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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL ELECTION COMMISSION

11 CFR Parts 106 and 300

[Notice 2005–27]

State, District, and Local Party Committee Payment of Certain Salaries and Wages

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: The Federal Election Commission is amending its rules to revise the method by which State, district and local party committees (collectively ''State party committees'') may pay salaries and wages of employees who spend 25 percent or less of their compensated time in a month on Federal election activity or activity in connection with Federal elections (''Federal-related activity'' or ''Federal-related activities''). These final rules implement the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Shays* v. *FEC,* which held that the Commission had not provided an adequate explanation for its former rules under the Administrative Procedure Act. The Commission is also changing its requirements regarding the method State party committees use to pay for employees' fringe benefits and clarifying its rules regarding the use of funds raised in joint Federal and non-Federal fundraising events. Further information is provided in the Supplementary Information that follows.

DATES: Effective Date: These rules are effective on January 19, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Assistant General Counsel, or Mr. Anthony T. Buckley, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002, Public Law 107–155, 116 Stat. 81 (2002) (''BCRA''), amended the Federal Election Campaign Act of 1971, as amended (the ''Act''), 2 U.S.C. 431 *et seq.*, in various respects. Under BCRA, State party committees must pay the salaries and wages of employees who spend more than 25 percent of their compensated time per month on Federal-related activities entirely with Federal funds.[1] 2 U.S.C. 431(20)(A)(iv) and 441i(b)(1). However, BCRA does not address what type of funds State party committees must use to pay the salaries and wages of employees who spend some, but not more than 25 percent, of their compensated time per month on Federal-related activities (''covered employees''). In 2002, the Commission promulgated 11 CFR 106.7(c)(1), (c)(5) and (d)(1), and 300.33(c)(2). Under these rules, State party committees were permitted to pay the salaries or wages of covered employees entirely with funds that comply with State law. *Id.*

In *Shays* v. *Federal Election Commission,* 337 F. Supp. 2d 28 (D.D.C. 2004) (''*Shays District*''), *aff'd,* 414 F.3d 76 (DC Cir. 2005) (''*Shays Appeal*''), *reh'g en banc denied* (Oct. 21, 2005) (No. 04–5352), the District Court considered a challenge to the regulations that permitted State party committees to use all non-Federal funds to pay the salaries and wages of covered employees. The District Court recognized that the Commission's interpretation of 2 U.S.C. 431(20)(A)(iv) and 441i(b)(1), did not violate the first step of *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984) (''*Chevron*''), because Congress had not directly spoken on this issue. However, the District Court held that the Commission's interpretation was not a permissible reading of the statute under step two of *Chevron.*[2] *Shays District* at 113–114.

On July 15, 2005, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the District Court's ruling on this regulation, but on different grounds. The Court of Appeals held that the regulations addressing the salaries and wages of covered employees survived both steps of the *Chevron* analysis, but that the regulation failed for lack of a sufficient explanation under the Administrative Procedure Act. *See Shays Appeal,* 414 F.3d at 112.

Before the Court of Appeals decision, the Commission issued a Notice of Proposed Rulemaking to determine the appropriate mix of Federal and non-Federal funds that State party committees must use to pay the salaries and wages of covered employees. *Notice of Proposed Rulemaking on State, District and Local Party Committee Payment of Certain Salaries and Wages,* 70 FR 23072 (May 4, 2005) (''NPRM''). The comment period closed on June 3, 2005. The Commission received comments from nine commenters in response to this NPRM. The Commission held a hearing on this rulemaking on August 4, 2005, at which four commenters testified.

After the hearing, the Commission reopened the comment period until September 29, 2005. In reopening the comment period, the Commission noted that it was doing so ''to allow all interested persons to submit information or comments that may be useful in this rulemaking in light of the Court of Appeals opinion.'' *Notice to Reopen Comment Period for Rulemaking on State, District, and Local Party Committee Payment of Certain Salaries and Wages,* 70 FR 51302 (Aug. 30, 2005). Five additional commenters submitted comments during this period. The names of all commenters and their written comments, as well as a transcript of the public hearing are available at *http://www.fec.gov/law/law_rulemakings.shtml#party_salaries* under ''State Party Payment of Salaries and Wages.''

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on December 14, 2005.

Explanation and Justification

The Court of Appeals' decision allows the Commission to attempt to justify the

[1] ''Federal funds'' are funds that are subject to the contribution limitations, source prohibitions, and reporting requirements of the Act. 11 CFR 300.2(g).

[2] The first step of the *Chevron* analysis, which courts use to review agency regulations, is whether Congress has directly spoken to the precise questions at issue. The second step is whether the agency's resolution of an issue not addressed in the statute is based on a permissible construction of the statute. *See Shays District* at 51–52 (citing *Chevron*).

rules allowing State party committees to use wholly non-Federal funds for the salaries and wages of covered employees. However, the decision also indicates that a far more substantial record would be necessary to support these regulations. *Shays Appeal* at 112. Here, the Court found it ''quite plausible that wealthy donors would swallow costs for increased state and local campaigning * * * [for] an army of workers devoting more than a day a week to federal elections.'' *Id.*

Several commenters urged the Commission to retain the rules allowing State party committees to pay the salaries and wages of covered employees with 100% non-Federal funds. They argued that there is no evidence of abuse or circumvention of BCRA by dividing Federal-related activities among many employees who each devote no more than 25% of their time to Federal races. In fact, one commenter testified that wealthy donors interested in Federal elections would not give a penny if apprised that no more than 25% of their donation would be used for these purposes. This commenter also urged the Commission to retain these rules for party committees that have under seven employees because it would be difficult for such small committees to engage in the kind of evasion that concerned the District Court.

Thus, the record developed during this rulemaking, including the comments submitted by the State and local party committees or their representatives, suggests that, in general, State party committees may face practical obstacles in trying to use the rule to circumvent BCRA in the way the court feared. However, as explained below, the Commission has an alternative to the former rules that addresses the Court of Appeals' concerns about circumvention and has the virtues of familiarity, relative ease of administration, and a reasonable relationship to the State party committees' level of Federal-related activities. Consequently, the Commission is not retaining the former rules. Instead, it is amending 11 CFR 106.7 and 300.33 to require State party committees to allocate the salaries and wages of covered employees between their Federal and non-Federal accounts as administrative costs.

I. Allocation of State Party Wages

A. Introduction

The NPRM presented three options for allocating the salaries and wages of covered employees. The first proposal would adopt an allocation method that would establish a fixed minimum of 25 percent that a State party committee would be required to allocate to its Federal account. The NPRM contained proposed rules only for this approach. The second proposal in the NPRM would adopt an allocation percentage directly proportional to the amount of compensated time an employee spent on Federal-related activities in a given month in relation to all compensated time in that same month. This proposal would have resulted in different ratios for different employees.

The third proposal would follow the pre-BCRA rules by treating salaries and wages of covered employees as administrative costs. This proposal would subject the salaries and wages at issue to the allocation ratios at 11 CFR 106.7(d)(2) that were developed as part of the BCRA soft money rulemaking. For the reasons stated below, the Commission is adopting this allocation method for the salaries and wages of covered employees.

B. 11 CFR 106.7(c)(1) and 300.33(c)(2) Allocation of Salaries and Wages as Administrative Costs

The Commission is amending 11 CFR 106.7(c)(1) and adding new 11 CFR 300.33(d)(1)–(3),[3] to require that State party committees either: (1) Allocate the salaries and wages of covered employees as administrative expenses, or (2) pay these salaries and wages entirely from a Federal account. Revised paragraph (c)(1) of section 106.7 sets forth these two options. New section 300.33(d) addresses how State party committees must pay the salaries, wages, and fringe benefits of their employees. Revised section 300.33(d)(1) mirrors the language in revised 11 CFR 106.7(c)(1). Revised section 300.33(d)(2) requires that State party committees pay the salaries, wages, and fringe benefits of employees who spend more than 25% of their compensated time in a given month on Federal-related activities with only Federal funds. New section 300.33(d)(3) states that State party committees may pay the salaries, wages, and fringe benefits of employees who spend no time in a given month on Federal-related activities entirely with funds that comply with State law.[4]

Allocation ratios for administrative costs in 11 CFR 106.7(d)(2)(i) through (iv) were modified during the BCRA soft money rulemaking. *Final Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money,* 67 FR 49064, 49079 (July 29, 2002) (''Soft Money E&J''). As explained in the 2002 Soft Money E&J, the Commission derived the four allocation ratios that range from 15% to 36% by taking the averages of the previous ballot composition-based allocation percentages reported by State party committees in four representative groupings of State party committees representing states of varying sizes and geographic locations. *Id.* This approach was designed ''to assure that activities deemed allocable are not paid for with a disproportionate amount of non-Federal funds.'' *Id.* This approach reflects the variability of State party committee Federal spending from election cycle to election cycle, depending on the types of Federal offices that are on the ballot in one election cycle versus another. For example, State party committees are required to use 15% Federal funds for administrative expenses in election cycles where only Members of the U.S. House of Representatives are on the ballot in those states, versus 36% when the offices of the President and U.S. Senate are also on the ballot.

The Commission has concluded that the use of these ratios will prevent circumvention of the soft money rules, even though the ratios do not track precisely the number of hours worked by employees. In addition, State party committees already use these allocation ratios for a variety of administrative costs and they allocated their employees' salaries and wages as administrative costs prior to BCRA's effective date. Thus, their familiarity and experience with the administrative costs allocation method will ease the transition and implementation of the new rules regarding the salaries and wages of covered employees.

The Commission received comments supporting partial application of the administrative cost allocation method. These commenters favored using the administrative costs ratios in election cycles other than Presidential election cycles. They argued that it would be inappropriate to apply Presidential election cycle allocation ratios of 28% and 36% because they would apply to employees who spend no more than 25% of their compensated time in a given month on Federal-related activities. The Commission disagrees that such an application would be inappropriate.

Requiring a Federal allocation percentage that is higher than the corresponding percentage of Federal-related activity is not inconsistent with BCRA. Under 2 U.S.C. 431(20)(A)(iv), Congress mandated that a person who

[3] The Commission is redesignating current 11 CFR 300.33(d) as 11 CFR 300.33(e).

[4] Section 300.33(c) is amended so that it addresses only public communications.

spends as little as 26% of his or her compensated time in a month on Federal-related activities must be paid entirely with Federal funds. Congress was silent on how State party committees should pay the salaries and wages of covered employees. Congress was aware, however, that at the time it enacted BCRA, State party committees were required to allocate salaries and wages of their employees as administrative costs. It is reasonable to conclude that Congress could have expected that the Commission might continue to treat the salaries and wages of covered employees as allocable administrative costs.

Another commenter objected to requiring allocation of covered employees' salaries as administrative costs, maintaining that there is no rational relationship between the time actually spent by employees on Federal-election activities and the amount of Federal money required to be used to fund those employees. Neither FECA nor BCRA requires that the allocation ratios be precisely proportional to the amount of time spent on Federal-related activities. It is sufficient that the administrative costs allocation ratios generally reflect the overall level of State party committees' Federal activity based on the percentage of Federal candidates on the ballot.

Other commenters who opposed the administrative costs allocation method were concerned that not enough Federal funds would be used to pay employees who spend 25% of their compensated time per month on Federal-related activities during any year in which no Presidential or Senatorial candidate is on the ballot. They argued that the 15% administrative costs allocation ratio for those years would allow State party committees to pay the remaining 10% of the employees' compensated time spent on Federal-related activities with non-Federal funds. According to these commenters, this approach is inconsistent with Congress' overall scheme of requiring Federal-related activities to be paid for with Federal funds.

The Commission disagrees that using the administrative costs allocation ratios is inconsistent with Congressional intent. The average of the allocation ratios of 15%, 21%, 28% and 36% is 25%, and the weighted average based on the frequency that State party committees would use the various ratios over a number of election cycles is over 26%. Moreover, when there is a Presidential candidate on the ballot, State party committees must pay the salaries and wages of covered employees with at least 28% or 36% Federal funds, depending on whether there is a Senatorial candidate on the ballot. Because the administrative costs allocation ratios for State party committees will average at least 25% over time, the allocation ratios will achieve one of the goals of the fixed minimum 25% allocation ratio—ensuring that over time, State party committees will use sufficient Federal funds to pay for employee time that is spent on Federal-related activities—without imposing a new allocation regime on State party committees.

Furthermore, the Court of Appeals suggested its approval of this approach when it noted that ''the salary rule appears particularly irrational given the FEC's recognition that costs for voter registration, get-out-the-vote drives, and generic party advertising—all matters, like salaries, that the FEA definition specifically addresses—may require allocation even when the activities 'do not qualify' as FEA. *See* 11 CFR 106.7(c)(5).'' *Shays Appeal* at 112.

In addition to the changes to 11 CFR 106.7(c)(1) and 300.33(d), corresponding changes are being made to two other regulations. Section 106.7(d)(1)(i) is being revised to state that these salaries and wages must be paid wholly from the Federal account, or allocated as administrative costs. Similarly, section 106.7(c)(5) is being amended to make clear that the salaries and wages of covered employees are not exempt from allocation but rather are subject to allocation as administrative expenses. Conforming changes are also being made to 11 CFR 100.57(b), 106.7(e)(2) and 300.36(b)(2)(ii).

