pool will utilize the most recent CERF settlement price to calculate NAV, unless "extraordinary circumstances" arise, which unless temporary in nature, would require Commission approval of an Exchange proposed rule change pursuant to Rule 19b–4.[38]

Exchange Trading Rules and Policies

The Exchange states that the Shares are subject to all applicable equity trading rules. The Shares will trade between the hours of 9:30 a.m. and 4:15 p.m. ET and will be subject to the equity margin rules of the Exchange.[39] A minimum of three Baskets, representing 150,000 Shares will be outstanding at the commencement of trading on the Exchange. The original listing fee applicable to the Shares will be $5,000. The annual continued listing fee for the Shares will be $2,000. The Exchange states that the Trust is exempt from corporate governance requirements in Section 303A of the NYSE Listed Company Manual, including the Exchange's audit committee requirements in Section 303A.06.[40]

The Exchange is adopting new NYSE Rule 1300B ("Commodity Trust Shares") to deal with issues related to the trading of the Shares. Specifically, for purposes of NYSE Rules 13 ("Definitions of Orders"), 36.30 ("Communications Between Exchange and Members' Offices"), 98 ("Restrictions on Approved Person Associated with a Specialist's Member Organization), 104 ("Dealings by Specialists"), 105(m) ("Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Rule 105"), 460.10 ("Specialists Participating in Contests"), 1002 ("Availability of Automatic Feature"), and 1005 ("Order May Not Be Broken Into Smaller Accounts"), the Shares will be treated similar to Investment Company Units.

When these Rules discuss Investment Company Units, references to the word index (or derivative or similar words) will be deemed to be references to the applicable commodity or commodity index price and reference to the word security (or derivative or similar words) will be deemed to be references to the Commodity Index Trust Shares.

The Exchange does not currently intend to exempt Commodity Trust Shares from the Exchange's "Market-on-Close/Limit-on-Close/Pre-Opening Price Indications" Policy, although the Exchange may do so by means of a rule change in the future if, after having experience with the trading of the Shares, the Exchange believes such an exemption is appropriate.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include (1) the extent to which trading is not occurring in the underlying commodities or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares is subject to trading halts caused by extraordinary market volatility pursuant to Exchange's "circuit breaker" rule.[41] The Exchange will halt trading in the Shares if the value of the Index is no longer calculated or available on at least a 15-second basis through one or more major market data vendors during the time the Shares trade on the NYSE, if the Indicative Value per Share updated at least every 15 seconds is no longer calculated or available, or if the NAV

[34] *See* telephone conservation between Michael Cavalier, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Commission, on April 5, 2006 (authorizing clarification of sentence).

[35] In the event that the Index value, the Indicative Value, or simultaneous distribution of the NAV is not available, the Exchange will immediately contact the Commission to discuss measures that may be appropriate.

[36] 17 CFR 240.19b–4.

[37] *See* April 10 Telephone Conference.

[38] *See* June 15 Telephone Conservation.

[39] *See* June 1 Telephone Conference (exchange citing NYSE Rule 431).

[40] *See* Rule 10A–3(c)(7), 17 CFR 240.10A–3(c)(7).

[41] NYSE Rule 80B.

per Share is not available to all market participants at the same time.[42]

Specialists' Trading Obligations

As a result of application of proposed NYSE Rule 1300B(b), the specialist in a relevant security,[43] the specialist's member organization and other specified persons will be prohibited under paragraph (m) of NYSE Rule 105 Guidelines from acting as market maker or functioning in any capacity involving market-making responsibilities in the physical commodities included in, or options, futures or options on futures on, the index underlying the relevant security, or any other derivatives (collectively, "derivative instruments") based on such index. A specialist entitled to an exemption under NYSE Rule 98 from paragraph (m) of NYSE Rule 105 Guidelines could act in a market making capacity in physical commodities included in, or derivative instruments based on such index, other than as a specialist in the same security in another market center.

Under NYSE Rule 1301B(a), the member organization acting as specialist in the relevant security: (i) Will be obligated to conduct all trading in the specialty security in its specialist account, (subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange); (ii) will be required to file with the Exchange and keep current a list identifying all accounts for trading in the physical commodities included in, or derivative instruments based on the relevant index, which the member organization acting as specialist may have or over which it may exercise investment discretion; and (iii) will be prohibited from trading in physical commodities included in, or derivative instruments based on the relevant index, in an account in which a member organization acting as specialist, controls trading activities which have not been reported to the Exchange as required by proposed NYSE Rule 1301B.

Under Rule 1301B(b), the member organization acting as specialist in a relevant security will be required to make available to the Exchange such books, records or other information pertaining to transactions by the member organization and other specified persons for its or their own accounts in derivative instruments on an index underlying such security or any commodity included in such index, as may be requested by the Exchange. This requirement is in addition to existing obligations under Exchange rules regarding the production of books and records.

Under proposed NYSE Rule 1301B(c), in connection with trading derivative instruments based on an index underlying a relevant security in which the member organization acts as specialist, the specialist could not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in derivative instruments based on the underlying index or in any commodity included in such index.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares. The Exchange will rely upon existing NYSE surveillance procedures governing equities with respect to surveillance of the Shares. The Exchange believes that these procedures are adequate to monitor Exchange trading of the Shares, to detect violations of Exchange rules, consequently deterring manipulation. In this regard, the Exchange currently has the authority under NYSE Rules 476 and 1301B to request the Exchange specialist in the Shares to provide NYSE Regulation with information that the specialist uses in connection with pricing the Shares on the Exchange, including specialist proprietary or other information regarding securities, commodities, futures, options on futures or other derivative instruments. The Exchange believes it also has authority to request any other information from its members—including floor brokers, specialists and "upstairs" firms—to fulfill its regulatory obligations.[44]

With regard to the Index components, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the New York Mercantile Exchange ("NYMEX"), the Kansas City Board of Trade, ICE Futures, and the LME, pursuant to its comprehensive information sharing agreements with each of those exchanges. All of the other trading venues on which current Index components and CERFs are traded are members of the Intermarket Surveillance Group ("ISG"), and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange. All these surveillance arrangements constitute comprehensive surveillance sharing arrangements.

Due Diligence

Before a member, member organization, allied member or employee thereof recommends a transaction in the Shares, such person must exercise due diligence to learn the essential facts relative to the customer pursuant to NYSE Rule 405, and must determine that the recommendation complies with all other applicable Exchange and Federal rules and regulations. A person making such recommendation should have a reasonable basis for believing, at the time of making the recommendation, that the customer has sufficient knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction.

Information Memorandum

The Exchange will distribute an Information Memorandum to its members in connection with the trading in the Shares. The Information Memorandum will discuss the special characteristics and risks of trading this type of security. Specifically, the Information Memorandum, among other things, will discuss what the Shares are, that Shares are not individually redeemable but are redeemable only in Baskets of 50,000 shares or multiples thereof, how a Basket is created and redeemed, applicable Exchange rules,

[42] In such events, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

[43] New Supplementary Material .10 to proposed NYSE Rule 1301B would apply the provisions of proposed Rule 1300B(b) and Rule 1301B to certain securities listed on the Exchange pursuant to Section 703.19 ("Other Securities") of the NYSE Listed Company Manual. Examples of the securities to which Supplementary Material .10 will apply are the subjects of the following File Nos.: (i) SR–NYSE–2006–16 (proposal to list and trade Index-Linked Securities of Barclays Bank PLC linked to the performance of the Dow Jones-AIG Commodity Index Total Return™); (ii) SR–NYSE–2006–19 (proposal to list and trade Index-Linked Securities of Barclays Bank PLC linked to the performance of the Goldman Sachs Crude Oil Total Return Index™); and (iii) File No. SR–NYSE–2006–20 (proposal to list and trade Index-Linked Securities of Barclays Bank PLC linked to the performance of the GSCI Total Return Index™).

[44] As a general matter, the Exchange has regulatory jurisdiction over its member organizations and any person or entity controlling a member organization. The Exchange also has regulatory jurisdiction over a subsidiary or affiliate of a member organization that is in the securities business. A member organization subsidiary or affiliate that does business only in commodities would not be subject to NYSE jurisdiction, but the Exchange could obtain certain information regarding the activities of such subsidiary or affiliate through reciprocal agreements with regulatory organizations of which such subsidiary or affiliate is a member.

the Indicative Value, dissemination information, trading information and the applicability of suitability rules, and exemptive relief granted by the Commission from certain rules under the Act.[45] The Information Memorandum will also reference that the Trust is subject to various fees and expenses described in the Registration Statement. Finally, the Information Memorandum will also note to members language in the Registration Statement regarding prospectus delivery requirements for the Shares.[46] The Information Memorandum will also reference the fact that there is no regulated source of last sale information regarding physical commodities and that the Commission has no jurisdiction over the trading of physical commodities or the futures contracts on which the value of the shares is based.

II. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[47] In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6(b)(5) of the Act,[48] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission received one comment letter on the Exchange's proposed rule change, in which DB raised a number of concerns. DB argues that CERFs were created specifically for the Trust, have no other *bona fide* economic purpose, and therefore that the CERF market is illiquid and susceptible to manipulation.[49] In this regard, CERFs are futures contracts on the GSCI–ER, an index whose value is based on the prices of the commodities contracts that comprise the GSCI–ER. Manipulation of the CERFs market would drive the price of CERFs out-of-line with the price of the commodities contracts on which its value is based, providing a potential arbitrage opportunity.[50] Moreover, as the Exchange also states, it has comprehensive surveillance sharing arrangements with futures exchanges trading the contracts that comprise the GSCI–ER. The Exchange also states that the CME and the NYSE have surveillance procedures in place to monitor the trading of CERFs and Shares, respectively, and through their participation in the ISG can access relevant trading information from each other's market.

DB argues that no information is disclosed about the criteria the Manager would use to value the Investing Pool's long position in CERFs if it determines that the most recent CERF settlement price is an inappropriate basis for calculating NAV. According to DB, because the most recent CERF settlement price may not be a reliable measurement of value as a consequence of thin CERF trading, the Manager may exercise his discretion frequently. In response, the NYSE states that the Sponsor has told the Exchange that the alternate evaluation procedures would be applied only in "extraordinary circumstances," such as when commodities representing a substantial weighting of the GSCI are experiencing extreme volatility in the spot market, where trading in some or all of the futures contracts in the underlying GSCI commodities has been suspended, or when operational issues are causing the dissemination of inaccurate market information.[51] The Commission notes that the Exchange has committed to commence delisting of the Shares if the Index Sponsor and the Manager of the Investing Pool deviate from using the most recent CERF settlement price in calculating the Index and NAV, respectively, except in "extraordinary circumstances" on a temporary basis.

Further, DB stated that the proposed calculation of the Indicative Value of the Trust is flawed. This comment references language in the original proposal that has since been modified. As originally proposed, the Indicative Value was to be "calculated based on cash and collateral in a Basket Amount divided by 50,000, adjusted to reflect the market value *of the Index commodities* through investments held by the Investing Pool, *i.e.*, CERFs" (emphasis added). This ambiguous language has been clarified;[52] the Indicative Value will be calculated based on the cash and collateral in a Basket Amount divided by 50,000, adjusted to reflect the market value of the investments held by the Investing Pool, *i.e.*, CERFs.

A. Surveillance

The Commission finds that the proposed rules provide the NYSE with the tools necessary to adequately monitor trading in the Shares and are designed to prevent fraudulent and manipulative acts and practices.[53] Information sharing agreements with primary markets are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products. The Commission believes that the Exchange's comprehensive surveillance sharing agreements with the NYMEX, the Kansas City Board of Trade, ICE Futures, and the LME for the purpose of providing information in connection with trading of Commodity Trust Shares create the basis for the NYSE to monitor for fraudulent and manipulative trading practices. The Exchange represents that all of the other trading venues on which current Index components and CERFs are traded are members of the ISG, and the Exchange has access to all relevant trading information with respect to those contracts without any further action.

Moreover, NYSE Rules 476 and 1301B require Exchange specialists, upon the Exchange's request, to provide NYSE Regulation with information that the specialist uses in connection with pricing the Shares on the Exchange,

[45] The applicable rules are: Rule 10a–1; Rule 200(g) of Regulation SHO; Section 11(d)(1) and Rule 11d1–2; and Rules 101 and 102 of Regulation M under the Act.

[46] The Registration Statement provides:

Because new Shares can be created and issued on an ongoing basis, at any point during the life of the Trust, a "distribution", as such term is used in the Securities Act, will be occurring. Authorized Participants, other broker-dealers and other persons are cautioned that some of their activities may result in their being deemed participants in a distribution in a manner that would render them statutory underwriters and subject them to the prospectus-delivery and liability provisions of the Securities Act.

For example, an Authorized Participant, other broker-dealer firm or its client will be deemed a statutory underwriter if it purchases a Basket from the Trust, breaks the Basket down into the constituent Shares and sells the Shares to its customers; or if it chooses to couple the creation of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for the Shares. A determination of whether a particular market participant is an underwriter must take into account all the facts and circumstances pertaining to the activities of the broker-dealer or its client in the particular case, and the examples mentioned above should not be considered a complete description of all the activities that would lead to designation as an underwriter and subject them to the prospectus-delivery and liability provisions of the Securities Act.

[47] In approving this proposal, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[48] 15 U.S.C. 78s(b)(5).

[49] *See* Rich Letter, *supra* note 5, at 1–2.

[50] Information is available about the NAV of the Trust, the market value of the Shares, and pricing information about the value of the commodities contracts that underlie CERFs, which is reflected in the Index, the GSCI and the GSCI–ER.

[51] *See* Yeager Letter, *supra* at note 6, at 4.

[52] *See supra* at note 34.

[53] 15 U.S.C. 78f(b)(5).

including specialist proprietary or other information regarding securities, commodities, futures, options on futures, or other derivative instruments. Furthermore, the Exchange believes that it also has the authority to request any other information from its member—including floor brokers, specialists and "upstairs" firms—to fulfill its regulatory obligations.

B. Dissemination of Information

The Commission believes that sufficient venues exist for obtaining reliable information so that investors in the Shares can monitor the underlying Index relative to the Indicative Value of their Shares. There is a considerable amount of information about the Index and its components and the CERFs available through public Web sites and professional subscription services, including Reuters and Bloomberg. Real time information about the trading of the component futures contracts and the CERFs and their daily settlement prices are available from one or more major market data vendors. Delayed information is often available from futures exchanges trading the underlying Index components and the CERFs. The official calculation of the Index made by the Index Sponsor is performed continuously and is reported on Reuters page GSCI (or any successor or replacement page) and will be updated on Reuters at least 15 seconds during business hours during the time the Shares trade on the Exchange. The settlement price for the Index is reported on Reuters Page GSCI at the end of each GSCI Business Day and on Bloomberg page GSCIER (index). While the Index is calculated by a broker-dealer, a number of independent sources verify both the intraday and closing Index values.

C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Shares are consistent with the Act. The Shares will trade as equity securities subject to NYSE rules including, among others, rules governing equity margins, specialist responsibilities, account opening, and customer suitability requirements. The Commission believes that the listing and delisting criteria for the Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. Finally, the Commission notes that the Information Memorandum that the Exchange will distribute will inform members and member organizations about the terms, characteristics and risks in trading the Shares, including their prospectus delivery obligations.

D. Amendment No. 2

The changes proposed by Amendment No. 2 are designed to ensure that certain material information—*i.e.*, the NAV for the Trust—is made available to all market participants at the same time. The Commission believes that these proposed changes strengthen the proposed rule change and do not raise any new regulatory issues. Therefore, the Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the 30th day after the amendment is published for comment in the **Federal Register**.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 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–NYSE–2006–17 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–NYSE–2006–17. 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 Commissions 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–17 and should be submitted by July 17, 2006.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[54] that the proposed rule change (SR–NYSE–2006–17), as amended by Amendment No. 1, is hereby approved, and that Amendment No. 2 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[55]

Nancy M. Morris,

Secretary.

[FR Doc. E6–9985 Filed 6–23–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54012; File No. SR–NYSE–2006–05]

Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Order Approving Proposed Rule Change as Amended by Amendments No. 1 and 2 Amending an Interpretation of NYSE Rule 345 (Employees—Registration, Approval, Records)

June 16, 2006.

I. Introduction

On February 17, 2006, the New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC) ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposal to amend the filing requirements in connection with the establishment of an "independent contractor" relationship between a natural person, who is required to be registered pursuant to NYSE Rule 345, and a member organization. On May 3, 2006, NYSE filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on

[54] 15 U.S.C. 78s(b)(2).

[55] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

May 17, 2006.[3] On June 14, 2006, NYSE filed Amendment No. 2 to the proposed rule change.[4] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The NYSE proposes to amend Interpretation (a)/02 ("Independent Contractors") of NYSE Rule 345 ("Employees—Registration, Approval, Records"). NYSE Rule 345(a) requires that natural persons performing certain prescribed duties on behalf of a member organization be registered with and qualified by the Exchange.[5] The Interpretation of NYSE Rule 345(a)[6] permits a registered representative to assert the status of "independent contractor" provided that any registered representative associated with a member organization who is so designated be considered an employee of that member organization for purposes of the rules of the Exchange.

Currently, the Interpretation subjects all independent contractor arrangements to prior Exchange approval pursuant to the following four conditions: (1) The member organization must provide written assurances to the Exchange that it will supervise and control all activities of the independent contractor effected on its behalf to the same degree and extent that it supervises and controls the activities of all other registered representatives and in a manner consistent with NYSE Rule 342; (2) a copy of the written agreement between the independent contractor and the member organization must be submitted to the Exchange which provides that the independent contractor will engage in securities-related activities solely on behalf of the member organization (except as otherwise explicitly permitted by the member organization in writing); that such securities-related activities will be subject to the direct, detailed supervision, control and discipline of the member organization; that the person is not subject to a "statutory disqualification" as defined in Section 3(a)(39) of the Act[7] and that nothing therein will negate any of the foregoing; (3) the prospective independent contractor must submit an undertaking subjecting himself to the jurisdiction of the Exchange; and (4) the member organization must provide the Exchange assurances that the prospective independent contractor is covered by the organization's fidelity insurance and that the independent contractor is in compliance with applicable state Blue Sky provisions.

The NYSE is eliminating the requirement that member organizations submit separate written representations to the Exchange for approval of proposed independent contractor arrangements. The amended Interpretation retains current requirements with respect to regulatory expectations regarding the arrangements. Accordingly, the proposed amendments would continue to specifically require compliance with the following regulatory requirements:

The member organization must directly supervise and control all activities effected on its behalf by independent contractors to the same degree and extent that it is required to regulate the activities of all other persons registered with the member organization consistent with NYSE Rule 342 and all other applicable Exchange rules.[8] For example: (a) The member organization must ensure that any permitted dual employment arrangement involving an independent contractor be in compliance with NYSE Rule 346 ("Limitations—Employment and Association with Members and Member Organizations"); (b) the member organization must ensure that independent contractors are covered by the organization's fidelity insurance bond, determine whether such persons are subject to a "statutory disqualification" and ensure that independent contractors are in compliance with applicable state Blue Sky provisions; and (c) the member organization must ensure that the initiation and cessation of independent contractor status and other required amendments be appropriately and timely evidenced via Form U4 ("Uniform Application for Securities Industry Registration or Transfer") or U5 ("Uniform Termination for Securities Industry Registration"), as applicable.[9] Independent contractor status must be indicated on Form U4 at the time of initial registration. If the status is discontinued, either by termination of the relationship or by the independent contractor becoming an employee, Form U4 must be amended promptly.

Further, the proposed amendments would require member organizations to obtain the written attestation of each individual seeking to assert independent contractor status that he will be subject to the direct, detailed supervision, control and discipline of the member organization; will be bound by the relevant rules, standards and guidelines of the member organization; and will be deemed an employee of the member organization and, as such, will be fully subject to the jurisdiction of the Exchange. The proposed amendments retain an updated[10] version of a "Consent to Jurisdiction" form that would be required for this purpose. Though member organizations will no longer need to submit executed Consent to Jurisdiction forms to the Exchange for approval, member organizations would be required to retain them along with the corresponding independent contractor agreement and timely provide them to the Exchange upon request.

The current Interpretation limits the application of independent contractor status to persons without supervisory responsibilities.[11] The proposed amendments would remove the prohibition against supervisory persons asserting the status of independent contractor, except for those persons designated as principal executive officers (*e.g.*, Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, etc.) who must

[3] *See* Securities Exchange Act Release No. 53789 (May 11, 2006), 71 FR 28735.

[4] In Amendment No. 2, the Exchange makes minor, non-substantive changes to the rule text contained in Exhibit 5 of the proposed rule change. This is a technical amendment and is not subject to notice and comment.

[5] NYSE Rule 345(a) states that "[n]o * * * member organization shall permit any natural person to perform regularly the duties customarily performed by (i) A registered representative, (ii) a securities lending representative, (iii) a securities trader or (iv) a direct supervisor of (i), (ii) or (iii) above, unless such person shall have been registered with, qualified by and is acceptable to the Exchange."

[6] *See NYSE Interpretation Handbook*, Rule 345(a)/02.

[7] *See* 15 U.S.C. 78c(a)(39).

[8] The Exchange notes that this would explicitly confirm that the standard of supervision for registered independent contractors is identical to that of registered employees, since the supervisory requirements of NYSE Rule 342 apply to member organizations and their employees.

[9] Form U4 is the uniform form used to register personnel in the securities industry. Form U4 is filed with Web CRD, the system developed jointly by the National Association of Securities Dealers and the North American Securities Administrators Association to register associated persons. Form U4, among other things, requires an associated person to state whether he is an independent contractor. By signing Form U4, an associated person acknowledges that he is subject to the rules of the self-regulatory organization ("SRO") with which he is registering as well as to the securities laws.

[10] The amendments to "Consent to Jurisdiction" consist of the deletion of dated references (such as the "Constitution" of the Exchange); replacing the term "registered representative" with the term "registered person" to reflect the proposed amendment that would eliminate the prohibition against supervisory persons asserting independent contractor status; and non-substantive changes that improve it stylistically.

[11] That prohibition has been relaxed as to registered representatives "in charge" of an office under NYSE Rule 342.15. *See* Securities Exchange Act Release No. 48762 (November 7, 2003), 68 FR 64942 (November 17, 2003) (SR–NYSE–2003–26).

remain direct employees of the member organization given their unique senior principal executive responsibilities over the various areas of their associated member organization.[12]

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[13] and, in particular, the requirements of Section 6 of the Act.[14] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change should reduce unnecessary administrative burdens on the NYSE as well as member organizations. Persons who assert independent contractor status are subject to the member organizations' internal policies and procedures and the jurisdictional reach of the Exchange to the same extent as any other registered person. The Exchange would still receive notice of independent contractor arrangements. The Rule helps ensure that member organizations are aware of their responsibility to supervise independent contractors.

Specifically, the revised Form U4: (1) Obviates the need to submit duplicative notice because the Form U4 provides the Exchange prompt notice and an up-to-date record of such persons[16] by requiring the identification by registered persons of independent contractor status; and (2) establishes jurisdictional reach by requiring registered persons who seek to become associated with a member organization to "submit to the authority of the jurisdictions and SROs and agree to comply with all provisions, conditions and covenants of the statutes, constitutions, certificates of incorporation, by-laws and rules and regulations of the jurisdictions and SROs as they are or may be adopted, or amended from time to time."[17]

The Exchange believes that permitting supervisors to assert independent contractor status should not affect the individual's ability to supervise, nor would it reduce accountability for failure to fulfill their supervisory, regulatory, and other professional obligations. The Commission notes that regardless of whether an individual is deemed an independent contractor, he will be required to have the same qualifications and act in the same capacity as any other person similarly charged with supervisory responsibilities.

Finally, the Commission reiterates its longstanding position that the designation of an independent contractor has no relevance for purposes of the securities laws.[18] In this regard, the Commission notes that member organizations may not avoid their obligation to control and supervise the activities of their registered persons by designating them as independent contractors.[19]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (File No. SR–NYSE–2006–05), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Nancy M. Morris,

Secretary.

[FR Doc. E6–9986 Filed 6–23–06; 8:45 am]

BILLING CODE 8010–01–P

[12] *See* NYSE Rule 311(b)(5) and its Interpretation.

[13] In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(5).

[16] NYSE Rule 345.12 provides, in part, that an application for a natural person required to be registered with the Exchange shall be submitted on Form U4 and that information on Form U4 must be kept current and shall be updated by filing with the Exchange an amendment to that filing.

[17] *See* Form U4, Subsection 2 of Section 15A (Individual/Applicant's Acknowledgement and Consent).

[18] *See* letter to Gordon S. Macklin, President, NASD, Charles J. Henry, Chicago Board Options Exchange, Robert J. Birnbaum, American Stock Exchange and John J. Phelan, NYSE from Douglas Scarff, Director, Division of Market Regulation, dated June 18, 1982.

[19] *See* Section 15(b)(4)(E) of the Act, 15 U.S.C. 78o(b)(4)(E).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53951A; File No. SR–NYSEArca–2006–23]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to a Pilot Program for NYSE Arca BBO Data

June 20, 2006.

Correction

In FR Document No. 06–5301 beginning on page 33500 for Friday, June 9, 2006, the 34 Release number was incorrectly stated. The correct number is 34–53951.

Nancy M. Morris,

Secretary.

[FR Doc. 06–5639 Filed 6–23–06; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53952A; File No. SR–NYSE Arca–2006–21]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Approval of Market Data Fees for NYSE Arca Data

June 20, 2006.

Correction

In FR Document No. 06–5300 beginning on page 33496 for Friday, June 9, 2006, the 34 Release number was incorrectly stated. The correct number is 34–53952.

Nancy M. Morris,

Secretary.

[FR Doc. 06–5641 Filed 6–16–06; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before August 25, 2006.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the

agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW., Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst, Office of Financial Assistance, 202–205–7528 *sandra.johnston@sba.gov*, Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION:

Title: "Statement of Personal History."

Description of Respondents: Small Business Lending Companies.

Form No. 1081.

Annual Responses: 200.

Annual Burden: 100.

Title: "U.S. Small Business Administration Application for Section 504 Loan."

Description of Respondents: Loan Applicants.

Form No. 1244.

Annual Responses: 10,000.

Annual Burden: 20,800.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E6–9975 Filed 6–23–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5451]

30-Day Notice of Proposed Information Collection: DS–158, Contact Information and Work History for Nonimmigrant Visa Applicant; OMB Control Number 1405–0144

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Contact Information and Work History for Nonimmigrant Visa Applicant.
- *OMB Control Number:* 1405–0144.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Visa Office.
- *Form Number:* DS–158.
- *Respondents:* Applicants for F, J, and M nonimmigrant visas.
- *Estimated Number of Respondents:* 700,000 per year.
- *Estimated Number of Responses:* 700,000 per year.
- *Average Hours per Response:* 1 hour.
- *Total Estimated Burden:* 700,000 hours per year.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain or Retain Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from June 26, 2006.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at (202) 395–4718. You may submit comments by any of the following methods:

- E-mail: *Katherine_T._Astrich@omb.eop.gov*. You must include the DS form number; information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- Fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copied of the proposed informational collection and support documents form Andrea Lage of the Office of Visa Services, U.S. Department of State, 2401 E Street, NW., Washington, DC 20522, who may be reached at (202) 663–1399 or *lageab@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond,

Abstract of proposed collection: This form collects contact information, current employment information, and previous work experience information from aliens applying for certain nonimmigrant visas to enter the United States.

Form DS–158 will be submitted to U.S. embassies and consulates overseas. A version of the form without personal data is available online.

Dated: June 9, 2006.

Stephen A Edson,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E6–10016 Filed 6–23–06; 8:45 am]

BILLING CODE 4710–06–P

TENNESSEE VALLEY AUTHORITY

Meeting No. 06–03

Time and Date: 9 a.m., June 28, 2006. TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

Status: Open.

Agenda

Old Business

Approval of minutes of May 18, 2006, Board Meeting.

New Business

1. Report of the Finance, Strategy, and Rates Committee. A. Approval of parameters for TVA's FY 2007 Budget proposal.
2. Report of the Community Relations Committee.
3. Preliminary Report of the Operations, Environment, and Safety Committee.
4. President's Report.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: June 21, 2006.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 06–5698 Filed 6–22–06; 10:50 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2006–20]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application,

processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 3, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2006–25068] by any of the following methods:

- *Web Site: http://dms.dot.gov.* 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 20590–001.
- *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.

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.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Shanna Harvey (202) 493–4657, or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on June 21, 2006.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

[Docket No.: FAA–2006–25068]

Petitioner: Experimental Aircraft Association.

Section of 14 CFR Affected: 14 CFR 61.325.

Description of Relief Sought: To permit Experimental Aircraft Association, to allow sport pilots' who have not received the required ground and flight training, and endorsements to operate within the Wittman Regional Airport (Oshkosh, Wisconsin) Class D airspace during the period July 22, 2006, through July 31, 2006, for the purpose of attending AirVenture 2006.

[FR Doc. E6–10036 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2006–25066]

Agency Information Collection Activities: Request for Comments for New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We are required to public this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 25, 2006.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA–2006–25066 by any of the following methods:

- Web Site: *http://dms.dot.gov.* 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.

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 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 questions concerning the Truck Parking Initiatives Grant Program, please contact William F. Mahorney, Office of Freight Management and Operation, HOFM–1, at (202) 366–6817, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Truck Parking Initiative.

Background

The shortage of long-term truck parking on the National Highway System (NHS) is a problem that needs to be addressed. It is nationally recognized that truck drivers frequently cannot find adequate, safe parking in order to obtain rest needed to comply with the Federal Motor Carrier Safety Regulations and ensure safety. Further, parking areas are often designed or maintained for short-term parking only, and as a result, allow parking for limited time periods. Section 1305 of the Safe, Accountable, Flexible, Efficient, and Transportation Equity Act: A Legacy for Users (SAFETEA–LU) directed the Secretary of Transportation to establish a Pilot program to address the long-term parking shortages along the NHS. eligible projects under section 1305 include:

1. Promoting the real-time dissemination of publicly or privately provided commercial motor vehicle parking availability on the NHS using ITS and other means;
2. Opening non-traditional facilities to commercial motor vehicle parking, including inspection and weigh stations, and park and ride facilities;
3. Making capital improvements to public commercial motor vehicle parking facilities currently closed on a seasonal basis to allow the facilities to remain open year round;
4. Constructing turnouts along the NHS to facilitate commercial motor vehicle access to parking facilities, and/or improving the geometric design of interchanges to improve access to commercial motor vehicle parking facilities;
5. Constructing commercial motor vehicle parking facilities adjacent to commercial truck stops and travel plazas;
6. Constructing safety rest areas that include parking for commercial motor Vehicles.

It is the belief of FHWA that given the limited resources available, the broad dissemination of the availability of public or private long-term parking spaces provides the greatest opportunity to maximize the effectiveness of this pilot program.

Guidelines and Administration

To administer this program for fiscal years 2006 through 2009, the GHWA will collection information necessary to evaluate and rank projects. The information collection is intended to only address the project funding allotted through the program.

1. The Administrator has determined that $5.385 million is available for grants in FY 2006 under section 1305, after obligation limitations.

2. Projects funded under this section shall be treated as projects on a Federal-Aid System under Chapter 1 of Title 23, United States Code.

3. Grants may be funded at an 80 to 100 percent funding level based on the criteria specified in section 120 of Title 23, U.S. Code.

As soon as practicable, a **Federal Register** Notice will be published with information and guidance relating to the application process. Also, a solicitation letter will be sent to all FHWA Division Offices containing the same information. This information will also be posted on the FHWA Web site, *http://www.fhwa.dot.gov/*. All applications must be submitted thru a State Department of Transportation to FHWA's Office of Freight Management and Operations, via the FHWA Division Office in the State in which the application was submitted. Awarded projects will be administered by the applicable State Department of Transportation as a Federal aid grant.

Information Proposed for Collection

Information recommended under SAFETEA–LU and proposed for the current program includes the following:

1. *Project Description.* The proposal should include a detailed project description, which would include the extent of the long-term truck parking shortage in the corridor/area to be addressed, along with contact information for the project's primary point of contact, and whether funds are being requested under 120 U.S.C. (b) or (c) or Title 23. Data helping to define the shortage may include truck volume (Average Daily Truck Traffic—ADTT) in the corridor to be addressed, current number of long-term commerical motor vehicle parking spaces, utilization of current long-term parking spaces, driver surveys, observational field studies, proximity to freight loading/unloading facilities, proximity to the NHS, etc.

2. *Project Rationale.* The proposal should set forth the rationale for the project and should include an analysis and demonstration of how the proposed project will positively affect truck parking, safety, traffic, congestion, or air quality in the identified corridor. Examples may include: Advance information on availability of parking that may help to reduce the number of trucks parked on roadsides and increase the utilization of available truck parking spaces, etc.

3. *Scope of work.* The scope of work should include a complete listing of activities to be funded through the grant; including technology development, information processing, information integration activities, developmental phase activities (planning, feasibility analysis, environmental review, engineering or design work, and other activities), construction, reconstruction, acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, acquisition of equipment, and operational improvements. Also to be included should be a 3-year performance measurement plan that continues beyond the demonstration period of the project.

4. *Stakeholder identification.* Stakeholder identification should include evidence of prior consultation and/or partnership with affected MPOs, local governments, community groups, private providers of commercial motor vehicle parking, and motorist and trucking organizations. It should include a listing of all public and private partners, and the role each will play in the execution of the project. Consultation examples may include: Memorandums of Agreement, Memorandums of Understanding, contracts, meeting minutes, letters of support/commitment, documentation in a State's TIPS/STIPS plans, etc.

5. *Cost estimate:* Applicants should provide a detailed quantification of eligible project costs by activity, and identification of all funding sources that will supplement the grant and be necessary to fully fund the project, and the anticipated dates on which the additional funds are to be made available. Public and private sources of funds (non-Federal commitment) will be considered by FHWA as an in-kind match contributing to the project. State matching funds will be required for projects eligible under 120 U.S.C. (b).