C. Alternative Allocation Methods

1. Minimum Allocation of 25 Percent

An alternative in the NPRM's proposed rule text would have required State party committees either (1) to allocate at least 25% of salaries and wages of covered employees to a Federal account, or (2) to pay those salaries and wages entirely with funds from a Federal account. *See* proposed 11 CFR 106.7(c)(1)(i) and (ii), 70 FR at 23074. As stated in the NPRM, a minimum allocation percentage of 25% would ensure that State party committees use Federal funds to pay for all the compensated time covered employees spend on Federal-related activity. 70 FR at 23073. In this way, this proposal was one way to prevent circumvention of the Act, which, according to the District Court and the Court of Appeals, the challenged rules failed to ensure. *See Shays District* at 114; *Shays Appeal* at 112.

Some commenters supported this proposal. They asserted that setting a fixed allocation ratio has the advantage of providing a clear and readily administered rule that would minimize the burdens of compliance on State party committees and simplify enforcement for the Commission. Other commenters supported this proposal only for election cycles when a Presidential candidate appears on the ballot. For election cycles in which there is no Presidential race, these commenters believed that it was more appropriate to use the same allocation ratio as is used for administrative costs.

In contrast, some commenters objected to this proposal in its entirety. One commenter argued that a fixed 25% allocation would introduce another step into an already complex process and required additional rules for determining how to manage payroll operations over and above what is already required for administrative expense allocation. Another commenter stated that the proposed 25% allocation sweeps too broadly and unjustifiably interferes with the type of money State and local committees may use to compensate their employees who work substantially on non-Federal issues.

Although a fixed minimum 25% allocation ratio on its face appears to be the simplest, most straightforward method for allocating salaries and wages of covered employees, it is not, given the other regulations that govern how State party committees pay for their disbursements and experience with past allocation methods. State party committees are already required to apply an allocation scheme to their administrative costs if they do not use 100% Federal funds. Moreover, before BCRA's enactment, State party committees were required to allocate their employees' salaries and wages as administrative costs if they did not use entirely Federal funds. By including the salaries and wages of covered employees as administrative costs, State party committees will use an allocation scheme with which they are familiar and have experience applying. The fixed minimum 25% allocation method would subject State party committees to an additional and different allocation ratio that would apply to only one category of their disbursements for which they would have to monitor, maintain records and report on a different form. To avoid creating yet another allocation method for State party committees to apply, the Commission is not adopting a fixed allocation ratio of 25% for salaries and wages of covered employees.

2. Allocation Directly Proportional to Amount of Time Worked

This proposal would adopt an allocation percentage for salaries and wages of covered employees directly proportional to the amount of compensated time these employees spend on Federal-related activities in a given month in relation to all compensated time in that same month. This proposal would probably have required State parties to use different percentages for different employees in a given month. The percentages would also be expected to vary for each employee from month to month.

Most commenters agreed that a direct proportionality allocation scheme would be complicated, would require additional recordkeeping that could be burdensome, and would be difficult to track, report, and enforce. The commenters who supported this method only did so to the extent that this method would be an optional method available to State party committees in lieu of another allocation method adopted by the Commission.

State party committees must maintain logs of employee time spent on Federal-related activities under current 11 CFR 106.7(d)(1). These same logs could serve as the basis for allocating these employees salaries and wages between Federal and non-Federal funds. While in most cases such a method could be expected to produce an allocation that most closely matches the proportion of employees' time spent on Federal-related activities, it suffers from a number of practical deficiencies. Under the current system, the logs only serve to distinguish covered employees from those over the 25% threshold. This division has legal consequences, while the particular percentage does not.

It would also introduce into the allocation scheme for State party committees the problems with computing complicated allocation ratios that the Commission sought to eliminate for SSFs and nonconnected committees when it amended the allocation regulations in 11 CFR 106.6. *See Final Rules on Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected Committees*, 69 FR 68056, 68059 (Nov. 23, 2004). When the Commission examined the allocation scheme for SSFs and nonconnected committees, it found that it was difficult for these committees to calculate a precise ratio because the calculation was based on predicting accurately the amount of time spent on certain activities. The calculation was further complicated when these committees predicted incorrectly the amount they spent on certain activities.

Based on the comments and Commission experience with allocation methods, an allocation method directly proportional to the amount of time worked would be complex and likely to engender confusion, and would be unduly burdensome to State party committees. For these reasons, the Commission is not adopting this allocation method.

D. Employees Who Spend No Compensated Time on Federal-Related Activities

In the NPRM, the Commission stated that it is continuing to interpret BCRA as allowing committees to pay the salaries and wages of employees who spend no time in a given month on Federal-related activities entirely with non-Federal funds. All commenters who addressed this issue supported this interpretation. Some of these commenters recommended that the Commission incorporate this interpretation into its regulations, as some committees might otherwise interpret the Commission's regulations as requiring them to allocate such salaries and wages. Consequently, the Commission is adding new 11 CFR 106.7(d)(1)(iii), which states that, notwithstanding section 106.7(d)(1)(i), salaries and wages paid for employees who spend none of their compensated time in a given month on Federal election activities or activities in connection with a Federal election may be paid entirely with non-Federal funds.

II. Allocation of Fringe Benefits of Employees

The NPRM also sought comment on whether the methods for allocating salaries and wages should be applied to fringe benefits of employees. Specifically, the NPRM sought comment on whether the rules should be amended to permit, but not require, State party committees to use the same allocation rules for fringe benefits as are used for salaries and wages, instead of allocating fringe benefits as administrative costs. In Advisory Opinion (''AO'') 2003–11, the Commission advised a State party committee that it may pay the costs of fringe benefits for covered employees with non-Federal funds. Fringe benefits were described by the State party committee as medical, dental, and prescription drug insurance coverage; coverage for short-term disability (wage loss) and long-term disability insurance benefits; coverage for life insurance benefits; and employer matching contributions to the 401(k) retirement plan. The Commission determined in AO 2003–11 that amounts spent on fringe benefits fell into the category of compensated time, and thus concluded that the State party committee could use entirely non-Federal funds to pay for the fringe benefits under the rules for payment of salaries and wages that were in effect at that time.

Some commenters urged the Commission to give State party committees the option of treating fringe benefits as administrative costs, while other commenters urged the Commission to treat fringe benefits as compensated time.

Because the salaries and wages of covered employees are treated as administrative costs under the revised rules at 11 CFR 106.7(c)(1) and (d)(1)(i), and fringe benefits are a form of compensation, it is appropriate for State party committees to treat fringe benefits for covered employees as administrative costs. Accordingly, State party committees must now treat fringe benefits as they would salaries and wages, depending on the time spent per month on Federal-related activities: Either by paying for them entirely from the Federal account, or by allocating the costs of the fringe benefits as administrative costs. Consistent with the new rules' approach to salaries and wages, the fringe benefits of employees who spend no time in a month on Federal-related activity may be paid with funds that comply with State law. Revised 11 CFR 106.7(c)(1) and 106.7(d)(1), and new 11 CFR 300.33(d) reflect that salaries, wages, and fringe benefits are treated the same. AO 2003–11 is hereby superseded to the extent it stated that State party committees may pay for fringe benefits of covered employees entirely with non-Federal funds.

III. Use of Funds Raised Through Joint Federal and Non-Federal Fundraising Events

The NPRM sought comment on whether to amend 11 CFR 106.7(c)(4) to clarify that Federal funds raised through a joint fundraising activity or a joint fundraiser (collectively ''joint fundraiser'') may be used for Federal election activity.[5] The statutory basis for section 106.7(c)(4) is 2 U.S.C. 441i(c), which reads: ''An amount spent by a [national committee of a political party or a State party committee] to raise funds that are used, in whole or in part, for expenditures and disbursements for

[5] Joint fundraisers include events where a State party committee raises both Federal and non-Federal funds on its own, or together with another organization under 11 CFR 102.17.

a Federal election activity shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.'' In AO 2004–12, the Commission determined that a State party committee could pay for Federal election activity with Federal funds raised at events where the costs of such events had been paid for with a combination of Federal and non-Federal funds, allocated through the use of the funds received method. *See* 11 CFR 106.6(d).

Some commenters supported amending the rule to reflect the interpretation in AO 2004–12. These commenters argued that the current regulation, strictly interpreted, would have required State party committees to pay all of their fundraising expenses with Federal dollars in order to use the Federal funds raised at a fundraiser to pay for Federal election activities. These commenters asserted that such a result was unduly burdensome for, and unfair to, State party committees. Other commenters who opposed any revision argued that the regulation ''captures one of the essential elements of BCRA: to provide for clear separation between hard money and soft money for the funds to be used by state parties for Federal election activities.'' They asserted that 2 U.S.C. 441i(c) mandates such a rule and interpretation.

The Commission disagrees that 2 U.S.C. 441i(c) requires this construction. The Commission interprets the statute to require only that the costs of raising Federal funds to pay for Federal election activities must be paid for with Federal funds. Allocation and the use of the funds received method accomplish this because they ensure that Federal funds are used to raise Federal funds. Indeed, with respect to the funds received method, the Commission has previously noted that it ''provides the most accurate basis for division of [fundraising] costs.'' *Explanation and Justification on Methods of Allocation Between Federal and Nonfederal Accounts; Payments; Reporting*, 55 FR 26058, 26065 (June 26, 1990).

Further, interpreting 2 U.S.C. 441i(c) to mandate special fundraising rules when raising Federal funds for Federal election activity would result in an anomalous treatment of Federal funds raised at joint fundraisers. Under this interpretation, State party committees could not use Federal funds raised at a joint fundraiser to pay for Federal election activities directly, but they could transfer the Federal funds to the national party committee to pay for Federal election activities in their own states; they could also transfer Federal funds to other State party committees to pay for their Federal election activities.

Furthermore, this interpretation of 2 U.S.C. 441i(c) would create a new class of Federal funds that must be used to pay for Federal election activity. This new class of Federal funds would be subject to fundraising restrictions that would not be applicable to other Federal funds including those used to make direct contributions to Federal candidates. The Commission does not believe that Congress intended these anomalous results.

In order to avoid any confusion concerning fundraising costs, the Commission is amending 11 CFR 106.7(c)(4) to state specifically that State party committees may allocate the direct costs of joint fundraising between their Federal and non-Federal accounts according to the funds received method described in 11 CFR 106.7(d)(4). All other statements in section 106.7(c)(4) suggesting otherwise are being deleted.

Corresponding changes are being made to other Commission regulations. Section 106.7(e)(4) and the contents of section 300.33(c)(3) are being removed, because neither indicates that direct costs of fundraising may be allocated. Also, section 300.32(a)(3) is being amended to state that State party committees that raise Federal and non-Federal funds at a joint fundraiser, where the Federal funds raised are to be used for Federal election activity, must either pay the direct costs of the fundraiser entirely with Federal funds, or must allocate the costs according to the funds received method. That rule is also being revised to state explicitly that if a State party committee raises only Federal funds at a fundraising activity it must pay the entire direct costs of the fundraising activity with Federal funds. The language in amended section 300.32(a)(3) closely tracks the new language at section 106.7(c)(4).

The Commission is also amending the description in 11 CFR 106.7(c)(4) of what is included in the direct costs of fundraising to conform to the descriptions at 11 CFR 106.6(b)(1)(ii) and 300.32(a)(3). This amendment is not a substantive change; rather, the Commission seeks to avoid any potential confusion by having two different descriptions of ''direct costs of fundraising'' in its regulations.

IV. Additional Issues

A commenter urged the Commission to address three issues not discussed in the NPRM. These issues are: (1) Establishing a payroll holding account into which both Federal and non-Federal funds are deposited for the sole purpose of transmitting payroll through a payroll company; (2) permitting allocation of fundraising costs among Federal, non-Federal and Levin accounts; and (3) providing guidance on how State party committees should remedy a situation in which they make a mistake in estimating the amount of time an employee spends on Federal-related activities. The first two issues are beyond the scope of this rulemaking.

Regarding the third issue, the commenters noted that some State party committees are required to pay their salaries, wages, and fringe benefits in advance because of their vendor contracts or payroll systems. Thus, these State party committees must estimate whether particular employees will spend more or less than 25 percent of their compensated time on Federal-related activity, and that these estimates are sometimes wrong. As a result, salaries, wages, and fringe benefits for employees may sometimes be prepaid with an allocable mix of Federal and non-Federal funds (under the new rule), when they should be prepaid entirely with Federal funds. Conversely, the salaries, wages, and fringe benefits for other employees might be prepaid entirely with Federal funds when they could have been paid with an allocable mix of Federal and non-Federal funds. The commenter sought guidance on how a State party committee could remedy these situations after the fact.