6. *Timeline.* Applicants should also submit a timeline that includes work to be completed and anticipated funding cycles. Gantt charts are preferred.

7. *Environmental process.* Applicants should show the timeline for complying with the national Environmental Policy Act (NEPA), if applicable.

8. *Project map.* Applicants should include a project map consisting of schematic illustrations depicting the project and connecting transportation infrastructure.

9. Proposals should not exceed 20 pages in length.

Burden Hours for Information Collection

Frequency: Annual.

Respondents: The 50 State DOTs and Puerto Rico and the District of Columbia.

Estimated Average Burden per Response: Burden hours estimates and discussions are provided for each item presented and required within the application submittal process.

- Project Description: 16 hours.
- The project description will be submitted through the submitting State agency, in conjunction with local governments, MPO's and other potential partners.
- Project Rationale: 8 hours.
  - Project rationale should include an analysis and demonstration of how the proposed project will positively effect truck parking, safety, traffic congestion, or air quality in the identified corridor.
- Scope of Work: 16 hours.
  - A complete listing of activities to be funded through the grant; including technology development, information processing, information integration activities, developmental phase activities (planning, feasibility analysis, environmental review, engineering or design work, and other activities), construction, reconstruction, acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, acquisition of equipment, operational improvements, and a 3-year performance measurement plan that continues beyond the demonstration period of the project.
- Stakeholder Identification: 1 hour.
  - Evidence of prior consultation and/or partnership with affected MPOs, local governments, community groups, private providers of commercial motor vehicle parking, and motorist and trucking organizations. A listing of all public and private partners, and the role each will play in the execution of the project should also be included.
- Cost estimate: 4 hours.
  - A detailed quantification of eligible project costs by activity, and an identification of all funding sources that will supplement the grant and be necessary to fully fund the project, and the anticipated dates on which the additional funds are to be made available. Public and private sources of funds (non-federal commitment) will be considered. State matching funds will

be required for projects eligible under 120 U.S.C. (b).

- Project Timeline: 1 hour 30 minutes.
  - That includes work to be completed and anticipated funding cycles. Gantt charts preferred.
- Environmental process: 2 hours.
  - Applicant should show the timeline for complying with the National Environmental Policy Act (NEPA), if applicable.
- Project Map: 1 hour.
  - Consisting of schematic illustrations depicting the project and connecting transportation infrastructure.
- Contact information of the State DOT, Local Agency or MPO (if applicable), FHWA Division Office. 5 minutes.
  - This requires providing a list of contracts and involves a nominal amount of time.

The total amount of time estimated to complete the application is 49 hours and 35 minutes.

Estimated Total Annual Burden Hours: 1487 total burden hours. It is estimated 30 applications will be processed annually.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 06–5663 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2006–25067]

Emergency OMB Approval for the Truck Parking Facilities Grant Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Emergency OMB Approval **Federal Register** Notice.

SUMMARY: The Federal Highway Administration has submitted the following request for emergency processing of a public information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapters 35). This notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to OMB for review and comment. The ICR describes the nature of the information collection and the expected burden.

Comments: Comments should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: Desk Officer for the Federal Highway Administration.

Type of Request: New.

DATES: OMB Approval has been requested by July 14th, 2006.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Truck Parking Initiatives grant program, please contact William F. Mahorney, Office of Freight Management and Operations, HOFM–1, at (202) 366–6817, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Truck Parking Initiative.

Background

The shortage of long-term truck parking on the National Highway System (NHS) is a problem that needs to be addressed. It is nationally recognized that truck drivers frequently cannot find adequate, safe parking in order to obtain rest needed to comply with the Federal Motor Carrier Safety Regulations and ensure safety. Further, parking areas are often designed or maintained for short-term parking only, and as a result, allow parking for limited time periods. Section 1305 of the Safe, Accountable, Flexible, Efficient, and Transportation Equity Act: A Legacy for Users (SAFETEA–LU) directed the Secretary of Transportation to establish a Pilot program to address the long-term parking shortages along the NHS. Eligible projects under section 1305 include:

1. Promoting the real-time dissemination of publicly or privately provided commercial motor vehicle parking availability on the NHS using ITS and other means;
2. Opening non-traditional facilities to commercial motor vehicle parking, including inspection and weigh stations, and park and ride facilities;
3. Making capital improvements to public commercial motor vehicle parking facilities currently closed on a seasonal basis to allow the facilities to remain open year round;
4. Constructing turnouts along the NHS to facilitate commercial motor vehicle access to parking facilities, and/or improving the geometric design of interchanges to improve access to commercial motor vehicle parking facilities;
5. Constructing commercial motor vehicle parking facilities adjacent to commercial truck stops and travel plazas; and
6. Constructing safety rest areas that include parking for commercial motor vehicles.

It is the belief of FHWA that given the limited resources available, the broad dissemination of the availability of public or private long-term parking spaces provides the greatest opportunity to maximize the effectiveness of this pilot program.

Guidelines and Administration

To administer this program for fiscal years 2006 through 2009, the FHWA will collect information necessary to evaluate and rank projects. The information collection is intended to only address the project funding allotted through the program.

1. The Administrator has determined that $5.384 million is available for grants in FY 2006 under section 1305, after obligation limitations.
2. Projects funded under this section shall be treated as projects on a Federal-Aid System under Chapter 1 of Title 23, United States Code.
3. Grants may be funded at an 80 to 100 percent funding level based on the criteria specified in section 120 of Title 23, U.S. Code.

As soon as practicable after the granting of this Emergency Clearance, a **Federal Register** Notice will be published with information and guidance relating to the application process. Also, a solicitation letter will be sent to all FHWA Division Offices containing the same information. This information will also be posted on the FHWA Web site. *http://www.fhwa.dot.gov/*. All applications must be submitted thru a State Department of Transportation to FHWA's Office of Freight Management and Operations, via the FHWA's Division Office in the State in which the application was submitted. Awarded projects will be administered by the

applicable State Department of Transportation as a Federal aid grant.

Information Proposed for Collection

Information recommended under SAFETEA–LU and proposed for the current program includes the following:

1. *Project Description.* The proposal should include a detailed project description, in which would include the extent of the long-term truck parking shortage in the corridor/area to be addressed, along with contract information for the project's primary point of contract, and whether funds are being requested under 120 U.S.C. (b) or (c) of Title 23. Data helping to define the shortage may include truck volume (Average Daily Truck Traffic—ADTT) in the corridor to be addressed, current number of long-term commercial motor vehicle parking spaces, utilization of current long-term parking spaces, driver surveys, observational field studies, proximity to freight loading/unloading facilities, proximity to the NHS, etc.

2. *Project Rationale.* The proposal should set forth the rationale for the project and should include an analysis and demonstration of how the proposed project will positively affect truck parking, safety, traffic congestion, or air quality in the identified corridor. Examples may include: Advance information on availability of parking that may help to reduce the number of trucks parked on roadsides and increase the utilization of available truck parking spaces, etc.

3. *Scope of work.* The scope of work should include a complete listing of activities to be funded through the grant; including technology development, information processing, information integration activities, developmental phase activities (planning, feasibility analysis, environmental review, engineering or design work and other activities), construction, reconstruction, acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, acquisition of equipment, and operational improvements. Also to be included should be a 3-year performance measurement plan that continues beyond the demonstration period of the project.

4. *Stakeholder identification.* Stakeholder identification should include evidence of prior consultation and/or partnership with affected MPOs, local governments, community groups, private providers of commercial motor vehicle parking, and motorist and trucking organizations. It should include a listing of all public and private partners, and the role each will play in the execution of the project. Consultation examples may include: Memorandums of Agreement, Memorandums of Understanding, contracts, meeting minutes, letters of support/commitment, documentation in a State's TIPS/STIPS plans, etc.

5. *Cost estimate.* Applicants should provide a detailed quantification of eligible project costs by activity, an identification of all funding sources that will supplement the grant and be necessary to fully fund the project, and the anticipated dates on which the additional funds are to be made available. Public and private sources of funds (non-federal commitment) will be considered by FHWA as an in-kind match contributing to the project. State matching funds will be required for projects eligible under 120 U.S.C. (b).

6. *Timeline.* applicants should also submit a timeline that includes work to be completed and anticipated funding cycles. Gantt charts are preferred.

7. *Environmental process.* Applicants should show the timeline for complying with the National Environmental Policy Act (NEPA), if applicable.

8. *Project map.* Applicants should include a project map consisting of schematic illustrations depicting the project and connecting transportation infrastructure.

9. Proposals should not exceed 20 pages in length.

Burden Hours for Information Collection

Frequency: Annual.

Respondents: The 50 State DOTs, Puerto Rico and the District of Columbia.

Estimated Average Burden per Response: Burden hours estimates and discussions are provided for each item presented and required within the application submittal process.

- Project Description: 16 hours.
  - The project description will be submitted through the submitting State agency, in conjunction with local governments, MPO's, and other potential partners.
- Project Rationale: 8 hours.
  - Project rationale should include an analysis and demonstration of how the proposed project will positively effect truck parking, safety, traffic congestion, or air quality in the identified corridor.
- Scope of Work: 6 hours.
  - A complete listing of activities to be funded through the grant; including technology development, information processing, information integration activities, developmental phase activities (planning, feasibility analysis, environmental review, engineering or design work, and other activities), construction, reconstruction, acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, acquisition of equipment, operational improvements, and a 3 year performance measurement plan that continues beyond the demonstration period of the project.
- Stakeholder Identification: 1 hour.
  - Evidence of prior consultation and/or partnership with affected MPOs, local governments, community groups, private providers of commercial motor vehicle parking and motorist and trucking organizations. A listing of all public and private partners, and the role each will play in the execution of the project should also be included.
- Cost estimate: 4 hours.
  - A detailed quantification of eligible projects costs by activity, and an identification of all funding sources that will supplement the grant and be necessary to fully fund the project, and the anticipated dates on which the additional funds are to be made available. Public and private sources of funds (non-Federal commitment) will be considered. State matching funds will be required for projects eligible under 120 U.S.C. (b).
- Project Timeline: 1 hour 30 minutes.
  - That includes work to be completed and anticipated funding cycles. Gantt charts preferred.
- Environmental process: 2 hours.
  - Applicant should show the timeline for complying with the National Environmental Policy Act (NEPA), if applicable.
- Project Map: 1 hour.
  - Consisting of schematic illustrations depicting the project and connecting transportation infrastructure.
- Contact information for the State DOT, Local Agency or MPO (if applicable), FWHA Division Office: 5 minutes.
  - This requires providing a list of contacts and involves a nominal amount of time.

The total amount of time estimated to complete the application is 49 hours and 35 minutes.

Estimated Total Annual Burden Hours: 1487 hours. It is estimated 30 applications will be processed annually.

(Authority: Section 1804 of Pub. L. 105–59.)

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 06–5664 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: State Route (SR)–108, Davis and Weber Counties, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS).

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed roadway improvement on SR–108 in Davis and Weber Counties, Utah.

FOR FURTHER INFORMATION CONTACT: Todd Emery, Transportation and Environmental Engineer, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84118, Telephone: (801) 963–0078, x. 227. Charles Mace, Project Manager, Utah Department of Transportation, 166 West Southwell Street, Ogden, UT 84404, Telephone (803) 620–1685. To received project updates, please provide your name and address to one of the above addresses.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation, will prepare an EIS on a proposal to improve SR–108 in Davis and Weber Counties. The proposed improvements would involve reconstruction of the existing SR–108 between SR–127 (West Antelope Drive) in Syracuse and SR–126 (1900 West) in West Haven, a distance of about 9.5 miles. The project would go through the cites of Syracuse, West Point, Clinton, Roy, and West Haven, Utah.

Improvements to SR–108 are necessary to provide for projected 2035 travel demand, and improve safety and regional mobility. Alternatives under consideration include (1) Taking no-action (no-build); (2) using alternative travel modes; (3) employing access control and transportation demand management to improve the efficiency of the existing road network; and (4) widening the existing two-lane roadway to five lanes or the appropriate number of lanes to address travel demand needs. Incorporated into and studied with the various build alternatives will be design variations for key intersections along the roadway. In addition, alternatives identified in the scoping process will be evaluated in the EIS.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings to solicit input on the project, identify potential alternatives, and obtain information about the community will be held in the proximity of the project starting in late July 2006. Information on the time and location of the public meeting will be provided to the community in local news papers and fliers through the mail. In addition, a public hearing to seek input on the alternatives evaluated in detail will be held after the draft EIS has been prepared. The draft EIS will be available for public and agency review and comment before the public hearing.

To ensure that a full range of issues related to the proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA or the Utah Department of Transportation at the addresses provided above.

(Catalog of Federal and Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this pr[illegible]am)

Walter C. Waidelich,

Division Administrator, Salt Lake City, Utah.

[FR Doc. 06–5655 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–24931]

Medical Review Board Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (DOT).

ACTION: Medical Review Board (MRB) Public Meeting.

SUMMARY: The MRB Public Meeting will provide the public an opportunity to observe and participate in MRB deliberations about the revision and development of Federal Motor Carrier Safety Regulation (FMCSR) medical standards, in accordance with the Federal Advisory Committee Act (FACA).

DATES: The MRB meeting will be held from 9 a.m.–1 p.m. on August 31, 2006. A public listening session will be held from 2 p.m.–5 p.m. Please note the preliminary agenda for this meeting in the **SUPPLEMENTARY INFORMATION** section of this Notice for specific information.

ADDRESSES: The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–2230, Washington, DC 20590–0001. The public must enter through the Southwest Visitor Entrance and comply with building security procedures, including provision of appropriate identification prior to escort to meeting room.

You may submit comments identified by DOT Docket Management System (DMS) Docket Number FMCSA–2006–24931 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 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 acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an

association, business, labor union, etc.). You may review the U.S. Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, 202–366–4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Kaye Kirby at 202–366–4001.

SUPPLEMENTARY INFORMATION: The following designations are made for each item: (A) is an "action" item; (I) is an "information item"; and (D) is a "discussion" item.

The preliminary agenda for the MRB meeting includes:

0800–0900	Meeting Registration (includes request for oral testimony)
0900–1100	(1) Call to Order and Introductions (A, I) (2) Statements of Conflict of Interest (A, I) (3) Written Comment to the Board (A, D) (4) Federal Reports (Diabetes, Schedule II Drugs, other medical topics pending) (A, D)
1100–1200	(5) Public Comment (A, D)
1200–1300	(6) 2006 Agenda, Research Questions, Other Issues (A, I, D)
1300	(7) Adjourn
1400–1700	(8) Listening Session (A, D)

Background

U.S. Secretary of Transportation Norman Y. Mineta announced on March 7, 2006, the five medical experts who will serve on FMCSA's new MRB. Section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59) requires the Secretary of Transportation with the advice of the MRB and a Chief Medical Examiner to "establish, review, and revise medical standards for operators of commercial motor vehicles (CMVs) that will ensure that the physical condition of operators is adequate to enable them to operate the vehicles safely." FMCSA is planning updates to the physical qualification regulations of CMV drivers, and the MRB will provide the necessary science-based guidance to establish realistic and responsible medical standards.

The MRB will operate in accordance with FACA as announced in the **Federal Register** (70 FR 57642, October 3, 2005). The MRB will be charged initially with the review of all current FMCSR medical standards (49 CFR 391.41), as well as proposing new science-based standards and guidelines to ensure that drivers operating CMVs in interstate commerce, as defined in CFR 390.5, are physically qualified to do so.

Meeting Participation

Attendance is open to the interested public, including medical examiners, motor carriers, drivers, and representatives of medical and scientific associations. The public can participate in a listening session which will be held from 2 p.m.–5 p.m. at the same location. Written comments for the MRB meeting will also be accepted beginning on July 26, 2006 and continuing until September 15, 2006, and should include the docket number that is listed in the **ADDRESSES** section. During the MRB meeting (1100–1200), oral comments may be limited depending on how many persons wish to comment; and will be accepted on a first come, first serve basis as requestors register at the meeting. The comments must directly address relevant medical and scientific issues on the MRB meeting agenda. For more information, view the following Web site: *http://www.fmcsa.dot.gov/mrb.*

Issued on: June 19, 2006.

David H. Hugel,

Acting Administrator.

[FR Doc. E6–10041 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No.: 2006–25166]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel AURORA.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–25166 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 26, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2006 25166. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel AURORA is:

Intended Use: "Luxury overnight vacation charters."

Geographic Region: British Virgin Is. and east coast of U.S. (ME, NH, MA, RI, CT, NY, NJ, PA, DE, MD, VA, NC, SC, GA & FL).

Dated: June 20, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–10040 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No.: 2006–25168]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel NAVARINO.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 20xx–xxxx at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 26, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2006 25168. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel NAVARINO is:

Intended Use: "Periodic charter of vessel for small groups."

Geographic Region: Southern California coast.

Dated: June 20, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–10037 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No.: 2006–25165]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PRIDE.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–25165 *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before July 26, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2006 25165. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PRIDE is:

Intended Use: "(1) Demise or bareboat charters and (2) time charters compliant to 46 CFR 147."

Geographic Region: Florida, Virginia, Maryland, Rhode Island, Massachusetts, New Hampshire, Maine.

Dated: June 20, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–10038 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No.: 2006–25167]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of

the Coastwise Trade Laws for the vessel SEA BREEZE IX.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–25167 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 26, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2006 25167. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SEA BREEZE IX is:

Intended Use: "6 pack charter on Lake Erie."

Geographic Region: Western Lake Erie.

Dated: June 20, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–10069 Filed 6–23–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34882]

Longview Switching Company—Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF) has agreed to grant overhead trackage rights to Longview Switching Company (LSC) over BNSF's Seattle Subdivision between a point south of Longview Junction, WA, at milepost 104.0 and a point north of Kelso, WA, at milepost 96.0, a distance of approximately 8.0 miles (Joint Trackage).

The transaction was scheduled to be consummated on or after June 13, 2006, the effective date of the exemption.

The purpose of the trackage rights is to allow for the overhead movement of BNSF and Union Pacific Railroad Company (UP) cars being handled by LSC during switching operations in the vicinity of Longview Junction.[1]

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34882, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Sidney L. Strickland Jr., Sidney Strickland and Associates, PLLC, 3050 K Street, NW., Suite 101, Washington, DC 20007.

Board decisions and notices are available on its Web site at *http://www.stb.dot.gov*.

Decided: June 20, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–10035 Filed 6–23–06; 8:45 am]

BILLING CODE 4915–01–P

[1] UP has trackage rights over the Joint Trackage pursuant to a trackage rights agreement dated July 1, 1909, as supplemented, between predecessors of BNSF and UP.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 20, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before July 26, 2006 to be assured of consideration.

Financial Management Service

OMB Number: 1510–0045.

Type of Review: Extension.

Title: Trace Request for EFT Payments.

Form: FMS 150.1 and 150.2.

Description: Used to notify the FI that a beneficiary has claimed non-receipt of credit for a payment. The form is designed to help the FI locate any problem and to keep the beneficiary informed of any action taken.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 17,971 hours.

Clearance Officer: Jiovannah Diggs, Financial Management Service, Room 144, 3700 East West Highway, Hyattsville, MD 20782. (202) 874–7662.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office

Building, Washington, DC 20503. (202) 395–7316.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–10010 Filed 6–23–06; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 20, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before July 26, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1814.

Type of Review: Extension.

Title: Changes in Corporate Control and Capital Structure.

Form: Form 1099–CAP.

Description: Any corporation that undergoes reorganization under Regulation section 1.6043–4T with stock, cash, and other property over $100 million must file Form 1099-CAP with the IRS shareholders.

Respondents: Business or other for-profit and Individuals or households.

Estimated Total Burden Hours: 67 hours.

OMB Number: 1545–1843.

Type of Review: Extension.

Title: REG–106736–00 (NPRM) Assumptions of Partner Liabilities.

Description: In order to be entitled to a deduction with respect to the economic performance of a contingent liability that was contributed by a partner and assumed by a partnership, the partnership, or former partner of the partnership, must receive notification of economic performance of the contingent liability from the partnership or other partner assuming the liability.

Respondents: Individuals or households; Business or other for-profit.

Estimated Total Burden Hours: 125 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–10011 Filed 6–23–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 19, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before July 26, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1981.

Type of Review: Extension.

Title: Alternative Fuel Vehicle Refueling Property Credit.

Form: Form 8911.

Description: Internal Revenue Code 30C allows a credit for alternative fuel vehicle refueling property. Form 8911, Alternative Fuel Refueling Property Credit, will be used by taxpayers to claim the credit.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 2,112 hours.

OMB Number: 1545–1989.

Type of Review: Extension.

Title: Notice 2006–26 Credit for Nonbusiness Energy Property.

Description: This notice of interim guidance relates to the procedures by which a manufacturer can certify that building envelope components or energy property qualify for the 25C credit. This notice is intended to provide (1) guidance concerning the methods by which manufacturers can provide such certifications to taxpayers and (2) guidance concerning the methods by which taxpayers can claim such credits.

Respondents: Individuals or households; Business or other for-profit.

Estimated Total Burden Hours: 350 hours.

OMB Number: 1545–1993.

Type of Review: Extension.

Title: Notice 2006–30 Alternative Fuel Motor Vehicle Credit.

Description: This notice sets forth a process that allows taxpayers who purchase alternative fuel motor vehicles to rely on the domestic manufacturer's (or, in the case of a foreign manufacturer, its domestic distributor's) certification that both a particular make, model, and year of vehicle qualifies as an alternative fuel motor vehicle under 30B(a)(4) of the Internal Revenue Code and the amount of credit allowable with respect to the vehicle.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 600 hours.

OMB Number: 1545–1260.

Type of Review: Extension.

Title: Final Regulations under Section 382 of the Internal Revenue Code of 1986; Limitations of Corporate Net Operating Loss Carryforwards.

Description: The reporting requirement concerns the election a taxpayer may make to treat as the change date the effective date of a plan of reorganization in a Title II or similar case rather than the confirmation date of the plan.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–1426.

Type of Review: Extension.

Title: INTL–21–91 (Temporary and Final) Section 6662—Imposition of the Accuracy-Related Penalty.

Description: These regulations provide guidance about substantial and gross valuation misstatements as defined in sections 6662(e) and 6662(b). They also provide guidance about the reasonable cause and good faith exclusion. These regulations apply to taxpayers who have transactions between persons described in Section 482 and net Section 482 transfer price adjustments.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 20,125 hours.

OMB Number: 1545–1131.

Type of Review: Extension.

Title: INTL–485–89 (Final) Taxation or Gain or Loss from Certain Nonfunctional Currency Transactions (Sections 998 Transactions).

Description: Sections 988(c)(1)(D) and (E) require taxpayers to make certain elections which determine whether section 988 applies. In addition, Sections 988(a)(1)(B) and 988(d) require taxpayers to identify transactions which generate capital gain or loss which are hedges of other transactions.

Respondents: Individuals or households; Business or other for-profit.

Estimated Total Burden Hours: 3,333 hours.

OMB Number: 1545–1683.

Type of Review: Extension.

Title: Notice Concerning Fiduciary Relationship.

Form: Form 56–A.

Description: The data collected on the form provides trustees of Illinois Land Trusts a convenient method of reporting information related to creating, changing, and closing such trusts.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 22,000 hours.

OMB Number: 1545–0495.

Type of Review: Extension.

Title: Request for Public Inspection or Copy of Exempt or Political Organization IRS Form.

Form: Form 4506–A.

Description: Internal Revenue Code section 6104 states that if an organization described in section 501(c) or (d) is exempt from taxation under section 501(a) for any taxable year, the application for exemption is open for public inspection. This includes all supporting documents, any letter or other documents issued by the IRS concerning the application, and certain annual returns of the organization. Form 4506–A is used to request public inspection or a copy of these documents.

Respondents: Businesses or other for-profit institutions, individuals or households, not-for-profit institutions, farms, the Federal government, and state, local, or tribal governments.

Estimated Total Burden Hours: 18,000 hours.

OMB Number: 1545–0902.

Type of Review: Revision.

Title: Form 8288, U.S. Withholding Tax Return for Disposition by Foreign Persons of U.S. Real Property Interests: Form 8288–A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.

Form: Form 8288 and 8288–A.

Description: Form 8288 is used by the withholding agent to report and transmit the withholding to IRS. Form 8288–A is used to validate the withholding and to return a copy of the transferor for his/her use in filing a tax return.

Respondents: Businesses or other for-profit institutions, individuals or households.

Estimated Total Burden Hours: 241,675 hours.

OMB Number: 1545–1684.

Type of Review: Extension.

Title: Revenue Procedure 2005–12, Pre-Filing Agreements Program (2001–22 superseded by 2005–12).

Description: Revenue Procedure 2001–22 describes a program under which certain large business taxpayers may request examination and resolution of specific issues relating to tax returns. The resolution of such issues under the program will be memorialized by a type of closing agreement under code section 7121 called a pre-filing agreement.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 49,215 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–10012 Filed 6–23–06; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 71, No. 122
Monday, June 26, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 63, 85, 90, 1048, 1065, and 1068

[EPA–HQ–OAR–2005–0030, FRL–8176–1]

RIN 2060-AM81 and 2060-AN62

Standards of Performance for Stationary Spark Ignition Internal Combustion Engines and National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines

Correction

In proposed rule document 06–4919 beginning on page 33804 in the issue of Monday, June 12, 2006, make the following corrections:

1. On page 33808, in Table 1, in the table heading, in the first line, ">19" should read "≤19".

2. On page 33809, in Table 3, in the second column, in the third entry, "HP≤500" should read "HP≥500".

3. On the same page, in the same table, in the same column, in the fifth entry, "HP≥500" should read "HP<500".

4. On pages 33810 and 33811, Table 4 is being reprinted in its entirety to read as follows:

TABLE 4.—EMISSION STANDARDS FOR STATIONARY RICE ≤500 HP LOCATED AT MAJOR SOURCES OF HAP EMISSIONS AND STATIONARY RICE LOCATED AT AREA SOURCES OF HAP EMISSIONS

Engine type and fuel	Maximum engine power	Manufacture date [a]	Emission standards
Existing All Fuels and All Types	All Sizes		No Emission Reduction.
New/Reconstructed SI	≤25 HP	January 1, 2008 ...	Meet 40 CFR part 60 subpart JJJJ.
New/Reconstructed SI Gasoline and Rich Burn LPG.	25<HP<500	January 1, 2008 ...	Meet 40 CFR part 60 subpart JJJJ.
	HP≥500	July 1, 2007	
New/Reconstructed Non-Emergency SI Natural Gas.	25<HP<500 [a]	January 1, 2008 ...	1.0 g/HP-hr NMHC.
and			
New/Reconstructed Non-Emergency SI Lean Burn LPG [b].		January 1, 2011 ...	0.7 g/HP-hr NMHC.
New/Reconstructed Non-Emergency SI Natural Gas.	HP≥500	July 1, 2007	1.0 g/HP-hr NMHC
and			
New/Reconstructed Non-Emergency SI Lean Burn LPG.		July 1, 2010	0.7 g/HP-hr NMHC.
New/Reconstructed Non-Emergency SI 4SLB at Major Sources (except landfill and digester gas) [b].	250<HP ≤500	January 1, 2008 ...	93% CO Reduction or 14 ppmvd formaldehyde.
CI All Fuels	All Sizes	2007+ Model Year	Meet 40 CFR part 60 subpart IIII.
Landfill/Digester Gas	HP<500	January 1, 2008 ...	1.0 g/HP-hr NMHC.
	HP≥500	July 1, 2007	1.0 g/HP-hr NMHC.
Emergency SI	All Sizes	January 1, 2009 ...	1.0 g/HP-hr NMHC.

[a] Stationary SI natural gas and lean burn LPG engines between 19 and 37 KW (25 and 50 HP) may comply with the requirements of Table 2 of this preamble, instead of this table, as applicable.

[b] New and reconstructed non-emergency 4SLB engines at major sources with a site rating between 250 and 500 HP are not required to meet the 1.0 and 0.7 g/HP-hr NMHC emission standards.

Table 3 to Subpart ZZZZ of Part 63 [Corrected]

5. On page 33844, in Table 3 to Subpart ZZZZ of Part 63, in the table heading, in the second line,">500 HP" should read "≤500 HP".

6. On page 33845, in the same table, in the table heading, in the second line,">500 HP" should read "≤500 HP".

[FR Doc. C6–4919 Filed 6–23–06; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Monday,
June 26, 2006

Part II

Department of Labor

Internal Control Program; Notice

DEPARTMENT OF LABOR

[Secretary's Order 14–2006]

Internal Control Program

1. *Purpose.* To delegate authority and assign responsibilities for the administrative and financial management of Department of Labor (DOL) programs, functions, and resources that ensure effective systems of internal control.

2. *Authorities and Directives Affected.*

A. *Authorities.* This Order is issued pursuant to Sections 2 and 4 of the Federal Managers' Financial Integrity Act of 1982 (the FMFIA); OMB Circular A–123, Rev., "Management's Responsibility for Internal Control" (December 21, 2004); the Chief Financial Officers Act of 1990 (the CFO Act); OMB Circular A–50, Rev., "Audit Follow-up" (September 29, 1982); OMB Circular A–127, Rev., "Financial Management Systems" (December 1, 2004); the Federal Financial Management Improvement Act (the FFMIA); the Government Performance and Results Act of 1993 (the GPRA); the Reports Consolidation Act of 2000 (the RCA); Services Acquisition Reform Act of 2003; Chief Human Capital Officers Act of 2002; Clinger-Cohen Act of 1996; 5 U.S.C. 301; 29 U.S.C. 551, *et seq.*; and Reorganization Plan No. 6 of 1950 (5 App. U.S.C.); Federal Information Security Management Act of 2002 (FISMA); OMB Circular A–130, "Management of Federal Information Resources".

B. *Directives Affected.* This Order supersedes and cancels Secretary's Order 2–89, "Internal Control Program" (January 17, 1989).

3. *Policy.* DOL agencies will maintain effective administrative, financial, and program performance reporting control systems for their programs, functions and resources to promote effectiveness and efficiency of operations and to prevent or minimize the occurrence of fraud, waste, abuse, and mismanagement. To this end, effective and efficient preventive measures, evaluation, documentation, and reporting will be used to provide both proactive and reactive means for administering Internal Control Systems within the Department.

4. *Background.* Internal controls are tools to help managers achieve results and safeguard the integrity of their programs through organizational and procedural measures. The FMFIA requires heads of Federal agencies, including the Secretary, to establish systems of internal control. It further requires the Secretary to issue an annual statement to the President and the Congress, based on an evaluation conducted in accordance with OMB guidelines, which certifies whether the Department's system of internal accounting and administrative control complies with FMFIA and OMB Circular A–123.

The GPRA, in conjunction with the RCA, requires Federal departments and agencies to develop and publish strategic and annual performance plans, to verify and validate the performance data reflected in annual performance budgets, to report to the President and to Congress on an annual basis on (a) the attainment of performance goals, and (b) the completeness and reliability of the data contained in DOL's annual Performance and Accountability Report required under the CFO Act.

5. *Objective.* The objective of DOL's internal control program is to provide, on a continuing basis, a reasonable assurance that:

A. Financial and other resources are safeguarded from unauthorized use or misappropriation;

B. All transactions are executed in accordance with authorizations;

C. All financial, non-financial, performance, statistical records, and related reports are reliable;

D. Applicable laws, regulations and policies are followed; and

E. Resources and programs are efficiently and effectively managed.

6. *Definitions.*

A. *Documentation of Controls.* The written policies and procedures, manuals, organization charts, memoranda, decision papers, assessment determinations, and related materials used to describe internal control methods and measures; communicate responsibilities and authorities for implementing such methods and measures; assess status or progress; and serve as a reference for review of existing internal controls and their functioning.

B. *Documentation of the Assessment Process.* Recordation of the assessment team authority and members, communications with agency management and employees regarding the assessment; key decisions of the assessment team; the assessment methodology; the assessment of internal control; the testing of controls and related results; and identified deficiencies and suggestions for improvements.

C. *Financial Management System.* The Financial Systems and the financial portions of Mixed Systems necessary to support financial management. including automated and manual processes, procedures, controls, data, hardware, software, and support personnel dedicated to the operation and maintenance of system functions.

D. *Financial System.* An Information System, comprised of one or more applications, that is used for (a) collecting, processing, maintaining, transmitting, or reporting data about financial events; (b) supporting financial planning or budgeting activities; (c) accumulating and reporting costs information; or (d) supporting the preparation of financial statements.

E. *Fiscal Integrity.* Financial policies, practices, and controls that ensure that all funds are spent and managed according to the goals, mission and objectives of the organization.

F. *Information System.* The organized collection, processing, transmission, and dissemination of information in accordance with defined procedures, whether automated or manual.

G. *Internal Control Board (ICB).* The DOL body responsible for monitoring and providing advice on the Department's internal controls as established in paragraph 7(I) below.

H. *Internal Control Principal (ICP).* The official formally designated as responsible for identifying, documenting, testing, evaluating, monitoring, and reporting internal controls, as well as monitoring corrective actions, for a particular DOL system.

I. *Internal Control System.* The plan of organization and all of the methods and measures adopted relative to the Department as a whole, or one or more of its component agencies, to document policies and procedures for safeguarding resources, ensure the accuracy and reliability of information, comply with applicable laws, regulations and policies, and promote operational economy and efficiency.

J. *Material Weakness.* A specific instance of non-compliance with the FMFIA, which is of sufficient importance to be reported to the President and the Congress. A Material Weakness is one that would: Impair fulfillment of the agency mission; deprive the public of needed services; violate statutory or regulatory requirements; significantly weaken safeguards against waste, loss, unauthorized use or misappropriation of funds, property or other assets; or result in a conflict of interest. A Significant Deficiency found under FISMA must be reported as a Material Weakness under the FMFIA.

K. *Mixed System.* An Information System that supports both financial and non-financial functions of the Federal Government or components thereof.

L. *Non-Financial System.* An Information System other than a Financial System or a Mixed System.

M. *Significant Deficiency.* A weakness in the Department's overall information systems security or management control structure, or within one or more information systems, that significantly restricts the capability of the Department to carry out its mission or compromises the security of the Department's information, information systems, personnel, or other resources, operations, or assets where the risk is great enough that the Secretary and outside agencies must be notified and immediate or near-immediate corrective action must be taken.

7. *Delegation of Authority and Assignment of Responsibility.*

A. The Deputy Secretary shall:

(1) Chair the ICB.

(2) Ensure that all communications directed to the ICB are distributed to Members and, as appropriate, are provided to Associate Members.

(3) Through the ICB, regularly and at least annually review and designate or re-designate, as appropriate, by published memorandum, the ICP of every Non-Financial System.

(4) Periodically update by published memorandum the roster of ICB Associate Members.

B. The Chief Financial Officer shall:

(1) Exercise overall responsibility for the Department's compliance with FMFIA and for the Department's Fiscal Integrity.

(2) Prepare the Secretary's annual FMFIA report to the President and the Congress from the individual reports submitted by DOL agency heads.

(3) Provide DOL agencies with the guidance necessary for timely preparation of their quarterly and annual FMFIA and FFMIA compliance attestations, including the status of internal controls within the respective agency.

(4) Ensure that appropriate internal controls are in place and operating effectively for financial management functions performed within and on behalf of the Department, including the quarterly financial management attestation process.

(5) Provide assistance to agency heads in instituting sound, effective financial management internal control policies and procedures in their agencies, which include preventive as well as corrective measures.

(6) Serve as a Member of the ICB.

(7) Periodically advise the ICB on the status of financial management internal control activity within the Department.

(8) Be responsible for regular evaluation of DOL financial management operations and coordinate with the appropriate agency heads to implement such controls, modifications and procedures as may be necessary for effective management and efficient functioning.

(9) Serve as the ICP for Financial Systems and for those Mixed Systems that are significantly financial as designated by the Deputy Secretary.

(10) For the functions listed in subparagraph 7(B)(4) above, be responsible for the identification, documentation, testing, evaluation, monitoring, and reporting of internal controls related to the financial systems and for those Mixed Systems that are significantly financial, and providing periodic briefings to the Members of the ICB, as listed in subparagraph 7(I)(1)(a), regarding the results of these activities.

(11) Provide for Documentation of the Assessment Process in paragraph 7(B)(10) above.

(12) Coordinate with the agency heads, ASAM, CIO, CAO, and CHCO where applicable to improve efficiency for all agency internal control reporting requirements.

C. The Assistant Secretary for Administration and Management (ASAM) shall:

(1) Ensure that appropriate internal controls are in place and operating effectively for performance management, property management, security and emergency management, and other business and administrative functions assigned to the ASAM performed within and on behalf of the Department.

(2) Provide assistance to agency heads in instituting sound, effective internal control policies and procedures in their agencies for performance management, property management, security and emergency management, and other business and administrative functions assigned to the ASAM, including preventive as well as corrective measures.

(3) Serve as a Member of the ICB.

(4) Periodically advise the ICB on the status of internal control activity within the Department related to performance management, property management, security and emergency management, and other business and administrative functions assigned to the ASAM.

(5) Be responsible for regular evaluation of DOL performance management, property management, security management, and other business and administrative functions assigned to the ASAM and coordinate with the appropriate agency heads to implement such controls, modifications, and procedures as may be necessary for effective management and efficient functioning.

(6) As designated by the Deputy Secretary, serve as an ICP for certain Non-Financial Systems and for certain Mixed Systems that are significantly non-financial.

(7) For the functions listed in subparagraph 7(C)(1) above, be responsible for the identification, documentation, testing, evaluation, monitoring, and reporting of internal controls related to the non-financial portions of Mixed Systems and providing periodic attestations to the Members of the ICB, as listed in subparagraph 7(I)(1)(a), regarding the results of these activities.

(8) Provide for Documentation of the Assessment Process in paragraph 7(C)(7) above.

(9) Coordinate with the agency heads, CFO, CIO, CAO, and CHCO where applicable to improve efficiency for all agency internal control reporting requirements.

D. The Chief Information Officer (CIO) shall:

(1) Ensure that appropriate internal controls are in place and operating effectively for information resource management functions performed within and on behalf of the Department.

(2) Provide assistance to agency heads in instituting sound, effective information resource management internal control policies and procedures in their agencies, which include preventive as well as corrective measures.

(3) Serve as a member of the ICB.

(4) Periodically advise the ICB on the status of information resource management internal control activity within the Department.

(5) Be responsible for regular evaluation of DOL information resource management operations and coordinate with the appropriate agency heads to implement such controls, modifications and procedures as may be necessary for effective management and efficient functioning.

(6) As designated by the Deputy Secretary, serve as an ICP for certain Non-Financial Systems and for certain Mixed Systems that are significantly non-financial.

(7) For the functions listed in subparagraph 7(D)(1) above, be responsible for the identification, documentation, testing, evaluation, monitoring, and reporting of internal controls related to the non-financial portions of Mixed Systems and providing periodic attestations to the Members of the ICB, as listed in subparagraph 7(I)(1)(a), regarding the results of these activities.

(8) Provide for Documentation of the Assessment Process in paragraph 7.D(7) above.

(9) Coordinate with the agency heads, CFO, ASAM, CAO, and CHCO where applicable to improve efficiency for all agency internal control reporting requirements.

E. The Chief Acquisition Officer (CAO) shall:

(1) Ensure that appropriate internal controls are in place and operating effectively for acquisition, grants, and cooperative agreements management functions performed within and on behalf of the Department.

(2) Provide assistance to agency heads in instituting sound, effective acquisition, grants, and cooperative agreements management internal control policies and procedures in their agencies, which include preventive as well as corrective measures.

(3) Serve as a member of the ICB.

(4) Periodically advise the ICB on the status of acquisition, grants, and cooperative agreements management internal control activity within the Department.

(5) Be responsible for regular evaluation of DOL operations that relate to acquisition, grants, and cooperative agreements and coordinate with the appropriate agency heads to implement such controls, modifications and procedures as may be necessary for effective management and efficient functioning.

(6) As designated by the Deputy Secretary, serve as an ICP for certain Non-Financial Systems and for certain Mixed Systems that are significantly non-financial.

(7) For the functions listed in subparagraph 7(E)(1) above, be responsible for the identification, documentation, testing, evaluation, monitoring, and reporting of internal controls related to the non-financial portions of Mixed Systems and providing periodic attestations to the Members of the ICB, as listed in subparagraph 7(I)(1)(a), regarding the results of these activities.

(8) Provide for Documentation of the Assessment Process in paragraph 7(E)(7) above.

(9) Coordinate with the agency heads, CFO, ASAM, CIO, and CHCO where applicable to improve efficiency for all agency internal control reporting requirements.

F. The Chief Human Capital Officer (CHCO) shall:

(1) Ensure that appropriate internal controls are in place and operating effectively for human capital management functions performed within and on behalf of the Department.

(2) Provide assistance to agency heads in instituting sound, effective human capital management internal control policies and procedures in their agencies, which include preventive as well as corrective measures.

(3) Serve as a member of the ICB.

(4) Periodically advise the ICB on the status of human capital management internal control activity within the Department.

(5) Be responsible for regular evaluation of DOL human capital operations and coordinate with the appropriate agency heads to implement such controls, modifications and procedures as may be necessary for effective management and efficient functioning.

(6) As designated by the Deputy Secretary, serve as an ICP for certain Non-Financial Systems and for certain Mixed Systems that are significantly non-financial.

(7) For the functions listed in subparagraph 7(F)(1) above, be responsible for the identification, documentation, testing, evaluation, monitoring, and reporting of internal controls related to the non-financial portions of Mixed Systems and providing periodic attestations to the Members of the ICB, as listed in subparagraph 7(I)(1)(a), regarding the results of these activities.

(8) Provide for Documentation of the Assessment Process in paragraph 7(F)(7) above.

(9) Coordinate with the agency heads, CFO, ASAM, CIO, and CAO where applicable to improve efficiency for all agency internal control reporting requirements.

G. DOL Agency Heads shall:

(1) Ensure that appropriate internal controls are in place and operating effectively for their respective agencies.

(2) Include in their agency's ongoing internal control program:

(a) Regular risk assessments;

(b) Reviews of high-risk components and activities;

(c) Cooperation with the Government Accountability Office (GAO) and the DOL Office of the Inspector General (OIG) in the conduct of external reviews and audits of agency components, careful consideration of any findings and recommendations, and proper and timely follow-up on those recommendations;

(d) Follow-through on corrective actions relative to internal control weaknesses in agency systems identified through agency or external reviews, assessments, or other evaluation efforts; and

(e) Maintenance of Documentation and responsive reporting on agency internal control program activities.

(3) Ensure that internal control responsibilities and results are included in performance standards and appraisals of appropriate agency managers.

(4) Upon discovery, immediately report any significant Internal Control System breakdowns to the CFO and the ASAM, CIO, CAO or CHCO as relevant.

(5) In conjunction with the ICB, institute internal agency procedures providing for the review of new program activities, proposed legislation and new or revised regulations, functions, or systems to ensure that adequate controls and safeguards are incorporated for increased efficiency and reduced risk.

(6) Submit to the CFO quarterly and annual FMFIA and FFMIA compliance attestations for their respective agencies in accordance with guidance provided by the CFO, including the status of internal controls within their respective agencies.

(7) Coordinate with the respective Internal Control Principal(s) where applicable to improve efficiency for all agency internal control reporting requirements.

H. Internal Control Principals (ICP), for the systems for which that have been designated as such, shall:

(1) Identify, document, test, evaluate, monitor, and report internal controls, as well as monitor corrective actions.

(2) Periodically brief the ICB on the implementation of corrective actions related to Material Weaknesses, the execution of remediation plans, and the achievement of appropriate internal control deadlines.

(3) Upon discovery, immediately report to the ICB all significant Internal Control System breakdowns.

(4) In coordination with other ICPs, ICB Members, ICB Associate Members, and other officials, as appropriate, direct the performance of reviews of new and/or reorganized functions and systems in the Department and participate in, as appropriate, reviews of other new and/or reorganized functions and systems in the Department. These reviews are to ensure the incorporation of adequate safeguards in regulations and procedures for more efficient operations and reductions in risk.

I. There is hereby established within the Department of Labor an Internal Control Board (ICB).

(1) The ICB shall include:

(a) The following Members:

1. The Deputy Secretary, who shall serve as Chair of the ICB;

2. The Chief Financial Officer;

3. The Assistant Secretary for Administration and Management;

4. The Chief Information Officer, unless otherwise represented by another Member of the ICB;

5. The Chief Acquisition Officer, unless otherwise represented by another Member of the ICB;

6. The Chief Human Capital Officer, unless otherwise represented by another Member of the ICB; and

7. The Solicitor of Labor, who shall serve as the Acting Chair of the ICB in the absence of the ICB Chair; and

(b) Up to six agency heads who may be designated periodically by the ICB Chair as Associate Members.

(2) The ICB shall have the following responsibilities:

(a) Ensure DOL's ongoing commitment and leadership support to an appropriate system of internal control;

(b) Monitor the progress of internal controls assessments throughout the Department that are conducted to achieve the objectives of reliable financial and non-financial reporting, effective and efficient operations, and compliance with applicable laws and regulations;

(c) Advise the Secretary on the materiality of internal control weaknesses for purposes of the disclosures in the annual FMFIA report and the annual Performance and Accountability Report (PAR);

(d) Monitor the implementation of corrective actions related to Material Weaknesses, the execution of remediation plans, and the achievement of appropriate internal control deadlines;

(e) Request briefings, as appropriate, from agency heads and program officials regarding aspects of the internal control program including the implementation of corrective actions;

(f) Advise agency heads when greater commitment, including application of more resources, is recommended in order to resolve and eliminate internal control weaknesses;

(g) Promote the dissemination throughout the Department of best practices and lessons learned through the internal control assessment process; and

(h) Meet quarterly, or at the direction of the Chairperson. Meetings shall be convened by the Chairperson with sufficient advance notice to promote full member preparation and participation.

J. The Inspector General shall:

(1) Serve as an advisor to the Department's ICB.

(2) Monitor implementation of the FMFIA in DOL; ensure the quality and consistency of reviews; and provide technical assistance in agency evaluation and review processes.

(3) Provide input to the design or redesign of activities and systems for increased control, effectiveness and efficiency for DOL management consideration.

(4) Review the Secretary's FMFIA annual reports to ensure the inclusion and appropriate treatment of known significant findings. If the Inspector General does not concur with the Secretary's Annual report, a separate report may be submitted to the President and Congress by the OIG.

K. The Solicitor of Labor is delegated authority and assigned responsibility for:

(1) Providing legal advice and assistance to all officials of the Department relating to the authorities of this Order.

(2) Serving as a Member of the ICB.

(3) Serving as the Acting Chair of the ICB in the absence of the ICB Chair.

8. *Reservations of Authority.*

A. The submission of reports and recommendations to the President and Congress concerning the administration of statutory or administrative provisions is reserved to the Secretary.

B. Except to the extent stated in this Order, this Secretary's Order does not affect the authorities and responsibilities of the Inspector General under the Inspector General Act of 1978, as amended, or Secretary's Order 04–2006 (February 21, 2006).

C. This Order does not affect any authorities and responsibilities of the Chief Financial Officer under the Chief Financial Officers Act of 1990, any other Federal law or regulation, or any Office of Management and Budget, Government Accountability Office, or U.S. Department of the Treasury policies and publications governing the fiscal responsibilities of Federal departments and agencies.

9. *Effective Date.* This Order is effective immediately.

Dated: June 20, 2006.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 06–5646 Filed 6–23–06; 8:45 am]

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Federal Register

Monday,
June 26, 2006

Part III

Department of the Interior

Fish and Wildlife Service

Policy on National Wildlife Refuge System Improvement Act of 1997 Mission and Goals and Refuge Purposes and Uses; Notices

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AU24

Policy on National Wildlife Refuge System Mission and Goals and Refuge Purposes

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (we, or the Service) is issuing this policy to articulate the mission and goals of the National Wildlife Refuge System (Refuge System) and their relationship to refuge purposes. This chapter is consistent with principles contained in the National Wildlife Refuge System Administration Act of 1966 (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act), including recognizing the priority for management activities and uses set forth in the Improvement Act (conserve fish, wildlife, and plants and their habitats; facilitate compatible wildlife-dependent recreational uses; and other uses). This policy describes the Refuge System mission, revises the Refuge System goals, and provides guidance for identifying or determining the purpose(s) of individual refuges within the Refuge System. This chapter also describes how the purpose(s) of a refuge addition relates to the original refuge purpose(s) and how wilderness designated under the Wilderness Act of 1964 (Wilderness Act) relates to a refuge's purpose(s). We are incorporating this policy as Part 601, Chapter 1, of the Fish and Wildlife Service Manual (601 FW 1).

DATES: This policy is effective July 26, 2006.

FOR FURTHER INFORMATION CONTACT: Carol Carson, Refuge Program Specialist, Division of Conservation Planning and Policy, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; telephone (703) 358–1744.

SUPPLEMENTARY INFORMATION: The Improvement Act (Pub. L. 105–57) amends and builds upon the Administration Act (16 U.S.C. 668dd *et seq.*), providing an "organic act" for the Refuge System. It clearly establishes that conservation and management of fish, wildlife, and plants and their habitats are the fundamental mission of the Refuge System and prioritizes refuge purposes in relation to the Refuge System mission. It states that we will manage each refuge to fulfill the mission of the Refuge System, as well as the specific purpose(s) for which that refuge was established. This policy is intended to improve the internal management of the Service, and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its Departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

The Improvement Act also provides a clear hierarchy of activities: conservation and management of fish, wildlife, and plants and their habitats; compatible wildlife-dependent recreational uses; and other uses. This chapter reflects that hierarchy.

We published a notice in the **Federal Register** on January 23, 1998 (63 FR 3583), notifying the public that we would be revising the Service Manual to establish policy (and/or regulations) as it relates to the Improvement Act. On January 16, 2001, we published in the **Federal Register** a draft policy on the National Wildlife Refuge System Mission, Goals, and Purposes (66 FR 3668, RIN 1018–AG46). The initial comment period closed on March 19, 2001. On March 15, 2001, we extended the comment period to April 19, 2001 (66 FR 15136). On May 15, 2001, we reopened the comment period to June 14, 2001 (66 FR 26879), and on June 21, 2001, we reopened the comment period until June 30, 2001 (66 FR 33268), and corrected the May 15, 2001, notice to reflect that comments received between April 19 and May 15, 2001, would be considered and need not be resubmitted.

Response to Comments Received

During the combined comment periods, we received 527 comment responses from State agencies or commissions, Federal agencies, nongovernmental organizations of both national and local scope, and individuals that resulted in 566 unique comments. Each unique comment was evaluated and categorized into one of 15 issues. One category (488 commenters) reflected general support for the policy, but did not cite a specific concern. A second category (3 commenters) was not specific, but generally did not support the policy; and a third category (11 commenters) did not specifically relate to this policy or was not substantive. We categorized the remaining issues into 12 main issues:

1. Coordination with State Fish and Wildlife Agencies;
2. Clarification of Terms or Wording Used in the Policy;
3. Impact on Compatible Wildlife-Dependent Recreation;
4. Quality of Life;
5. Wilderness Designations and the Impact on Purposes/Management;
6. Emphasis on Waterfowl Management;
7. Timing of Policy Issuance;
8. Hunting in the Public Use Goal;
9. Need for the Policy and Conflicts with the Improvement Act;
10. Private Landowner Rights;
11. Process for Determining and Applying Purposes; and
12. Relationship of Refuge System Mission and Service Mission.

We revised the policy title to clarify that the focus is on the mission and goals for the National Wildlife Refuge System as a whole and their relationship to individual refuge purposes.

Issue 1: Coordination With State Fish and Wildlife Agencies

Comment: We received 10 comments concerning this issue. State fish and wildlife agencies were the primary commenters and expressed concern that more coordination was needed on this and other policies that were published simultaneously as a result of the Improvement Act. Several commenters expressed the need for more time to review and comment on the policy. One commenter asked that the States be consulted when the refuge purpose was unclear and additional research was needed. The same commenter also requested that we add into the policy a requirement to involve States in any decisionmaking process.

Response: Both the Service and the State fish and wildlife agencies have authorities and responsibilities for management of fish and wildlife on national wildlife refuges as described in Code of Federal Regulations (CFR), Title 43, part 24. Consistent with the Administration Act, as amended, the Director of the Service will interact, coordinate, cooperate, and collaborate with the State fish and wildlife agencies in a timely and effective manner on the acquisition and management of refuges. Under both the Administration Act, as amended, and 43 CFR part 24, the Director of the Service, as the Secretary's designee, will ensure that Refuge System regulations and management plans are, to the extent practicable, consistent with State laws, regulations, and management plans. We charge refuge managers, as the designated representatives of the Director at the local level, with carrying out these directives. We will provide State fish and wildlife agencies timely and meaningful opportunities to

participate in the development and implementation of programs conducted under this policy. These opportunities will most commonly occur through State fish and wildlife agency representation on comprehensive conservation plan (CCP) planning teams. However, we will provide other opportunities for the State fish and wildlife agencies to participate in the development and implementation of program changes that would be made outside of the CCP process. Further, we will continue to provide State fish and wildlife agencies opportunities to discuss and, if necessary, elevate decisions within the hierarchy of the Service.

During the comment period, we developed summaries of this and other policies and sent them to each State. We held numerous meetings with individual State fish and wildlife agencies, through the International Association of Fish and Wildlife Agencies, to explain the policy and discuss concerns. We extended the comment period three times to accommodate additional review and comment. To address concerns, we added a section in the policy concerning consultation with the States. We also changed the decision process for determining refuge purpose(s) in Exhibit 1 by adding the provision that we should consult with the States when determining refuge purpose(s) requires further research.

Issue 2: Clarification of Terms or Wording Used in the Policy

Comment: We received 20 comments with suggested editorial changes to clarify the meaning of certain terms or policy. These suggested changes included using the word "conserve" versus "preserve," deleting the term "ecosystem(s)" if not germane to the section, clarifying the terms "historic" and "native," and adding recognition of habitat manipulation as an acceptable practice in attaining some goals. An underlying concern among several commenters was that the policy might be perceived as diluting the mandate to administer and manage refuges in accordance with their purpose(s).

Response: We reviewed and edited the policy specific to the comments above to improve clarity and understanding. We changed the term "preserve" to "conserve," deleted the term "ecosystem(s)" if it did not add meaning to a section, and added the role of habitat management in the goals section. The term "historic" is not used in the final policy. Therefore, we did not define it. The term "native" is used in a quote, in the title of a law, and relative to the policy on biological integrity, diversity, and environmental health (601 FW 3). We did not define the term since it is defined in that policy. In addition, we changed the term "unit" to "refuge" to be consistent with other policies and added a section defining the term "refuge." Finally, we removed the original Goal A (draft sections 1.6A and 1.7A) and moved it to a separate and new section (section 1.5) in the front of the policy to emphasize our duty imposed by the Improvement Act to manage each refuge to fulfill and carry out the purpose(s) for which it was established.

Issue 3: Impact on Wildlife-Dependent Recreation

Comment: Nine commenters expressed concern that parts of the policy may be interpreted in a way that would discourage wildlife-dependent recreation on refuges.

Response: We reviewed the policy and made appropriate changes to ensure that wording did not diminish the clear policy in the Improvement Act that compatible wildlife-dependent recreation (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) is a legitimate and appropriate general public use of the Refuge System. Compatible wildlife-dependent recreational uses are the priority general public uses of the Refuge System and receive priority consideration in refuge planning and management. We think the policy strongly supports the intent of the Improvement Act by making compatible wildlife-dependent recreation a goal of the Refuge System.

Issue 4: Quality of Life

Comment: We received four comments in this category. One commenter requested that mosquito control be added as a goal of the Refuge System in the context that refuges should contribute to the quality of life around them. The other commenters raised some concern over how the Service would deal with the air quality effects of encouraging natural processes such as fire.

Response: Due to the complexity and inherent local differences and circumstances of mosquito control, we are developing a separate policy to address that issue. In addition, we believe this final policy is an umbrella policy, broad in scope and intent, and is not the proper forum for guidance on specific, on-the-ground management actions. In regard to air quality and fire, we consider public health, safety, and air quality when planning and conducting prescribed burns. Each refuge should have in place a fire management plan that addresses these concerns in detail.

Issue 5: Wilderness Designations and the Impact on Purposes/Management

Comment: Four commenters voiced concern about how designated wilderness on a refuge affects the purpose(s) for which the refuge was established. Some felt the purposes of the Wilderness Act (16 U.S.C. 1131–1136) had been misapplied and managing a refuge with designated wilderness would conflict with the establishing purpose(s) of a refuge.

Response: We carefully reviewed sections 1.14 and 1.16 of the draft policy (sections 1.15 and 1.17 of the final policy) with regard to the purpose(s) of a refuge and wilderness designation. We modified these sections to clarify their intent and ensure consistency with both the Improvement Act and the Wilderness Act. Specifically, we removed any reference to designated wilderness in the first section (1.15), and we changed the second section (1.17) by deleting the reference to wilderness purposes being equal to a refuge's purpose(s) and substituting language from the Wilderness Act that states that the purposes of the Wilderness Act are to be "within and supplemental" to the purposes of refuges and other Federal lands. We clarified our interpretation that "within and supplemental" means wilderness purposes become additional purposes of the refuge, yet apply only to those areas of the refuge designated as wilderness. Wilderness purposes and refuge purposes are not mutually exclusive, but rather wilderness designations provide additional considerations for determining the administrative and management actions we need to take to achieve a refuge's purpose(s) on designated wilderness areas within the Refuge System.

Issue 6: Emphasis on Waterfowl Management

Comment: One commenter was concerned that Goal C of the draft policy (Perpetuate migratory bird, interjurisdictional fish, and marine mammal populations) placed too much emphasis on waterfowl management.

Response: It is critical to reaffirm the Refuge System's important role in the conservation of the Nation's waterfowl resource. The concern of waterfowl hunters and other conservationists over drastically declining waterfowl populations and habitat spurred the tremendous growth of the Refuge System in the 1930s. Waterfowl

conservation continues to be an important function of the Refuge System among the various Federal land systems, bringing enjoyment to millions of visitors who view the migration spectacle or take part in quality waterfowl hunting programs. However, this recognition of the role refuges play in the conservation of the waterfowl resource does not diminish the important and increasing role the Refuge System plays in the conservation of all migratory birds and other Federal trust species. Thus, we made no changes to Goal C of the draft policy (Goal B of the final policy) based upon this comment.

Issue 7: Timing of Policy Issuance

Comment: Two commenters stated that this policy should have preceded other policies that are now final, especially the Biological Integrity, Diversity, and Environmental Health Policy.

Response: We do not disagree with these comments, but we had to make a number of decisions with regard to our policy development. The decision to proceed first with policies on refuge planning; compatibility; and biological integrity, diversity, and environmental health stemmed in part from specific direction in the Improvement Act. At that time, we felt it prudent to begin with those policies that had specific directives in the Improvement Act. We will be reviewing our policies once they are all finalized in order to ensure consistency among them as a group.

Issue 8: Hunting in the Public Use Goal

Comment: One commenter stated that reference to hunting should be deleted from Goal F (in the draft policy) on providing safe, quality, wildlife-dependent recreation on refuges.

Response: As clearly stated in the Improvement Act, compatible wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) are legitimate and appropriate uses of the Refuge System, are the priority general public uses of the Refuge System, and should be facilitated. The goals, as revised, reiterate this. Thus, we made no change to Goal F of the draft policy (Goal E of the final policy) based on this comment.

Issue 9: Need for the Policy and Perceived Conflicts With the Improvement Act

Comment: One commenter expressed concern that the policy went beyond the intent of the Improvement Act or might serve to usurp directives in the Improvement Act. They also recommended we delete the entire section dealing with goals since the Improvement Act does not support the establishment of goals for the Refuge System and questioned certain terms and phrases that may lead to misinterpretation by refuge managers and thus lead to actions contrary to the Improvement Act.

Response: As stated in the policy, we believe revising the Refuge System goals is an important bridge between the Improvement Act and carrying out our obligations under it for planning, administration, management, and growth of the Refuge System. The Refuge System has operated with goals similar to the ones in this policy for decades. Our aim in revising these goals was to ensure consistency with the Improvement Act and to capture the evolution in the science and practice of fish and wildlife management that has occurred since we articulated the original goals in the Refuge Manual (2 RM 1.4). We have closely reviewed these goals and their meaning to ensure they are not contrary to provisions in the Improvement Act. This final policy improves clarity and consistency with the Improvement Act with respect to individual refuge purposes and the Refuge System mission.

Issue 10: Private Landowner Rights

Comment: Two commenters expressed concern that some provisions in this policy may adversely affect private property rights of refuge neighbors.

Response: We found nothing in the policy that could be construed as adversely affecting private property rights. This policy deals specifically with lands, waters, and interests within the Refuge System and does not apply outside the Refuge System. We continue to be mindful of our refuge neighbors in our administrative and management actions on refuges and often rely heavily on cooperation and collaboration with neighboring private landowners to help achieve the purpose(s) of a refuge. Many refuges help deliver the Service's Partners for Fish and Wildlife Program, which provides technical assistance to surrounding landowners who wish to enhance their lands for fish and wildlife.

Issue 11: Process for Determining and Applying Purposes

Comment: Six commenters expressed concern about the process for determining and applying refuge purposes. One commenter noted that purposes derived from Executive orders and legislation are often vague and can lead to varying interpretations and felt the policy should provide additional details on refining purposes. Other comments included opposition to changing refuge purpose(s), support for ensuring that purpose(s) remained more important than the mission of the Refuge System, and opposition to setting a priority among multiple purposes. Several commenters expressed concern that going beyond purposes in executive or legislative actions would lead to endless debate and misinterpretation of the history and memorandums associated with some refuge establishments.

Response: The Improvement Act, although specific in describing from where purposes are specified or derived (laws, proclamations, Executive orders, agreements, public land orders, donation documents, and administrative memoranda), did not articulate a specific process for determining purpose(s). We sought to do that in this policy, reiterating what the Improvement Act defined while providing guidance for those rare instances where establishing documents do not clearly specify purpose(s). We are not authorizing any change of purposes. We are only spelling out the process by which we identify the purposes that have been established in those specific sources. By doing so, we ensure that we will consider what the law requires.

We also believe trying to describe additional details on refining purposes would result in a complicated process that may cause more confusion, rather than less. Comprehensive conservation planning teams develop goals and objectives consistent with the Improvement Act and individual refuge purposes during the CCP process, and we believe that process is the forum to solidify, focus, and clarify refuge purposes. The planning process provides an opportunity for the involvement of representatives of other Federal agencies, State fish and wildlife or other conservation agencies, tribes, nongovernmental groups, refuge neighbors, and the general public, thus ensuring a balanced approach in developing goals and objectives that flow from a refuge's purpose(s). In order to further clarify potentially broad refuge purposes, we added section 1.19 (How does the Refuge System focus planning and development of management goals and objectives for refuges where the purpose(s) seems overly broad?).

This policy maintains the clear direction in the Improvement Act that, if a conflict exists between carrying out the purpose(s) of a refuge and the

mission of the Refuge System, refuge purposes take precedence. We have strengthened this directive by adding a new section 1.5 on why a refuge's purpose(s) has priority over the mission and goals of the Refuge System.

The relationship between multiple purposes on a given refuge and additions to existing refuges under different authorities (with different purposes) was important to address in the policy (section 1.15 of the draft policy and section 1.16 of the final policy). Purposes, as stated in the Improvement Act, are the basis for determining whether a use of the refuge is compatible. Determining compatibility of a use is, by its nature, site- or area-specific. Extending the purposes of the original refuge to areas that are added later is important, especially in those instances where the purpose for acquiring tracts or units may be quite different from the purpose of the original refuge. However, this extension of the purpose of the original refuge does not override or displace the purpose for which the new area was acquired. For example, some refuges established under authority of the Migratory Bird Conservation Act added lands under the authority of the Refuge Recreation Act. These acts provide very different purposes, and we consider it important that the conservation purposes of the "mother refuge" flow to the additions or "children" with a recreation purpose to preserve congressional and administrative intent. We also consider setting a priority among multiple purposes important should a conflict between such purposes arise, and fish and wildlife-related purposes take precedence over any nonwildlife purposes according to the clear hierarchy established in the Improvement Act and associated House Report.

Issue 12: Relationship of Refuge System Mission and Service Mission

Comment: One commenter requested that section 1.5 in the draft policy dealing with the relationship of the Refuge System mission and the Service mission be deleted or revised to avoid the interpretation that the Service mission has equal weight with the Refuge System mission.

Response: We consider it important to explain the mission of the Refuge System within the organizational context of the Service (section 1.7 of the final policy). Within the Refuge System, we are charged with achieving refuge purposes and the Refuge System mission. By fulfilling these charges, we contribute significantly to the Service mission.

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order (E.O.) 12866, this document is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under E.O. 12866.

1. This document will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit or full economic analysis is not required. This document is administrative and procedural in nature. The Improvement Act provides legal recognition for the Refuge System mission and its relationship to refuge purposes. This policy reiterates the Refuge System mission and provides guidance for identifying or determining refuge purpose(s). We expect this policy will not cause a measurable economic effect to existing refuge public use programs.

The appropriate measure of the economic effect of changes in recreational use is the change in the welfare of recreationists. We measure this in terms of willingness to pay for the recreational opportunity. We estimated total annual willingness to pay for all recreation at refuges to be $792.1 million in fiscal year 2001 (*Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation*, DOI/FWS/Refuges, 2003). We expect the policy implemented in this document will not affect public uses of the Refuge System. This policy stipulates that, in accordance with direction given in the Improvement Act, a refuge purpose will receive priority consideration over Refuge System mission should there be a conflict between the two.

2. This document will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency since the document pertains solely to management of refuges by the Service.

3. This document does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other Federal assistance programs are associated with public use of refuges.

4. This document does not raise novel legal or policy issues; however, it does provide guidance for ensuring that conservation and management of fish, wildlife, and plants and their habitats and facilitating compatible wildlife-dependent recreational uses receive priority consideration, in respective order, for administration of the Refuge System.

Regulatory Flexibility Act

We certify 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.*).

Congress created the Refuge System to conserve fish, wildlife, and plants and their habitats and facilitated this mission by providing Americans opportunities to visit and participate in compatible wildlife-dependent recreation (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) as priority general public uses on refuges and to better appreciate the value of, and need for, fish and wildlife conservation.

This document is administrative and procedural in nature and provides a hierarchy of activities on refuges: conservation and management of fish, wildlife, and plants and their habitats, compatible wildlife-dependent recreation; and other uses. Since we determine the permissibility of wildlife-dependent recreational uses on a refuge with the establishment of the refuge, which includes an opportunity for public comment, this policy will not significantly affect public uses of refuges and, consequently, any business establishments in the vicinity of any refuge.

Refuge visitation is a small component of the wildlife recreation industry as a whole. In 2001, 82 million U.S. residents 16 years old and older spent 1.2 billion activity-days in wildlife-associated recreation activities. They spent about $108 billion on fishing, hunting, and wildlife watching trips (Tables 1, 50, 52, and 68, *2001 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation*, DOI/FWS/FA, 2002). Refuges recorded about 39 million visitor-days in fiscal year 2003 (Refuge Management Information System, FY2003 Public Use Summary). A 2003 study of refuge visitors found their travel spending generated $809 million in sales and 19,000 jobs for local economies (*Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation*, DOI/FWS/Refuges, 2003). These spending figures include spending which would have occurred in the community anyway, and so they show the importance of the activity in the local economy rather than its incremental impact. Marginally greater

recreational opportunities on refuges will have little industrywide effect.