Commission regulations at 11 CFR 106.7(f) govern transfers from a non-Federal to a Federal account, or from Federal and non-Federal accounts to an allocation account, to cover allocable expenses. When a State party committee uses a Federal or allocation account to prepay salaries, wages, and fringe benefits and later determines that these amounts could have been paid from a non-Federal account, *i.e.* the salaries, wages, and fringe benefits for covered employees, the non-Federal account may reimburse the Federal account or the allocation account within the 70-day time window in that rule. In contrast, the salaries, wages, and fringe benefits of employees who spend more than 25 percent of their compensated time per month on Federal-related activity are not allocable expenses and must be paid for entirely out of the Federal account. When a State party committee uses a non-Federal or allocation account to prepay salaries, wages, and fringe benefits and later determines that these amounts must have been paid for from a Federal account, current regulations do not contemplate that the Federal account can reimburse the non-Federal account or allocation account within the 70-day time window. While the Commission may consider such a

transfer a mitigating factor, the use of non-Federal funds to prepay salaries, wages, and fringe benefits that are required to be paid for with Federal funds is impermissible under Commission regulations.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The Commission certifies that the attached final rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the organizations affected by these final rules are State, district, and local party committees, which are not ''small entities'' under 5 U.S.C. 601. These not-for-profit committees do not meet the definition of ''small organization,'' which requires that the enterprise be independently owned and operated and not dominant in its field. 5 U.S.C. 601(4). State party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the State party committees of the Democratic and Republican parties have a major controlling influence within the political arena of their State and are thus dominant in their field. District and local party committees are generally considered affiliated with the State party committees and need not be considered separately. To the extent that any State party committees representing minor political parties might be considered ''small organizations,'' the number affected by these final rules is not substantial.

List of Subjects

11 CFR Part 106

Campaign funds, political committees and parties, reporting and recordkeeping requirements.

11 CFR Part 300

Campaign funds, nonprofit organizations, political committees and parties, political candidates, reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, Subchapters A and C of Chapter 1 of title 11 of the *Code of Federal Regulations* are amended as follows:

PART 100—SCOPE AND DEFINITIONS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

§ 100.57 [Amended]

■ 2. In § 100.57, amend paragraph (b) introductory text by removing ''(consistent with 11 CFR 300.33(c)(3))''.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

■ 3. The authority citation for part 106 continues to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

■ 4. Section 106.7 is amended by:
■ a. Revising paragraphs (c)(1), (c)(4), (c)(5), (d)(1)(i), and (d)(1)(ii):
■ b. Adding paragraph (d)(1)(iii);
■ c. Removing ''300.33(c)(2)'' in paragraph (e)(2) and adding in its place ''300.33(d)(2)'; and
■ d. Removing paragraph (e)(4).

Revisions and additions read as follows:

§ 106.7 Allocation of expenses between Federal and non-Federal accounts by party committees, other than for Federal election activities.

* * * * *

(c) *Costs allocable by State, district, and local party committees between Federal and non-Federal accounts.*

(1) *Salaries, wages, and fringe benefits.* State, district, and local party committees must either pay salaries, wages, and fringe benefits for employees who spend 25% or less of their time in a given month on Federal election activity or activity in connection with a Federal election with funds from their Federal account, or with a combination of funds from their Federal and non-Federal accounts, in accordance with paragraph (d)(2) of this section. *See* 11 CFR 300.33(d)(1).

* * * * *

(4) *Certain fundraising costs.* State, district, and local party committees may allocate the direct costs of joint fundraising programs or events between their Federal and non-Federal accounts according to the funds received method described in paragraph (d)(4) of this section. The direct costs of a fundraising program or event include expenses for the solicitation of funds and for the planning and administration of actual fundraising programs and events.

(5) *Voter-drive activities that do not qualify as Federal election activities and that are not party exempt activities.* Expenses for voter identification, voter registration, and get-out-the-vote drives, and any other activities that urge the general public to register or vote, or that promote or oppose a political party, without promoting or opposing a candidate or non-Federal candidate, that do not qualify as Federal election activities and that are not exempt party activities, must be paid with Federal funds or may be allocated between the committee's Federal and non-Federal accounts.

(d) *Allocation percentages, ratios, and record-keeping.*

(1) * * *

(i) Except as provided in paragraph (d)(1)(iii) of this section, salaries, wages, and fringe benefits paid for employees who spend 25% or less of their compensated time in a given month on Federal election activities or on activities in connection with a Federal election must either be paid only from the Federal account or be allocated as administrative costs under paragraph (d)(2) of this section.

(ii) Salaries, wages, and fringe benefits paid for employees who spend more than 25% of their compensated time in a given month on Federal election activities or on activities in connection with a Federal election must be paid only from a Federal account. *See* 11 CFR 300.33(d)(1), and paragraph (e)(2) of this section.

(iii) Salaries, wages, and fringe benefits paid for employees who spend none of their compensated time in a given month on Federal election activities or on activities in connection with a Federal election may be paid entirely with funds that comply with State law.

* * * * *

PART 300—NON-FEDERAL FUNDS

■ 5. The authority citation for part 300 continues to read as follows:

Authority: 2 U.S.C. 434(e), 438(a)(8), 441a(a), 441i, 453.

■ 6. Section 300.32 is amended by revising paragraph (a)(3) to read as follows:

§ 300.32 Expenditures and disbursements.

(a) *Federal funds.* * * *

(3) State, district, and local party committees that raise Federal funds through an activity where only Federal funds are raised, must pay the direct costs of such fundraising only with Federal funds. State, district, and local party committees that raise Federal funds and non-Federal funds through a joint fundraising activity under 11 CFR 106.7(d)(4) or a joint fundraiser under 11 CFR 102.17, where the Federal funds are to be used, in whole or in part, for Federal election activities, must either pay the direct costs of such fundraising only with Federal funds or allocate the direct costs in accordance with the funds received method described in 11 CFR 106.7(d)(4). The direct costs of a

fundraising program or event include expenses for the solicitation of funds and for the planning and administration of actual fundraising programs and events.

* * * * *

■ 7. Section 300.33 is amended by:

■ a. Revising paragraph (c);

■ b. Redesignating paragraph (d) as paragraph (e) and removing ''(d)(2)(i)'' and adding ''(e)(2)(i)'' in its place in newly designated paragraph (e)(2)(ii); and

■ c. Adding new paragraph (d).

Revisions and additions read as follows:

§ 300.33 Allocation of costs of Federal election activity.

* * * * *

(c) *Costs of public communications.* Expenditures for public communications as defined in 11 CFR 100.26 by State, district, and local party committees and organizations that refer to a clearly identified candidate for Federal office and that promote, support, attack, or oppose any such candidate for Federal office must not be allocated between or among Federal, non-Federal, and Levin accounts. Only Federal funds may be used.

(d) *Costs of salaries, wages, and fringe benefits.*

(1) Except as provided in paragraph (d)(3) of this section, salaries, wages, and fringe benefits paid for employees who spend 25% or less of their compensated time in a given month on Federal election activities or on activities in connection with a Federal election must either be paid only from the Federal account or be allocated as administrative costs under 11 CFR 106.7(d)(2).

(2) Salaries, wages, and fringe benefits paid for employees who spend more than 25% of their compensated time in a given month on Federal election activities or on activities in connection with a Federal election must be paid only from a Federal account.

(3) Salaries, wages, and fringe benefits paid for employees who spend none of their compensated time in a given month on Federal election activities or on activities in connection with a Federal election may be paid entirely with funds that comply with State law. *See* 11 CFR 106.7(c)(1) and (d)(1).

* * * * *

§ 300.36 [Amended]

■ 8. In § 300.36, amend paragraph (b)(2)(ii) by removing ''(d)'' and adding in its place ''(e)''.

Dated: December 14, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05–24249 Filed 12–19–05; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted final amendments to its Regulation A to reflect the Board's approval of an increase in the primary credit rate at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically increased by formula as a result of the Board's primary credit rate action.

DATES: The amendments to part 201 (Regulation A) are effective December 20, 2005. The rate changes for primary and secondary credit were effective on the dates specified in 12 CFR 201.51, as amended.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board (202/452–3259); for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

The Board approved requests by the Reserve Banks to increase by 25 basis points the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby increasing from 5.00 percent to 5.25 percent the rate that each Reserve Bank charges for extensions of primary credit. As a result of the Board's action on the primary credit rate, the rate that each Reserve Bank charges for extensions of secondary credit automatically increased from 5.50 percent to 5.75 percent under the secondary credit rate formula. The final amendments to Regulation A reflect these rate changes.

The 25-basis-point increase in the primary credit rate was associated with a similar increase in the target for the Federal funds rate (from 4.00 percent to 4.25 percent) approved by the Federal Open Market Committee (Committee) and announced at the same time. A press release announcing these actions indicated that:

> Despite elevated energy prices and hurricane-related disruptions, the expansion in economic activity appears solid. Core inflation has stayed relatively low in recent months and longer-term inflation expectations remain contained. Nevertheless, possible increases in resource utilization as well as elevated energy prices have the potential to add to inflation pressures.
>
> The Committee judges that some further measured policy firming is likely to be needed to keep the risks to the attainment of both sustainable economic growth and price stability roughly in balance. In any event, the Committee will respond to changes in economic prospects as needed to foster these objectives.

Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the new primary and secondary credit rates will not have a significantly adverse economic impact on a substantial number of small entities because the final rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The Board did not follow the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments because the Board for good cause determined that delaying implementation of the new primary and secondary credit rates in order to allow notice and public comment would be unnecessary and contrary to the public interest in fostering price stability and sustainable economic growth. For these same reasons, the Board also has not provided 30 days prior notice of the effective date of the rule under section 553(d).

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[1]

(a) *Primary credit.* The interest rates for primary credit provided to depository institutions under § 201.4(a) are:

Federal Reserve Bank	Rate	Effective
Boston	5.25	December 13, 2005.
New York	5.25	December 13, 2005.
Philadelphia	5.25	December 13, 2005.
Cleveland	5.25	December 13, 2005.
Richmond	5.25	December 13, 2005.
Atlanta	5.25	December 13, 2005.
Chicago	5.25	December 13, 2005.
St. Louis	5.25	December 14, 2005.
Minneapolis	5.25	December 13, 2005.
Kansas City	5.25	December 13, 2005.
Dallas	5.25	December 13, 2005.
San Francisco	5.25	December 13, 2005.

(b) *Secondary credit.* The interest rates for secondary credit provided to depository institutions under 201.4(b) are:

Federal Reserve Bank	Rate	Effective
Boston	5.75	December 13, 2005.
New York	5.75	December 13, 2005.
Philadelphia	5.75	December 13, 2005.
Cleveland	5.75	December 13, 2005.
Richmond	5.75	December 13, 2005.
Atlanta	5.75	December 13, 2005.
Chicago	5.75	December 13, 2005.
St. Louis	5.75	December 14, 2005.
Minneapolis	5.75	December 13, 2005.
Kansas City	5.75	December 13, 2005.
Dallas	5.75	December 13, 2005.
San Francisco	5.75	December 13, 2005.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 14, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E5–7512 Filed 12–19–05; 8:45 am]

BILLING CODE 6210–01–P

[1] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22633; Directorate Identifier 2005–NM–155–AD; Amendment 39–14422; AD 2005–26–01]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Dassault Model Falcon 2000 airplanes. This AD requires an inspection for the presence of fail-safe pins, nuts, and washers on each engine, and replacement of the fail-safe fastener assembly with a new assembly if necessary. This AD results from a report of a missing pin of a fail-safe fastener. We are issuing this AD to prevent reduced structural integrity of an engine mount due to a missing pin of a fail-safe fastener, and possible separation of an engine from the airplane during flight.

DATES: This AD becomes effective January 24, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 24, 2006.

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

Contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Dassault Model Falcon 2000 airplanes. That NPRM was published in the **Federal Register** on October 7, 2005 (70 FR 58634). That NPRM proposed to require an inspection for the presence of fail-safe pins, nuts, and washers on each engine, and replacement of the fail-safe fastener assembly with a new assembly if necessary.

Comments

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

Conclusion

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

Costs of Compliance

This AD will affect about 149 airplanes of U.S. registry. The required inspection will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the inspection required by this AD for U.S. operators is $9,685, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–26–01 Dassault Aviation: Amendment 39–14422. Docket No. FAA–2005–22633; Directorate Identifier 2005–NM–155–AD.

Effective Date

(a) This AD becomes effective January 24, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Falcon 2000 airplanes, certificated in any category; up to and including serial number 212, excluding serial number 208.

Unsafe Condition

(d) This AD results from a report of a missing pin of a fail-safe fastener. We are issuing this AD to prevent reduced structural integrity of an engine mount due to a missing pin of a fail-safe fastener, and possible separation of an engine from the airplane during flight.

Compliance

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

Inspection and Replacement

(f) Before the accumulation of 3,750 total landings, or within 2 months after the effective date of this AD, whichever occurs later: Do a detailed inspection for the presence of fail-safe pins, nuts, and washers on each engine, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F2000–301, dated February 2, 2005. If any component is found missing at an attachment point, before further flight, replace the fail-safe fastener assembly with a new assembly, in accordance with the service bulletin.

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

(g) Inspections and replacements done in accordance with Chapter 54–003, dated December 2002, of the Dassault Falcon 2000 Maintenance Manual are acceptable for compliance with the requirements of paragraph (f) of this AD.

No Reporting

(h) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) French airworthiness directive F–2005–018, dated February 2, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use Dassault Service Bulletin F2000–301, dated February 2, 2005, to perform the actions that are required by this

AD, unless the AD specifies otherwise. The Director of the **Federal Register** approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 8, 2005.