We expect no changes in expenditures as a result of this document. We expect no change in recreational opportunities, so we do not expect the document to have a significant economic effect on a substantial number of small entities in any region or nationally.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This document is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This document:

1. Does not have an annual effect on the economy of $100 million or more. This document will only affect visitors at refuges. It may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the Refuge System. See "Regulatory Flexibility Act."

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. See "Regulatory Flexibility Act."

3. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. See "Regulatory Flexibility Act."

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

1. This document will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. See "Regulatory Flexibility Act."

2. This document will not produce a Federal mandate of $100 million or greater in any year; it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. See "Regulatory Flexibility Act."

Takings (E.O. 12630)

In accordance with E.O. 12630, the document does not have significant takings implications. A takings implication assessment is not required. This policy may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the Refuge System. Refer to "Regulatory Flexibility Act."

Federalism (E.O. 13132)

In accordance with E.O. 13132, the document does not have significant federalism effects. This document will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132, we have determined that this document does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that the document does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This policy will expand upon established policy and result in better understanding of the policy by refuge visitors.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 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. Because this notice provides to refuge managers general information on the National Wildlife Refuge System Mission and Goals and Refuge Purposes, it is not a significant regulatory action under E.O. 12866 and is not expected to significantly affect energy supplies, distribution, and use. This notice does not designate any areas that have been identified as having oil or gas reserves, whether in production or otherwise identified for future use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on refuges with tribal governments having adjoining or overlapping jurisdiction before we propose the activities. This policy is consistent with and not less restrictive than tribal reservation rules.

Paperwork Reduction Act

This document does not include any new information collections that would require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (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 unless it displays a currently valid OMB control number.

National Environmental Policy Act

We ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) when developing refuge policies. In accordance with 516 DM 2, appendix 1.10, we have determined that this document is categorically excluded from the NEPA process because it is limited to policies, directives, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Site-specific proposals, as indicated above, will be subject to the NEPA process.

Primary Author

Don Hultman, Refuge Supervisor, Midwest Region, National Wildlife Refuge System, U.S. Fish and Wildlife Service, was the primary author of this notice.

Availability of the Policy

The Final National Wildlife Refuge System Mission and Goals and Refuge Purposes Policy is available at this Web site: *http://policy.fws.gov/ser600.html.* Persons without Internet access may request a hard copy by contacting the office listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Dated: January 20, 2006.

H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

Note: This document was received at the Office of the Federal Register on June 21, 2006.

[FR Doc. 06–5643 Filed 6–23–06; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AG46

Final Appropriate Refuge Uses Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice pertains to our final policy regarding the process we use to decide if a nonwildlife-dependent recreational use is an appropriate use of

a refuge. The National Wildlife Refuge System Improvement Act of 1997 (Improvement Act) amends the National Wildlife Refuge System Administration Act of 1966 (Administration Act) and defines six refuge uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) as wildlife-dependent recreational uses. The Improvement Act states that when compatible these uses are appropriate refuge uses and are the priority general public uses of the National Wildlife Refuge System (Refuge System). The Improvement Act directs us to give priority consideration to and facilitate these uses. To do this, we will provide compatible wildlife-dependent recreational uses enhanced and priority consideration over other general public uses in refuge planning and management. This final policy establishes a process for determining when we may further consider other general public uses on refuges. We are incorporating this policy as part 603, chapter 1, of the Fish and Wildlife Service Manual (603 FW 1). This chapter (603 FW 1) will be available on the U.S. Fish and Wildlife Service's (Service) Web site at *http://policy.fws.gov/ser600.html*.

DATES: This policy is effective July 26, 2006.

FOR FURTHER INFORMATION CONTACT: Carol Carson, Refuge Program Specialist, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203 (telephone 703–358–2490, fax 703–358–2154).

SUPPLEMENTARY INFORMATION: We published the Draft Appropriate Refuge Uses Policy in the **Federal Register** on January 16, 2001 (66 FR 3673). We invited the public to provide comments on the draft policy. The initial comment period closed on March 19, 2001. On March 15, 2001, we extended the comment period to April 19, 2001 (66 FR 15136). On May 15, 2001, we reopened the comment period to June 14, 2001 (66 FR 26879), and on June 21, 2001, we reopened the comment period until June 30, 2001 (66 FR 33268). In our June 21, 2001, notice, we also corrected the May 15, 2001, notice to reflect that comments received between April 19 and May 15, 2001, would be considered and need not be resubmitted.

Background

The Improvement Act (Pub. L. 105–57) amends and builds upon the Administration Act (16 U.S.C. 6688dd *et seq.*), providing an "organic act" for the Refuge System. The Improvement Act clearly establishes the Refuge System mission, provides guidance to the Secretary of the Interior (Secretary) for management of the Refuge System, provides a mechanism for refuge planning, and gives refuge managers uniform direction and procedures for making decisions regarding uses of the Refuge System.

Previously, much Refuge System public recreation policy was promulgated from the Refuge Recreation Act of 1962 (Recreation Act), which authorized us to regulate or curtail public recreational uses in order to ensure that we accomplish our primary conservation objectives. The Recreation Act also authorizes us to allow public recreation on areas within the Refuge System when the use is an "appropriate incidental or secondary use." The Administration Act authorizes the Secretary to allow any use, but only if the use is compatible with the purposes of the area. The Improvement Act amended the Administration Act to define compatibility and to provide a Refuge System mission. It also includes specific directives and a clear hierarchy of public uses on the Refuge System.

The Improvement Act defines wildlife-dependent recreation and wildlife-dependent recreational use as "a use of a refuge involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation." The Improvement Act also provides a set of affirmative stewardship responsibilities regarding our administration of the Refuge System. These stewardship responsibilities direct us to ensure that these six wildlife-dependent recreational uses, where compatible, are provided enhanced consideration and priority over other general public uses.

We are committed to providing enhanced opportunities for the public to enjoy compatible wildlife-dependent recreation. We are also committed to ensuring that refuge uses do not compromise individual refuge purpose(s) or the Refuge System mission. We can achieve individual refuge purpose(s) and the Refuge System mission while providing people with lasting opportunities for quality, wildlife-dependent recreation. To do this we must carefully plan, apply regulations and policies uniformly throughout the Refuge System, diligently monitor impacts of uses on natural resources, and prevent or eliminate uses not appropriate in the Refuge System.

The finding of appropriateness is the first step in deciding whether we will allow a proposed use or continue, expand, renew, or extend an existing use on a refuge. The Improvement Act states that, when compatible, the six wildlife-dependent recreational uses are appropriate and legitimate uses of the Refuge System and are the priority general public uses of the Refuge System. The Improvement Act directs us to facilitate these priority general public uses. We evaluate all other general public uses under a process established by this policy to determine their relationship to individual refuge purpose(s), the Refuge System mission, and priority general public uses. This screening process (i.e., the appropriateness finding contained in this policy) is a decision process that refuge managers will use to quickly and systematically find which uses are appropriate on a specific refuge. The outcome of the process will vary depending on refuge purpose(s) and conditions at the refuge, but the process will be applied consistently throughout the Refuge System. When we find a use is appropriate, we then thoroughly review the use for compatibility before allowing it on a refuge. This appropriate use policy and our compatibility policy (603 FW 2) are key tools refuge managers use together.

Purpose of This Final Policy

The purpose of this final policy is to establish a procedure for finding when uses other than the six wildlife-dependent recreational uses are appropriate for further consideration to be allowed on a refuge. This policy also provides procedures for review of existing uses. The policy will help us fulfill individual refuge purpose(s) and the Refuge System mission, as well as afford priority to compatible wildlife-dependent recreational uses within the Refuge System. This policy will apply to all proposed and existing uses of refuges where we have jurisdiction over these uses. This policy does not apply where we do not have jurisdiction. This policy is intended to improve the internal management of the Service, and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its Departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

Summary of Comments Received

During public comment periods, we received 2,064 comment letters by mail, fax, or email on our draft policy from Federal, State, and local governments, nongovernmental organizations (NGOs), and individuals. Some comments addressed specific elements of the draft policy, while many comments

expressed general support without addressing specific elements. We considered all of the information and recommendations for improvement included in the comments and made changes to the draft policy where needed. The number of issues addressed in each comment letter varied widely. We identified 18 specific issues addressed in the comment letters. A summary of those issues and our responses follow. Several comments were not relevant to this policy, and we do not address them.

Issue 1: Coordination With State Fish and Wildlife Agencies and Jurisdiction

Comment: Several commenters were concerned the draft policy contained no language requiring us to coordinate with State or local government agencies. Some States felt that State authorities, jurisdictions, and responsibilities were "made vague, diminished, or * * * ignored" in the draft policy. Two States were concerned that the draft policy may result in Federal infringement on State jurisdiction. One State commented that the policy should be rewritten to involve State agencies at an early stage. One commenter recommended that we implement a more formal process to solicit input from State agencies.

Response: In section 1.2 of the draft policy (What is the scope of this policy?), we stated the "policy applies to all proposed and existing uses of national wildlife refuges when we have jurisdiction over these uses." In section 1.2.B., we acknowledge and consider the roles of the States in managing fish and wildlife management on refuge when such activities are consistent with the refuges purpose(s), refuge goals, and the Refuge System mission. To enhance our coordination with State fish and wildlife agencies, we include take of fish and wildlife under State regulations as an appropriate activity on refuges (section 1.3B.). However, before we allow a specific activity, we must determine if the activity is compatible.

Both the Service and the State fish and wildlife agencies have authorities and responsibilities for management of fish and wildlife on refuges as described in the Code of Federal Regulations (CFR), Title 43, part 24. Consistent with the Administration Act, as amended, the Director of the Service will interact, coordinate, cooperate, and collaborate with the State fish and wildlife agencies in a timely and effective manner on the acquisition and management of refuges. Under both the Administration Act, as amended, and 43 CFR 24.4(e), the Director of the Service, as the Secretary's designee, will ensure that Refuge System regulations and management plans are, to the extent practicable, consistent with State laws, regulations, and management plans. We charge refuge managers, as the designated representatives of the Director at the local level, with carrying out these directives. We will provide State fish and wildlife agencies timely and meaningful opportunities to participate in the development and implementation of programs conducted under this policy. These opportunities will most commonly occur through State fish and wildlife agency representation on comprehensive conservation plan (CCP) planning teams. However, we will provide other opportunities for the State fish and wildlife agencies to participate in the development and implementation of program changes that would be made outside of the CCP process (603 FW 2). Further, we will continue to provide State fish and wildlife agencies opportunities to discuss and, if necessary, elevate decisions within the hierarchy of the Service.

During the comment periods, we developed summaries of this and other policies and sent them to each State. We held numerous meetings with individual State fish and wildlife agencies, through the International Association of Fish and Wildlife Agencies, to explain the policy and discuss concerns. We extended the comment period three times to accommodate additional review and comment. To address concerns regarding input from State agencies, we added language to the final policy that stresses the importance of this coordination. We also modified section 1.6E. (Refuge Manager) in the draft policy (section 1.7E. in the final policy) to state the refuge manager must consult with State fish and wildlife agencies when a request for a use could affect fish, wildlife, or other resources that are of concern to the State fish and wildlife agency.

Issue 2: Categories of Refuge Uses

Comment: We received a variety of comments concerning the six wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) identified in the Improvement Act. Several commenters suggested that there is another legitimate category of uses that requires special consideration. That category would include other wildlife-dependent uses that are not specifically identified in the Improvement Act. Some commenters stated that these activities should be considered second after the six wildlife-dependent recreational uses. A number of commenters suggested additional uses that should also be given priority, such as boating, swimming, and camping. One commenter stated the way "a quality experience" is discussed, hunting is made subservient to all other wildlife-dependent activities. Other commenters objected to any hunting or fishing on refuges and recommended these activities be banned.

Response: The Improvement Act is very specific where it states that "compatible wildlife-dependent recreational uses are the priority general public uses of the Refuge System and shall receive priority consideration in refuge planning and management." The Act goes on to define "wildlife-dependent recreational uses" as uses "of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation." The term "wildlife-dependent recreational use" is clearly defined in law, and we do not have the authority to change that definition and add categories of wildlife-dependent recreational uses. The intent of these provisions is to ensure that those types of uses most closely related to refuge purposes and the Refuge System mission would be available. While other uses might also be allowed, the Improvement Act does not prioritize them. In addition, the use of the term "quality experience" is in no way intended to make hunting subservient to any use. Finally, wildlife dependent recreational uses, including hunting and fishing, are the uses that the Improvement Act directs us to facilitate when they are compatible, "subject to such restrictions or regulations as may be necessary, reasonable, and appropriate." Therefore, we have not made any changes to the policy based on these comments.

Comment: Three commenters stated uses that directly support priority uses should be subject to the appropriateness finding. Also, several comments concerned the lack of justification for identifying public uses that facilitate priority public uses as "second priority uses of the System."

Response: The Improvement Act directs us to provide increased opportunities for families to experience compatible wildlife-dependent recreation. The Act defines compatible wildlife-dependent recreational uses as the priority general public uses of the Refuge System. The Act directs us to ensure that we provide opportunities within the Refuge System for these uses and to facilitate these uses. Priority general public uses may require additional activities to ensure that we

can provide the public with safe, quality, compatible wildlife-dependent recreational opportunities. However, we agree with the commenters that uses supporting the priority general public uses should also be evaluated under this policy to ensure they are appropriate, and we revised the final policy to reflect this. Supporting uses, if truly necessary for the safe, practical, and effective conduct of a wildlife-dependent use, should readily meet the requirements of this policy. Supporting uses that are found appropriate must also undergo review for compatibility before being allowed on a refuge.

Comment: One commenter stated uses that contribute to refuge purposes or to the Refuge System mission should not automatically be considered appropriate uses. Two commenters stated it was not clear if the policy applies to refuge management activities.

Response: We consider uses that help us fulfill our legally mandated Refuge System mission to be appropriate on refuges. However, these uses must also meet the compatibility requirements of the Improvement Act.

The Improvement Act requires us to manage each refuge to fulfill the specific purpose(s) for which the refuge was established as well as the Refuge System mission. The Act defines management activities, which we conduct to achieve refuge purposes and the Refuge System mission, to include methods and procedures such as "protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking." The Act clearly differentiates between management activities and uses of refuges. Based on the requirements of the Act, this policy provides procedures to follow in finding if a use of a refuge is appropriate. It does not apply to refuge management activities. We added a paragraph in section 1.2B. to the final policy to clarify that it does not apply to management activities (see the compatibility policy, 603 FW 2.9 and 2.10). We also described the types of activities we consider to be refuge management activities based on the Improvement Act.

Issue 3: Factors Used To Make an Appropriateness Finding

Comment: We received a wide range of comments concerning the factors we will use to decide if a refuge use is appropriate. Some commenters stated the factors we use should be based solely on whether the proposed activity is consistent with fulfilling the purpose(s) for which the refuge was established.

Response: We are responsible for managing each refuge to fulfill its establishing purpose(s) and the Refuge System mission. In addition, the Improvement Act requires us to manage refuges as a nationwide system. To do this, we need standard procedures that are followed throughout the Refuge System. This policy provides standard procedures in the form of a process for all refuge managers to follow when deciding whether or not a use is appropriate on a specific refuge. The process each refuge manager uses is the same, but the outcome of the process will usually vary because the refuge manager evaluates the use in relation to the refuge purpose(s), the Refuge System mission, and conditions at the refuge.

Comment: Some commenters fully supported the factors used to make an appropriateness finding in the draft policy and stated the Service should use the factors to strictly evaluate all uses. Other commenters suggested we use some of the factors, but not others. Some commenters suggested that few uses would meet all of the factors and recommended that the factors should be more flexible, and some suggested revisions to specific factors. However, the commenters had no consensus on what changes should be made. Some commenters thought certain factors were too restrictive; others thought the same factors should be more restrictive.

Response: The Improvement Act requires we facilitate compatible wildlife-dependent recreational uses (the priority general public uses). We must carefully review other refuge uses to ensure they are appropriate, meet the compatibility requirements, and would not conflict with the priority general public uses, refuge purposes, the Refuge System mission, and other refuge and Refuge System management goals and objectives. Our aim is to provide quality, compatible, wildlife-dependent recreation to enable the American public to develop an appreciation for fish and wildlife. If the response is "no" to any of the factors dealing with jurisdiction, public safety, and compliance with laws, regulations, Executive orders, and policies, we will immediately stop consideration of the use. Although we will generally not allow a use when the answer to one of the other factors is "no," we state that there may be exceptions. Each refuge situation will be different. We provide a process to follow to ensure consistency in the way we manage refuges. However, we will immediately reject any use that is illegal, inconsistent with existing policy, unsafe, or over which we do not have jurisdiction. Refuge managers must use sound professional judgment in making these evaluations and should consult with the refuge supervisor when they receive requests for uses that may be sensitive or controversial. The refuge manager is also responsible for consulting with State fish and wildlife agencies when a request could affect fish, wildlife, or other resources that are of concern to the State fish and wildlife agency. We modified section 1.6E. in the draft policy (Refuge Manager) (section 1.7E. in the final policy) to clarify the requirement for State consultation.

Comment: One commenter asked if the first factor regarding compliance with applicable laws and regulations referred to both Federal and State laws and regulations.

Response: This factor refers to all laws and regulations, when applicable, including State, local, and tribal requirements. We revised the text in section 1.11A. (section 1.10 of the draft policy) and in exhibit 1 to clarify this.

Comment: Two commenters objected to the use of such words as "believe" or "feel" in relation to the refuge manager's review of an activity.

Response: We agree that the use of terms such as "believe" or "feel" should not be included in the final policy. We therefore eliminated these terms.

Comment: Several commenters, including a number of State agencies, expressed concern that inclusion of the factor in section 1.10A.(3)(i) ("Is the refuge the only place this activity can reasonably occur?") in the draft policy would preclude legitimate activities, such as hunting and fishing, on a refuge if the answer is "no." With respect to uses other than wildlife-dependent recreational uses, commenters stated that this factor should also consider whether the refuge affords a quality public setting for persons who could not otherwise attain access or afford to engage in the activity. They stated refuge managers should not disregard uses simply because opportunities already exist on nearby State lands and recommended this factor be deleted or rewritten.

Response: After considering all the comments, we again reviewed this factor concerning location. Under the Improvement Act, wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, or environmental education and interpretation) are considered appropriate uses by this policy (section 1.11A.(1) in the final policy). These activities are, however, subject to a compatibility determination before they can occur on a refuge. Compatible wildlife-dependent recreational uses are the priority general public uses of the

Refuge System. For other general public uses, whether or not the refuge is the only place the use can occur is an important factor that should be considered by refuge managers. The proximity of other public or private lands that allow a proposed use may reduce the public's need for an activity other than a wildlife-dependent recreational use to be conducted on the refuge.

We are trying to ensure that the conduct of uses other than wildlife-dependent recreational uses does not compromise our ability to offer opportunities for priority general public uses or to properly manage the refuge for its establishing purposes. We originally introduced this factor in the context of considering whether a nonwildlife-dependent use, such as cave exploring or rock climbing, is appropriate on the refuge if it was not available anywhere nearby. These uses now occur on some refuges, and the public has no other opportunity to engage in these activities for hundreds of miles. This factor introduces an opportunity whereby we might consider such an activity appropriate. However, we deleted this factor as a criteria in the checklist and incorporated it into section 1.11B of the final policy.

Issue 4: Refuge Managers, the Appropriate Use Process, and Oversight

Comment: We received comments ranging from the opinion that the refuge manager is given too much authority, to the opinion that the refuge manager should have more authority. Some commenters on this issue were concerned about the amount of autonomy given to the refuge manager, especially when the draft policy did not specifically require coordination with the States. Some commenters did not think refuge managers should have the discretion to allow a use that does not meet all of the factors included in section 1.10A.(3) of the draft policy, while others stated that the factors leave a refuge manager with little or no discretion. Comments ranged from seeing no value in letting local refuge managers make appropriate use decisions themselves, to the perception the decisionmaking authority of the individual refuge manager is usurped. One commenter stated citizens (neighbors) could exert pressure on a local manager; therefore, the refuge manager should not be allowed to consider each case on its merits. Concern was also expressed that, if a refuge manager were biased for or against a certain activity, then nothing would check that bias. Several commenters stated refuge managers should have to provide documentation on all uses found not appropriate as well as documentation on uses found appropriate. In addition, one commenter recommended the review process for all appropriate use findings, both positive and negative, should be the same. Various commenters thought that a refuge manager might try to get out of having to provide documentation by declaring a use not appropriate. Several commenters recommended there be oversight on all appropriate use decisions. Most who commented on this issue suggested the refuge supervisor review appropriateness findings, while one commenter suggested that the Regional Director provide final approval.

Response: Refuge managers are responsible for using sound professional judgment when making findings of appropriateness and documenting those findings in writing. A refuge manager's field experience and knowledge of the refuge's resources are essential to making the appropriateness finding. In any situation having unusual factors, such as pressure from local citizens, the refuge manager should discuss the situation with his/her refuge supervisor. Section 1.10A.(3) of the draft policy (1.11A.(3) of the final policy) requires a refuge manager to document findings that a use is appropriate in writing by completing exhibit 1 and to obtain concurrence from the refuge supervisor. Section 1.10B. of the draft policy (1.11C. of the final policy) requires that, when a refuge manager finds a proposed use is not appropriate, the finding must also be documented using exhibit 1. Thus, the policy requires refuge managers to complete the same form (exhibit 1) for all uses subject to an appropriateness finding, regardless of whether the finding is positive or negative.

To ensure consistency and oversight and to balance any potential bias on the part of the refuge manager, we revised the responsibilities of the refuge manager to include a requirement to consult with the refuge supervisor on all findings. When a request could affect fish, wildlife, or other resources of concern to a State fish and wildlife agency, the refuge manager is required to coordinate with the State fish and wildlife agency. In addition, we revised the draft policy to clarify that the refuge manager must submit all findings of appropriateness to Refuge System Headquarters, through the refuge supervisor, for inclusion in a national reference database on refuge uses. However, only uses a refuge manager finds to be appropriate require refuge supervisor concurrence. We revised the responsibilities of the refuge supervisor to include a periodic review of findings where a use is considered not appropriate. With these changes, all findings are seen by the refuge supervisor at least annually. This should help achieve consistency within the Region. We need to try and ensure that we apply relevant laws, regulations, and policies consistently in similar situations. This policy represents a balance by providing clear standards that all managers will use, as well as the flexibility they need, to make judgments applicable in specific situations.

Comment: One commenter stated the draft policy should be rewritten to give clear criteria and a detailed, step-by-step approach for refuge managers to follow. One commenter considered the process to decide appropriateness too complex and suggested it be streamlined and simplified.

Response: We consider the guidance in this policy to be clear and easy to follow. Exhibit 1, which must be completed for each proposed use, provides a checklist of each factor the refuge manager must consider and presents a simple, streamlined framework for making these decisions. We did not make revisions to the policy based on these comments.

Comment: Two States commented there were no provisions in the draft policy for State agencies to appeal decisions made by refuge managers.

Response: The Improvement Act directs us to ensure that we effectively coordinate, interact, and cooperate with the fish and wildlife agencies of the States in which refuges are located. One of the ways we do this is by inviting State fish and wildlife agencies to participate on the CCP team for each refuge. We added an element to the refuge manager's responsibilities to require consultation with State fish and wildlife agencies when requests for uses could affect fish, wildlife, or other resources of concern to the State agency, whether within or outside of the CCP process. In any instance where State fish and wildlife agencies have concerns they do not think have been addressed, they should contact Refuge System representatives first at the refuge and then, if they consider it necessary, at the Regional level.

Comment: One commenter suggested exhibit 1 should be modified to include the statements contained in sections 1.10A.(1) and (2) of the draft policy. The commenter stated that having an easy documentation process for these activities will allow refuge managers to comply with the annual review of uses identified in the draft policy.

Response: Section 1.10A.(1) in the draft policy identified as appropriate

both wildlife-dependent recreational uses as defined in the Improvement Act and activities "necessary for the safe, practical, and effective conduct of a priority public use on the refuge." The Act states that compatible wildlife-dependent recreational uses are appropriate and legitimate refuge uses. For those uses, a refuge manager does not need to complete exhibit 1. We revised the final policy to require appropriateness findings for general public uses that are not wildlife-dependent recreational uses as defined by the Improvement Act, but that may support such uses. The refuge manager must complete exhibit 1 for these uses.

Section 1.10A.(2) in the draft policy identifies as appropriate activities that contribute to fulfilling the Refuge System mission or the refuge purposes, goals, or objectives as described in a refuge management plan. Because the uses covered in this section have already been found appropriate, the refuge manager does not need to complete additional documentation (such as exhibit 1). However, the CCP process includes a review of the appropriateness and compatibility of all existing refuge uses and of any planned future public uses. The documentation for both appropriateness findings and compatibility determinations should be included in the documentation for the CCP.

The commenter mentioned a requirement for an "annual review" of uses identified in the draft policy. There is no requirement for such a review. Section 1.10C. of the draft policy (section 1.11D. of the final policy) contains a requirement that refuge managers review all existing uses for appropriateness within 1 year of the issuance of the final appropriate uses policy. However, this would be a one-time review to ensure that current uses are appropriate. Once current uses have been reviewed, there is no requirement, nor is there a need, for an annual review of uses for appropriateness.

Comment: One commenter stated exhibit 1 should also include the line "Would this use be manageable by using volunteers or other resources available from cooperating partners?" This would remind managers of the potential opportunity to obtain additional resources from cooperators.

Response: Volunteers and other resources are, and will continue to be, valuable assets to refuge managers. When a refuge manager makes a determination of whether or not a requested use is manageable, such resources should be considered. However, the refuge manager is also responsible for anticipating the long-term effects of use decisions. The resources available at one point may not be available the next time someone requests the same or a similar use of the refuge. The refuge manager needs to be aware of precedents that may be set by allowing a use the refuge staff alone could not manage. If a requested use would rely heavily on volunteer and other resources, the refuge manager should consider discussing the situation with the refuge supervisor before making an appropriateness finding. We revised section 1.10A.(3)(f) of the draft policy (section 1.11A.(3)(g) in the final policy) to remind the refuge manager to consider the use of volunteers and other resources. The compatibility policy (603 FW 2) also addresses the question of available resources in its section 2.12A.(7).

Comment: One commenter recommended a list of responsibilities, by job title, be included in appropriate sections of each of the policies. The commenter also recommended that an appeal process should be identified within these job categories.

Response: A list of responsibilities, by job title, is already included in section 1.6 (What are our responsibilities?) in the draft policy (section 1.7 in the final policy). We added a statement in section 1.10C. of the final policy pointing out that persons who are denied a special use permit for an activity may appeal the denial by following the procedures outlined in 50 CFR 25.45 and in 50 CFR 36.41.

Issue 5: Consistency

Comment: Several commenters stressed the need for uniformity among refuges in the same geographic area. In addition, they stated we should give a high priority to ensuring Refuge System policies, management activities, and recreational uses are consistent with State laws, regulations, and policy.

Response: We clarified in the final policy that, when reviewing requests for refuge uses, we must ensure the uses are consistent with applicable State law (section 1.11A.(3)(b) of the final policy). This policy provides a consistent process for refuge managers to follow in making appropriateness findings on refuge uses. In making these findings, the refuge manager must consider the specific purpose(s) for which that refuge was established as well as the Refuge System mission. Because the establishing purposes of all refuges in a Region are usually not the same and local conditions and needs vary, decisions on what is appropriate on one refuge may not be the same for other refuges in that Region. Also, the national database, which will have appropriateness findings filtering through refuge supervisors, may provide additional consistency.

Issue 6: Public Involvement

Comment: Several commenters recommended the public be actively involved in making management decisions for refuges.

Response: Most decisions to allow particular public use activities on a refuge currently are or will soon be made in the refuge CCP process which provides significant opportunity for public involvement. New uses may also be allowed or existing uses discontinued based upon specific step-down plans derived from CCPs. These step-down plans may include a public involvement process in accordance with the National Environmental Policy Act (42 U.S.C. 4321–4347). If an activity is not addressed in these plans, the refuge manager must first find if that activity is appropriate. If the activity is appropriate, the refuge manager then must determine whether the activity is compatible with refuge purposes and the System mission. The compatibility determination includes an opportunity for public involvement. The refuge manager must be allowed some discretion in making timely decisions on behalf of the resource, while balancing the need to seek public input on significant or sensitive requests for uses of a refuge. We rely on refuge managers to use their sound professional judgment when making these decisions. When a specific request for a permit to conduct an activity is denied because of a decision by a refuge manager under this policy, the requestor may appeal the decision by following the procedures outlined in 50 CFR 25.45 and 50 CFR 36.41. The CCP and compatibility determination processes provide meaningful opportunities for public involvement in refuge management decisions. Therefore, we did not make any changes to this policy regarding public involvement.

Issue 7: Conflict Resolution Between Priority Uses

Comment: Several commenters stated the policy should incorporate guidance for resolving conflicts among priority uses.

Response: This policy focuses on finding whether or not a proposed refuge use is appropriate. The compatibility policy provides guidance for managing conflicting uses (603 FW 2.11G.). The issue is also addressed in our policies on recreational refuge uses (605 FW 1–7).

Issue 8: Trapping

Comment: Many commenters expressed concern that trapping was not mentioned in this policy. Several commenters suggested trapping be identified as a wildlife-dependent recreational use and that it is an appropriate, legitimate, and compatible use on most Refuge System units. Several commenters also requested the Service "clearly articulate its process for permitting and regulating trapping within System holdings." Some commenters stated refuge managers should have to justify why uses dependent on the presence of wildlife not included in the Improvement Act definition, such as trapping, may not be allowed on a specific refuge. Two commenters stated trapping should not be ruled out as a management tool. One commenter assumed that, since recreational trapping was not mentioned, it is considered a form of hunting and recommended we state this in the final policy.

Response: The Improvement Act defines wildlife-dependent recreation as "a use of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation." The statutory definition of wildlife-dependent recreation does not include trapping. However, we recognize trapping as a form of regulated take and consider it an important management tool. We address trapping in our regulations in 43 CFR 24.4, 50 CFR 31.2, and 50 CFR 31.16, as well as in the Refuge Manual (7 RM 15). We coordinate and cooperate with State fish and wildlife agencies. To further this relationship, we include the take of fish and wildlife under State regulations, including trapping, as an appropriate refuge use. However, before allowing this use on a particular refuge, we must first determine if it is compatible with the purposes of that refuge.

Issue 9: Upper Mississippi National Wildlife Refuge (NWR)

Comment: Several commenters expressed concern regarding the many overlapping jurisdictions, the history of multiple use, and how this policy would apply to the Upper Mississippi NWR. Some commenters were concerned the proposed policy would impose limits on power boating, fishing, or other water recreation on the Mississippi River. Other commenters suggested the policy should have more flexibility and recognize the unique history of recreational uses on the Upper Mississippi River. Several commenters stated the policy should be strictly applied to uses on the Upper Mississippi NWR.

Response: Section 1.2 of both the draft and final policies states that the policy applies *only* to uses which are under the jurisdiction and control of the Service. This policy apply to areas or activities where we do not have jurisdiction. For example, the policy does not apply where the States have jurisdiction over the waterways near the Upper Mississippi NWR. This policy provides a consistent process for refuge managers to follow to decide if a use is an appropriate refuge use. The results of this process are based on refuge purpose(s), the Refuge System mission, and refuge conditions. We invite and encourage public participation at several points during refuge planning, such as during the CCP and the compatibility determination processes. In the final policy (section 1.11A.(3)(a)), we added a criterion concerning jurisdiction over a use as a factor to be considered when making an appropriateness finding. We also included this as the first criterion in exhibit 1.

Issue 10: Use of Snowmobiles, Off-Highway Vehicles, Boats, and Personal Watercraft on Refuges

Comment: We received a variety of comments concerning use of snowmobiles on refuges. Some commenters supported the use of snowmobiles on refuges as an alternate form of transportation, to gain access for wildlife-dependent recreational uses, or because the use conforms with terms and conditions outlined within an environmental impact statement or an environmental assessment. Other commenters objected to the use of snowmobiles on refuges because of noise pollution, habitat damage, and wildlife disturbance.

Response: The draft policy did not specifically address the appropriateness of snowmobiling as a refuge use. The policy outlines the process that the refuge manager must follow in making the appropriateness finding of any proposed refuge use, including snowmobiling. Because refuges have different establishing purposes and local conditions vary, a proposed refuge use may be found to be appropriate on one refuge, but not appropriate on another. Individual refuge managers will make the appropriateness finding on snowmobiling as a refuge use on a case-by-case basis. We must also comply with Alaska National Interest Lands Conservation Act of 1980 (ANILCA) (16 U.S.C. 410hh–410hh–5, 460mm–460mm–4, 539–539e, and 3101–3233; 43 U.S.C. 1631 et seq.) and any refuge-specific legislation.

The policy states that, before we can allow any off-road vehicle use (including snowmobiles), we must comply with Executive Order (E.O.) 11644, which requires we designate areas as open or closed to off-road vehicles in order to protect refuge resources, promote safety, and minimize conflict among various refuge users; monitor the effects of these uses once they are allowed; and amend or rescind any area designation as necessary based on the information gathered. Furthermore, E.O. 11989 requires we close areas to these types of uses when we determine the use causes or will cause considerable adverse effects on the soil, vegetation, wildlife, habitat, or cultural or historic resources. This policy allows flexibility and consideration at the local level based upon specific, on-site needs for accessibility and transportation. However, we must protect wildlife and habitat from unwarranted damage. We did not make changes to the final policy based on these comments.

Comment: The majority of comments received were form letters supporting the use of off-highway vehicles (OHVs) on refuges. However, we received comments from many individuals recommending we ban all OHV use on refuges. One commenter suggested we restrict their use. Commenters supporting use of OHVs on refuges felt access opportunities provided by OHV use were legitimate uses and that limitations were too restrictive and unnecessary. Commenters opposing their use stated OHVs cause habitat damage as well as air and noise pollution.