Michael Zielinski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24150 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22527; Directorate Identifier 2004–NM–04–AD; Amendment 39–14420; AD 2005–25–27]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 Series Airplanes; A300 B4–103 and B4–203 Airplanes; and A310–203 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A300 B2 series airplanes, A300 B4–103 and B4–203 airplanes, and A310–203 airplanes. This AD requires a one-time inspection for missing or incorrect rivets in the structural area affected by conversion from passenger to freight configuration, and corrective action if necessary. This AD results from a report of rivets missing from the passenger-to-freight converted area. We are issuing this AD to prevent structural failure of the main deck and main deck cargo door areas.

DATES: This AD becomes effective January 24, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 24, 2006.

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

Contact EADS Airbus GmbH, Postfach 95 01 09, 21111 Hamburg, Germany, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7323; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A300 B2 series airplanes, A300 B4–103 and B4–203 airplanes, and A310–203 airplanes. That NPRM was published in the **Federal Register** on September 27, 2005 (70 FR 56378). That NPRM proposed to require a one-time inspection for missing or incorrect rivets in the entire structural area affected by conversion from passenger-to-freight configuration, and corrective action if necessary.

Comments

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

Clarification of All Operator Telex (AOT) Reference

We have clarified the reference to the Airbus AOT, which was cited in the NPRM as Airbus AOT M113–02–007, dated June 21, 2002. The reference to Airbus AOT M113–02–007 parallels the citation for this AOT that was given in German airworthiness directive 2002–200, dated June 27, 2002, which also addresses the subject of this AD. However, the service bulletins that are referenced as the appropriate source of service information for accomplishing the required actions refer to this same AOT with the number BWED/101/02. Therefore, we have determined that referring to this AOT as ''Airbus A300 B4, A310–200 All Operator Telex BWED/101/02 (LBA Approval, Reference M113–02–007), dated June 21, 2002,'' will minimize confusion.

Conclusion

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

Costs of Compliance

This AD affects about 6 airplanes of U.S. registry. The actions take about 80 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $31,200, or $5,200 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–25–27 Airbus: Amendment 39–14420. Docket No. FAA–2005–22527; Directorate Identifier 2004–NM–04–AD.

Effective Date

(a) This AD becomes effective January 24, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes; Model A300 B4–103 and B4–203 airplanes, and Model A310–203 airplanes; certificated in any category; as identified in EADS Airbus A300 Alert Service Bulletin DA–53–073, dated June 26, 2002; and EADS Airbus A310 Alert Service Bulletin DA–53–074, dated June 27, 2002; as applicable.

Unsafe Condition

(d) This AD was prompted by a report of rivets missing from the structural area affected by conversion from passenger-to-freight configuration. We are issuing this AD to prevent structural failure of the main deck and main deck cargo door areas.

Compliance

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

Inspection

(f) Within 300 flight cycles after the effective date of this AD: Do a general visual inspection for missing or incorrect rivets in the structural area affected by conversion from passenger-to-freight configuration identified in Airbus A300 B4, A310–200 All Operator Telex Airbus BWED/101/02 (LBA Approval, Reference M113–02–007), dated June 21, 2002. Do the inspections in accordance with the Accomplishment Instructions of EADS Alert Service Bulletin DA–53–073, dated June 26, 2002; or EADS Airbus A310 Alert Service Bulletin DA–53–074, dated June 27, 2002; as applicable.

Note 1: For the purposes of this AD, a general visual inspection is: ''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 ensure visual access to all 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.''

Corrective Action

(g) If any inspection required by paragraph (f) of this AD identifies a missing or incorrect rivet: Before further flight, repair according to a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or the Luftfahrt-Bundesamt (LBA) (or its delegated agent).

No Reporting Required

(h) Although the service bulletins referenced in this AD specify to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, New York 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.

Related Information

(j) German airworthiness directive 2002–200, dated June 27, 2002, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use the service information listed in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact EADS Airbus GmbH, Postfach 95 01 09, 21111 Hamburg, Germany, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Service document	Date
Airbus A300 B2, A310–200 All Operator Telex BWED/101/02 (LBA Approval, Reference M113–02–007)	June 21, 2002.
EADS Airbus A300 Alert Service Bulletin DA–53–073	June 26, 2002.
EADS Airbus A310 Alert Service Bulletin DA–53–074	June 27, 2002.

Issued in Renton, Washington, on December 8, 2005.

Michael Zielinski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24049 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21836; Directorate Identifier 2005–CE–36–AD; Amendment 39–14415; AD 2005–25–22]

RIN 2120–AA64

Airworthiness Directives; Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa ''PZL-Bielsko'' Model SZD–50–3 ''Puchacz'' Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa ''PZL-Bielsko'' Model SZD–50–3 ''Puchacz'' gliders. This AD requires you to perform a visual inspection of the turnbuckle link for cracks or wear and replace if cracks or wear is found. This action only applies to those gliders where the turnbuckle is directly connected to the pedal. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Poland. We are issuing this AD to detect and correct cracks in the turnbuckle link, which could result in failure of the rudder cable. This failure could lead to loss of control of the glider.

DATES: This AD becomes effective on January 27, 2006.

As of January 27, 2006, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Allstar PZL Glider Sp. z o.o., ul.Ciexzynska 325, 43–300 Bielsko-Biala, Poland; telephone: 43 33 812 50 26; facsimile: 48 33 812 37 39; Web site: *http://www.szd.com.pl.*

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–2005–21836; Directorate Identifier 2005–CE–36–AD.

FOR FURTHER INFORMATION CONTACT: Gregory Davison, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Civil Aviation Office, which is the airworthiness authority for Poland, recently notified FAA that an unsafe condition may exist on all Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa ''PZL-Bielsko'' Model SZD–50–3 ''Puchacz'' gliders. The Civil Aviation Office reports a broken turnbuckle on a glider performing rudder operations in flight. Specifically, material fatigue caused the end of the turnbuckle that connects the rudder cable with rear seat, right-side pedal to break. Occupants, because of glider design, may have stepped on the rudder cable while entering or exiting the glider, putting stress on the turnbuckle link. This may have contributed to the material fatigue.

What is the potential impact if FAA took no action? Cracks or wear in the turnbuckle link could result in failure of the rudder cable. This failure could lead to loss of control of the glider.

Has FAA taken any action to this point? 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 all ''PZL-Bielsko'' Model SZD–50–3 ''Puchacz'' gliders. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 10, 2005 (70 FR 46439). The NPRM proposed to detect and correct cracks in the turnbuckle link that could result in failure of the rudder cable. This failure could lead to loss of control of the glider.

Comments

Was the public invited to comment? 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

What is FAA's final determination on this issue? 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.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many gliders does this AD impact? We estimate that this AD affects 8 gliders in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected gliders? We estimate the following costs to do this inspection:

Labor cost	Total cost per glider	Total cost on U.S. operators
1 workhour × $65 = $65	$65	$520

We estimate the following costs to do any necessary replacements that would be required based on the results of this inspection. We have no way of determining the number of gliders that may need this repair/replacement:

Labor cost	Parts cost	Total cost per glider
1 workhour × $65 = $65	$20	$85

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? 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

Will this AD impact various entities? 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.

Will this AD involve a significant rule or regulatory action? 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–2005–21836; Directorate Identifier 2005–CE–36–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 adding a new AD to read as follows:

2005–25–22 Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa ''PZL-Bielsko'': Amendment 39–14415; Docket No. FAA–2005–21836; Directorate Identifier 2005–CE–36–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on January 27, 2006.

What Other ADs Are Affected by This Action?

(b) None.

What Gliders Are Affected by This AD?

(c) This AD affects Model SZD–50–3 ''Puchacz'' gliders, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of a turnbuckle link breaking in flight. The actions specified in this AD are intended to detect and correct cracks in the turnbuckle link, which could result in failure of the rudder cable. This failure could lead to loss of control of the glider.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following on gliders where the turnbuckle is directly connected to the pedal:

Actions	Compliance	Procedures
(1) Visually inspect the turnbuckle end for cracks or wear. Use a 10X magnifying glass. The magnifying power in this AD takes precedence over the magnifying power stated in Allstar PZL Glider Ltd. Bulletin No. BE–054/SZD–50–3/2003 ''Puchacz.'' Inspection is not required on gliders where additional short cables between the rear seat pedal and turnbuckle have been installed.	Initially within 25 hours time-in-service (TIS) after January 27, 2006 (the effective date of this AD), and repetitively thereafter at intervals not to exceed 50 hours TIS.	Follow Allstar PZL Glider Ltd. Bulletin No. BE–054/SZD–50–3/2003 ''Puchacz,'' as approved by Civil Aviation Office Airworthiness Directive No. SP–0012–2004–A, dated February 5, 2004.
(2) If cracks or wear is found during any inspection required by this AD, replace the turnbuckle end. The turnbuckle must have a steel end and support a maximum load of 6,100 newtons (converts to 1,371 pounds of force), following Allstar PZL Glider Ltd. Bulletin No. BE–054/SZD–50–3/2003 ''Puchacz.''	Prior to further light after the inspection where cracks or wear is found.	Follow the procedures in the maintenance manual.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Gregory Davison, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) Allstar PZL Glider Ltd. Bulletin No. BE–054/SZD–50–3/2003 ''Puchacz'' and Civil Aviation Office Airworthiness Directive No. SP–0012–2004–A, dated February 5, 2004, also address the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in Allstar PZL Glider Ltd. Bulletin No. BE–054/SZD–50–3/2003 ''Puchacz,'' as approved by Civil Aviation Office Airworthiness Directive No. SP–0012–2004–A, dated February 5, 2004. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Allstar PZL Glider Sp. z o.o., ul.Ciezzynska 325, 43–300 Bielsko-Biala, Poland; telephone: 43 33 812 50 26; facsimile: 48 33 812 37 39; Web site: *http://www.szd.com.pl.* 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/federal_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–2005–21836; Directorate Identifier 2005–CE–36–AD.

Issued in Kansas City, Missouri, on December 5, 2005.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23896 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22021; Airspace Docket No. 04–AAL–06]

Establishment of Class E Airspace; Arctic Village, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace description contained in a Final Rule that was published in the **Federal Register** on Thursday, November 17, 2005 (70 FR 69646). Airspace Docket No. 04–AAL–06.

DATES: *Effective Date:* 0901 UTC, February 16, 2006.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 05–22771, Airspace Docket No. 04–AAL–06, published on Thursday, November 17, 2005 (70 FR 69646), established Class E airspace at Arctic Village, AK. An error was discovered in the airspace description that misidentified the airfield location. This action corrects that error.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the airspace description of the Class E airspace published in the **Federal Register**, Thursday, November 17, 2005 (70 FR 69646), (FR Doc 05–22771, page 69646, column 3) is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AAL AK E5 Arctic Village, AK [Corrected]

Arctic Village, AK

(Lat. 68°06′53″ N., long. 145°34′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Arctic Village Airport and within 3 miles each side of the 040° bearing from the Arctic Village airport extending from the 6.4-mile radius to 14.8 miles North of the airport and that airspace extending upward from 1,200 ft. above the surface within a 65-mile radius of the airport.

* * * * *

Issued in Anchorage, AK, on December 13, 2005.

Anthony M. Wylie,

Manager, Safety, Area Flight Service Operations.

[FR Doc. 05–24231 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22538; Airspace Docket No. 05–AAL–30]

Revision of Class E Airspace; Koliganek, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Koliganek, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAPs). This rule results in revised Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Koliganek Airport, AK.

DATES: *Effective Date:* 0901 UTC, February 16, 2006.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Tuesday, October 25, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace upward from 700 ft. and 1,200 ft. above the surface at Koliganek, AK (70 FR 61583). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing two new SIAPs for the Koliganek Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 09, original; (2) RNAV (GPS) RWY 27, original. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Koliganek Airport area is revised by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at Koliganek, Alaska. This Class E airspace is established to accommodate aircraft executing two new SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rule (IFR) operations at Koliganek Airport, Koliganek, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator.

Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Koliganek Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, 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 14 CFR 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, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Koliganek, AK [Revised]

Koliganek Airport, AK

(Lat. 59°43′36″ N., long. 157°5′34″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Koliganek Airport and that airspace extending upward from 1,200 feet above the surface within a 45-mile radius of the Koliganek airport.

* * * * *

Issued in Anchorage, AK, on Insert December 13, 2005.

Anthony M. Wylie,

Manager, Safety, Area Flight Service Operations.

[FR Doc. 05–24230 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22537; Airspace Docket No. 05–AAL–29]

Establishment of Class E Airspace; Tok Junction, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Tok Junction, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAPs). This rule results in new Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Tok Junction Airport, AK.

EFFECTIVE DATE: 0901 UTC, February 16, 2006.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, October 25, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace upward from 700 ft. and 1,200 ft. above the surface at Tok Junction, AK (70 FR 61587). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing two new SIAPs for the Tok Junction Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 07, original; (2) RNAV (GPS) RWY 25, original. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Tok Junction Airport area is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed. The Notice of Proposed Rulemaking omitted an exemption to the airspace over Canada. It has been corrected in this document.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Tok Junction, Alaska. This Class E airspace is established to accommodate aircraft executing two new SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rule (IFR) operations at Tok Junction Airport, Tok, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable

airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Tok Junction Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, 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 14 CFR 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, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Tok Junction, AK [New]

Tok Junction Airport, AK
(Lat. 63°19′46″ N., long. 142°57′13″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Tok Junction Airport, and that airspace extending upward from 1,200 feet above the surface within a 64.8-mile radius of the Tok Junction Airport, excluding the airspace east of 141°00′ W.

* * * * *

Issued in Anchorage, AK, on December 13, 2005.

Anthony M. Wylie,

Manager, Safety, Area Flight Service Operations.

[FR Doc. 05–24229 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22536; Airspace Docket No. 05–AAL–25]

Establishment of Class E Airspace; Nondalton, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Nondalton, AK to provide adequate controlled airspace to contain aircraft executing one new Standard Instrument Approach Procedure (SIAP) and one Departure Procedure (DP). This rule results in new Class E airspace upward from 700 feet (ft.) above the surface at Nondalton Airport, AK.

DATES: Effective Date: 0901 UTC, February 16, 2006.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, October 25, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace upward from 700 ft. above the surface at Nondalton, AK (70 FR 61586). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing one new SIAP and one new DP for the Nondalton Airport. The new approach is the Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 02, original. The DP is the Iliamna One RNAV. Class E controlled airspace extending upward from 700 ft. above the surface in the Nondalton Airport area is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Nondalton, Alaska. This Class E airspace is established to accommodate aircraft executing one new SIAP and a new DP, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rule (IFR) operations at Nondalton Airport, Nondalton, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Nondalton Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, 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 14 CFR 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, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Nondalton, AK [New]

Nondalton Airport, AK
(Lat. 59°58′49″ N., long. 154°50′21″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Nondalton Airport, and within 1 mile each side of the 214° bearing from the airport extending from the 6.3-mile radius to 9.9 miles southwest of the airport.

* * * * *

Issued in Anchorage, AK, on December 13, 2005.

Anthony M. Wylie,

Manager, Safety, Area Flight Service Operations.

[FR Doc. 05–24227 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22535; Airspace Docket No. 05–AAL–24]

Establishment of Class E Airspace; New Stuyahok, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at New Stuyahok, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAPs). This rule results in new Class E airspace upward from 700 feet (ft.) above the surface at New Stuyahok Airport, AK.

EFFECTIVE DATE: 0901 UTC, February 16, 2006.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, October 25, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace upward from 700 ft. above the surface at New Stuyahok, AK (70 FR 61585). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing two new SIAPs for the New Stuyahok Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 16, original; (2) RNAV (GPS) RWY 34, original. Class E controlled airspace extending upward from 700 ft. above the surface in the New Stuyahok Airport area is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed. A typographical error listing an incorrect FAA Docket Number was noted in the Notice of Proposed Rulemaking. It has been corrected in this document.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at New Stuyahok, Alaska. This Class E airspace is established to accommodate aircraft executing two new SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rule (IFR) operations at New Stuyahok Airport, New Stuyahok, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the New Stuyahok Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, 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 14 CFR 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, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 New Stuyahok, AK [New]

New Stuyahok Airport, AK
(Lat. 59°27′00″ N., long. 157°19′42″ W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the New Stuyahok Airport.

* * * * *

Issued in Anchorage, AK, on December 13, 2005.

Anthony M. Wylie,

Manager, Safety, Area Flight Service Operations.

[FR Doc. 05–24226 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 145

[Docket No.: FAA–2003–15085; Amendment Nos. 121–318 and 145–25]

RIN 2120–AG75

Hazardous Materials Training Requirements; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects the final rule, ''Hazardous Materials Training Requirements'' published in the **Federal Register** of October 7, 2005.

DATES: Effective December 20, 2005.

FOR FURTHER INFORMATION CONTACT: Janet McLaughlin, Office of Hazardous Materials, ADG–1, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–8434.

SUPPLEMENTARY INFORMATION: On October 7, 2005, the FAA published a final rule, ''Hazardous Materials Training Requirements'' (70 FR 58796; Oct. 7, 2005). The rule added appendix O to part 121 to prescribe the requirements for hazardous materials training under part 121, subpart Z, and part 135, subpart K. The appendix contains two tables (one for will-carry certificate holders, and the other for will-not-carry certificate holders) showing various categories of persons, defined by job function or responsibility, and the specified category they must receive. In both tables, in the entry for ''Provisions for passengers and crew,'' there should not have been an ''X'' in the column for ''Shippers.''

In addition, the rule added § 145.206 Notification of hazardous materials authorizations. As explained in the preamble of that rule, sections proposed as §§ 121.801 through 121.804 (subpart Z) were renumbered as §§ 121.1001 through 121.1007 in the final rule because other rules had been added to part 121 since the NPRM was published. Section 145.206 (a) contained a cross reference that was not correctly updated. This document corrects that error.

List of Subjects

CFR 14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

CFR 14 CFR Part 145

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration corrects chapter I of title 14, Code of Federal Regulations, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

■ 2. Amend appendix O by revising Table 1 and Table 2 to read as follows:

Appendix O—Hazardous Materials Training Requirements For Certificate Holders

* * * * *

TABLE 1.—OPERATORS THAT TRANSPORT HAZARDOUS MATERIAL—WILL-CARRY CERTIFICATE HOLDERS

Aspects of transport of hazardous materials by air with which they must be familiar, as a minimum (See note 1)	Shippers (See Note 2) Will-carry	Operators and ground-handling agent's staff accepting hazardous materials (See Note 3) Will-carry	Operators and ground-handling agents staff responsible for the handling, storage, and loading of cargo and baggage Will-carry	Passenger-handling staff Will-carry	Flight crew members and load planners Will-carry	Crew members (other than flight crew members) Will-carry
General philosophy	X	X	X	X	X	X
Limitations	X	X	X	X	X	X
General requirements for shippers	X	X				
Classification	X	X				
List of hazardous materials	X	X			X	
General packing requirements	X	X				
Labeling and marking	X	X	X	X	X	X

TABLE 1.—OPERATORS THAT TRANSPORT HAZARDOUS MATERIAL—WILL-CARRY CERTIFICATE HOLDERS—Continued

Aspects of transport of hazardous materials by air with which they must be familiar, as a minimum (See note 1)	Shippers (See Note 2) Will-carry	Operators and ground-handling agent's staff accepting hazardous materials (See Note 3) Will-carry	Operators and ground-handling agents staff responsible for the handling, storage, and loading of cargo and baggage Will-carry	Passenger-handling staff Will-carry	Flight crew members and load planners Will-carry	Crew members (other than flight crew members) Will-carry
Hazardous materials transport document and other relevant documentation	X	X				
Acceptance procedures		X				
Recognition of undeclared hazardous materials	X	X	X	X	X	X
Storage and loading procedures		X	X		X	
Pilots' notification		X	X		X	
Provisions for passengers and crew		X	X	X	X	X
Emergency procedures	X	X	X	X	X	X

Note 1.—Depending on the responsibilities of the person, the aspects of training to be covered may vary from those shown in the table.

Note 2.—When a person offers a consignment of hazmat, including COMAT, for or on behalf of the certificate holder, then the person must be trained in the certificate holder's training program and comply with shipper responsibilities and training. If offering goods on another certificate holder's equipment, the person must be trained in compliance with the training requirements in 49 CFR. All shippers of hazmat must be trained under 49 CFR. The shipper functions in 49 CFR mirror the training aspects that must be covered for any shipper offering hazmat for transport.

Note 3.—When an operator, its subsidiary, or an agent of the operator is undertaking the responsibilities of acceptance staff, such as the passenger handling staff accepting small parcel cargo, the certificate holder, its subsidy, or the agent must be trained in the certificate holder's training program and comply with the acceptance staff training requirements.

TABLE 2.—OPERATORS THAT DO NOT TRANSPORT HAZARDOUS MATERIALS—WILL-NOT-CARRY CERTIFICATE HOLDERS

Aspects of transport of hazardous materials by air with which they must be familiar, as a minimum (See Note 1)	Shippers (See Note 2) Will-not-carry	Operators and ground-handling agent's staff accepting cargo other than hazardous materials (See Note 3) Will-not-carry	Operators and ground-handling agents staff responsible for the handling, storage, and loading of cargo and baggage Will-not-carry	Passenger-handling staff Will-not-carry	Flight crew members and load planners Will-not-carry	Crew members (other than flight crew members) Will-not-carry
General philosophy	X	X	X	X	X	X
Limitations	X	X	X	X	X	X
General requirements for shippers	X					
Classification	X					
List of hazardous materials	X					
General packing requirements	X					
Labeling and marking	X	X	X	X	X	X
Hazardous materials transport document and other relevant documentation	X	X				
Acceptance procedures						
Recognition of undeclared hazardous materials	X	X	X	X	X	X
Storage and loading procedures						
Pilots' notification						
Provisions for passengers and Crew		X	X	X	X	X
Emergency procedures	X	X	X	X	X	X

Note 1—Depending on the responsibilities of the person, the aspects of training to be covered may vary from those shown in the table.

Note 2—When a person offers a consignment of hazmat, including COMAT, for air transport for or on behalf of the certificate holder, then that person must be properly trained. All shippers of hazmat must be trained under 49 CFR. The shipper functions in 49 CFR mirror the training aspects that must be covered for any shipper, including a will-not-carry certificate holder offering dangerous goods for transport, with the exception of recognition training. Recognition training is a separate FAA requirement in the certificate holder's training program.

Note 3—When an operator, its subsidiary, or an agent of the operator is undertaking the responsibilities of acceptance staff, such as the passenger handling staff accepting small parcel cargo, the certificate holder, its subsidiary, or the agent must be trained in the certificate holder's training program and comply with the acceptance staff training requirements.

PART 145—REPAIR STATIONS

■ 3. The authority citation for part 145 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707, 44717.

§ 145.206 [Amended]

■ 4. Amend § 145.206 (a) by removing the reference to ''§ 121.905 (e)'' and replacing it with ''§ 121.1005 (e).''

Issued in Washington, DC on December 14, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 05–24225 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

New Animal Drugs; Change of Sponsor; Chloramphenicol Capsules

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) for chloramphenicol capsules from Nylos Trading Co., Inc., to Pharmaceutical Ventures, Ltd.

DATES: This rule is effective December 20, 2005.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *david.newkirk@fda.gov*.

SUPPLEMENTARY INFORMATION: Nylos Trading Co., Inc., P.O. Box 2, Route 202, Pomona, NY 10970, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 65–150 for Chloramphenicol Capsules to Pharmaceutical Ventures, Ltd., P.O. Box D1400, Pomona, NY 10970. Accordingly, the regulations are amended in § 520.390b (21 CFR 520.390b) to reflect this change of sponsorship and a current format. In addition, FDA is taking this opportunity to revise § 520.390b to reflect the prohibition of extralabel use of chloramphenicol in food-producing animals under 21 CFR 530.41.

Following these changes of sponsorship, Nylos Trading Co., Inc., is no longer the sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to remove the entries for Nylos Trading Co., Inc.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for ''Nylos Trading Co., Inc.'' and by alphabetically adding a new entry for ''Pharmaceutical Ventures, Ltd.''; and in the table in paragraph (c)(2) by removing the entry for ''027454'' and by numerically adding a new entry for ''050057'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* *
Pharmaceutical Ventures, Ltd., P.O. Box D1400, Pomona, NY 10970	050057
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* *	* * *
050057	Pharmaceutical Ventures, Ltd., P.O. Box D1400, Pomona, NY 10970
* *	* * *

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 4. Revise § 520.390b to read as follows:

§ 520.390b Chloramphenicol capsules.

(a) *Specifications*. Each capsule contains 50, 100, 250, or 500 milligrams (mg) chloramphenicol.

(b) *Sponsors*. See sponsors in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(1) Nos. 000069, 000185, and 050057 for capsules containing 50, 100, 250, or 500 mg chloramphenicol.

(2) No. 058034 for capsules containing 100 or 250 mg chloramphenicol.

(c) *Special considerations*. Federal law prohibits the extralabel use of this product in food-producing animals.

(d) *Conditions of use in dogs*—(1) *Amount*. 25 mg per pound of body weight every 6 hours.

(2) *Indications for use*. For treatment of bacterial pulmonary infections, bacterial infections of the urinary tract, bacterial enteritis, and bacterial infections associated with canine distemper caused by susceptible organisms.

(3) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 8, 2005.

Bernadette A. Dunham,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 05–24270 Filed 12–19–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AM32

Use of Diagnostic Code Numbers; Schedule of Ratings-Neurological Conditions and Convulsive Disorders

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by updating references to diagnostic codes in two regulations. These amendments are necessary to correct outdated references in the Schedule for Rating Disabilities.

DATES: *Effective Date:* December 20, 2005.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Consultant, Compensation and Pension Service, Policy and Regulations Staff, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7211.