Response: The draft policy did not specifically address the use of OHVs on refuges. The policy outlines the process the refuge manager must follow in making an appropriateness finding on a proposed refuge use, including uses involving OHVs. Because refuges have different establishing purposes, a proposed refuge use may be found to be appropriate on one refuge, but not appropriate on another. Individual refuge managers will make appropriateness findings on proposed OHV use on a refuge on a case-by-case basis.

Current refuge policy (8 RM 7) and regulations (50 CFR 26.27) generally allow OHV use on established roadways or designated trails open for public vehicular use if the vehicle complies with State requirements. Both the draft policy and final policy reaffirm current policy and regulations, including E.O. 11644 and E.O. 11989. For Alaska,

ANILCA contains provisions concerning use of OHVs.

Comment: We received comments ranging from requests that we ban all watercraft to requests that we allow all watercraft. Some commenters recommended restrictions on certain types of watercraft (such as motorized and personal watercraft); others supported the inclusion of sailing as a priority use.

Response: The draft policy did not specifically address the use of any particular type of watercraft. The policy provides a standard procedure for all refuge managers to follow when making appropriateness findings for refuge uses including the use of watercraft. The Improvement Act specifically defines the wildlife-dependent recreational uses as hunting, fishing, wildlife observation and photography, and environmental education and interpretation. Wildlife-dependent recreational uses that are compatible are the priority general public uses. We do not have the authority to add other uses to those defined by law. Therefore, we did not make changes to the final policy based on these comments. Refuge managers, however, do have the latitude to consider any type of watercraft use under this policy. Where there is a strong nexus between the use of watercraft and a wildlife-dependent recreational use, the use of that watercraft may be both appropriate and compatible. For example, the use of canoes may be allowed on a refuge to facilitate fishing. On the other hand, conducting boat races on refuge waters would likely not be determined either appropriate or compatible.

Issue 11: General Support

We received over 1,400 comments supporting the policy. Comments came from a Federal agency, States, nongovernmental organizations, and individuals. Commenters supported the development of the policy to provide guidance and standardization for management of the Refuge System. The strongest themes in the comments were recognition of the need to limit human activities on refuges and for the policy to be grounded in law.

Issue 12: Rights-of-Way

Comment: We received one comment concerning corridor preservation and the importance of accommodating future roadway widening and other modifications. The commenter pointed out the importance of incorporating public transportation needs for refuge users in refuge management policy.

Response: We agree that corridor preservation is important to accommodate future right-of-way requests when appropriate, compatible, and practical. Rights-of-way will continue to be handled through the compatibility and right-of-way permit processes, not this policy. We did not make any changes to the final policy based on this comment.

Issue 13: Research on Refuges

Comment: Three organizations commented that all research should be considered appropriate and should not be subject to the appropriateness review. Two commenters supported the requirement that research should be subject to the appropriate uses policy. One commenter stated research should be defined as a refuge management activity, regardless of what the research is or who conducts it.

Response: Not all research may be appropriate. Some research may affect fish, wildlife, and plants in a manner neither consistent with refuge management plans nor compatible with refuge purposes or the Refuge System mission. Some research may interfere with or preclude refuge management activities, appropriate and compatible public uses, or other research. Some research may be appropriate off the refuge, but not on the refuge. For example, some natural and physical research may not be wildlife-dependent and may be accomplished successfully at locations off the refuge. Because not all research supports the establishing purposes of refuges or the Refuge System mission, we cannot define research as a refuge management activity. Therefore, we did not exempt all research from evaluation under this policy.

Issue 14: Accessibility

Comment: Some commenters recommended we allow motorized travel to provide persons with disabilities the opportunity to participate in outdoor recreational opportunities.

Response: We are committed to identifying and developing, where appropriate, opportunities for persons with disabilities to enjoy national wildlife refuges. A refuge manager can make decisions concerning the use of a motorized vehicle to accommodate a person with a disability who would like to participate in an approved recreational activity. The refuge manager will make this type of decision either on a case-by-case basis or programmatically through the CCP or stepdown management plans. The chapters on recreation in Part 605 of the Service Manual provide a more comprehensive discussion on providing opportunities to individuals with disabilities.

Issue 15: Dogs on Refuges

Comment: One commenter stated dogs were becoming a problem on the Upper Mississippi NWR. We also received comments from two organizations that exist to train or otherwise promote use of dogs. These organizations proposed that field trials, raccoon hunting, and other dog-related activities be allowed on refuges.

Response: Provisions are already in place requiring dogs on refuges to be on a leash or otherwise under control. Anyone who is aware of a problem with dogs on a refuge should notify the refuge manager so that there can be better enforcement of existing provisions. The specific issue of field trials is addressed in another chapter of the Service Manual (631 FW 5). No changes were made to the final policy based on these comments.

Issue 16: Clarify Goals

Comment: One commenter stated the policy does not clearly and specifically spell out the goals of the policy.

Response: We disagree and direct the reader to section 1.1 (What is the purpose of this chapter?) which describes the purpose of this policy. We do not see a need to break down the purpose into goals.

Issue 17: Resource Extraction

Comment: One commenter supported our intention to honor valid existing mining rights. Some commenters encouraged us to ban all mining and oil exploration on refuges, while other commenters stated we should allow some resource extraction.

Response: We revised section 1.9D.(7) (Natural resource extractions) in the draft policy (section 1.10C.(7) in the final policy) to clarify when natural resources may be extracted. Part 612 of the Fish and Wildlife Service Manual provides detailed information on minerals management on refuges, and we refer the refuge manager to that chapter. We have a legal obligation to honor any valid existing rights and will continue to do so. Where there are no existing legal rights and activities do not support a refuge management activity, refuge purposes, or the Refuge System mission, we will generally find them not appropriate. Under current Department of the Interior and Service policy, we only allow oil and gas leasing on refuges outside of Alaska in cases where these resources under the refuge are being extracted from a site outside the refuge (drainage).

Issue 18: Required Determinations

Comment: One commenter stated the curtailment of some activities on some refuges could affect smaller user groups, affect the local economy, and place additional pressure on nearby State-owned sites. The commenter did not agree the "document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act." The commenter expressed concern about the impact of policy changes on businesses in the vicinity of the Upper Mississippi NWR, especially businesses related to boating.

Response: In determining whether or not a document will have a significant impact (an annual effect on the economy of $100 million or more) under the Regulatory Flexibility Act, we consider the amount of change that may occur due to any alteration in policy. This policy applies only to activities where we have jurisdiction. Most waterways in the vicinity of the Upper Mississippi NWR are under State jurisdiction and not subject to this policy. Therefore, this policy would have little or no effect on boating businesses near the Upper Mississippi NWR. In addition, we may be able to provide other wildlife-dependent recreational opportunities on the refuge that could increase income to some businesses.

Comment: One State expressed concern the policy will have a substantial direct effect on the relationship between States and the Federal Government (under E.O. 13132, Federalism) and that the draft has the Federal Government intruding into areas of State jurisdiction concerning navigable waters near the Upper Mississippi NWR.

Response: The policy only applies where we have jurisdiction. This policy does not apply where we do not have jurisdiction. Therefore, there will be no effect on the relationship between States and the Federal Government. We amended section 1.2 to clarify and emphasize that the policy only applies where we have jurisdiction.

Comment: One commenter disagreed with our statement that the overall net effect of the policy is likely to increase visitor activity at the Upper Mississippi NWR. The commenter suggested we should examine the effects on each refuge to make a valid determination of the potential impact of this policy.

Response: Refuge visitation is a small component of the wildlife recreation industry as a whole. We expect changes in expenditures as a result of this policy to be marginal and scattered. Because this is a relatively small proportion of recreational spending, we do not agree we need to do a refuge-by-refuge evaluation. We do not expect the policy to have a substantial or significant economic effect (over $100 million) and have made no changes in the final notice concerning this issue.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in E.O. 12866, the Office of Management and Budget (OMB) has determined that this policy is a significant regulatory action.

1. This document will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit or full economic analysis is not required. This document is administrative, legal, technical, and procedural in nature. This policy establishes the process for making an appropriateness finding for proposed refuge uses. This policy will have the effect of providing priority consideration for compatible wildlife-dependent recreational uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation. Existing policy has been in place since 1985 that encourages the phase-out of nonwildlife-oriented recreation on refuges. The Improvement Act does not greatly change this direction in public use, but provides legal recognition of the priority we afford to compatible wildlife-dependent recreational uses. We expect these new procedures to cause only minor modifications to existing refuge public use programs. While we may curtail some nonpriority refuge uses, we may also provide new and expanded opportunities for priority public uses. We expect an overall small increase, at most a 5 percent annual increase, in the amount of public use activities allowed on refuges as a result of this policy.

The appropriate measure of the economic effect of changes in recreational use is the change in the welfare of recreationists. We measure this in terms of willingness to pay for the recreational opportunity. We estimated total annual willingness to pay for all recreation at refuges to be $792.1 million in fiscal year 2001 (*Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation,* DOI/FWS/Refuges, 2003). We expect the appropriate use process implemented in this policy to cause at most a 5 percent annual increase in recreational use Refuge Systemwide. This does not mean that every refuge will have the same increase in public use. We will allow the increases only on refuges where increases in hunting, fishing, and other wildlife-dependent recreational visitation are compatible. Across the entire Refuge System, we expect an increase in hunting, fishing, and nonconsumptive visitation to amount to no more than a 5 percent overall increase. If the full 5 percent increase in public use were to occur at refuges, this would translate to a maximum additional willingness for the public to pay $39.6 million annually. However, we expect the real benefit to be less than $39.6 million because we expect the final increase in public use to be smaller than 5 percent. Furthermore, if the public substitutes nonrefuge recreation sites for refuges, then we would subtract the loss of benefit attributed to nonrefuge sites from the $39.6 million estimate.

We measure the economic effect of commercial activity by the change in producer surplus. We can measure this as the opportunity cost of the change; *i.e.*, the cost of using the next best production option if we discontinue production using the refuge. Refuges use grazing, haying, timber harvesting, and farming to help fulfill refuge purposes and the Refuge System mission. Congress authorizes us to allow economic activities on refuges, and we do allow some. But, for all practical purposes (almost 100 percent), we invite the economic activities to help achieve a refuge purpose or the Refuge System mission. For example, we do not allow farming *per se;* rather, we invite an individual farmer to farm on the refuge under a cooperative agreement to help achieve a refuge purpose. This policy will likely have minor changes in the number of these activities occurring on refuges. Information on profits and production alternatives for most of these activities is proprietary, so a valid estimate of the total benefits of permitting these activities on refuges is not available.

2. This policy will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency since the policy pertains solely to management of refuges by the Service.

3. This policy does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other Federal assistance programs are associated with public use of refuges.

4. OMB has determined that this policy raises novel legal or policy issues. This policy incorporates the Improvement Act provisions that ensure that compatible wildlife-dependent recreational uses are the priority general public uses of the Refuge System, and adds consistency in application of public use guidelines across the entire Refuge System.

Regulatory Flexibility Act

We certify this document 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.*).

Congress created the Refuge System to conserve fish, wildlife, and plants and their habitats and facilitated this conservation mission by directing us to provide Americans opportunities to visit and participate in compatible wildlife-dependent recreation (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) as priority general public uses on refuges and to better appreciate the value of and need for conservation of fish, wildlife, and plants and their habitats.

This document is administrative, legal, technical, and procedural in nature and provides more detailed instructions for making a finding of appropriateness for public use activities than have existed in the past. This policy may result in more opportunities for wildlife-dependent recreation on refuges and may result in the reduction of some nonwildlife-dependent recreation. For example, more wildlife observation opportunities may occur at Florida Panther National Wildlife Refuge in Florida or more hunting opportunities at Pond Creek National Wildlife Refuge in Arkansas. Conversely, we may no longer allow some activities on some refuges. The overall net effect of these regulations is likely to increase visitor activity near the refuge. To the extent visitors spend time and money in the area that would not otherwise have been spent there, they contribute new income to the regional economy and benefit local businesses.

Refuge visitation is a small component of the wildlife recreation industry as a whole. In 2001, 82 million U.S. residents 16 years old and older spent 1.2 billion activity-days in wildlife-associated recreation activities. They spent about $108 billion on fishing, hunting, and wildlife watching trips (Tables 1, 50, 52, and 68, *2001 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation*, DOI/FWS/FA, 2002). Refuges recorded about 39 million visitor-days in fiscal year 2003 (Refuge Management Information System, FY2003 Public Use Summary). A 2003 study of refuge visitors found their travel spending generated $809 million in sales and 19,000 jobs for local economies (*Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation*, DOI/FWS/Refuges, 2003). These spending figures include spending which would have occurred in the community anyway, and so they show the importance of the activity in the local economy rather than its incremental impact. Marginally greater recreational opportunities on refuges will have little industrywide effect.

Expenditures as a result of this policy are a transfer and not a benefit to many small businesses. We expect the incremental increase of recreational opportunities to be marginal and scattered, so we do not expect the policy to have a significant economic impact on a substantial number of small entities in any region or nationally.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This policy is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This policy:

1. Does not have an annual effect on the economy of $100 million or more. This document will affect only visitors at refuges. It may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the Refuge System. See response under the Regulatory Flexibility Act.

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

3. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

1. This policy will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. See response to Regulatory Flexibility Act.

2. This policy will not produce a Federal mandate of $100 million or greater in any year; *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. See response to Regulatory Flexibility Act.

Takings (E.O. 12630)

In accordance with E.O. 12630, this policy does not have significant takings implications. A takings implication assessment is not required. This policy may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the Refuge System. Refer to response under Regulatory Flexibility Act.

Federalism (E.O. 13132)

In accordance with E.O. 13132, this document does not have significant federalism effects. This document applies only to areas where we have jurisdiction. It will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132, we have determined that this policy does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that this policy does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This policy will expand upon established policies, and result in better understanding of the policies by refuge visitors.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 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 policy is administrative, legal, technical, and procedural in nature. Because this policy establishes the process for making an appropriateness finding for proposed refuge uses, it is not a significant regulatory action under E.O. 12866 and is not expected to significantly affect energy supplies, distribution, and use. This notice does not designate any areas that have been identified as having oil or gas reserves, whether in production or otherwise identified for future use. Therefore, this action is not a significant energy action and no statement of energy effects is required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on refuges with tribal governments having adjoining or overlapping jurisdiction before we propose the activities. This policy is consistent with and not less restrictive than tribal reservation rules.

Paperwork Reduction Act

This document does not include any new information collection that would require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (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 unless it displays a currently valid OMB control number.

Section 7 Consultation

We determined the policy established by this notice will not affect listed species or designated critical habitat. Therefore, consultation under section 7 of the Endangered Species Act is not required. The basis for this conclusion is this final policy establishes the process for making a finding of whether or not a use of a refuge is an appropriate use. The appropriateness process described in this final policy is only one step in the decisionmaking process for deciding whether or not to allow a use of a refuge. The ultimate decision to allow or otherwise implement a particular use is the causative agent with respect to affecting listed species or their critical habitat. We will conduct section 7 consultations when actions that the decision authorizes, funds, or carries out may affect listed species or their critical habitat.

National Environmental Policy Act

We ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) when developing refuge CCPs and visitor services plans, and we make determinations required by NEPA before the addition of refuges to the lists of areas open to public uses. In accordance with 516 DM 2, appendix 1.10, we have determined this policy is categorically excluded from the NEPA process because it is limited to policies, directives, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Site-specific proposals, as indicated above, will be subject to the NEPA process.

Available Information for Specific Refuges

Individual refuge headquarters offices retain information regarding public use programs, the conditions that apply to their specific programs, and maps of their respective areas. You may also obtain information from the Regional Offices at the addresses listed below:

- *Region 1*—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 NE 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214; *http://pacific.fws.gov.*
- *Region 2*—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 248–7419; *http://southwest.fws.gov.*
- *Region 3*—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713–5400; *http://midwest.fws.gov.*
- *Region 4*—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7166; *http://southeast.fws.gov.*
- *Region 5*—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8550; *http://northeast.fws.gov.*
- *Region 6*—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, Colorado 80228; Telephone (303) 236–8145; *http://mountain-prairie.fws.gov.*
- *Region 7*—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545; *http://alaska.fws.gov.*

Primary Author

Tom C. Worthington, Chief, Division of Refuge Operations, Region 3, National Wildlife Refuge System, U.S. Fish and Wildlife Service, is the primary author of this notice.

Authority

Our authority for issuing these manual chapters is derived from 16 U.S.C. 668dd *et seq.*

Availability of the Policy

The Final Appropriate Refuge Uses Policy is available at this Web site: *http://policy.fws.gov/ser600.html.*

Persons without Internet access may request a hard copy by contacting the office listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Dated: January 20, 2006.

H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

Note: This document was received at the Office of the Federal Register on June 21, 2006.

[FR Doc. 06–5645 Filed 6–23–06; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AU25

Final Wildlife-Dependent Recreational Uses Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This policy explains how we will provide visitors with quality hunting, fishing, wildlife observation and photography, and environmental education and interpretation opportunities on units of the National Wildlife Refuge System (Refuge System). The National Wildlife Refuge System Improvement Act of 1997 (Improvement Act) that amends the National Wildlife Refuge System Administration Act of 1966 (Administration Act) defines and establishes that compatible wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) are the priority general public uses of the Refuge System and will receive

enhanced and priority consideration in refuge planning and management over other general public uses. This final policy describes how we will facilitate these uses. We are incorporating this policy as Part 605, chapters 1–7, of the Fish and Wildlife Service Manual.

DATES: This policy is effective July 26, 2006.

FOR FURTHER INFORMATION CONTACT: Carol Carson, Refuge Program Specialist, Division of Conservation Planning and Policy, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; telephone (703) 358–1744.

SUPPLEMENTARY INFORMATION: We published the Draft Wildlife-Dependent Recreational Uses Policy in the **Federal Register** on January 16, 2001 (66 FR 3681). We invited the public to provide comments on the draft policy. The initial comment period closed on March 19, 2001. On March 15, 2001, we extended the comment period to April 19, 2001 (66 FR 15136). On May 15, 2001, we reopened the comment period to June 14, 2001 (66 FR 26879), and on June 21, 2001, we reopened the comment period until June 30, 2001 (66 FR 33268). In our June 21, 2001, notice, we also corrected the May 15, 2001, notice to reflect that comments received between April 19 and May 15, 2001, would be considered and need not be resubmitted.

Background

The Improvement Act (Pub. L. 105–57) amends and builds upon the Administration Act (16 U.S.C. 662dd *et seq.*), providing an "organic act" for the Refuge System. The Improvement Act clearly establishes the Refuge System mission, provides guidance to the Secretary of the Interior (Secretary) for management of the Refuge System, provides a mechanism for refuge planning, and gives refuge managers uniform direction and procedures for making decisions regarding wildlife conservation and uses of the Refuge System.

The Improvement Act defines six wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) that, when compatible, are the priority general public uses of the Refuge System. The Improvement Act also provides a set of affirmative stewardship responsibilities regarding our administration of the Refuge System. These stewardship responsibilities direct us to ensure that compatible wildlife-dependent recreational uses are provided enhanced consideration and priority over other general public uses.

The Refuge Recreation Act of 1962 (16 U.S.C. 460–460k–4) (Recreation Act) authorizes us to regulate or curtail public recreational uses in order to ensure that we accomplish our primary conservation objectives. The Recreation Act also directs us to administer the Refuge System for public recreation when the use is an "appropriate incidental or secondary use." The Improvement Act provides the Refuge System mission and includes specific directives and a clear hierarchy of public uses of the Refuge System.

Compatible wildlife-dependent recreational uses are the priority general public uses of the Refuge System, have been determined to be appropriate by law, and are to be facilitated. This wildlife-dependent recreational uses policy, along with the appropriate refuge uses policy and our compatibility policy and regulations, are key tools refuge managers use together to fortify our commitment to provide enhanced opportunities for the public to enjoy compatible wildlife-dependent recreation while at the same time ensuring that no refuge uses compromise individual refuge purpose(s) or the Refuge System mission. Through careful planning, consistent Refuge Systemwide application of regulations and policies, diligent monitoring of the impacts of uses on natural resources, and by preventing or eliminating uses not appropriate to the Refuge System, we can achieve individual refuge purpose(s) and the Refuge System mission while providing people with lasting opportunities for quality wildlife-dependent recreation.

Final Wildlife-Dependent Recreational Uses Policy

To ensure we achieve individual refuge purpose(s) as well as the Refuge System mission and to be sure we afford priority to compatible wildlife-dependent recreational uses within the Refuge System, we are establishing a policy on wildlife-dependent recreational uses. This policy is intended to improve the internal management of the Service, and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its Departments, agencies, instrumentalities or entities, its officers or employees, or any other person. The following is a summary of this policy.

Chapter 1, General Guidance, provides Service policies, strategies, and requirements concerning the management of wildlife-dependent recreation programs within the Refuge System. Refuges are national treasures for the conservation of wildlife and for people who enjoy the wonders of the outdoors. Wildlife-dependent recreation programs promote understanding and appreciation of natural and cultural resources and their management in the Refuge System. To assure that the Refuge System's fish, wildlife, and plant resources are professionally managed, their needs should be considered first. Therefore we only allow wildlife-dependent recreational uses on a refuge after we determine the use to be compatible. We encourage refuge staff to develop and take full advantage of opportunities to work with other partners who have an interest in helping us promote quality wildlife-dependent recreational programs on refuges. Our general policy is to provide the American public quality opportunities to take part in compatible wildlife-dependent recreation. To accomplish this policy, we ensure consistency and professionalism in planning and implementing wildlife-dependent recreational use programs and activities in the Refuge System. Compatible wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) are the priority general public uses of the Refuge System and will receive enhanced and priority consideration in refuge planning and management over all other general public uses.

Chapter 2, Hunting, provides Service policy governing the management of recreational hunting within the Refuge System. The Improvement Act identifies hunting as a wildlife-dependent recreational use of the Refuge System. Hunting programs help promote understanding and appreciation of natural resources and their management in the Refuge System. Hunting is also an integral part of a comprehensive wildlife management program. We strongly encourage refuge managers to provide the public quality compatible hunting opportunities. We work cooperatively with the State fish and wildlife agencies to plan and implement hunting programs, and we conduct the programs, to the extent practicable, consistent with applicable State laws, regulations, and management plans. In addition, we plan hunting programs in consultation and cooperation with appropriate tribal agencies, and we conduct them, to the extent practicable, consistent with applicable tribal regulations. We encourage refuge staff to develop and take full advantage of

opportunities to work with other partners who have an interest in helping us promote quality wildlife-dependent recreational programs on refuges.

Chapter 3, Fishing, provides Service policy governing the management of recreational fishing within the Refuge System. The Improvement Act identifies fishing as a wildlife-dependent recreational use of the Refuge System. Fishing programs help promote understanding and appreciation of natural resources and their management in the Refuge System. We strongly encourage refuge managers to provide the public quality compatible fishing opportunities. We work cooperatively with the State fish and wildlife agencies to plan and implement fishing programs, and we conduct them, to the extent practicable, consistent with applicable State laws, regulations, and management plans. Additionally, we plan fishing programs in consultation and cooperation with appropriate tribal agencies, and we conduct them, to the extent practicable, consistent with applicable tribal regulations. We base fishing seasons on refuges on applicable State regulations, local conditions, and biological objectives. The Service's Division of Fish and Wildlife Management and Habitat Restoration has many field offices with a broad range of expertise that are available to the refuge manager when planning and managing fishing programs. We encourage refuge managers to take advantage of this important resource. We also encourage refuge staff to develop and take full advantage of opportunities to work with other partners who have an interest in helping us promote quality wildlife-dependent recreational programs on refuges.

Chapter 4, Wildlife Observation, provides Service policy governing the management of recreational wildlife observation within the Refuge System. The Improvement Act identifies wildlife observation as a wildlife-dependent recreational use of the Refuge System. Wildlife observation programs help promote understanding and appreciation of natural resources and their management on all lands in the Refuge System. We strongly encourage refuge managers to provide the public quality compatible wildlife observation opportunities. We also encourage refuge managers to coordinate refuge wildlife observation programs with applicable Federal, State, and tribal programs. We encourage refuge staff to develop and take full advantage of opportunities to work with other partners who have an interest in helping us promote quality wildlife-dependent recreational programs on refuges.

Chapter 5, Wildlife Photography, provides Service policy governing the management of recreational wildlife photography within the Refuge System. The Improvement Act identifies wildlife photography as a wildlife-dependent recreational use of the Refuge System. Wildlife photography programs help promote understanding and appreciation of natural resources and their management on all lands in the Refuge System. We strongly encourage refuge managers to provide the public with quality compatible wildlife photography opportunities. We also encourage refuge managers to coordinate wildlife photography programs with applicable State programs. We encourage refuge staff to develop and take full advantage of opportunities to work with other partners who have an interest in helping us promote quality wildlife-dependent recreational programs on refuges.

Chapter 6, Environmental Education, provides Service policy governing the management of environmental education within the Refuge System. The Improvement Act identifies environmental education as a wildlife-dependent recreational use of the Refuge System. Environmental education programs help promote understanding and appreciation of natural and cultural resources and their management on all lands in the Refuge System. We strongly encourage refuge managers to provide the public quality compatible environmental education opportunities. Refuge managers should work with local schools and other organizations to provide these programs. We also encourage refuge managers to coordinate refuge environmental education programs with applicable Federal, State, and local programs. We encourage refuge staff to develop and take full advantage of opportunities to work with other partners who have an interest in helping us promote quality wildlife-dependent recreational programs on refuges.

Chapter 7, Interpretation, provides Service policy governing the management of interpretation within the Refuge System. The Improvement Act identifies interpretation as a wildlife-dependent recreational use of the Refuge System. Interpretation programs help promote understanding and appreciation of natural and cultural resources and their management on all lands in the Refuge System. We strongly encourage refuge managers to provide to the public quality compatible interpretation opportunities. We encourage refuge staff to coordinate refuge interpretive programs and materials with applicable Federal, State, and local programs. We also encourage refuge staff to develop and take full advantage of opportunities to work with other partners who have an interest in helping us promote quality wildlife-dependent recreational programs on refuges.

Summary of Comments Received

During public comment periods, we received a total of 647 comment letters by mail, fax, or e-mail on our draft policy from Federal, State, and local government agencies, nongovernmental organizations, and private citizens. Of these, 439 were form letters generally supporting the policies in their draft form and commending the Service for its proactive approach. We categorized the remaining responses into 50 issue categories, broken down by the chapter to which they most applied: General guidance—11; hunting—15; fishing—10, wildlife observation—5; wildlife photography—3, environmental education—3; and interpretation—3. These categories represent our analysis of the comments and our effort to ensure that all were addressed. Several comments were not relevant to this policy, and we do not address them.

As a result of the comments received and our own review of the various chapters, we made editorial changes to improve the clarity and readability of the policy. We streamlined information in chapters 2–7, placed information applicable to all chapters in chapter 1, and revised language in the chapters to improve consistency and readability. Although the chapters have been restructured and streamlined, the revisions do not significantly change the scope, context, or focus of the chapters.

Issue Categories

General Guidance

1–1. General partnerships/public involvement.
1–2. State coordination.
1–3. Insufficient funds should not be enough to prohibit wildlife-dependent recreational uses.
1–4. Clarify the use of the term "high quality."
1–5. Resolution of conflicts among wildlife-dependent recreational uses.
1–6. Provide documentation to partners when a compatibility determination results in the prohibition of a wildlife-dependent recreational use.
1–7. Add category of nonpriority wildlife-dependent recreational uses.
1–8. Clarification of terms or wording used in policy.
1–9. Existing uses should be grandfathered into wildlife-dependent recreational uses.
1–10. Add/clarify provision to close refuges to a particular use if a situation merits.
1–11. Too much refuge manager autonomy.

Hunting

2–1. Hunting with dogs.
2–2. Trapping.
2–3. Ethical standards.
2–4. Migratory birds.
2–5. Proficiency testing.
2–6. Nontoxic shot restrictions.
2–7. Night use of refuges.
2–8. "Inviolate" sanctuary.
2–9. Revise section 2.13 of the draft hunting chapter to demonstrate the desire for a balanced hunting program.
2–10. Revise Exhibit 1, section III, to remove the term "impact" and use a less intrusive word.
2–11. Population goals and objectives in hunting plan.
2–12. Crippling loss.
2–13. Reliance on technology.
2–14. Use of the word "weapon."
2–15. Tournament hunting.

Fishing

3–1. Tournament fishing.
3–2. Use of nonnative bait.
3–3. Commercial fishing.
3–4. Population goals and objectives in fishing plan.
3–5. Native fish.
3–6. Night use of refuges.
3–7. Use of barbless hooks.
3–8. Authority of the Service to control navigable waters.
3–9. Use of nontoxic tackle.
3–10. Ice fishing.

Wildlife Observation

4–1. No requirement mentioned for wildlife observation plan and not mentioned under requirements for CCPs.
4–2. Move concepts to appendix or another plan.
4–3. Emphasize hiking as a wildlife observation opportunity.
4–4. Wildlife observation chapter does not have the same level of thoroughness as hunting and fishing chapters.
4–5. Conflicting relationships in draft sections of the draft wildlife observation chapter.

Wildlife Photography

5–1. No requirement mentioned for wildlife photography plan and not mentioned under requirements for CCPs.
5–2. Emphasize hiking as a wildlife photography opportunity.
5–3. Wildlife photography chapter does not have the same level of thoroughness as hunting and fishing chapters.

Environmental Education

6–1. Tribal consultation and coordination.
6–2. Educate the public on the importance of hunting as a wildlife management tool.
6–3. Environmental Education chapter does not have the same level of thoroughness as the hunting and fishing policies.

Interpretation

7–1. Tribal consultation and coordination.
7–2. Increase public understanding and support for wildlife management practices.
7–3. Interpretation chapter does not have the same level of thoroughness as the hunting and fishing policies.

General Guidance

Issue 1–1: General Partnerships/Public Involvement

Comment: We received six comments suggesting that we include specific requirements for public/partnership involvement and stakeholder consultation in the development of our policy and/or management plans. One commenter suggested that we develop interim approval processes to expedite hunting on refuges until public consultation/coordination is completed. Another commenter suggested it was inappropriate to propose policy without giving the public an opportunity to comment.

Response: The hunting and fishing policies specifically require the refuge manager to seek public involvement for any new or significant changes to these programs. The policies require the refuge manager to plan ahead and to obtain as much involvement from groups and individuals as possible. These policies suggest methods of obtaining input, including the use of public meetings, news releases, and mailings.

Our hunting and fishing policies state that refuge managers must provide interested stakeholders an opportunity to provide input into significant programs. This opportunity most commonly occurs during the comprehensive conservation plan (CCP) planning process. Additional opportunities to provide input may occur during the development of a visitor services plan (VSP), a step-down management plan of the CCP. The VSP is the overarching document for providing visitor services in the Refuge System. This plan is an analysis of all aspects of visitor service programs on a refuge, including, but not limited to, programs associated with wildlife-dependent recreation.

An additional interim approval process to expedite hunting on refuges would not shorten the required process. Opening a refuge to hunting or fishing is different than opening a refuge to other wildlife-dependent recreation in that refuge-specific regulations must be printed in the **Federal Register.** These refuge-specific regulations must be published prior to opening a refuge.

By releasing draft policies in the **Federal Register,** distributing news releases, using the worldwide web, and opening the policy comment period for over 120 days to interested individuals and groups for comment, we feel that we adequately informed the public of the existence of this draft policy and gave ample time and opportunity for the public to comment.

Issue 1–2: State Coordination

Comment: We received numerous comments from State fish and wildlife agencies and nongovernmental organizations that requested we revise the policies to emphasize language from the Improvement Act that directs the Secretary of the Interior to variously interact, coordinate, cooperate, and collaborate with the States in a timely and effective manner on the acquisition and management of refuges. The law further directs the Secretary to ensure that Refuge System regulations and management plans are, to the extent practicable, consistent with State laws, regulations, and management plans.

Response: Effective conservation of fish, wildlife, and plants and their habitat depends on the partnership and cooperation among many individuals and organizations. Especially important is the professional relationship between fish and wildlife managers at the State and Federal levels. The importance of that relationship is reflected in the Improvement Act. The final policies include language directing refuge managers to coordinate with State fish and wildlife agencies whenever changes are made to refuge hunting or fishing programs. The draft wildlife-dependent recreational use policy chapters contained direction to refuge managers to work cooperatively with State fish and wildlife agencies. We strengthened this guidance in this final version of the policy in section 1.13C.

The language we added follows the mandate of the Improvement Act and reflects our intent to work cooperatively with State fish and wildlife agencies in the management of the Refuge System. However, when differences occur, the Service retains the authority to make final decisions consistent with refuge purpose(s) and the Refuge System mission. State representatives continue to have the ability to discuss these decisions with the decisionmaker and their organizational superiors.

Issue 1–3: Insufficient Funds Should Not Be Enough To Prohibit Wildlife-Dependent Recreational Uses

Comment: We received comments suggesting that the wording "refuge managers will offer wildlife-dependent recreational use programs only to the extent that staff and funds are sufficient to develop, operate, and maintain the program to safe, high quality standards" unnecessarily allows refuge managers an ambiguous "out" if they do not want to provide for any one of the six

wildlife-dependent recreational uses, specifically hunting.

Response: With respect to the comments mentioned above, our answer addresses all six wildlife-dependent recreational uses even though the commenters specifically related their comments to hunting. The statement is meant to ensure that refuge managers use available funding and staff resources wisely when offering wildlife-dependent recreational opportunities on refuges. The statement does not serve as a mechanism for justifying or favoring one use over another or prohibiting a use such as hunting because the refuge manager is opposed to hunting. The six wildlife-dependent recreational uses are equal. We revised section 1.10 in the final policy to encourage refuge managers to use partnerships, user fee programs, and cooperative efforts, where appropriate, to increase opportunities for quality wildlife-dependent uses.