SUPPLEMENTARY INFORMATION: VA's Schedule for Rating Disabilities includes criteria for evaluating disabilities by analogy where there is no specific diagnostic code for the disability being evaluated. In 38 CFR 4.27 and 38 CFR 4.124a, the rating criteria reference examples of diseases that can be rated by analogy to certain specified diagnostic odes. Two of the

diagnostic codes listed in 38 CFR 4.27 and 4.124a, for rheumatoid (atrophic) arthritis and for dementia, are outdated due to changes to the diagnostic criteria for evaluating these diseases. Therefore, we are amending 38 CFR 4.27 and 4.124a to replace outdated references with the current diagnostic codes for ankylosing spondylitis, a disability similar to rheumatoid arthritis, and for dementia.

Section 4.27, Use of diagnostic code numbers, includes as an example: ''Thus, rheumatoid (atrophic) arthritis rated as ankylosis of the lumbar spine should be coded 5002–5289.'' However, Diagnostic Code 5289 was removed from 38 CFR 4.71a, Schedule of ratings-musculoskeletal system, by a rulemaking published on August 27, 2003, at 68 FR 51454. Therefore, the reference to 5289 for ankylosis of the lumbar spine is outdated. We will replace the outdated reference to Diagnostic Code 5289 with the current Diagnostic Code for ankylosing spondylitis, 5240, which is a disability similar to rheumatoid arthritis.

Similarly, in § 4.124a, Schedule of ratings-neurological conditions and convulsive disorders, the paragraph discussing Mental Disorders in Epilepsies which appears after Diagnostic Code 8914 includes references to Diagnostic Codes 9304 and 9307 for dementia: ''(e.g., 9304 or 9307)'' and ''(e.g., Diagnostic Code 9304 or 9307)''. However, Diagnostic Code 9307 was removed by a rulemaking published on October 8, 1996, at 61 FR 52695. Therefore, the reference to Diagnostic Code 9307 currently in 38 CFR 4.124a is outdated. We will remove the reference to Diagnostic Code 9307 and insert a reference to Diagnostic Code 9326, which replaced Diagnostic Code 9307.

Administrative Procedures Act

This final rule merely replaces inaccurate examples and does not alter the content of the regulations. Accordingly, there is a basis for dispensing with prior notice and comment and the delayed effective date provisions of 5 U.S.C. 553.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers: The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.104, Pension for Non-Service-Connected Disability for Veterans, and 64.109, Veterans Compensation for Service-Connected Disability.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Approved: December 14, 2005.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 4 is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

§ 4.27 [Amended]

■ 2. Amend § 4.27 by removing ''5002–5289'' and adding, in its place, ''5002–5240''.

§ 4.124a [Amended]

■ 3. Amend § 4.124a following the undesignated center heading ''The Epilepsies'' at the conclusion of the table in the undesignated paragraph ''Mental Disorders in Epilepsies'' remove ''9307'' and add in its place ''9326''.

[FR Doc. 05–24272 Filed 12–19–05; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2005–IA–0006; FRL–8010–9]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision submitted by the state of Iowa. This revision includes the general rulemaking that Iowa completes for the purpose of updating and clarifying various rules, and making other minor revisions as generally described in this document. EPA is also proposing approval of revisions to the Iowa Operating Permits Program for the purpose of updating and clarifying various rules included in the general rulemaking. These revisions add new definitions, as well as an administrative correction to a previously submitted rule. Approval of these revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the State's revised air program rules.

DATES: This direct final rule will be effective February 21, 2006, without further notice, unless EPA receives adverse comment by January 19, 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–2005–IA–0006, by one of the following methods:

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

2. E-mail: Heather Hamilton at *hamilton.heather@epa.gov.*

3. Mail: Heather Hamilton, 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 Heather Hamilton, 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–2005–IA–0006. 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 *www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy 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: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@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?
What Is the Federal Approval Process for a SIP?
What Does Federal Approval of a State Regulation Mean to Me?
What Is the Part 70 Operating Permits Program?
What Is the Federal Approval Process for an Operating Permits Program?
What Is Being Addressed in This Document?
Have the Requirements for Approval of a SIP and a Part 70 Revision Been Met?
What Action is EPA Taking?

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 Is the Part 70 Operating Permits Program?

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM_{10}; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revision to the state and local agencies operating permits program are

also subject to public notice, comment, and our approval.

What Is the Federal Approval Process for an Operating Permits Program?

In order for state regulations to be included in the Federally-enforceable Title V operating permits program, states must formally adopt regulations 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 approved operating permits program. 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 502 of the CAA, including revisions to the state program, are included in the Federally-approved operating permits program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled ''Approval Status of State and Local Operating Permits Programs.''

What Is Being Addressed in This Document?

EPA is approving the State Implementation Plan (SIP) revisions submitted by the state of Iowa which include numerous minor revisions to various rules. The revisions consist of updating references to Federal rules, clarifying emissions reduction language to permits, providing notification of ownership for construction permits, adding definitions, amending variance language, and making minor revisions to the Compliance Sampling Manual. EPA is also approving a new rule into the SIP and Operating Permits Program at 567–22.209 to set forth information with regard to change of ownership for facilities with voluntary operating permits. EPA is approving revisions to the Iowa Operating Permits Program to update CFR references, and to update information with regard to submitting Title V permit applications.

Revisions to update the CFR references were made to Iowa Administrative Code (IAC) 567–22.1(1) ''b'' New or reconstructed major sources of hazardous air pollutants, and, 567–20.2 definition of ''Volatile Organic Compound.''

Requirements with regard to control equipment which reduces or eliminates all emissions to the atmosphere (567–22.1(2) ''g'') have been changed to state that a permit must be obtained requiring emission reductions before a source may take credit for the reductions. This revision further states that if a construction permit has been previously issued, all other conditions of the permit remain in effect.

The Compliance Sampling Manual is being revised to update procedures and to clarify and correct some of the existing language in the manual. References to the CFR within the Compliance Sampling Manual have also been updated with this change.

A revision to IAC 567–20.2, as it relates to open burning of untreated wood, adds a new definition of ''untreated.'' The definition relates to a rule that limits citizens from burning matter that is treated and adversely affects the environment. The definition does not relax the stringency of open burning restrictions, but helps to limit emissions of pollutants which may adversely affect air quality.

Additional definitions added at IAC 567–20.2 are as follows: ''biodiesel fuel,'' ''diesel fuel,'' ''number 1 fuel oil,'' and ''number 2 fuel oil.'' Included in the definitions are references to the American Society for Testing and Material Specifications and information with regard to the Environmental Protection Agency registration.

An amendment was made to the variance language as it relates to construction permits in IAC 567–21.2(3) ''a.'' This provision authorizes variances from state regulatory requirements for the limited purpose of testing alternative fuels. It does not allow variances from permitting requirements for sources subject to major source permitting requirements. The revision clearly states that the Iowa Department of Natural Resources (IDNR) may not grant variances for projects subject to certain Federal requirements. Although we believe that this limited variance provision for minor sources is acceptable, we note that variances from SIP requirements and minor source permit limits issued under SIPs are not recognized by EPA and do not change the underlying requirements unless approved by EPA as revisions to the SIP.

An amendment to 567–22.1(3) ''b'' revises references to the Iowa Code (542B.1, and 542B.26) that provides requirements for professional licensed engineers and corporation employees submitting construction permit applications to IDNR.

Clarification has been made to IAC 567–22.3(8) (Ownership change of permitted equipment) to include the accurate mailing address of the Air Quality Bureau, Iowa Department of Natural Resources.

The state of Iowa requested a revision to the Title V Operating Permits Program approved for state rule revisions updating CFR references to the definitions located at 567–22.100 as follows: EPA reference method, existing hazardous air pollutant sources, and hazardous air pollutant. Revisions to update CFR references were also made at 567–22.101(2) Title V deferred stationary sources, and 567–22.108(17) ''a''(2), reopening of Title V permits.

A revision to 567–22.105(1), Duty to apply, was made to reduce the number of copies of Title V permit applications from four to three and to clarify where the applications should be sent.

The state submission also includes an updated incorporation by reference of EPA's Acid Rain regulations. The state rules, which were effective on July 13, 2005, are not a part of the SIP or the Operating Permits Program; and, therefore, we are not acting on this revision to the Acid Rain regulations.

On May 2, 2005, a rule was published to add a comma to IAC 567–22.3(3), Conditions of Approval. A comma was inserted between fuel specifications and compliance testing to differentiate between the two conditions. This was erroneously published as a Title V revision and is being corrected with this revision.

Have the Requirements for Approval of a SIP Revision and Title V Program 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, including section 110 and implementing regulations. This revision is also consistent with applicable EPA requirements in Title V of the Clean Air Act and 40 CFR part 70.

What Action Is EPA Taking?

This revision includes rules processed as ''general rulemaking'' that Iowa completes for the purpose of updating and clarifying various rules, and making other minor revisions as generally described in this document. Revisions to the Iowa Operating Permits Program for the purpose of updating and clarifying various rules are also included in this rulemaking. This revision adds new definitions, and a new rule that applies to change of

ownership for facilities with voluntary operating permits. One administrative correction is being made to a previously submitted rule. EPA is revising the Iowa SIP and Title V operating permit programs by approving the state rule revisions.

We are processing this revision to the Iowa State Implementation Plan and Iowa Operating Permits as a direct final action because these revisions make routine changes to the existing rules 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 state 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 state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state 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 February 21, 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

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 12, 2005.

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 Q—Iowa

■ 2. In § 52.820 the table in paragraph (c) is amended by revising the entries for 567–20.2, 567–21.2, 567–22.1, 567–22.3, 567–22.300, and 567–25.1 and by adding an entry in numerical order for 567–22.209 to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources Environmental Protection Commission [567]				
*	*	*	*	*
Chapter 20—Scope of Title—Definitions—Forms—Rules of Practice				
*	*	*	*	*
567–20.2	Definitions	9/21/05	12/20/05 [*insert FR page number where the document begins*]	The definitions for anaerobic lagoon, odor, odorous substance, and odorous substance source are not SIP approved.
*	*	*	*	*
Chapter 21—Compliance				
*	*	*	*	*
567–21.2	Variances	7/13/05	12/20/05 [*insert FR page number where the document begins*]	
*	*	*	*	*
Chapter 22—Controlling Pollution				
567–22.1	Permits Required for New or Existing Stationary Sources.	7/13/05	12/20/05 [*insert FR page number where the document begins*]	Subrules 22.1(2) and 22.1(2) "i" have a state effective date of 5/23/01.
*	*	*	*	*
567–22.3	Issuing Permits	7/13/05	12/20/05 [*insert FR page number where the document begins*]	Subrule 22.3(6) is not SIP approved.
*	*	*	*	*
567–22.209	Change of Ownership for Facilities with Voluntary Operating Permits.	7/13/05	12/20/05 [*insert FR page number where the document begins*]	
567–22.300	Operating Permit by Rule for Small Sources.	7/13/05	12/20/05 [*insert FR page number where the document begins*]	Subrule 22.300(7) "c" has a state effective date of 10/14/98.
*	*	*	*	*
Chapter 25—Measurement of Emissions				
567–25.1	Testing and Sampling of New and Existing Equipment.	7/13/05	12/20/05 [*insert FR page number where the document begins*]	
*	*	*	*	*

* * * * *

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

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

Appendix A to Part 70—[Amended]

■ 2. Appendix A to part 70 is amended by revising paragraph (h) under "Iowa" to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Iowa

* * * * *

(h) The Iowa Department of Natural Resources submitted for program approval rules 567–22.100, 567–22.101(2), 567–22.102, 567–22.105(1), 567–22.108(17)"a"(2), 567–22.209 and 567–22.300(12) on July 18, 2005. The state effective date was July 13, 2005. These revisions to the Iowa program are approved effective February 21, 2006.

* * * * *

[FR Doc. 05–24259 Filed 12–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–8005–4]

RIN 2060–AJ77

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Modification of Federal On-Board Diagnostic Regulations for: Light-Duty Vehicles, Light-Duty Trucks, Medium Duty Passenger Vehicles, Complete Heavy Duty Vehicles and Engines Intended for Use in Heavy Duty Vehicles Weighing 14,000 Pounds GVWR or Less

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing certain requirements associated with the Federal on-board diagnostic (OBD) system regulations. On June 17, 2003, EPA published both a direct final rule and a concurrent notice of proposed rulemaking (68 FR 35972 and 68 FR 35830 respectively) to amend and revise certain provisions of the Federal OBD regulations. EPA published the direct final rule believing that no adverse comments would be received. However, due to the receipt of an adverse comment, EPA published a partial withdrawal notice on August 14, 2003 (68 FR 48561) withdrawing two specific regulatory amendments included in the direct final rule. The direct final rule, absent those two withdrawn provisions, became effective on August 18, 2003.

The purpose of this action is to finalize the portion of the direct final rule that was withdrawn with the revisions suggested by the commenters and to clarify several smaller issues that were raised by industry during the comment period.

DATES: This final rule takes effect on February 21, 2006.

ADDRESSES: All comments and materials relevant to today's action are contained in Public Docket No. OAR–2003–0080 (old legacy docket is A–2002–20) at EPA's Air and Radiation Docket and Information Center (Air Docket) at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460. Dockets may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566–1742 and by facsimile at (202) 566–1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR Part 2.

FOR FURTHER INFORMATION CONTACT: Arvon Mitcham, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Certification and Compliance Division, 2000 Traverwood, Ann Arbor MI 48105; telephone (734) 214–4522, e-mail ''*mitcham.arvon@epa.gov*.''