Issue 1–4: Clarify the Use of the Term "High Quality"

Comment: Several commenters requested clarification of the term "high quality," and one commenter believed that we were mandating that all wildlife-dependent uses had to meet these standards or they could not occur on refuges.

Response: In the individual chapters, we clarified most terms that commenters stated were ambiguous. We developed 11 criteria to evaluate the quality of our wildlife-dependent recreation programs (section 1.6). The "quality" criteria are factors to consider when developing wildlife-dependent recreational use programs, and not immutable standards. They are guidelines for refuge managers to use when starting, analyzing, or evaluating a wildlife-dependent recreational use. Nothing in the policy requires that any of the wildlife-dependent recreational uses meet all of the goals listed under the "quality" definition. The term "quality" is used as a standard we strive to achieve in our wildlife-dependent recreational use programs. However, we have removed the modifiers "high" and "highest" from quality throughout these chapters. In addition, we moved the discussions of quality from the chapters on specific wildlife-dependent recreational uses to the general guidance chapter. We apply the concept of quality to all of our wildlife-dependent recreational use programs equally.

Issue 1–5: Resolution of Conflicts Among Wildlife-Dependent Recreational Uses

Comment: Several States commented that there is no protocol for resolving conflicts among priority general public uses with the final decision left to the refuge manager. In addition, several of the States requested an appeals process.

Response: The Improvement Act and accompanying House Report 105–106 strongly encourage refuge managers to provide wildlife-dependent recreational uses that are compatible and urged them to use "sound professional judgment" when making determinations on proposed uses. There is no implicit priority described in the Improvement Act that elevates one of the wildlife-dependent recreational uses over another. The Improvement Act and accompanying House Report 105–106 were silent on the issue of an appeals process, and we do not propose to include such an appeals process in these chapters. Director's Order No. 148 addresses coordination and cooperation with State fish and wildlife agencies. In addition, there is a mechanism for State fish and wildlife agencies to participate in the CCP process (602 FW 1.7B). We also provide other opportunities for State fish and wildlife agencies to participate in the development and implementation of program changes that would be made outside of the CCP process. We will continue to provide State fish and wildlife agencies opportunities to discuss and, if necessary, elevate decisions within the hierarchy of the Service. The final policy clarifies this.

Issue 1–6: Provide Documentation to Partners When a Compatibility Determination Results in a Prohibited Wildlife-Dependent Recreational Use

Comment: Several commenters requested that we provide rigorous documentation when negative compatibility determinations are made resulting in the prohibition of a wildlife-dependent recreational use.

Response: We agree and believe this requirement is adequately addressed in the compatibility policy (603 FW 2). These wildlife-dependent recreational use chapters only reference the need to adhere to the compatibility standards, and as such, are not the appropriate location to provide additional assurances that certain responsibilities are met.

Issue 1–7: Add Category of Nonpriority Wildlife-Dependent Recreational Uses

Comment: We received two comments suggesting there are certain activities that fall under the category "non-priority wildlife-dependent recreational uses." Examples given were frog gigging, live collection of nonprotected vertebrates and insects, and set lines.

Response: The Improvement Act defined wildlife-dependent recreational uses as hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We are unable to deviate from this legal definition. The Refuge Manual (8 RM 9) covers other refuge uses.

Issue 1–8: Clarification of Terms or Wording Used in Policy

Comment: One commenter requested that we change the term "targeted" species in the draft chapter to "specified" species. We also received numerous comments suggesting editorial changes or clarification of terms or wording used in the policy.

Response: We left the term "target" because it seemed to more clearly articulate our thought process in this section. We did a thorough review of the policy and, where necessary, changed the wording of sections to improve clarity and understanding. In addition to comments received from our public review process, we reviewed the chapters to ensure they met the mandates of the Improvement Act, Refuge System mission, and other appropriate guidelines. One example of such an internal editorial change was reference and relationship of recreational uses to visitor services. We moved information from the interpretation chapter related to a visitor services plan (VSP) and added additional clarification language into the general guidance chapter.

Issue 1–9: Existing Uses Should Be Grandfathered Into Wildlife-Dependent Recreational Uses

Comment: Two commenters suggested that preexisting wildlife-dependent recreational uses should be "grandfathered" into a refuge's visitor services program and that, in effect, this policy would only apply to a new use or an extension of an existing use.

Response: We disagree; the Improvement Act clearly states: "the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety." This language clearly directs us to conduct compatibility determinations on all public uses, whether preexisting or not. Therefore, we did not make any

changes to the policies in response to these comments.

Issue 1–10: Add/Clarify Provision to Close a Refuge to a Particular Use if a Situation Merits

Comment: One commenter requested that we add a provision that would allow the closure of a refuge in case of disease outbreak. Two commenters questioned our authority to close refuges on waters where we have no jurisdiction. One commenter was concerned that this section allows a refuge manager to close a refuge to hunting without cause.

Response: We already have regulations covering the closure of refuges and do not think it is necessary to elaborate on them in this policy. They state that a refuge manager may close all or any part of a refuge that is open whenever necessary to protect the resources of the area or in the event of an emergency endangering life, property, or any population of wildlife, fish, or plants. The sections, as written, allow for closure in case of disease outbreak. Refuge policy only affects lands and waters under our jurisdiction.

We base nonemergency closures on impacts to wildlife populations, ecosystems, and priority recreation uses. We follow the public participation process identified in the National Environmental Policy Act (NEPA). If the impacts are likely to be major or controversial, we require the preparation of an environmental assessment. This requirement deters the arbitrary closure of a refuge to a compatible wildlife-dependent recreational use unless the situation merits.

Issue 1–11: Too Much Refuge Manager Autonomy

Comment: Several State fish and wildlife agencies expressed concern that refuge managers have too much authority or discretion when approving or disapproving public use activities.

Response: The refuge manager at the site is best positioned and equipped to make these decisions. These policies as well as training will guide the refuge mangers in making decisions. To ensure consistency, the refuge managers submit certain decisions, such as compatibility determinations, to the Regional office for review before they are finalized.

This creates a check and balance system that ensures consistency and provides a vehicle for States to use in the case of disagreement.

Hunting

Issue 2–1: Hunting With Dogs

Comment: Several commenters suggested the language under which pursuit hounds would be permitted is so restrictive that we essentially prohibit the use of pursuit hounds in the policy. Several commenters pointed out that an untrained dog, no matter the type, could adversely affect wildlife habitat and resources, so the need to differentiate between breeds is unnecessary.

Response: The intent of the draft policy was not to prohibit the use of pursuit hounds, but to encourage the use of well-trained dogs in the Refuge System. Since pursuit hounds are more likely to range out of the control of the hunter, more stringent guidelines were placed on these dogs. We agree with the concerns of the commenters, and we rewrote the section on use of dogs to create an equally stringent evaluation for the use of all dogs on refuges.

Issue 2–2: Trapping

Comment: We received numerous comments expressing concern that trapping was not addressed in the hunting chapter. Several commenters suggested that trapping is a legitimate wildlife-dependent recreational use and an appropriate and compatible use on most refuges in the Refuge System. Other commenters requested that we clarify and/or identify trapping, because it has important management implications for some refuges in the Refuge System. One commenter assumed that since recreational trapping was not mentioned, it was considered a form of hunting and recommended that we clarify our position in the final policy.

Response: The Improvement Act clearly defines wildlife-dependent recreation as "a use of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation." This definition does not include trapping. The Improvement Act, as well as accompanying House Report 105–106, specifically identifies "regulated take" as a management activity. We consider trapping an important management tool, as well as a method of take regulated by States. As such, we have not addressed trapping in this chapter. However, if determined compatible, recreational trapping can be allowed under State regulations. For more information regarding the compatibility of trapping, see 603 FW 2.

Issue 2–3: Ethical Standards

Comment: One commenter stated that ethics are a matter of individual conscience and that law enforcement is the proper province of the Service. Another commenter stated that hunters operating within the limits of game laws are by default ethical, therefore the Service should be concentrating on hunting as a management tool and not the ethics of hunters.

Response: We agree that it would be difficult for the Service to enforce an ambiguous concept of ethics for hunters. We also agree that hunters operating within the guidelines of State and refuge-specific hunting regulations are usually ethical. Therefore, we removed the references to ethics and ethical behavior.

Issue 2–4: Migratory Birds

Comment: One commenter requested that a reference to State involvement in the determination of migratory bird regulations be added to the hunting policy, and another requested that migratory bird management be articulated in the chapter.

Response: We agree that the draft policy (section 2.3) did not clearly articulate the States' role in developing and setting migratory bird hunting regulations. As such, we revised the policy in several places to include the importance of the role of State fish and wildlife agencies in determining hunting regulations.

Issue 2–5: Proficiency Testing

Comment: One commenter stated that allowing refuge managers to impose proficiency testing more restrictive than that of the State gives a refuge manager license to advance a personal philosophy which may be anti-hunting.

Response: Our hunting policy does not require mandatory testing or qualifications above State requirements. In fact, proficiency testing is and will continue to be rare in the Refuge System. Our hunting policy does allow a refuge manager to implement a proficiency test more restrictive than that required by the State under special circumstances. Before we implement a proficiency test, we carefully put it through several levels of review and require the Regional Refuge System chief's approval. This review process, and the subsequent requirement for Regional approval, makes it difficult for an individual refuge manager's bias to drive the management of a hunting program.

Issue 2–6: Nontoxic Shot Restrictions

Comment: One commenter requested we clarify section 2.13Q of the draft

hunting chapter to reflect that nontoxic shot restrictions do not necessarily apply to deer or turkey hunters.

Response: We agree, and we revised this section accordingly.

Issue 2–7: Night Use of Refuges

Comment: One commenter agreed that nighttime hunting and fishing may not be appropriate on all refuges, but the use should be independently evaluated.

Response: We believe our hunting policy, as written, gives refuge managers the ability to independently evaluate the night use of a refuge. Our policy states that we allow night hunting when it is compatible with refuge purpose(s) and the Refuge System mission. It also states that if a refuge is generally not open after sunset, refuge managers may make an exception and allow night hunting. No change to the wording of the chapter was necessary.

Issue 2–8: "Inviolate" Sanctuary

Comment: Several commenters questioned the use of the term "inviolate" sanctuary. These commenters stated that many people associate the word inviolate with closed to entry and therefore closed to hunting. One commenter stated that the wording in the draft hunting policy would attach inviolate sanctuary status to refuges other than waterfowl production areas, easement refuges, etc., that were purchased to fulfill the purpose of the Migratory Bird Treaty Act. One commenter stated that there is no longer a need for inviolate sanctuaries with all the habitat restoration accomplished by States, other government agencies, and private landowners.

Response: The Migratory Bird Conservation Act of 1929, as amended (MBCA), defines the term "inviolate sanctuaries" where take of birds was prohibited. Subsequent amendments to the Duck Stamp Act and the Administration Act authorized the Secretary to allow hunting in these areas up to certain limits. The hunting policy chapter cannot change the statutory definition of this term. We therefore use the term "inviolate" as it is defined in the MBCA and as modified by law. In our draft policy, we attempted to simplify the long and complex explanation of inviolate sanctuaries outlined in the 1982 Refuge Manual hunting policy. After careful review, we agree with the commenter that the draft policy erroneously applies inviolate sanctuary status to refuges not purchased under the MBCA. The draft policy did not adequately clarify the language; therefore, we replaced the language of the draft policy with language used in the 1982 hunting policy. The final hunting chapter explains various scenarios when we may restrict hunting by law.

When we use funds from the MBCA to purchase bird habitat, these lands are subject to the regulations, restrictions, and purposes of the MBCA and the Administration Act. We agree that much progress has been made in habitat restoration since the MBCA was signed into law, but the 40 percent restriction for any refuge that is designated "for use as an inviolate sanctuary, or for any other management purpose, for migratory birds' remains.

Issue 2–9: Revise Section 2.13 of the Draft Hunting Chapter to Demonstrate the Desire for a Balanced Hunting Program

Comment: We received several comments requesting that we add a stipulation that all methods of take permitted by State law be allowed, to the extent feasible, on refuges.

Response: The Administration Act states that when we open a refuge to hunting or fishing, the Refuge System regulations should be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans. We revised the text to clarify this. When Refuge System regulations differ from State regulations, we publish those differences in the **Federal Register**. We also consult with State fish and wildlife agencies, tribes, and other appropriate authorities during the development of hunting programs and whenever we plan significant changes to our existing hunting programs.

Issue 2–10: Revise Exhibit 1, Section III, to Remove the Term "Impact" and Use a Less Intrusive Word

Comment: Three commenters were concerned that by using the word "impact" in the statement of objectives section in exhibit 1, we automatically presumed that hunting will impact refuge objectives.

Response: It was not our intent to imply that hunting, by default, created an impact on refuge objectives. We revised this exhibit and removed the term "impact."

Issue 2–11: Population Goals and Objectives in Hunting Plan

Comment: Some commenters expressed concern that the policy encourages population objectives that may differ from State population objectives and recommended that State wildlife agencies be involved closely during this process. Some commenters suggested replacing the phrase "to the extent practicable" with the phrase "to the greatest extent possible."

Response: We coordinate closely with the State fish and wildlife agencies concerning wildlife population objectives, and in many cases State plans may provide the wildlife population objective levels for a refuge. We stress coordination and cooperation with State fish and wildlife agencies throughout the policy. There will be circumstances where refuge objectives may differ from State objectives because our missions differ. We revised some text to clarify the relationship between the State fish and wildlife agencies and the Refuge System. The phrase "to the extent practicable" is a direct quote from the Administration Act, and we kept the statutory language in the policy.

Issue 2–12: Crippling Loss

Comment: Two commenters commented on the ambiguity of the term "crippling loss." One suggested the number of dogs used has an insignificant impact on crippling loss.

Response: We agree, and we removed the term from the final policy.

Issue 2–13: Reliance on Technology

Comment: A number of commenters requested clarification of what was meant by the "use of technology designed to increase the advantage of the hunter."

Response: The intent of the draft policies was to reflect that refuge hunts should minimize the use of vehicles and adopt State restrictions on a number of technological advances that increase hunter efficiency (for example, inline muzzleloaders, night scopes, and let-off of compound bows). The result was confusing, and technology was undefined. We revised and moved the entire "quality hunting experience" section and other sections dealing with quality to section 1.6 of the final policy. This section now covers the term "quality" for all compatible wildlife-dependent recreation, which includes hunting.

Issue 2–14: Use of the Word "Weapon"

Comment: Two commenters requested that we remove the word "weapon" from sections 2.6C and the 2.13O in the draft policy. One commenter suggested the word "weapon" denotes a relationship with war and the other stated that hunter education programs discourage the use of the word "weapons."

Response: We no longer use the word "weapon." We refer to "special season hunts" in the final policy.

Issue 2–15: Tournament Hunting

Comment: We received several comments concerned about our definition of tournament hunting and its prohibition on the Refuge System.

Response: We eliminated tournament hunting from the definitions section and from the policy.

Fishing

Issue 3–1: Tournament Fishing

Comment: There were many comments on our proposed tournament fishing policy. Most commenters questioned the restriction on awards and the implication that tournament fishing had negative effects on fish populations. Commenters argued that we should remove the restrictions on tournament fishing because of the economic effects on local communities, the lack of science supporting the need to limit tournaments on refuge waters, the fact that fishermen and hunters are natural resources' strongest contributors, and that tournaments employ a "catch and release" ethic. A few States questioned the authority of the Federal Government to regulate fish populations. Some States requested that we not set national policy governing fishing tournaments, but assess this activity on a case-by-case basis. One commenter stated we should not just focus on monetary awards received for fishing, but instead we should limit organizational activities and prize awards on refuge property as a whole.

The majority of comments we received on tournament fishing disagreed with the draft tournament fishing policy. We also received a number of letters and e-mails from individuals who wrote supporting the draft tournament fishing language and described their mostly negative fishing experience around an active fishing tournament.

Response: It is not our intent to ban tournament fishing on Refuge System waters, but instead to ensure that tournaments do not displace other anglers. We have attempted to develop policy that ensures the refuge is open to all anglers, even during a tournament. The fishing policy is designed so it does not favor tournaments over the individual angler. We understand the benefits tournament fishing provides to the sport of fishing and realize that many communities with quality fishing opportunities derive much-needed income from hosting events. Our intent is not to eliminate tournament fishing, but instead to ensure an event meets specific criteria before it can be held on waters under our control.

We agree that limiting awards is not the best way to achieve our objectives. Other regulatory methods, such as designating parking spaces for nontournament or tournament participants, regulating tournament permits, increasing monitoring of fish populations, increasing coordination with State fish and wildlife agencies, and limiting the number of tournaments on a particular body of water each year may be better methods of achieving our objectives. We changed the wording relating to tournament fishing and replaced it with wording that encourages refuge managers to monitor the effects of the tournament on fish populations and evaluate the experience of participating and nonparticipating anglers. We also added wording that requires refuge managers to consider other regulatory methods before denying a fishing tournament permit. In addition, we added wording that strongly encourages refuge managers to consult State fish and wildlife agencies when considering and/or developing restrictions on tournament fishing.

Issue 3–2: Use of Nonnative Bait

Comment: We received four comments about the use of nonnative bait. One commenter applauded our restrictions on the use of live nonnative bait, one wanted us to differentiate between the use of resident and nonresident nonnative bait items, one wanted this restriction to only apply to aquatic nonnative bait, and one commented on both resident and aquatic limitations.

Response: It was our intent to only prohibit the use of nonnative aquatic bait and not live bait like the European nightcrawler or naturalized aquatic bait. We revised the definition of nonnative to clarify this.

Issue 3–3: Commercial Fishing

Comment: One commenter requested the addition of commercial fishing to this policy.

Response: This policy applies to recreational fishing only, and commercial fishing discussions are not appropriate in this policy. We did not make any changes based on this comment.

Issue 3–4: Population Goals and Objectives in Fishing Plan

Comment: Some commenters expressed concern that the policy encourages population objectives that may differ from State fish population objectives. It was recommended that State fish and wildlife agencies be involved closely during this process. Some commenters suggested replacing the phrase "to the extent practicable" with the phrase "to the greatest extent possible."

Response: We stress cooperation with State fish and wildlife agencies throughout the policy. The intent of the policy is that we will coordinate closely with the States concerning fish population objectives. In many cases, State plans may provide the population objective levels for a refuge. There will be circumstances where refuge objectives may differ from State objectives because our missions differ. We did not make revisions based on these comments. The phrase "to the extent practicable" is a direct quote from the Improvement Act, and we kept the statutory language in the policy.

Issue 3–5: Native Fish

Comment: We received several comments concerning our definition of native fisheries (section 3.6C in the draft policy). One commenter questioned what criteria we used in defining a watershed with respect to native fish and the inherent lack of knowledge to presettlement times. Another commenter thought it was "unrealistic" to attempt to reestablish native species.

Response: The definition of native fish was designed to aid the understanding of our fishing programs and their relationship to the biological integrity, diversity, and environmental health of the Refuge System. However, we do not use the term "native fish" in the policy. Therefore, we deleted the term.

Issue 3–6: Night Use of Refuges

Comment: We received two comments on night use of refuges for fishing. One commenter agreed that nighttime hunting and fishing may not be appropriate on all refuges, but the use should be independently evaluated. One commenter questioned the authority of the Service to regulate night use of the refuge. This commenter felt it was a State function.

Response: We revised this section to clarify that refuge managers have the ability to independently evaluate the night use of a refuge. Our policy states that we may allow night fishing when it is compatible with refuge purpose(s) and the Refuge System mission. It also states that if a refuge generally is not open after sunset, refuge managers may make an exception and permit night fishing as long as the decision is based on specific refuge objectives and not historic use. We disagree with the commenter who believes the States regulate night use of a refuge. The law expressly states the Service has the

authority to regulate use in the Refuge System.

Issue 3–7: Use of Barbless Hooks

Comment: We received several comments on the use of barbless hooks. One commenter suggested the barbless hook policy is laudable, but needs clarification to account for the difference between warm and cold water fish populations. Another commenter recommended we remove the slot size reference in this section.

Response: We agree. Research is not conclusive on the benefits of using barbless hooks in all situations. The use of barbless hooks can reduce fish handling time for certain species of fish intended for release. We encourage refuge managers who manage specific programs that benefit from "catch and release" fishing to take the lead in introducing barbless hook methods to anglers in brochures, on signs, and in other information sheets in those areas where fisheries will benefit.

Issue 3–8: Authority of Service To Control Navigable Waters

Comment: Several commenters questioned the authority of the Service to close public waters to fishing, especially when navigable waters exist. Some questioned our authority to regulate navigable waters.

Response: This policy applies only to fishing on waters where the Service has jurisdiction. We believe the policy states this, therefore we did not revise the policy based on this comment.

Issue 3–9: Use of Nontoxic Tackle

Comment: We received two comments on nontoxic tackle. One commenter was concerned about restrictions on fishing tackle, primarily lead weights, and the perceived conflicts with State regulations. One commenter questioned the authority of the Service to regulate tackle on the refuge. This commenter felt it was a State function.

Response: This section was included because we recognize lead poisoning of some bird species, particularly loons, is an issue on a number of refuges. Law allows us to develop regulations more restrictive than State requirements in order to protect wildlife as necessary. We have imposed a number of restrictions in coordination with States. We deleted the section on nontoxic tackle.

Issue 3–10: Ice Fishing

Comment: A commenter recommended that we strengthen this section by including guidelines for ice fishing structures.

Response: This policy is not designed to address ice fishing structures. If ice fishing is a compatible recreational use on a refuge, then the use and construction of ice fishing structures would be evaluated under the compatibility policy (603 FW 2).

Wildlife Observation

Issue 4–1: No Requirement Mentioned for Wildlife Observation Plan and Not Mentioned Under Requirements for CCPs

Comment: One commenter noted that the hunting, fishing, and interpretive chapters all mentioned the need for detailed planning documents. There was no mention of the need for such a document in the wildlife observation chapter.

Response: By not mentioning the need of a planning document for wildlife observation programs, we failed to highlight the importance of our visitor services planning process. The lack of a detailed explanation of the visitor services plan (VSP) in all of our wildlife-dependent recreation chapters created what appeared to be a disjointed planning approach to visitor services. A VSP is a step-down management plan of the CCP and is the overarching document for providing visitor services in the Refuge System. This plan is an analysis of all aspects of visitor service programs on a refuge, including, but not limited to programs associated with wildlife observation. The VSP can be completed before, during, or after the CCP is completed. We deleted the reference to an interpretive plan in the interpretation chapter and clarified the link between the VSP and all recreational use programs in the Refuge System. We provide an example outline of a VSP in exhibit 1 of 605 FW 1.

Issue 4–2: Move Concepts to Appendix or Another Plan

Comment: One commenter supported the concept that "high quality" viewing opportunities be tied to interpretive and educational messages, but suggested that the messages involve interested organizations and, when approved, be placed as an appendix in the wildlife observation policy.

Response: Although we are pleased that this commenter supports the idea of the educational and interpretive link to our wildlife observation programs, we disagree with including messages sponsored by interested organizations as an appendix. Opportunities to include more specific guidance will occur in our environmental education and interpretation handbooks. Our environmental education specialists and our interpretive professionals are charged with developing programs that are both accurate and sensitive to the needs of a diverse community. They do not hesitate to seek advice from scientists, tribes, local communities, State agencies, and others when appropriate and necessary. Because interpretive and educational messages are tied to the goals and objectives of an individual refuge, we do not consider it appropriate to include them in an appendix to this policy.

Issue 4–3: Emphasize Hiking as a Wildlife Observation Opportunity

Comment: One commenter wanted us to emphasize the role of hiking and hiking trails in this policy. The commenter stated that hiking trails afford the public low-impact access to back-country areas where they can easily observe wildlife.

Response: Refuges provide visitors an opportunity to view wildlife using a variety of facilities, including trails. Our wildlife observation programs focus on viewing opportunities and how to improve the viewing experience. We provide general guidelines under the section outlining a quality experience and encourage experiences that take place in natural settings. We neither promote nor discourage the use of trails. Instead, we encourage our managers to use facilities that maximize opportunities to view a wide spectrum of wildlife species and habitats on the refuge while protecting refuge resources.

Issue 4–4: Wildlife Observation Chapter Does Not Have the Same Level of Thoroughness as Hunting and Fishing Chapters

Comment: One commenter suggested that the wildlife observation policy does not include the same level of thoroughness as the hunting and fishing chapters.

Response: Although it is true that the hunting and fishing chapters contain more detailed information and guidance than the wildlife observation chapter, we are not indicating that wildlife observation is less important than hunting and fishing. The Improvement Act defined wildlife-dependent recreation as a use of a refuge involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation. When these activities are compatible, they are the priority general public uses of the Refuge System. The Improvement Act did not develop a hierarchy between the wildlife-dependent recreational uses, and we are not attempting to create one through the level of detail contained in each policy. Hunting and fishing are

inherently regulatory in nature and, therefore, require more guidance than wildlife observation on refuges.

Issue 4–5: Conflicting Relationships in Draft Sections of the Draft Wildlife Observation Chapter

Comment: One commenter stated that there was a disconnect between one of our goals identified in a quality wildlife observation opportunity and the example we used in the section identified as tools we can use to support wildlife observation.

Response: We agreed with the commenter and removed the example that appeared to be in conflict with one of our quality goals.

Wildlife Photography

Issue 5–1: No Requirement Mentioned for Wildlife Photography Plan and Not Mentioned Under Requirements for CCPs

Comment: One commenter noted that the hunting, fishing, and interpretive chapters all mentioned the need for detailed planning documents and that there was no mention of such a document in the wildlife photography chapter.

Response: By not mentioning the need of a planning document for our wildlife photography programs, we failed to highlight the importance of our visitor services planning process. The lack of a detailed explanation of the visitor services plan (VSP) in all of our wildlife-dependent recreation chapters created what appeared to be a disjointed planning approach to visitor services. A VSP is a step-down management plan of the CCP and is the overarching document for providing visitor services in the Refuge System. This plan is an analysis of all aspects of visitor service programs on a refuge, including, but not limited, to programs associated with wildlife photography. The VSP can be completed before, during, or after the CCP is completed. We deleted the reference to an interpretive plan in the interpretation chapter and clarified the link between the VSP and all recreational use programs in the Refuge System. We provide an example outline of a VSP in exhibit 1 of 605 FW 1.

Issue 5–2: Emphasize Hiking as a Wildlife Photography Opportunity

Comment: One commenter wanted us to emphasize the role of hiking and hiking trails in this policy. The commenter stated that hiking trails afford the public low-impact access to back-country areas where they can easily observe and photograph wildlife.

Response: Refuges provide visitors with an opportunity to view wildlife using a variety of facilities, including trails. Our wildlife photography programs focus on opportunities and how to improve the photography experience. We provide general guidelines under the section outlining a quality experience and encourage experiences that cause the least amount of disturbance to wildlife, are available to a broad spectrum of the photographing public, blend with the natural setting, and cause minimal conflicts with other compatible wildlife-dependent recreational uses. We neither promote nor discourage the use of trails. Instead, we encourage our managers to use facilities that maximize opportunities while meeting other refuge objectives. We did not make revisions based on this comment.

Issue 5–3: Wildlife Photography Chapter Does Not Have the Same Level of Thoroughness as Hunting and Fishing Chapters

Comment: One commenter suggested that the photography policy does not include the same level of thoroughness as the hunting and fishing policy.

Response: Although it is true that the hunting and fishing chapters contain more detailed information and guidance than the wildlife photography chapter, we are not indicating that wildlife photography is less important than hunting and fishing. The Improvement Act defined wildlife-dependent recreation as a use of a refuge involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation. When these activities are compatible, they are the priority general public uses of the Refuge System. The Improvement Act did not develop a hierarchy between the wildlife-dependent recreational uses, and we are not attempting to create one through the level of detail contained in each policy. Hunting and fishing are inherently regulatory in nature and, therefore, require more guidance than wildlife photography on refuges.

Environmental Education

Issue 6–1: Tribal Consultation and Coordination

Comment: We received two comments recommending that we expand the teaching focus identified to include the trust responsibilities of States and tribes rather than just those of the Service and that educational materials include the historic customs and culture of the people who live in the surrounding area.

Response: We address the issue of tribal consultation and coordination in section 1.9. In addition, we manage visitor services in accordance with applicable Federal, State, and tribal laws (see 50 CFR subchapter C).

Issue 6–2: Educate the Public on the Importance of Hunting as a Wildlife Management Tool

Comment: Two commenters suggested the Service's environmental education program promote the role and importance of hunting as a wildlife management tool in the Refuge System.

Response: In section 6.3 of the draft environmental education chapter, we state: "Environmental education programs will promote understanding and appreciation of natural and cultural resources and their management on all lands and waters included in the System." While not specific to hunting, education is general to all recreational uses, including the wildlife-dependent recreational uses (hunting, fishing, wildlife photography and observation, and environmental education and interpretation). This sentence adequately addresses this issue and was retained in the final chapter. Therefore, we did not make any revisions based on this comment.

Issue 6–3: Environmental Education Chapter Does Not Have the Same Level of Thoroughness as the Hunting and Fishing Policies

Comment: One commenter suggested that the environmental education policy does not include the same level of thoroughness as the hunting and fishing policy.

Response: Although it is true that the hunting and fishing chapters contain more detailed information and guidance than the environmental education chapter, we are not indicating that environmental education is less important than hunting and fishing. The Improvement Act defined wildlife-dependent recreation as a use of a refuge involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation. When these activities are compatible, they are the priority general public uses of the Refuge System. The Improvement Act did not develop a hierarchy between the wildlife-dependent recreational uses, and we are not attempting to create one through the level of detail contained in each policy. Hunting and fishing are inherently regulatory in nature and, therefore, require more guidance than environmental education on refuges.

Interpretation

Issue 7–1: Tribal Consultation and Coordination

Comment: We received two comments recommending that we expand the teaching focus identified to include the trust responsibilities of the States and tribes rather than just those of the Service and that educational materials include the historic customs and culture of the people who live in the surrounding area.

Response: We address the issue of tribal consultation and coordination in section 1.9. In addition, we manage visitor services in accordance with applicable Federal, State, and tribal laws (see 50 CFR subchapter C).

Issue 7–2: Increase Public Understanding and Support for Wildlife Management Practices

Comment: In order to increase public awareness as to various wildlife management practices performed by State and Federal agencies, one commenter suggested adding: "Increase public understanding and support for wildlife management practices performed on System lands."

Response: In section 7.4 of the draft interpretation chapter, we stated that we will develop and maintain interpretive programs to increase public understanding and support, develop a sense of stewardship leading to actions and attitudes that reflect concern and respect for our natural resources, and provide an understanding of the management of our natural and cultural resources. We retained this language in the final chapter.

Issue 7–3: Interpretation Chapter Does Not Have the Same Level of Thoroughness as the Hunting and Fishing Policies

Comment: One commenter suggested that the interpretation policy does not include the same level of thoroughness as the hunting and fishing policy.

Response: Although it is true that the hunting and fishing chapters contain more detailed information and guidance than the interpretation chapter, we are not indicating that interpretation is less important than hunting and fishing. The Improvement Act defined wildlife-dependent recreation as a use of a refuge involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation. When these activities are compatible, they are the priority general public uses of the Refuge System. The Improvement Act did not develop a hierarchy between the wildlife-dependent recreational uses, and we are not attempting to create one through the level of detail contained in each policy. Hunting and fishing are inherently regulatory in nature and, therefore, require more guidance than interpretation on refuges.

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order (E.O.) 12866, the Office of Management and Budget (OMB) has determined that this policy is not a significant regulatory action.

(1) This policy will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit or full economic analysis is not required. This policy is administrative, legal, technical, and procedural in nature. This policy establishes the process for developing opportunities for wildlife-dependent recreational uses of refuges. This policy will have the effect of providing priority consideration for compatible wildlife-dependent recreational uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation. Existing policy has been in place since 1985 that encourages the phase-out of nonwildlife-oriented recreation on refuges. The Improvement Act does not greatly change this direction in public use, but provides legal recognition of the priority we afford to compatible wildlife-dependent recreational uses. We expect these new procedures to cause only minor modifications to existing refuge public use programs. While we may curtail some general public uses, we may provide new and expanded opportunities for compatible wildlife-dependent recreational uses. We expect an overall small increase, at most a 5 percent annual increase, in the amount of recreational uses allowed on refuges as a result of this policy.

The appropriate measure of the economic effect of changes in recreational use is the change in the welfare of recreationists. We measure this in terms of willingness to pay for the recreation opportunity. We estimated total annual willingness to pay for all recreation at refuges to be $792 million in fiscal year 2002 (*Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation*, DOI/FWS/Refuges, 1997 and 2003). We expect the visitor services programs implemented in this policy to cause at most a 5 percent annual increase in recreational use Refuge Systemwide. This does not mean that every refuge will have the same increase in public use. We will allow the increases only on refuges where increases in hunting, fishing, and other wildlife-dependent recreational uses are compatible. Across the entire Refuge System, we expect an increase in wildlife-dependent recreational use to amount to no more than a 5 percent overall increase. If the full 5 percent increase in recreational use were to occur at refuges, this would translate to a maximum additional willingness to pay of $21 million (1999 dollars) annually for the public. However, we expect the real benefit to be less than $21 million because we expect the final increase in recreational use to be smaller than 5 percent. Furthermore, if the public substitutes non-refuge recreation sites for refuges, then we would subtract the loss of benefit attributed to non-refuge sites from the $21 million estimate.

(2) This policy will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency since the policy pertains solely to management of refuges by the Service.

(3) This policy does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other Federal assistance programs are associated with recreational use of refuges.

(4) OMB has determined that this policy does not raise novel legal or policy issues. It adds the Improvement Act provisions that ensure that compatible wildlife-dependent recreational uses are the priority general public uses of the Refuge System and adds consistency in application of public use guidelines across the entire Refuge System.

Regulatory Flexibility Act

We certify that this document 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.*).

Congress created the Refuge System to conserve fish, wildlife, and plants and their habitats, and this conservation mission has been facilitated by providing Americans opportunities to visit and participate in compatible wildlife-dependent recreation (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) on refuges and to better appreciate the value of and need for wildlife conservation.

This policy is administrative, legal, technical, and procedural in nature and

provides more detailed instructions for the development of visitor services programs than have existed in the past. This policy may result in more opportunities for wildlife-dependent recreation on refuges and may result in the reduction of some nonwildlife-dependent recreation. For example, more wildlife observation opportunities may occur at Florida Panther National Wildlife Refuge in Florida or more hunting opportunities at Pond Creek National Wildlife Refuge in Arkansas. Conversely, we may no longer allow some activities on some refuges. For example, some refuges may currently allow water skiing on refuge-controlled waters or the use of off-road vehicles; we would likely curtail some of these uses as we implement this policy. The overall net effect of these regulations is likely to increase visitor activity near the refuge. To the extent visitors spend time and money in the area that would not otherwise have been spent there, they contribute new income to the regional economy and benefit local businesses.

Refuge visitation is a small component of the wildlife recreation industry as a whole. In 2001, 82 million U.S. residents over 15 years of age spent 1.2 billion activity-days in wildlife-associated recreation activities. They spent about $108 billion on fishing, hunting, and wildlife watching trips (tables 1, 50, 52, and 68, *2001 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation*, DOI/FWS/FA, 2002). Refuges recorded about 39 million visitor-days in FY 2003 (RMIS, FY 2003 Public Use Summary). A 2003 study of refuge visitors found their travel spending generated over $800 million in sales and 19,000 jobs for local economies (*Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation*, DOI/FWS/Refuges, 1997 and 2003). These spending figures include spending that would have occurred in the community anyway, and so they show the importance of the activity in the local economy rather than its incremental impact. Marginally greater recreational opportunities on refuges will have little industry-wide effect.

Expenditures as a result of this policy are a transfer and not a benefit to many small businesses. We expect the incremental increase of recreational opportunities to be marginal and scattered, so we do not expect the policy to have a significant economic impact on a substantial number of small entities in any region or nationally.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This policy is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This policy:

(1) Does not have an annual effect on the economy of $100 million or more. This policy will affect only visitors at refuges. It may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the Refuge System. See response under Regulatory Flexibility Act.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(1) This policy will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. See "Regulatory Flexibility Act."

(2) This policy will not produce a Federal mandate of $100 million or greater in any year; i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. See "Regulatory Flexibility Act."

Takings (E.O. 12630)

In accordance with E.O. 12630, this policy does not have significant takings implications. A takings implication assessment is not required. This policy may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the Refuge System. See "Regulatory Flexibility Act."

Federalism Assessment (E.O. 13132)

In accordance with E.O. 13132, this policy does not have significant federalism effects. This policy applies only to areas where we have jurisdiction. It will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132, we have determined that this policy does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that this policy does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This policy will expand upon established policies and result in better understanding of the policies by refuge visitors.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. This E.O. requires agencies to prepare statements of energy effects when undertaking certain actions. This policy is administrative, legal, technical, and procedural in nature. Because this policy establishes the process for developing visitor services programs on refuge, it is not a significant regulatory action under E.O. 12866 and is not expected to significantly affect energy supplies, distribution, and use. This notice does not designate any areas that have been identified as having oil or gas reserves, whether in production or otherwise identified for future use. Therefore, this action is not a significant energy action and no statement of energy effects is required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we evaluated possible effects on federally recognized Indian tribes and determined that there are no effects. We coordinate recreational use on refuges with tribal governments having adjoining or overlapping jurisdiction before we propose the activities. This policy is consistent with and not less restrictive than tribal reservation rules.

Paperwork Reduction Act

This document does not include any new information collection that would require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (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 unless it displays a currently valid OMB control number.

Section 7 Consultation

We have determined that the policy established by this notice will not affect listed species or designated critical habitat. Therefore, consultation under

section 7 of the Endangered Species Act is not required. The basis for this conclusion is that this final policy explains how we will provide visitors with quality hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

National Environmental Policy Act

We ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) when developing refuge CCPs and VSPs, and we make the determinations required by NEPA before the addition of refuges to the lists of areas open to public uses. In accordance with 516 DM 2, appendix 1.10, we have determined that this policy is categorically excluded from the NEPA process because it is limited to policies, directives, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Site-specific proposals, as indicated above, will be subject to the NEPA process.

Available Information for Specific Refuges

Individual refuge administrative offices retain information regarding visitor services programs and the conditions that apply to their specific programs and maps of their respective areas.

You may also obtain information from the Regional Offices at the addresses listed below:

- Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214; *http://pacific.fws.gov.*
- Region 2—Arizona, New Mexico, Oklahoma and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 248–7419; *http://southwest.fws.gov.*
- Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713–5300; *http://midwest.fws.gov.*
- Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7166; *http://southeast.fws.gov.*
- Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8306; *http://northeast.fws.gov.*
- Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, Colorado 80228; Telephone (303) 236–8145; *http://www.r6.fws.gov.*
- Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545; *http://alaska.fws.gov.*

Availability of the Policy

The Final Wildlife-Dependent Recreational Uses Policy is available at this Web site: *http://policy.fws.gov/ser600.html.*

Persons without Internet access may request a hard copy by contacting the office listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Dated: January 20, 2006.

H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

Note: This document was received at the Office of the Federal Register on June 21, 2006.

[FR Doc. 06–5644 Filed 6–23–06; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Monday,
June 26, 2006

Part IV

The President

Federal Register
Vol. 71, No. 122
Monday, June 26, 2006

Presidential Documents

Title 3—

The President

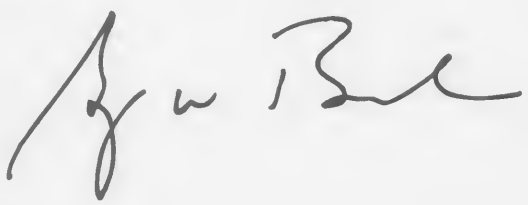
Memorandum of May 25, 2006

Assignment of Certain Functions Relating to the Global War on Terror

Memorandum for the Secretary of State [and] the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3, United States Code, the functions of the President under the heading "Peacekeeping Operations" in chapter 2 of title II in Division A of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (Public Law 109–13) are assigned to the Secretary of State. The Secretary should consult the Director of the Office of Management and Budget as appropriate in the performance of such functions.

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register.**



THE WHITE HOUSE,
Washington, May 25, 2006.

[FR Doc. 06–5714
Filed 6–23–06; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Memorandum of May 26, 2006

Assignment of Certain Functions Related to the Use of Cooperative Threat Reduction Funds for States Outside the Former Soviet Union

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

By the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3, United States Code, I hereby assign to the Secretary of State the functions of the President under:

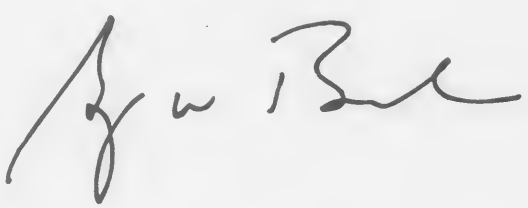
(1) subsection 1203(d) of the Cooperative Threat Reduction Act of 1993 (22 U.S.C. 5952(d)), as it relates to section 1308(e) of the National Defense Authorization Act for Fiscal Year 1994 (22 U.S.C. 5963);

(2) subsections 1306(a) and (b) of the National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314), as amended (22 U.S.C. 5952 note), as they relate to section 1308(e); and

(3) section 1304 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163).

The Secretary of State shall consult the Secretary of Defense prior to making a determination specified in section 1308(a)(2).

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 26, 2006.

[FR Doc. 06–5715
Filed 6–26–06; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2006–15 of June 15, 2006

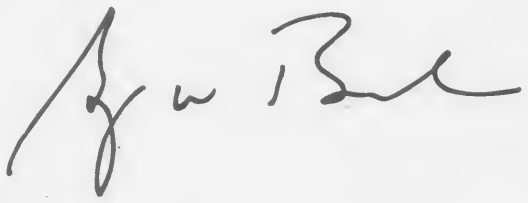
Suspension of Limitations Under the Jerusalem Embassy Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the "Act"), I hereby determine that it is necessary to protect the national security interests of the United States to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act. My Administration remains committed to beginning the process of moving our Embassy to Jerusalem.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the **Federal Register**.

This suspension shall take effect after transmission of this determination and report to the Congress.



THE WHITE HOUSE,
Washington, June 15, 2006.

[FR Doc. 06–5716
Filed 6–23–06; 8:45 am]
Billing code 4710–10–P

Presidential Documents

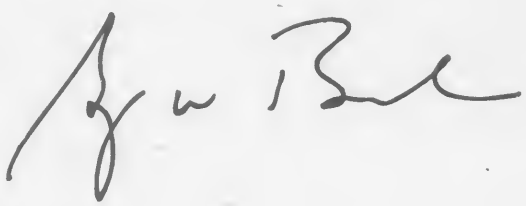
Presidential Determination No. 2006–16 of June 19, 2006

Eligibility of the Kingdom of Swaziland to Receive Defense Articles and Defense Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to section 503(a) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2311), and section 3(a)(1) of the Arms Export Control Act, as amended (22 U.S.C. 2753), I hereby find that the furnishing of defense articles and defense services to the Kingdom of Swaziland will strengthen the security of the United States and promote world peace.

You are authorized and directed to transmit this determination, including the justification, to the Congress and to arrange for the publication of this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 19, 2006.

[FR Doc. 06–5717
Filed 6–23–06; 8:45 am]
Billing code 4710–10–P

Federal Register

Monday,
June 26, 2006

Part V

The President

Proclamation 8031—Establishment of the Northwestern Hawaiian Islands Marine National Monument

Federal Register
Vol. 71, No. 122
Monday, June 26, 2006

Presidential Documents

Title 3—

The President

Proclamation 8031 of June 15, 2006

Establishment of the Northwestern Hawaiian Islands Marine National Monument

By the President of the United States of America

A Proclamation

In the Pacific Ocean northwest of the principal islands of Hawaii lies an approximately 1,200 nautical mile stretch of coral islands, seamounts, banks, and shoals. The area, including the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, the Midway National Wildlife Refuge, the Hawaiian Islands National Wildlife Refuge, and the Battle of Midway National Memorial, supports a dynamic reef ecosystem with more than 7,000 marine species, of which approximately half are unique to the Hawaiian Island chain. This diverse ecosystem is home to many species of coral, fish, birds, marine mammals, and other flora and fauna including the endangered Hawaiian monk seal, the threatened green sea turtle, and the endangered leatherback and hawksbill sea turtles. In addition, this area has great cultural significance to Native Hawaiians and a connection to early Polynesian culture worthy of protection and understanding.

WHEREAS Executive Order 13089 of June 11, 1998, Executive Order 13178 of December 4, 2000, and Executive Order 13196 of January 18, 2001, as well as the process for designation of a National Marine Sanctuary undertaken by the Secretary of Commerce, have identified objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States in the area of the Northwestern Hawaiian Islands;

WHEREAS section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) (the "Antiquities Act") authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected;

WHEREAS it would be in the public interest to preserve the marine area of the Northwestern Hawaiian Islands and certain lands as necessary for the care and management of the historic and scientific objects therein,

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Northwestern Hawaiian Islands Marine National Monument (the "monument" or "national monument") for the purpose of protecting the objects described above, all lands and interests in lands owned or controlled by the Government of the United States within the boundaries described on the accompanying map entitled "Northwestern Hawaiian Islands Marine National Monument" attached to and forming a part of this proclamation. The Federal land and interests in land reserved includes approximately 139,793 square miles of emergent and submerged lands and waters of the Northwestern Hawaiian Islands, which is the smallest

area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including, but not limited to, withdrawal from location, entry, and patent under mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

The Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), will have primary responsibility regarding management of the marine areas, in consultation with the Secretary of the Interior. The Secretary of the Interior, through the Fish and Wildlife Service (FWS), will have sole responsibility for management of the areas of the monument that overlay the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge, in consultation with the Secretary of Commerce.

The Secretary of Commerce and the Secretary of the Interior (collectively, the "Secretaries") shall review and, as appropriate, modify the interagency agreement developed for coordinated management of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, signed on May 19, 2006. To manage the monument, the Secretary of Commerce, in consultation with the Secretary of the Interior and the State of Hawaii, shall modify, as appropriate, the plan developed by NOAA's National Marine Sanctuary Program through the public sanctuary designation process, and will provide for public review of that plan. To the extent authorized by law, the Secretaries, acting through the FWS and NOAA, shall promulgate any additional regulations needed for the proper care and management of the objects identified above.

The Secretary of State, in consultation with the Secretaries, shall take appropriate action to enter into negotiations with other governments to make necessary arrangements for the protection of the monument and to promote the purposes for which the monument is established. The Secretary of State, in consultation with the Secretaries, shall seek the cooperation of other governments and international organizations in furtherance of the purposes of this proclamation and consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas. Furthermore, this proclamation shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

Nothing in this proclamation shall be deemed to diminish or enlarge the jurisdiction of the State of Hawaii.

The establishment of this monument is subject to valid existing rights and use of the monument shall be administered as follows:

Access to the Monument

The Secretaries shall prohibit entering the monument except pursuant to permission granted by the Secretaries or their designees. Any person passing through the monument without interruption must notify an official designated by the Secretaries at least 72 hours, but no longer than 1 month, prior to the entry date. Notification of departure from the monument must be provided within 12 hours of leaving. A person providing notice must provide the following information, as applicable: (i) position when making report; (ii) vessel name and International Maritime Organization identification number; (iii) name, address, and telephone number of owner and operator; (iv) United States Coast Guard (USCG) documentation, State license, or registration number; (v) home port; (vi) intended and actual route through the monument; (vii) general categories of any hazardous cargo on board; and (viii) length of vessel and propulsion type (e.g., motor or sail).

Vessel Monitoring Systems

1. As soon as possible but not later than 30 days following the issuance of this proclamation, NOAA shall publish in the **Federal Register** a list of approved transmitting units and associated communications service providers for purposes of this proclamation. An owner or operator of a vessel that has been issued a permit for accessing the monument must ensure that such a vessel has an operating vessel monitoring system (VMS) on board, approved by the Office of Legal Enforcement in the National Oceanic and Atmospheric Administration in the Department of Commerce (OLE) when voyaging within the monument. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and OLE as provided by an OLE-approved communication service provider.

2. Only a VMS that has been approved by OLE may be used. When installing and activating the OLE-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must:

a. Follow procedures indicated on an installation and activation checklist, which is available from OLE; and

b. Submit to OLE a statement certifying compliance with the checklist, as prescribed on the checklist.

3. No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.

4. When a vessel's VMS is not operating properly, the owner or operator must immediately contact OLE, and follow instructions from that office. If notified by OLE that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by OLE the vessel's positions or returning to port until the VMS is operable.

5. As a condition of authorized access to the monument, a vessel owner or operator subject to the requirements for a VMS in this section must allow OLE, the USCG, and their authorized officers and designees access to the vessels position data obtained from the VMS. Consistent with applicable law, including the limitations on access to, and use, of VMS data collected under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the Secretaries may have access to, and use of, collected data for scientific, statistical, and management purposes.

6. OLE has authority over the installation and operation of the VMS unit. OLE may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit, when deemed appropriate by OLE.

7. The Secretaries shall prohibit any person from conducting or causing to be conducted:

a. Operating any vessel without an approved transmitting device within the monument area 45 days after the publication of the list of approved transmitting devices described in paragraph (1) above;

b. Failing to install, activate, repair, or replace a mobile transceiver unit prior to leaving port;

c. Failing to operate and maintain a mobile transceiver unit on board the vessel at all times;

d. Tampering with, damaging, destroying, altering, or in any way distorting, rendering useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel;

e. Failing to contact OLE or follow OLE instructions when automatic position reporting has been interrupted;

f. Registering a VMS or mobile transceiver unit registered to more than one vessel at the same time;

g. Connecting or leaving connected additional equipment to a VMS unit or mobile transceiver unit without the prior approval of OLE;

h. Making a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a VMS unit or mobile transceiver unit or communication service provider.

Restrictions

Prohibited Activities

The Secretaries shall prohibit persons from conducting or causing to be conducted the following activities:

1. Exploring for, developing, or producing oil, gas, or minerals within the monument;

2. Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a monument resource;

3. Introducing or otherwise releasing an introduced species from within or into the monument; and

4. Anchoring on or having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor rope.

Regulated Activities

Except as otherwise provided in this proclamation, the Secretaries shall prohibit any person from conducting or causing to be conducted within the monument the following activities:

1. Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving monument resource;

2. Drilling into, dredging, or otherwise altering the submerged lands other than by anchoring a vessel; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands;

3. Anchoring a vessel;

4. Deserting a vessel aground, at anchor, or adrift;

5. Discharging or depositing any material or other matter into Special Preservation Areas or the Midway Atoll Special Management Area except vessel engine cooling water, weather deck runoff, and vessel engine exhaust;

6. Discharging or depositing any material or other matter into the monument, or discharging or depositing any material or other matter outside of the monument that subsequently enters the monument and injures any resources of the monument, except fish parts (i.e., chumming material or bait) used in and during authorized fishing operations, or discharges incidental to vessel use such as deck wash, approved marine sanitation device effluent, cooling water, and engine exhaust;

7. Touching coral, living or dead;

8. Possessing fishing gear except when stowed and not available for immediate use during passage without interruption through the monument;

9. Swimming, snorkeling, or closed or open circuit SCUBA diving within any Special Preservation Area or the Midway Atoll Special Management Area; and

10. Attracting any living monument resources.

Emergencies and Law Enforcement Activities

The prohibitions required by this proclamation shall not apply to activities necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for law enforcement purposes.

Armed Forces Actions

1. The prohibitions required by this proclamation shall not apply to activities and exercises of the Armed Forces (including those carried out by the United States Coast Guard) that are consistent with applicable laws.

2. Nothing in this proclamation shall limit agency actions to respond to emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution.

3. All activities and exercises of the Armed Forces shall be carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on monument resources and qualities.

4. In the event of threatened or actual destruction of, loss of, or injury to a monument resource or quality resulting from an incident, including but not limited to spills and groundings, caused by a component of the Department of Defense or the USCG, the cognizant component shall promptly coordinate with the Secretaries for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the monument resource or quality.

Commercial Fishing

1. The Secretaries shall ensure that any commercial lobster fishing permit shall be subject to a zero annual harvest limit.

2. Fishing for bottomfish and pelagic species. The Secretaries shall ensure that:

a. Commercial fishing for bottomfish and associated pelagic species may continue within the monument for not longer than 5 years from the date of this proclamation provided that:

(i) The fishing is conducted in accordance with a valid commercial bottomfish permit issued by NOAA; and

(ii) Such permit is in effect on the date of this proclamation and is subsequently renewed pursuant to NOAA regulations at 50 CFR part 660 subpart E as necessary.

b. Total landings for each fishing year may not exceed the following amounts:

(i) 350,000 pounds for bottomfish species; and

(ii) 180,000 pounds for pelagic species.

c. Commercial fishing for bottomfish and associated pelagic species is prohibited in the monument after 5 years from the date of this proclamation.

General Requirements

The Secretaries shall ensure that any commercial fishing within the monument is conducted in accordance with the following restrictions and conditions:

1. A valid permit or facsimile of a valid permit is on board the fishing vessel and is available for inspection by an authorized officer;

2. No attempt is made to falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other required record or report;

3. Only gear specifically authorized by the relevant permit issued under the Magnuson-Stevens Fishery Conservation and Management Act is allowed to be in the possession of a person conducting commercial fishing under this section;

4. Any person conducting commercial fishing notifies the Secretaries by telephone, facsimile, or electronic mail at least 72 hours before entering the monument and within 12 hours after leaving the monument;

5. All fishing vessels must carry an activated and functioning VMS unit on board at all times whenever the vessel is in the monument;

6. All fishing vessels must carry an observer when requested to do so by the Secretaries; and

7. The activity does not take place within any Ecological Reserve, any Special Preservation Area, or the Midway Atoll Special Management Area.

Permitting Procedures and Criteria

Subject to such terms and conditions as the Secretaries deem appropriate, a person may conduct an activity regulated by this proclamation if such activity is specifically authorized by a permit. The Secretaries, in their discretion, may issue a permit under this proclamation if the Secretaries find that the activity: (i) is research designed to further understanding of monument resources and qualities; (ii) will further the educational value of the monument; (iii) will assist in the conservation and management of the monument; (iv) will allow Native Hawaiian practices; (v) will allow a special ocean use; or (vi) will allow recreational activities.

Findings

1. The Secretaries may not issue any permit unless the Secretaries find:

a. The activity can be conducted with adequate safeguards for the resources and ecological integrity of the monument;

b. The activity will be conducted in a manner compatible with the management direction of this proclamation, considering the extent to which the conduct of the activity may diminish or enhance monument resources, qualities, and ecological integrity, any indirect, secondary, or cumulative effects of the activity, and the duration of such effects;

c. There is no practicable alternative to conducting the activity within the monument;

d. The end value of the activity outweighs its adverse impacts on monument resources, qualities, and ecological integrity;

e. The duration of the activity is no longer than necessary to achieve its stated purpose;

f. The applicant is qualified to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;

g. The applicant has adequate financial resources available to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;

h. The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to their impacts to monument resources, qualities, and ecological integrity;

i. The applicant's vessel has been outfitted with a mobile transceiver unit approved by OLE and complies with the requirements of this proclamation; and

j. There are no other factors that would make the issuance of a permit for the activity inappropriate.

2. *Additional Findings for Native Hawaiian Practice Permits.* In addition to the findings listed above, the Secretaries shall not issue a permit to allow Native Hawaiian practices unless the Secretaries find:

a. The activity is non-commercial and will not involve the sale of any organism or material collected;

b. The purpose and intent of the activity are appropriate and deemed necessary by traditional standards in the Native Hawaiian culture (pono), and demonstrate an understanding of, and background in, the traditional practice, and its associated values and protocols;

c. The activity benefits the resources of the Northwestern Hawaiian Islands and the Native Hawaiian community;

d. The activity supports or advances the perpetuation of traditional knowledge and ancestral connections of Native Hawaiians to the Northwestern Hawaiian Islands; and

e. Any monument resource harvested from the monument will be consumed in the monument.

3. *Additional Findings, Criteria, and Requirements for Special Ocean Use Permits*

a. In addition to the findings listed above, the following requirements apply to the issuance of a permit for a special ocean use:

(i) Any permit for a special ocean use issued under this section:

(A) Shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the monument is designated and with protection of monument resources;

(B) Shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretaries;

(C) Shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure monument resources; and

(D) Shall require the permittee to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims; and

(ii) Each person issued a permit for a special ocean use under this section shall submit an annual report to the Secretaries not later than December 31 of each year that describes activities conducted under that permit and revenues derived from such activities during the year.

b. The Secretaries may not issue a permit for a special ocean use unless they determine that the proposed activity will be consistent with the findings listed above for the issuance of any permit.

c. Categories of special ocean use being permitted for the first time under this section will be restricted in duration and permitted as a special ocean use pilot project. Subsequent permits for any category of special ocean use may be issued only if a special ocean use pilot project for that category has been determined by the Secretaries to meet the criteria in this proclamation and any terms and conditions placed on the permit for the pilot project.

d. The Secretaries shall provide public notice prior to requiring a special ocean use permit for any category of activity not previously identified as a special ocean use.

e. The following requirements apply to permits for a special ocean use for an activity within the Midway Atoll Special Management Area.

(i) The Secretaries may issue a permit for a special ocean use for activities within the Midway Atoll Special Management Area provided:

(A) The Secretaries find the activity furthers the conservation and management of the monument; and

(B) The Director of the United States Fish and Wildlife Service or his or her designee has determined that the activity is compatible with the purposes for which the Midway Atoll National Wildlife Refuge was designated.

(ii) As part of a permit, the Secretaries may allow vessels to transit the monument as necessary to enter the Midway Atoll Special Management Area.

f. The Secretaries may issue a permit for a special ocean use for activities outside the Midway Atoll Special Management Area provided:

(i) The Secretaries find the activity will directly benefit the conservation and management of the monument;

(ii) The Secretaries determine the purpose of the activity is for research or education related to the resources or qualities of the monument;

(iii) The Secretaries provide public notice of the application and an opportunity to provide comments at least 30 days prior to issuing the permit; and

(iv) The activity does not involve the use of a commercial passenger vessel.

4. *Additional Findings for Recreation Permits.* The Secretaries may issue a permit only for recreational activities to be conducted within the Midway Atoll Special Management Area. In addition to the general findings listed above for any permit, the Secretaries may not issue such permit unless the Secretaries find:

a. The activity is for the purpose of recreation as defined in regulation;

b. The activity is not associated with any for-hire operation; and

c. The activity does not involve any extractive use.

Sustenance Fishing

Sustenance fishing means fishing for bottomfish or pelagic species that are consumed within the monument, and is incidental to an activity permitted under this proclamation. The Secretaries may permit sustenance fishing outside of any Special Preservation Area as a term or condition of any permit issued under this proclamation. The Secretaries may not permit sustenance fishing in the Midway Atoll Special Management Area unless the activity has been determined by the Director of the United States Fish and Wildlife Service or his or her designee to be compatible with the purposes for which the Midway Atoll National Wildlife Refuge was established. Sustenance fishing must be conducted in a manner compatible with this proclamation, including considering the extent to which the conduct of the activity may diminish monument resources, qualities, and ecological integrity, as well as any indirect, secondary, or cumulative effects of the activity and the duration of such effects. The Secretaries will develop procedures for systematic reporting of sustenance fishing.

Definitions For purposes of this proclamation:

Attract or Attracting means luring or attempting to lure a living resource by any means, except the mere presence of human beings (e.g., swimmers, divers, boaters).

Bottomfish Species means bottomfish management unit species as defined at 50 CFR 660.12.

Commercial Bottomfishing means commercial fishing for bottomfish species.

Commercial Passenger Vessel means a vessel that carries individuals who have paid for such carriage.

Commercial Pelagic Trolling means commercial fishing for pelagic species.

Deserting a vessel means:

1. Leaving a vessel aground or adrift:

(i) Without notifying the Secretaries of the vessel going aground or adrift within 12 hours of its discovery and developing and presenting to the Secretaries a preliminary salvage plan within 24 hours of such notification;

(ii) After expressing or manifesting intention to not undertake or to cease salvage efforts; or

(iii) When the Secretaries are unable, after reasonable efforts, to reach the owner/operator within 12 hours of the vessels condition being reported to authorities.

2. Leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

Ecological Reserve means an area of the monument consisting of contiguous, diverse habitats that provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the monument.

Ecological Integrity means a condition determined to be characteristic of an ecosystem that has the ability to maintain the function, structure, and abundance of natural biological communities, including rates of change in response to natural environmental variation.

Fishing Year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31.

Introduced Species means:

1. A species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystem(s) protected by the monument; or

2. Any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Landing means offloading fish from a fishing vessel or causing fish to be offloaded from a fishing vessel.

Midway Atoll Special Management Area means the area of the monument surrounding Midway Atoll out to a distance of 12 nautical miles, established for the enhanced management, protection, and preservation of monument wildlife and historical resources.

Mobile Transceiver Unit means a vessel monitoring system or VMS device installed on board a vessel that is used for vessel monitoring and transmitting the vessel's position as required by this proclamation.

Native Hawaiian Practices means cultural activities conducted for the purposes of perpetuating traditional knowledge, caring for and protecting the environment, and strengthening cultural and spiritual connections to the Northwestern Hawaiian Islands that have demonstrable benefits to the Native Hawaiian community. This may include, but is not limited to, the non-commercial use of monument resources for direct personal consumption while in the monument.

Ocean-Based Ecotourism means a class of fee-for-service activities that involves visiting the monument for study, enjoyment, or volunteer assistance for purposes of conservation and management.

Pelagic Species means Pacific Pelagic Management Unit Species as defined at 50 CFR 660.12.

Pono means appropriate, correct, and deemed necessary by traditional standards in the Hawaiian culture.

Recreational Activity means an activity conducted for personal enjoyment that does not result in the extraction of monument resources and that does not involve a fee-for-service transaction. This includes, but is not limited to, wildlife viewing, SCUBA diving, snorkeling, and boating.

Special Preservation Area (SPA) means discrete, biologically important areas of the monument within which uses are subject to conditions, restrictions, and prohibitions, including but not limited to access restrictions. SPAs are used to avoid concentrations of uses that could result in declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research.

Special Ocean Use means an activity or use of the monument that is engaged in to generate revenue or profits for one or more of the persons associated with the activity or use, and does not destroy, cause the loss of, or injure monument resources. This includes ocean-based ecotourism and other activities such as educational and research activities that are engaged in to generate revenue, but does not include commercial fishing for bottomfish or pelagic species conducted pursuant to a valid permit issued by NOAA.

Stowed and Not Available for Immediate Use means not readily accessible for immediate use, e.g., by being securely covered and lashed to a deck

or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

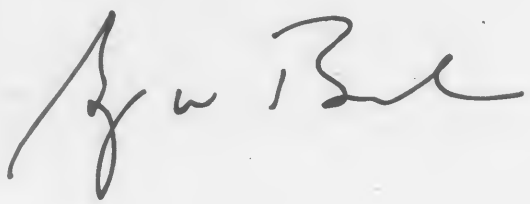
Sustenance Fishing means fishing for bottomfish or pelagic species in which all catch is consumed within the monument, and that is incidental to an activity permitted under this proclamation.

Vessel Monitoring System or VMS means a vessel monitoring system or mobile transceiver unit approved by the Office for Law Enforcement for use on vessels permitted to access the monument, as required by this subpart.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

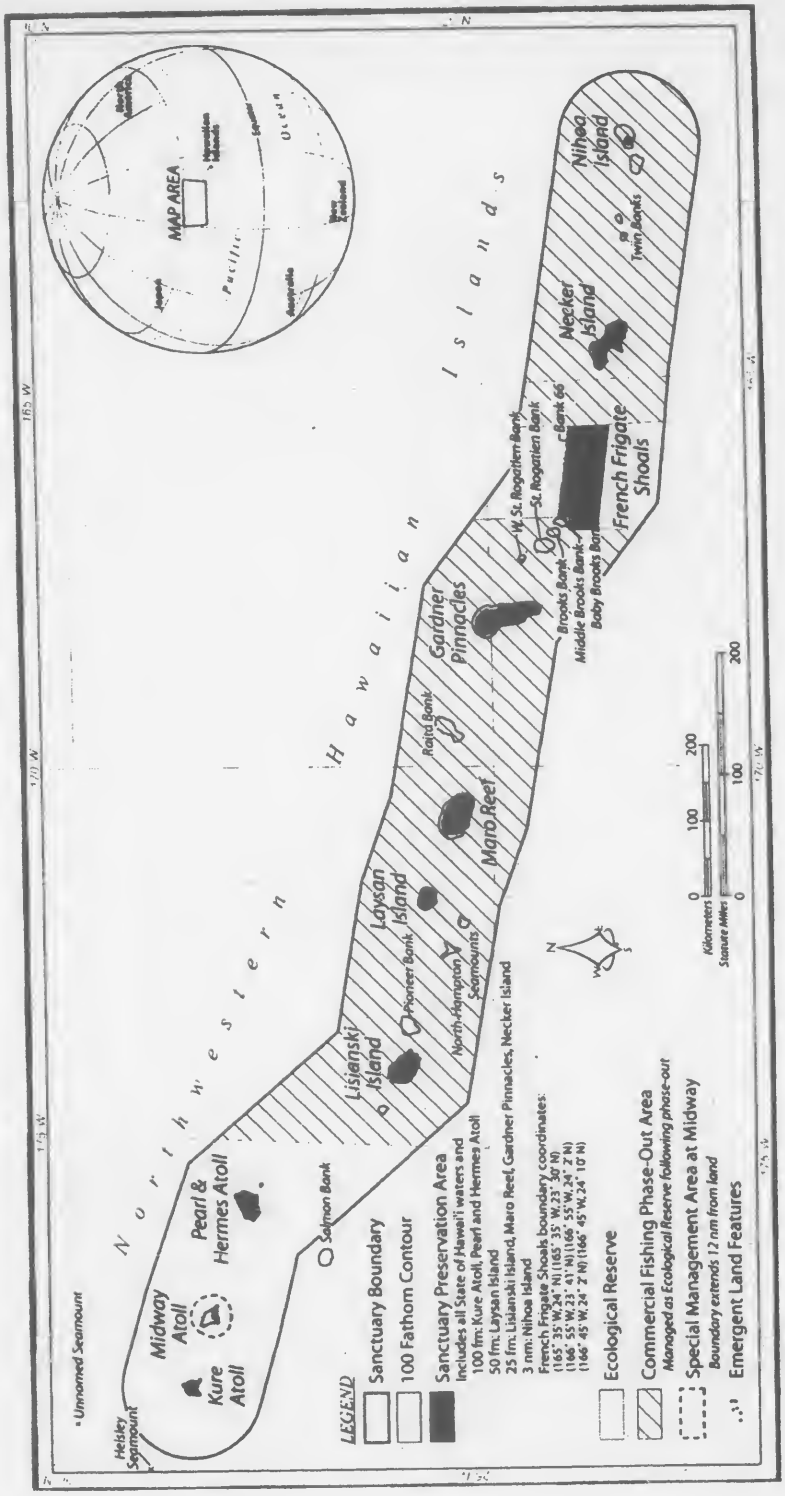
Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of June, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



Billing code 3195–01–P

Northwestern Hawaiian Islands Marine National Monument



Northwestern Hawaiian Islands Marine National Monument Boundary Coordinates

[Coordinates listed are unprojected (Geographic) and based on the North American Datum of 1983.]