Regulated Entities: Entities potentially regulated by this action are those which manufacture new motor vehicles and engines.

Category	Examples of regulated entities	NAICS codes [a]	SIC codes [b]
Industry	New motor vehicle and engine manufacturers	33611, 336112, 336120	3711

[a] North American Industry Classification System (NAICS) Code.
[b] Standard Industrial Classification (SIC) System Code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your product is regulated by this action, you should carefully examine the applicability criteria in § 86.005–17, § 86.1806–04 and § 86.1806–05 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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J. Congressional Review Act

I. Electronic Availability

Today's action is available electronically on the day of publication from EPA?s **Federal Register** Internet Web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA Federal Register Web Site: http://www.epa.gov/docs/fedrgstr/epa-air/.

OTAQ's Web site: http://www.epa.gov/otaq/url-fr.htm. (Either select a desired date or use the Search feature.)

II. Introduction and Background

On February 19, 1993, pursuant to Clean Air Act (CAA) section 202(m), 42 U.S.C. 7521(m), EPA published a final rulemaking (58 FR 9468) requiring manufacturers of light-duty vehicles (LDVs) and light-duty trucks (LDTs) to install on-board diagnostic (OBD) systems on such vehicles beginning with the 1994 model year. The regulations promulgated in that final rulemaking require manufacturers to install OBD systems which monitor emission control components for any malfunction or deterioration causing exceedance of certain emission thresholds, and alert the vehicle operator to the need for repair. That rulemaking also requires that, when a malfunction occurs, diagnostic information must be stored in the vehicle's computer to assist the technician in diagnosis and repair.

Additionally, this original OBD regulation provided an allowance for manufacturers to satisfy federal OBD requirements through the 1998 model year by installing OBD systems satisfying the OBD II requirements promulgated by the California Air Resources Board (CARB) pertaining to those model years. On December 22, 1998 (63 FR 70681), EPA revised the federal OBD regulations such that the allowance of compliance with the

California OBD II regulations (excluding anti-tampering provisions) extended indefinitely, rather than applying only through the 1998 model year. In addition, EPA updated the allowed version to the most recently published version, at that time, CARB Mail-Out #97–24 (December 9, 1997).

On June 17, 2003, EPA published both a direct final rule and a concurrent notice of proposed rulemaking (68 FR 35972 and 68 FR 35830 respectively) to amend and revise certain provisions of the federal OBD regulations. Among other several minor revisions, this action also updated the allowed version of the California OBD II regulations; and updated the incorporation by reference of standardized practices developed by the Society of Automotive Engineers (SAE) and the International Organization for Standardization (ISO) to incorporate recently published versions. This action also incorporated by reference a new standardized protocol developed by the International Organization for Standardization (ISO 15765–4.3) and established a future date, model year 2008, by which this protocol would be the only acceptable protocol.

EPA received comments from the Engine Manufacturers Association (EMA) and Cummins that the direct final rule did not continue to allow the use of the heavy-duty communication protocol, SAE J1939, as currently allowed under the Federal OBD and CARB OBD II requirements, beyond the 2007 model year for vehicles that are not optionally certified to CARB's 1968.2 OBD II requirements. EMA commented that the direct final rule required that 2008 and later model year heavy-duty engines and vehicles under 14,000 lbs. GVWR that are certified to the Federal OBD technical monitoring requirements must use the ISO 15765–4.3 communication protocol. EMA and Cummins commented that this is not consistent with CARB's requirements for medium duty vehicles (between 8500 and 14,000 lbs. GVWR), nor is it consistent with the existing communication protocols developed for the unique operational characteristics of heavy-duty vehicles. As a result, EPA withdrew the portion of the direct final rule establishing the requirement that by model year 2008, ISO 15765–4.3 would be the only acceptable protocol. This final action addresses the comments of EMA and Cummins and finalizes revised regulations incorporating those comments.

In addition, EPA received comments from the Alliance of Automobile Manufacturers (''the Alliance'') and the Association of International Automobile Manufacturers (AIAM) requesting clarification of certain aspects of the direct final rule. The Alliance and AIAM requested that their comments not be considered ''adverse'' unless their understanding of EPA's intent was incorrect. The Alliance and AIAM specifically expressed interest that EPA clarify that the new OBD requirements, as applied to Tier 2 vehicles, would be phased-in on the same schedule as CARB's LEV II program. As explained below, EPA believes it appropriate to clarify not only this phase-in requirement but also to clarify what malfunction thresholds apply when comparing LEV II and Tier 2 programs. The Alliance and AIAM also sought clarification from EPA as to whether production testing for OBD would be required and whether EPA was adopting CARB's new enforcement specific provisions relating to OBD. Because EPA is further clarifying its intent and does not disagree with commenters' understanding, EPA did not consider these comments adverse. Finally, the Alliance and AIAM requested that EPA reference the final version of CARB's OBD II regulations contained in Title 13 California Code of Regulations 1968.2 (13 CCR 1968.2)), as modified, approved and filed on April 21, 2003. At the time, EPA referenced the latest version of the CARB OBD II regulations contained in CARB Mail-Out MSCD #02–11 (October 7, 2002) to allow manufacturer OBD certification according to the optional compliance provisions in paragraph (j) of the Federal OBD Regulations. This final action will address those comments as well.

III. Requirements of the Final Rule

A. Use of SAE J1939 Communication Protocol Beyond Model Year 2007

In the June 17, 2003 Direct Final Rule, EPA incorporated by reference a new, optional standardized communication protocol, ISO 15765–4.3:2001, December 14, 2001, ''Road Vehicles-Diagnostics on Controller Area Network (CAN)—Part 4: Requirements for emission-related systems'' at 500 kilobytes per second (kbps) baud rate, that can be used by manufacturers to design OBD systems. The standardized communication protocols provide a uniform language structure that facilitates compatibility between OBD II equipped vehicles and OBD II-related equipment. Manufacturers of light-duty vehicles and trucks are planning to implement this new protocol on vehicles, and some have done so as early as the 2003 MY, in addition to the existing communication protocols: SAE J1939, SAE J1850, ISO 9141, and ISO 14230–4.

In addition, EPA also included a provision that, commencing in the 2008 model year, would have required manufacturers to use this new communication protocol, ISO 15765–4.3 (500 kbps baud rate) for vehicles and engines below 14,000 lbs. The currently allowed communication protocols (SAE J1939, SAE J1850, ISO 9141, and ISO 14230–4) would have been eliminated for vehicles and engines below 14,000 lbs. Therefore, with the 2008 model year, the other, currently-accepted protocols: SAE J1939, SAE J1850, ISO 9141–2 and ISO 14230–4, would no longer be accepted for all vehicles and engines below 14,000 lbs. and all manufacturers of vehicles and engines below 14,000 lbs. would have been required to implement OBD systems using only ISO 15765–4.3 (500 kbps baud rate).

The Direct Final Rule did not distinguish between medium-duty vehicles (at or above 8500 and 14000 pounds GVWR) and light-duty vehicles and trucks (below 8500 pounds). While no one objected to this provision as it applied to light-duty vehicles and trucks, EMA and Cummins commented that this provision would unintentionally eliminate the use of SAE J1939 for vehicles and engines between 8500 and 14000 pounds GVWR. EPA believes that it is reasonable to allow medium-duty engine and vehicle manufacturers between 8500 and 14000 pounds GVWR to continue to use communication protocol SAE J1939 beyond the 2008 model year along with the new protocol.

Therefore, EPA is finalizing a provision requiring that the only allowable protocols will be ISO 15765–4.3 (500 kbps baud rate) for vehicles 8500 pounds GVWR and below and either SAE J1939 or ISO 15765–4.3 (500 kbps baud rate) for vehicles 8500 to 14000 pounds GVWR beginning with the 2008 MY. Accordingly, with the 2008 model year, the other currently-accepted protocols SAE J1850, ISO 9141–2 and ISO 14230–4, would no longer be accepted.

B. Applicable Phase-Ins for OBD System Monitoring Requirements for Federal Vehicles Certifying by Demonstrating Compliance With California OBD II

EPA received comment from the Alliance and AIAM regarding the certification of federal Tier 2 vehicles to California OBD II regulations that reference California LEV II standards. CARB's regulations phase-in additional OBD requirements to coincide with the phase-in of LEV II vehicles. Beginning

in the 2004 model year, CARB phases in new OBD II requirements to coincide with the LEV II requirements at 25, 50, 75, and 100 percent over four model years. The new OBD II requirements are for: NO_X conversion capability (Title 13 CCR 1968.2 (e)(1.2.2)), secondary air monitoring (Title 13 CCR 1968.2 (e)(5.2.3)), continuous oxygen sensor monitoring (Title 13 CCR 1968.2 (e)(7.3.1)(B)(ii) and (e)(7.3.2)(B)(ii)), cold start emission reduction strategy monitoring (Title 13 CCR 1968.2 (e)(11.1.1)), crankshaft and camshaft alignment for variable valve timing (VVT)- and timing belt/chain-equipped vehicles (Title 13 CCR 1968.2 (e)(16.1.2)), and MIL illumination for comprehensive component malfunctions on SULEV II applications only if they cause emissions increase equal to or greater than 25% (Title 13 CCR 1968.2 (e)(16.4.2)(A)).

These provisions create some confusion for vehicles that are certifying to Federal emission requirements during those four years but using the option of meeting federal OBD requirements by demonstrating compliance with California's OBDII regulations. Since EPA's regulations do not reference California's LEV II regulations, the provisions of California's OBD II regulations that distinguish LEV II vehicles do not directly correspond to federal regulations; in particular, EPA's Tier 2 regulations.

The Alliance and AIAM commented that EPA's Direct Final Rule was not clear on how OBD requirements that apply only to LEV II vehicles would be applied to vehicles certified to EPA's Tier 2 emissions standards. The Alliance and AIAM further commented that it has been EPA's policy in the past to require the same OBD requirements for a specific model vehicle produced for sale outside of California as those that apply in that model year for that model vehicle in California. The Alliance and AIAM asked EPA to confirm their position on this policy and to issue guidance as appropriate to verify EPA's position.

EPA's Tier 2 standards follow a phase-in that is similar to the phase-in of LEV II controls in California. Tier 2 standards begin for all vehicles in the 2004 model year but have a phase-in of final Tier 2 vehicle emission standards of 25, 50, 75, and 100 percent in the 2004, 2005 2006 and 2007 model years, respectively, and a corresponding phase-out for interim non-Tier 2 vehicle emission standards of 75, 50, 25, and 0% over those four model years. This allows the phase-in of the new California OBD II requirements to be phased-in to the federal fleet in generally the same time frame as the California fleet, using the phase-in of the final Tier 2 standards as a general surrogate to the phase-in of LEV II standards, recognizing that there is likely to be considerable correspondence between vehicles certified to LEV II standards in California to vehicles certified to final Tier 2 standards federally.

EPA agrees with the comments made by the Alliance and AIAM that we reiterate our intentions to maintain the current policy that allows OEMs to phase-in CARB's new OBD II monitoring requirements on the same schedule for vehicles sold outside of California (for those vehicles certified by EPA to the ''50 State'' or ''49 State'' standards). Therefore, the phase-in of CARB's LEV II OBD II requirements for the monitors outlined above generally should meet the same phase-in and be phased in with the Federal Tier 2 final emission standards at 25, 50, 75, and 100 percent as specified in EPA's Tier 2 regulation over four model years and shall apply to vehicles sold outside of California. EPA recognizes that there may not be exact correspondence between the levels of LEV II vehicles sold in California and the levels of corresponding vehicles sold federally, and thus is not requiring exact correspondence to the phase-in levels for final Tier 2 standards, but EPA is expecting relatively similar levels during the phase-in years.

C. OBD System Design and Applicable Malfunction Thresholds for Federal Vehicles Certifying by Demonstrating Compliance With California OBD II

In reviewing the comments from the Alliance/AIAM discussed above, EPA realized that it may not be clear in some cases what the applicable OBD malfunction threshold is for Federal vehicles certifying to Federal OBD requirements by showing compliance with CARB OBD II regulations. Traditionally, OEMs certifying to EPA emissions standards but optionally complying with CARB OBD II requirements would use the applicable CARB OBD II malfunction thresholds (i.e., 1.75 times the applicable standard) as a multiplier for the applicable EPA emission thresholds. Although this optional compliance allowed manufacturers to certify a CARB OBD II system on a federal vehicle, the applicable EPA emission standards must be applied, in lieu of the California emission standards, when certifying a Federal vehicle or engine. This was possible in the past without further clarification because the relationship of the malfunction thresholds to the underlying standards under the OBD II regulations was not tied to the type of California vehicle (e.g. TLEV, LEV, ULEV, etc) being certified. However, because the revised California OBD II standards have different multiples based on the type of California LEV II vehicle being certified, and because LEV II emission bins are not identical to the emission bins for the federal Tier 2 program,[1] EPA needs to clarify the manner in which the thresholds in California's OBDII requirements should be incorporated into the federal requirements. Therefore, EPA is adding regulatory language to clarify this issue.