Point	Latitude	Longitude
1	28.437480	-175.177660
2	28.267840	-175.000000
3	26.848220	-173.513200
4	26.600050	-171.628460
5	26.591570	-171.564050
6	26.584980	-171.514000
7	26.567910	-171.458490
8	26.555880	-171.419340
9	26.237590	-170.384040
10	25.842570	-167.964750
11	25.816640	-167.805960
12	25.784980	-167.612000
13	25.664070	-167.441430
14	25.585060	-167.329980
15	25.173930	-166.750000
16	24.681970	-166.056000
17	24.594130	-165.583330
18	24.399760	-164.537400
19	23.880420	-161.742420
20	23.868390	-161.686790
21	23.853160	-161.632100
22	23.834780	-161.578570
23	23.813320	-161.526420
24	23.788880	-161.475860
25	23.761550	-161.427080
26	23.731440	-161.380290
27	23.698680	-161.335660
28	23.663380	-161.293370
29	23.625700	-161.253600
30	23.585780	-161.216500
31	23.543790	-161.182210
32	23.499890	-161.150870
33	23.454250	-161.122600
34	23.407070	-161.097510
35	23.358510	-161.075690
36	23.308790	-161.057240
37	23.258090	-161.042210
38	23.206620	-161.030670
39	23.154580	-161.022660
40	23.102170	-161.018200
41	23.049610	-161.017300

42	22.997110	-161.019980
43	22.944850	-161.026200
44	22.893070	-161.035950
45	22.841950	-161.049190
46	22.791700	-161.065840
47	22.742520	-161.085860
48	22.694600	-161.109150
49	22.648120	-161.135620
50	22.603270	-161.165160
51	22.560230	-161.197660
52	22.519160	-161.232980
53	22.480220	-161.270990
54	22.443560	-161.311530
55	22.409340	-161.354440
56	22.377670	-161.399560
57	22.348690	-161.446710
58	22.322500	-161.495710
59	22.299220	-161.546350
60	22.278920	-161.598460
61	22.261680	-161.651810
62	22.247580	-161.706210
63	22.236670	-161.761450
64	22.228990	-161.817300
65	22.224580	-161.873560
66	22.223430	-161.930000
67	22.225570	-161.986410
68	22.230990	-162.042570
69	22.238520	-162.090980
70	22.239660	-162.098260
71	22.753090	-164.860380
72	22.837820	-165.583330
73	22.925010	-166.327230
74	22.932210	-166.388720
75	22.956970	-166.600000
76	23.062650	-166.750000
77	23.091440	-166.790850
78	24.211550	-168.380720
79	24.211630	-168.380830
80	24.211670	-168.381050
81	24.596330	-170.739990
82	24.604970	-170.793000
83	24.619830	-170.839640
84	24.629360	-170.869580
85	24.937290	-171.836510
86	25.276970	-174.414000
87	25.830690	-175.000000
88	27.246110	-176.497940
89	27.415860	-177.555230

90	27.597840	-178.498430
91	27.610780	-178.565510
92	27.625520	-178.622110
93	27.643380	-178.677580
94	27.664280	-178.731700
95	27.688140	-178.784270
96	27.714880	-178.835070
97	27.744380	-178.883910
98	27.776540	-178.930610
99	27.811230	-178.974960
100	27.848320	-179.016810
101	27.887650	-179.055990
102	27.929090	-179.092340
103	27.972460	-179.125720
104	28.017600	-179.155980
105	28.064330	-179.183020
106	28.112470	-179.206730
107	28.161840	-179.226990
108	28.212230	-179.243740
109	28.263450	-179.256890
110	28.315300	-179.266400
111	28.367580	-179.272220
112	28.412080	-179.274000
113	28.420080	-179.274320
114	28.430370	-179.274000
115	28.472580	-179.272690
116	28.524900	-179.267320
117	28.576810	-179.258240
118	28.628110	-179.245480
119	28.678610	-179.229070
120	28.728090	-179.209090
121	28.776360	-179.185600
122	28.823240	-179.158700
123	28.868520	-179.128480
124	28.912040	-179.095060
125	28.953610	-179.058580
126	28.993080	-179.019170
127	29.030280	-178.977000
128	29.065060	-178.932220
129	29.097280	-178.885010
130	29.126820	-178.835570
131	29.153560	-178.784090
132	29.177380	-178.730770
133	29.198200	-178.675830
134	29.215930	-178.619490
135	29.230490	-178.561970
136	29.241830	-178.503520
137	29.249910	-178.444360

138	29.254680	-178.384730
139	29.256140	-178.324870
140	29.254270	-178.265030
141	29.249080	-178.205450
142	29.240600	-178.146360
143	29.057970	-177.201300
144	29.042570	-177.121570
145	28.649370	-175.591270
146	28.644570	-175.572600
147	28.581980	-175.329000
148	28.437480	-175.177660

Ecological Reserves Boundary Coordinates

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

Table B-1 Ecological Reserve West of 175 degrees West Longitude

Point ID	Latitude	Longitude
1	29.042570	-177.121570
2	28.649370	-175.591270
3	28.644570	-175.572600
4	28.581980	-175.329000
5	28.437480	-175.177660
6	28.267840	-175.000000
7	25.830690	-175.000000
8	27.246110	-176.497940
9	27.415860	-177.555230
10	27.610780	-178.565510
11	27.625520	-178.622110
12	27.643380	-178.677580
13	27.664280	-178.731700
14	27.688140	-178.784270
15	27.714880	-178.835070
16	27.744380	-178.883910
17	27.776540	-178.930610
18	27.811230	-178.974960
19	27.848320	-179.016810
20	27.887650	-179.055990

21	27.929090	-179.092340
22	27.972460	-179.125720
23	28.017600	-179.155980
24	28.064330	-179.183020
25	28.112470	-179.206730
26	28.161840	-179.226990
27	28.212230	-179.243740
28	28.263450	-179.256890
29	28.315300	-179.266400
30	28.367580	-179.272220
31	28.412080	-179.274000
32	28.430370	-179.274000
33	28.472580	-179.272690
34	28.524900	-179.267320
35	28.576810	-179.258240
36	28.628110	-179.245480
37	28.678610	-179.229070
38	28.728090	-179.209090
39	28.776360	-179.185600
40	28.823240	-179.158700
41	28.868520	-179.128480
42	28.912040	-179.095060
43	28.953610	-179.058580
44	28.993080	-179.019170
45	29.030280	-178.977000
46	29.065060	-178.932220
47	29.097280	-178.885010
48	29.126820	-178.835570
49	29.153560	-178.784090
50	29.177380	-178.730770
51	29.198200	-178.675830
52	29.215930	-178.619490
53	29.230490	-178.561970
54	29.241830	-178.503520
55	29.249910	-178.444360

56	29.254680	-178.384730
57	29.256140	-178.324870
58	29.254270	-178.265030
59	29.249080	-178.205450
60	29.240600	-178.146360
61	29.057970	-177.201300
62	29.042570	-177.121570

Table B-2 French Frigate Shoals Ecological Reserve

Point ID	Latitude	Longitude
1	24.594130	-165.583330
2	23.499970	-165.583330
3	23.999970	-165.583330
4	24.166640	-166.750000
5	25.173930	-166.750000
6	24.681970	-166.056000
7	24.594130	-165.583330
8	23.740820	-166.927560
9	23.687790	-166.928170
10	23.666640	-166.750000
11	23.499970	-165.583330
12	22.837820	-165.583330
13	22.956970	-166.600000
14	23.062650	-166.750000
15	23.196210	-166.938090
16	23.740960	-166.929090
17	23.740820	-166.927560

Special Preservation Areas Boundary Coordinates

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

Table C-1 French Frigate Shoals Special Preservation Area

Point ID	Latitude	Longitude
1	23.999970	-165.583330
2	23.499970	-165.583330
3	23.666640	-166.750000
4	23.687790	-166.928170

5	23.740820	-166.927560
6	24.036510	-166.924170
7	24.034000	-166.752270
8	24.166640	-166.750000
9	23.999970	-165.583330

Table C-2 Gardner Pinnacles Special Preservation Area

Point ID	Latitude	Longitude`
1	25.069550	-167.932070
2	25.041750	-167.925060
3	25.013260	-167.941650
4	24.941640	-167.941660
5	24.906030	-167.922730
6	24.881740	-167.901230
7	24.849970	-167.891660
8	24.747630	-167.897660
9	24.629080	-167.872660
10	24.590720	-167.873600
11	24.563150	-167.866590
12	24.491640	-167.875000
13	24.448290	-167.890630
14	24.428440	-167.901840
15	24.411150	-167.954400
16	24.419790	-167.989680
17	24.438010	-168.003690
18	24.508310	-168.016660
19	24.574980	-168.050000
20	24.591640	-168.083330
21	24.699970	-168.125000
22	24.774970	-168.133330
23	24.816640	-168.150000
24	24.883310	-168.150000
25	24.949970	-168.225000
26	25.008310	-168.266660
27	25.065400	-168.277990
28	25.093010	-168.267940
29	25.103750	-168.250890
30	25.165870	-168.225750
31	25.181750	-168.196320
32	25.191640	-168.141660
33	25.192730	-168.086360
34	25.174040	-168.041280
35	25.124980	-167.983330
36	25.069550	-167.932070

Table C-3 Kure Atoll Special Preservation Area

Point ID	Latitude	Longitude`
1	28.392840	-178.429820

2	28.399910	-178.436410
3	28.415160	-178.446280
4	28.432200	-178.448290
5	28.455370	-178.441200
6	28.478140	-178.430830
7	28.496460	-178.413240
8	28.500820	-178.406980
9	28.506480	-178.398860
10	28.514860	-178.380810
11	28.519980	-178.357030
12	28.521950	-178.334820
13	28.521950	-178.334800
14	28.525880	-178.330960
15	28.529600	-178.322670
16	28.546060	-178.307530
17	28.544020	-178.296510
18	28.522790	-178.285740
19	28.502900	-178.282050
20	28.502890	-178.282030
21	28.499380	-178.276340
22	28.487070	-178.260900
23	28.475690	-178.250260
24	28.471030	-178.245900
25	28.450220	-178.238690
26	28.416860	-178.231260
27	28.397060	-178.232420
28	28.378270	-178.238260
29	28.363050	-178.245720
30	28.362280	-178.246630
31	28.362270	-178.246650
32	28.351660	-178.238800
33	28.343860	-178.228570
34	28.341350	-178.214180
35	28.328300	-178.211250
36	28.320980	-178.215800
37	28.318750	-178.226820
38	28.326780	-178.233600
39	28.332160	-178.261690
40	28.342560	-178.262560
41	28.346030	-178.266850
42	28.343860	-178.269830
43	28.336310	-178.286080
44	28.335300	-178.315410
45	28.340220	-178.363860
46	28.344070	-178.381090
47	28.323940	-178.406220
48	28.321250	-178.428370
49	28.367630	-178.432740

50	28.392840	-178.429820

Table C-4 Pearl and Hermes Atoll Special Preservation Area

Point ID	Latitude	Longitude
1	27.757750	-176.036520
2	27.768320	-176.040880
3	27.768320	-176.040880
4	27.770100	-176.048300
5	27.782320	-176.065490
6	27.840940	-176.037040
7	27.855580	-176.034410
8	27.874110	-176.034890
9	27.892740	-176.027240
10	27.899910	-176.012850
11	27.910770	-175.983500
12	27.910800	-175.983470
13	27.919710	-175.976620
14	27.927980	-175.967410
15	27.935100	-175.956890
16	27.939420	-175.946360
17	27.943320	-175.937810
18	27.950350	-175.926920
19	27.963550	-175.906130
20	27.974710	-175.888940
21	27.981650	-175.875480
22	27.987800	-175.860460
23	27.997110	-175.839520
24	28.004660	-175.823330
25	28.008440	-175.813830
26	28.010980	-175.803790
27	28.011520	-175.793180
28	28.011060	-175.781740
29	28.010310	-175.770160
30	28.009350	-175.764210
31	28.009350	-175.764180
32	28.011110	-175.761890
33	28.021650	-175.734510
34	28.007620	-175.715020
35	27.989730	-175.708650
36	27.989710	-175.708630
37	27.982190	-175.698330
38	27.976630	-175.691710
39	27.973990	-175.688570
40	27.967780	-175.681600
41	27.962560	-175.676580
42	27.955580	-175.672400
43	27.945870	-175.667950
44	27.935150	-175.664330

45	27.923930	-175.662390
46	27.914190	-175.661560
47	27.899720	-175.661860
48	27.883490	-175.664100
49	27.869160	-175.669150
50	27.859160	-175.672680
51	27.848250	-175.675300
52	27.836260	-175.678940
53	27.828010	-175.682580
54	27.818010	-175.688990
55	27.811250	-175.690970
56	27.805500	-175.693210
57	27.805240	-175.693310
58	27.795260	-175.697130
59	27.783750	-175.704120
60	27.776490	-175.709430
61	27.771010	-175.713510
62	27.770990	-175.713520
63	27.763470	-175.710490
64	27.755510	-175.719930
65	27.755160	-175.725020
66	27.749210	-175.729550
67	27.744440	-175.735410
68	27.739890	-175.743640
69	27.735130	-175.754680
70	27.732590	-175.766400
71	27.731290	-175.779240
72	27.730230	-175.795430
73	27.731050	-175.816390
74	27.732360	-175.825560
75	27.733580	-175.833100
76	27.734560	-175.837560
77	27.735040	-175.841750
78	27.732280	-175.845940
79	27.727480	-175.852770
80	27.722740	-175.861850
81	27.717130	-175.874800
82	27.709340	-175.894910
83	27.702570	-175.913780
84	27.699260	-175.929970
85	27.697450	-175.945320
86	27.697660	-175.956490
87	27.699370	-175.966810
88	27.703320	-175.976850
89	27.710260	-175.989680
90	27.720440	-176.003340
91	27.732370	-176.017010
92	27.741820	-176.025930

93	27.746800	-176.029970
94	27.749030	-176.031780

Table C-5 Lisianski Island Special Preservation Area

Point ID	Latitude	Longitude`
1	25.940390	-173.790690
2	25.910770	-173.795060
3	25.910770	-173.795060
4	25.871480	-173.850890
5	25.879490	-173.891610
6	25.879980	-173.943990
7	25.963710	-174.108790
8	25.979580	-174.120000
9	26.000210	-174.142570
10	26.040550	-174.157290
11	26.122730	-174.154820
12	26.174970	-174.133330
13	26.212150	-174.085540
14	26.217240	-174.050590
15	26.212430	-173.982900
16	26.183310	-173.933330
17	26.142200	-173.896560
18	26.119380	-173.861860
19	26.085600	-173.822290
20	26.041640	-173.799990
21	26.008310	-173.766660
22	25.988250	-173.752100
23	25.971020	-173.752830

Table C-6 Laysan Island Special Preservation Area

Point ID	Latitude	Longitude`
1	25.716670	-171.650000
2	25.700000	-171.666670
3	25.691670	-171.700000
4	25.700000	-171.708330
5	25.700000	-171.733330
6	25.691670	-171.750000
7	25.691670	-171.783330
8	25.708330	-171.816670
9	25.758330	-171.850000
10	25.791670	-171.866670
11	25.833330	-171.875000
12	25.866670	-171.850000
13	25.883330	-171.833330
14	25.900000	-171.800000
15	25.900000	-171.766670
16	25.883330	-171.675000
17	25.866670	-171.625000

18	25.833330	-171.600000
19	25.791670	-171.591670
20	25.766670	-171.600000
21	25.741670	-171.616670
22	25.725000	-171.633330
23	25.716670	-171.650000

Table C-7 Maro Reef Special Preservation Area

Point ID	Latitude	Longitude
1	25.566690	-170.517140
2	25.466690	-170.408800
3	25.375020	-170.350470
4	25.258350	-170.408800
5	25.250020	-170.425470
6	25.258350	-170.542140
7	25.283350	-170.592140
8	25.300020	-170.650470
9	25.316690	-170.767140
10	25.333350	-170.800470
11	25.358350	-170.808800
12	25.391690	-170.867140
13	25.450020	-170.892140
14	25.525020	-170.900470
15	25.550020	-170.900470
16	25.583350	-170.875470
17	25.625020	-170.808810
18	25.633350	-170.775470
19	25.633350	-170.708800
20	25.616690	-170.683810
21	25.591690	-170.575470
22	25.566690	-170.517140

Table C-8 Necker Island Special Preservation Area

Point ID	Latitude	Longitude
1	23.642160	-164.551780
2	23.613240	-164.535150
3	23.588260	-164.530180
4	23.550990	-164.527340
5	23.522830	-164.509770
6	23.490850	-164.451480
7	23.480450	-164.441650
8	23.462880	-164.393270
9	23.463220	-164.368120
10	23.449040	-164.327110
11	23.431280	-164.304620
12	23.396860	-164.282330
13	23.357080	-164.270620
14	23.308700	-164.250210

15	23.289700	-164.256760
16	23.279120	-164.267160
17	23.256820	-164.275850
18	23.235370	-164.298150
19	23.232530	-164.336710
20	23.238010	-164.369100
21	23.256190	-164.395600
22	23.263000	-164.457020
23	23.270370	-164.470630
24	23.291640	-164.483330
25	23.308310	-164.525000
26	23.308870	-164.596130
27	23.299420	-164.630360
28	23.300400	-164.641120
29	23.313770	-164.639170
30	23.323870	-164.629710
31	23.326810	-164.618950
32	23.342460	-164.621560
33	23.353870	-164.609170
34	23.406430	-164.588630
35	23.444900	-164.579500
36	23.455990	-164.605580
37	23.466750	-164.609170
38	23.479950	-164.622600
39	23.490020	-164.651170
40	23.496910	-164.695970
41	23.496540	-164.733520
42	23.484440	-164.769800
43	23.502770	-164.782090
44	23.509200	-164.799290
45	23.523370	-164.810810
46	23.537360	-164.832550
47	23.567430	-164.847030
48	23.600880	-164.834360
49	23.616190	-164.819810
50	23.622430	-164.801100
51	23.621480	-164.768400
52	23.631120	-164.738540
53	23.650580	-164.687890
54	23.663250	-164.624580
55	23.656440	-164.575820
56	23.642160	-164.551780

Table C-9 Nihoa Island Special Preservation Area

Point ID	Latitude	Longitude`
1	23.099610	-161.971310
2	23.100370	-161.970570
3	23.101120	-161.969810

4	23.101850	-161.969040
5	23.102580	-161.968250
6	23.103290	-161.967450
7	23.103990	-161.966630
8	23.104680	-161.965800
9	23.105350	-161.964950
10	23.106020	-161.964090
11	23.106670	-161.963220
12	23.107310	-161.962340
13	23.107930	-161.961440
14	23.108540	-161.960530
15	23.109140	-161.959610
16	23.109720	-161.958670
17	23.110290	-161.957730
18	23.110850	-161.956770
19	23.111390	-161.955800
20	23.111910	-161.954820
21	23.112420	-161.953830
22	23.112920	-161.952830
23	23.113400	-161.951820
24	23.113870	-161.950800
25	23.114320	-161.949770
26	23.114750	-161.948740
27	23.115170	-161.947690
28	23.115580	-161.946640
29	23.115970	-161.945570
30	23.116340	-161.944500
31	23.116700	-161.943420
32	23.117040	-161.942340
33	23.117360	-161.941250
34	23.117670	-161.940150
35	23.117960	-161.939050
36	23.118240	-161.937940
37	23.118500	-161.936820
38	23.118740	-161.935700
39	23.118970	-161.934580
40	23.119170	-161.933450
41	23.119370	-161.932320
42	23.119540	-161.931180
43	23.119700	-161.930040
44	23.119840	-161.928900
45	23.119960	-161.927750
46	23.120070	-161.926610
47	23.120160	-161.925460
48	23.120230	-161.924310
49	23.120290	-161.923150
50	23.120320	-161.922000
51	23.120350	-161.920850

52	23.120350	-161.919690
53	23.120340	-161.918540
54	23.120300	-161.917390
55	23.120260	-161.916240
56	23.120190	-161.915090
57	23.120110	-161.913940
58	23.120010	-161.912790
59	23.119890	-161.911640
60	23.119760	-161.910500
61	23.119610	-161.909360
62	23.119440	-161.908230
63	23.119250	-161.907090
64	23.119050	-161.905970
65	23.118830	-161.904840
66	23.118600	-161.903720
67	23.118350	-161.902610
68	23.118080	-161.901500
69	23.117790	-161.900400
70	23.117490	-161.899300
71	23.117170	-161.898210
72	23.116840	-161.897130
73	23.116490	-161.896050
74	23.116190	-161.895200
75	23.116120	-161.894980
76	23.115770	-161.894010
77	23.115740	-161.893920
78	23.115340	-161.892870
79	23.114930	-161.891820
80	23.114500	-161.890790
81	23.114050	-161.889760
82	23.113590	-161.888740
83	23.113110	-161.887740
84	23.112620	-161.886740
85	23.112120	-161.885750
86	23.111600	-161.884770
87	23.111070	-161.883810
88	23.110520	-161.882850
89	23.109950	-161.881910
90	23.109380	-161.880970
91	23.108780	-161.880050
92	23.108180	-161.879150
93	23.107560	-161.878250
94	23.106930	-161.877370
95	23.106280	-161.876500
96	23.105630	-161.875640
97	23.104950	-161.874800
98	23.104270	-161.873970
99	23.103580	-161.873160

100	23.102870	-161.872360
101	23.102150	-161.871570
102	23.101420	-161.870800
103	23.100670	-161.870040
104	23.099920	-161.869300
105	23.099160	-161.868580
106	23.098380	-161.867870
107	23.097960	-161.867500
108	23.097590	-161.867180
109	23.096790	-161.866500
110	23.095990	-161.865840
111	23.095170	-161.865200
112	23.094350	-161.864570
113	23.093510	-161.863960
114	23.092670	-161.863370
115	23.091810	-161.862790
116	23.090950	-161.862240
117	23.090080	-161.861700
118	23.089200	-161.861170
119	23.088320	-161.860670
120	23.087420	-161.860180
121	23.086530	-161.859720
122	23.085620	-161.859270
123	23.084700	-161.858840
124	23.083780	-161.858420
125	23.082860	-161.858030
126	23.081930	-161.857660
127	23.080990	-161.857300
128	23.080040	-161.856970
129	23.079100	-161.856650
130	23.078140	-161.856350
131	23.077190	-161.856080
132	23.076220	-161.855820
133	23.075260	-161.855580
134	23.074290	-161.855360
135	23.073320	-161.855160
136	23.072350	-161.854990
137	23.071370	-161.854830
138	23.070390	-161.854690
139	23.069410	-161.854570
140	23.068430	-161.854470
141	23.067440	-161.854390
142	23.066450	-161.854330
143	23.065470	-161.854290
144	23.064480	-161.854280
145	23.063490	-161.854280
146	23.062510	-161.854300
147	23.061520	-161.854340

148	23.060530	-161.854400
149	23.059550	-161.854490
150	23.058570	-161.854590
151	23.057580	-161.854710
152	23.056600	-161.854850
153	23.055630	-161.855020
154	23.054650	-161.855200
155	23.053670	-161.855400
156	23.052710	-161.855620
157	23.051740	-161.855860
158	23.050780	-161.856120
159	23.049820	-161.856410
160	23.048870	-161.856710
161	23.047910	-161.857030
162	23.046970	-161.857360
163	23.046030	-161.857720
164	23.045100	-161.858100
165	23.044170	-161.858500
166	23.043240	-161.858910
167	23.042330	-161.859350
168	23.041420	-161.859800
169	23.040510	-161.860270
170	23.039620	-161.860760
171	23.038730	-161.861260
172	23.037850	-161.861790
173	23.036980	-161.862330
174	23.036110	-161.862890
175	23.035250	-161.863470
176	23.034400	-161.864070
177	23.033570	-161.864680
178	23.032740	-161.865310
179	23.031910	-161.865960
180	23.031100	-161.866620
181	23.030310	-161.867300
182	23.029510	-161.868000
183	23.028730	-161.868710
184	23.027960	-161.869430
185	23.027200	-161.870180
186	23.026460	-161.870940
187	23.025720	-161.871710
188	23.025000	-161.872500
189	23.024280	-161.873300
190	23.023580	-161.874120
191	23.022900	-161.874950
192	23.022220	-161.875790
193	23.021560	-161.876650
194	23.020910	-161.877520
195	23.020270	-161.878410

196	23.019650	-161.879310
197	23.019030	-161.880220
198	23.018440	-161.881140
199	23.017860	-161.882070
200	23.017290	-161.883020
201	23.016730	-161.883980
202	23.016190	-161.884940
203	23.015670	-161.885920
204	23.015150	-161.886910
205	23.014660	-161.887910
206	23.014170	-161.888920
207	23.013710	-161.889940
208	23.013260	-161.890970
209	23.012820	-161.892010
210	23.012400	-161.893060
211	23.012000	-161.894110
212	23.011610	-161.895170
213	23.011230	-161.896240
214	23.010880	-161.897320
215	23.010540	-161.898410
216	23.010210	-161.899500
217	23.009900	-161.900590
218	23.009610	-161.901700
219	23.009340	-161.902810
220	23.009080	-161.903920
221	23.008840	-161.905040
222	23.008610	-161.906170
223	23.008400	-161.907300
224	23.008210	-161.908430
225	23.008160	-161.908750
226	23.008030	-161.909560
227	23.007880	-161.910700
228	23.007740	-161.911850
229	23.007610	-161.912990
230	23.007550	-161.913660
231	23.007510	-161.914140
232	23.007420	-161.915290
233	23.007340	-161.916440
234	23.007290	-161.917590
235	23.007250	-161.918740
236	23.007230	-161.919900
237	23.007230	-161.921050
238	23.007240	-161.922210
239	23.007270	-161.923360
240	23.007270	-161.923360
241	23.007320	-161.924510
242	23.007380	-161.925660
243	23.007470	-161.926810

244	23.007570	-161.927960
245	23.007680	-161.929100
246	23.007820	-161.930240
247	23.007970	-161.931380
248	23.008140	-161.932520
249	23.008320	-161.933650
250	23.008520	-161.934780
251	23.008740	-161.935900
252	23.008980	-161.937020
253	23.009230	-161.938140
254	23.009500	-161.939240
255	23.009780	-161.940350
256	23.010080	-161.941440
257	23.010400	-161.942530
258	23.010740	-161.943620
259	23.011090	-161.944690
260	23.011460	-161.945760
261	23.011840	-161.946820
262	23.012240	-161.947880
263	23.012650	-161.948920
264	23.013080	-161.949960
265	23.013520	-161.950980
266	23.013990	-161.952000
267	23.014460	-161.953010
268	23.014950	-161.954010
269	23.015460	-161.955000
270	23.015980	-161.955970
271	23.016510	-161.956940
272	23.017060	-161.957900
273	23.017620	-161.958840
274	23.018200	-161.959770
275	23.018790	-161.960690
276	23.019400	-161.961600
277	23.019480	-161.961720
278	23.019600	-161.961890
279	23.020010	-161.962500
280	23.020650	-161.963380
281	23.021290	-161.964250
282	23.021950	-161.965100
283	23.022620	-161.965950
284	23.023300	-161.966770
285	23.024000	-161.967590
286	23.024710	-161.968390
287	23.025430	-161.969170
288	23.026160	-161.969950
289	23.026900	-161.970700
290	23.027650	-161.971440
291	23.028420	-161.972170

292	23.029200	-161.972870
293	23.029980	-161.973570
294	23.030780	-161.974240
295	23.031590	-161.974900
296	23.032400	-161.975550
297	23.033230	-161.976170
298	23.034060	-161.976780
299	23.034910	-161.977380
300	23.035760	-161.977950
301	23.036620	-161.978510
302	23.037490	-161.979050
303	23.038370	-161.979570
304	23.039260	-161.980080
305	23.040150	-161.980560
306	23.041050	-161.981030
307	23.041960	-161.981480
308	23.042870	-161.981910
309	23.043790	-161.982320
310	23.044720	-161.982710
311	23.045650	-161.983090
312	23.046590	-161.983440
313	23.047530	-161.983780
314	23.048480	-161.984090
315	23.049430	-161.984390
316	23.050390	-161.984670
317	23.051350	-161.984930
318	23.052320	-161.985160
319	23.053290	-161.985380
320	23.054260	-161.985580
321	23.055230	-161.985760
322	23.056210	-161.985920
323	23.057190	-161.986060
324	23.058170	-161.986180
325	23.059150	-161.986280
326	23.060130	-161.986350
327	23.061120	-161.986410
328	23.062110	-161.986450
329	23.063090	-161.986470
330	23.064080	-161.986470
331	23.065070	-161.986450
332	23.066060	-161.986400
333	23.067040	-161.986340
334	23.068030	-161.986260
335	23.069010	-161.986160
336	23.069990	-161.986030
337	23.070970	-161.985890
338	23.071950	-161.985730
339	23.072930	-161.985550

340	23.073900	-161.985350
341	23.074870	-161.985120
342	23.075830	-161.984880
343	23.076800	-161.984620
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345	23.078710	-161.984040
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360	23.092320	-161.977270
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362	23.094010	-161.976060
363	23.094840	-161.975430
364	23.095660	-161.974790
365	23.096470	-161.974130
366	23.097270	-161.973450
367	23.098060	-161.972750
368	23.098840	-161.972040

Midway Atoll Special Management Area Boundary Coordinates

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

Point	Latitude	Longitude
1	27.997920	-177.312670
2	27.991240	-177.363420
3	27.992160	-177.417620
4	27.999620	-177.470820
5	28.015160	-177.518750
6	28.036610	-177.553930
7	28.068170	-177.594240
8	28.105720	-177.620360
9	28.148620	-177.643950
10	28.201340	-177.655070
11	28.214300	-177.656000
12	28.236740	-177.650280

13	28.258770	-177.651870
14	28.297350	-177.637040
15	28.316240	-177.625190
16	28.338040	-177.607660
17	28.369970	-177.595290
18	28.404180	-177.565440
19	28.436280	-177.526610
20	28.460440	-177.490130
21	28.475910	-177.445680
22	28.482310	-177.424090
23	28.484800	-177.378720
24	28.481280	-177.324120
25	28.464920	-177.265700
26	28.442740	-177.218650
27	28.412680	-177.172550
28	28.376800	-177.137820
29	28.332440	-177.115740
30	28.268790	-177.089450
31	28.214270	-177.087250
32	28.179270	-177.084890
33	28.156690	-177.093630
34	28.125950	-177.109140
35	28.097800	-177.124810
36	28.067810	-177.150600
37	28.039860	-177.186770
38	28.021050	-177.222070
39	28.005720	-177.264920
40	27.997920	-177.312670

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Filed 6–23–06; 8:45 am]
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S. 1445/P.L. 109–237

To designate the facility of the United States Postal Service located at 520 Colorado Avenue in Arriba, Colorado, as the "William H. Emery Post Office". (June 23, 2006; 120 Stat. 506)

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[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

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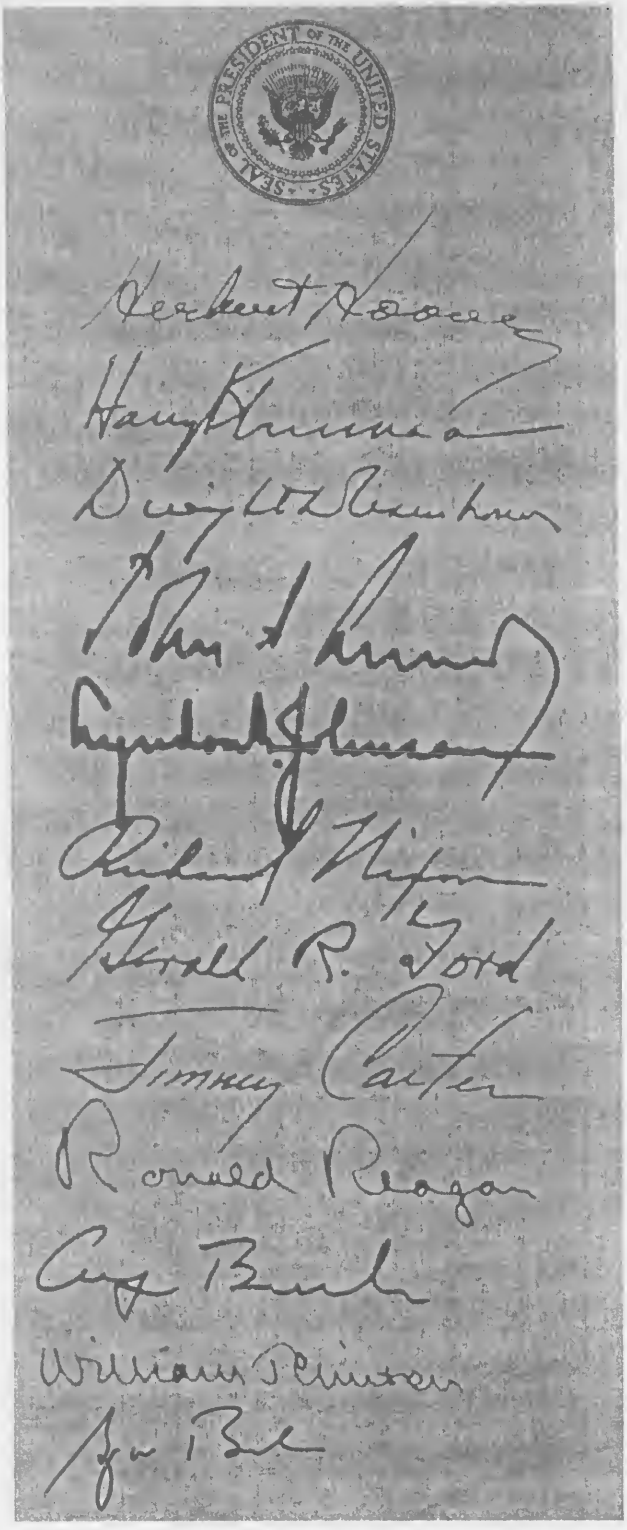

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