EPA is clarifying that vehicles certified to Federal Tier II emissions standards but complying with Federal OBD by showing compliance with CARB OBD II regulations are subject to all OBD monitoring requirements applicable to LEV II applications (subject to the phase-in discussed above), but shall use Tier 2 emissions standards for the purposes of determining malfunction thresholds as described below. CARB has similar provisions in their OBD II regulations contained in Title 13 CCR 1968.2 (c)(20), and (e)(18.1.3) but these provisions only relate to vehicles and engines certified for use in California (i.e., California-only or 50-state vehicles and engines).

Where the Federal standards correspond directly to California standards, this operation is simple, as the manufacture would simply use the thresholds in the OBD II regulations that correspond to the California LEV II vehicle type (e.g. ULEV, SULEV) matching the Federal bin to which the federal vehicle is certified. As noted above, there is one instance where an EPA Tier 2 bin does not have a corresponding CARB LEV II Program emissions category and the emission standards serving as the basis for calculating the malfunction thresholds are not identical. Tier 2 Bin 4 NMOG standard of 0.07 g/mi, and NO_X standard of 0.04 g/mi and CO standard of 2.1 g/mi, has no corresponding CARB LEV II Program' emissions category. This Tier 2 bin falls between the CARB LEV II Program LEV II emissions category (0.09 g/mi NMOG, NO_X standard of 0.07 g/mi and CO standard of 2.1 g/mi) and the ULEV II emissions category (0.055 g/mi NMOG, 0.07 g/mi NO_X, 2.1 g/mi CO). Using the NMOG

[1] There is one instance where an EPA Tier 2 bin does not have a corresponding CARB LEV II emissions category, (bin 4), and two other instances concerning OBD where the EPA and CARB emission standards for individual criteria pollutants are not identical: The NOx standard for Tier 2 Bin 3 and the CO standards for Tier 2 Bin 2.

criteria pollutant as an example, the table below highlights this dilemma (all numbers in grams per mile):

Federal Tier 2 bin number	Tier 2 Full Useful Life NMOG emission standards	Federal OBD NMOG threshold	CARB OBD II NMOG threshold	California LEV II Full Useful Life NMOG emission standards	California LEV II emissions category
5	0.09	0.1575	0.1575	0.09	LEV II.
4	0.07	0.1225			
3	0.055	0.09625	0.09625	0.055	ULEVII.

Therefore, we are clarifying in this final rule the method and the appropriate malfunction threshold values for a vehicle or engine certified to Tier 2 Bin 4 but optionally complying with CARB OBD II which is to use the Tier 2 Bin 4 emission standards and the CARB ULEV II multiplicative factors for all pollutants except NO_X, (*e.g.*, 1.75 times the standard for NMOG, CO and PM catalyst monitoring, 1.5 times the standard for all other monitors except comprehensive components) and the SULEV II multiplicative emission factors for NO_X (*e.g.* for LDVs, 3.5 times the NO_X emission standard for model years 2005 and 2006 and 2.5 times the NO_X emission standard for model year 2007 and beyond for catalyst monitoring; 2.5 times the emission standard for all other NO_X monitors except comprehensive components) to determine the appropriate OBD malfunction threshold.

In addition, there are two instances where the EPA Tier 2 and CARB LEV II emission standards for individual criteria pollutants are not identical: The NO_X standard for Tier 2 Bin 3, which is 0.03 g/mi, compared the 0.07 g/mi standard for ULEVs, and the CO standard for Tier 2 Bin 2, which is 2.1 g/mile, compared to 1.0 g/mile for SULEVs.

To resolve these issues, vehicles certified to Tier 2, Bin 3 emissions standards shall utilize the Tier 2 Bin 3 NO_X emission standards and the CARB SULEV II multiplicative factors to determine the appropriate OBD malfunction threshold. Vehicles certified to Tier 2, Bin 2 emissions standards shall utilize the Tier 2 Bin 2 CO emission standards and the CARB SULEV II multiplicative factors to determine the appropriate OBD malfunction threshold. For vehicles certified to federal bin 7 and higher, manufacturers must use the multipliers for Cal LEV II vehicles and the federal standards to determine their thresholds.

IV. Other Issues Raised by Industry During the Comment Period

A. Production Vehicle Testing

The Alliance and AIAM commented that the CARB OBDII regulations require manufacturers to conduct production vehicle testing. The Alliance and AIAM requested that EPA clarify that production vehicle testing would not be required on federal vehicles certified to the CARB OBDII regulations. As an alternative, vehicle manufacturers said they would provide EPA copies of the final production vehicle evaluation reports that are provided to CARB as part of their certification process.

EPA agrees with the Alliance and AIAM comments that federal OBD regulations do not explicitly require manufacturers to conduct production vehicle testing. However, manufacturers who intend to meet the Federal OBD requirements by meeting the CARB OBDII requirements may be required to submit the same information that is submitted to CARB in order for EPA to make its own determinations of compliance. As a result, although EPA will not require the manufacturers to conduct production vehicle testing, the EPA may use the reports from the production vehicle testing program to assess in-use compliance. This is consistent with EPA policy to use all available information from the field to assess in-use compliance, of which the manufacturers are aware.

B. Enforcement

The Alliance and AIAM requested that EPA clarify that the new enforcement provisions finalized in the CARB OBDII regulations (section 1968.5) are not being adopted by EPA and that EPA will continue to conduct independent evaluations before determining enforcement actions.

EPA agrees with the Alliance and AIAM that our Direct Final Rule did not adopt the enforcement provisions enacted by CARB. EPA has no current intent to adopt such provisions. We will continue to conduct our own independent assessments and evaluations of manufacturer compliance before pursuing enforcement actions. However, EPA will continue to use all available information, including, but not limited to, any information collected by CARB in making our compliance and enforcement determinations.

C. Referencing the Final Version of CARB's OBD II Regulations in Title 13 California Code of Regulations 1968.2 (13 CCR 1968.2)

The Alliance and AIAM requested that EPA reference the final version of CARB's OBD II regulations contained in Title 13 California Code of Regulations 1968.2 (13 CCR 1968.2) under paragraph (j) of the Federal OBD regulations allowing optional compliance with CARB OBD II requirements. The final version of CARB's OBD II Regulations Title 13 California Code of Regulations 1968.2 (13 CCR 1968.2) was approved by the California Office of Administrative Law (OAL) and filed with the California Secretary of State on April 23, 2003.

The EPA agrees with this recommendation and will reference CARB?s OBD II Regulations Title 13 California Code of Regulations 1968.2 (13 CCR 1968.2) (April 23, 2003) in paragraph (j) of the Federal OBD regulations in this regulatory action.

V. Cost Effectiveness

The purpose of this rulemaking is to clarify existing provisions of EPA's OBD regulations. As a result, there are no cost effectiveness issues for this action.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a ''significant regulatory action'' as any regulatory action 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.

Pursuant to the terms of Executive Order 12866, we have determined that this rule is not a ''significant regulatory action.''

B. Paperwork Reduction Act

Today's action does not impose any new information collection burden. The modifications noted above do not change the information collection requirements submitted to and approved by OMB in association with the OBD final rulemakings (58 FR 9468, February 19, 1993; and 59 FR 38372, July 28, 1994 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (64 FR 23906) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0104, EPA ICR number 0783.47. A copy of the OMB approved Information Collection Requests (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare an initial regulatory flexibility analysis of any proposed 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 today's final rule on small entities, small entity is defined as: (1) Those businesses meeting the definition provided by the Small Business Administration (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.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Today's action provides clarification and correct reference information and does not add new regulatory burden on small entities. Periodically EPA must update its regulations to incorporate by reference any new applicable communication protocols (including those set forth by the SAE and the ISO) to be used by the OBD system. EPA had unnecessarily deleted the allowance of a certain SAE protocol for 2007 and later model year heavy-duty vehicles in a previous rulemaking and by today's final rule that protocol is placed back into the regulation.

Second, the phase-in of the new OBD II regulations in California is tied to a phase in of their new emission standards called LEV II (the second round of low-emission vehicle standards) that commence in the 2004 model year. EPA's Tier 2 emission standards (that also commences in 2004) are phased in with a similar schedule as LEV II and therefore, based on manufacturers' request, we are clarifying that those manufacturers that choose to optionally certify their federal vehicles to CARB's OBD II regulations may do so based on the same phase-in of OBD II as allowed within California. However, because in a very few instances the emission standard levels of LEV II and Tier 2 do not completely match, we are also clarifying within the regulations what emission malfunction thresholds and emission levels apply to federal vehicles certified as meeting the OBD II regulations.

We are also adding reference to the final CARB ''Mail-out'' number for CARB's OBD II regulation as finalized. In addition, we have added clarification of whether EPA was adopting some of CARB's ancillary OBD II regulations such as the testing requirements on production vehicles and CARB's unique in-use testing and enforcement requirements. By today's action we are clarifying that EPA did not adopt such requirements by the direct final rule and is not otherwise doing so.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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, we 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 for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and

timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nor does this rule have any Federal mandates that may result in the expenditures of $100 million or more in any year by the private sector as also defined by the provisions of Title II of the UMRA. Nothing in the rule will significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires us 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 the various levels of government''.

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or we consult with state and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (i.e., the rules 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 the various levels of government). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the agency's area of regulatory responsibility.

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 the various levels of government, as specified in Executive Order 13132. This rule updates provisions of an earlier rule that adopted national standards relating to OBD systems and the ability of manufacturers to demonstrate Federal compliance based on demonstration of compliance with California OBD II regulations. The requirements of the rule will be enforced by the Federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 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. Today's rule would not uniquely affect the communities of American Indian tribal governments since the motor vehicle fuel and other related requirements for private businesses in today's rule have national applicability. Furthermore, today's rule does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document.

This rule does not significantly or uniquely affect the communities of Indian tribal governments. As noted above, this rule will be implemented at the Federal level and imposes compliance obligations and options on private industry. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045, ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) 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 we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Executive Order directs us to 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 us.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it is based on technology performance and not on health or safety risks.

H. 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 under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d) of Public Law 104–113, directs us to use voluntary consensus standards in our regulatory activities unless it 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) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This final rule references technical standards adopted by us through previous rulemakings. Specifically, this rule references technical standards developed by the Society of Automotive Engineers (SAE) and the International

Standards Organization (ISO) related to the design and function of On-Board Diagnostic (OBD) systems on motor vehicles and engines below 14,000 pounds gross vehice weight rating, for which today's action applies. No new technical standards are established in today's rule.

Statutory and Legal Authority

Statutory authority for today's final rule comes from the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in particular, section 202(m) of the Act (42 U.S.C. 7521(m)).

List of Subjects in 40 CFR Part 86

Environmental Protection, Incorporation by reference, Administrative practice and procedure, Motor vehicle pollution, On-board diagnostics.

Dated: November 29, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, part 86 of title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Section 86.005–17 is amended by adding paragraph (h)(3) and revising paragraph (j) to read as follows:

* * * * *

§ 86.005–17 On-board diagnostics.

* * * * *

(h) * * *

(3) Beginning with the 2008 model year and beyond, ISO 15765–4.3:2001 ''Road Vehicles-Diagnostics on Controller Area Network (CAN)—Part 4: Requirements for emission-related systems'', (December 14, 2001) shall be the only acceptable protocol used for standardized on-board to off-board communications for vehicles below 8500 pounds. For vehicles 8500 to 14000 pounds ISO 15765–4.3 or the SAE J1939 series of standards (SAE J1939–11, J1939–13, J1939–21, J1939–31, J1939–71, J1939–73, J1939–81). All other standardized on-board to off-board communications protocols: SAE J1850 ''Class B Data Communication Network Interface,'' (Revised, May 2001) in (h)(1)(i), ISO 9141–2 ''Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information,'' (February 1, 1994) in (h)(2)(i), and ISO 14230–4 ''Road vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems'', (June 1, 2000) in paragraph (h)(2)(ii) of this section will at that time no longer be accepted.

* * * * *

(j) *California OBDII compliance option.* For heavy-duty engines weighing 14,000 pounds GVWR or less, demonstration of compliance with California OBD II requirements (Title 13 California Code of Regulations § 1968.2 (13 CCR 1968.2)), as modified, approved and filed on April 21, 2003, shall satisfy the requirements of this section, except that compliance with 13 CCR 1968.2(e)(4.2.2)(C), pertaining to 0.02 inch evaporative leak detection, and 13 CCR 1968.2(d)(1.4), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency provisions of 13 CCR 1968.2(i) do not apply. The deficiency provisions of paragraph (i) of this section and the evaporative leak detection requirement of paragraph (b)(4) of this section apply to manufacturers selecting this paragraph for demonstrating compliance. In addition, demonstration of compliance with 13 CCR 1968.2(e)(16.2.1)(C), to the extent it applies to the verification of proper alignment between the camshaft and crankshaft, applies only to vehicles equipped with variable valve timing.

* * * * *

■ 3. Section 86.1806–04 is amended by revising paragraph (j) and adding paragraph (l) to read as follows:

§ 86.1806–04 On-board diagnostics.

* * * * *

(j) *California OBDII compliance option.* For heavy-duty engines weighing 14,000 pounds GVWR or less, demonstration of compliance with California OBD II requirements (Title 13 California Code of Regulations § 1968.2 (13 CCR 1968.2)), as modified, approved and filed on April 21, 2003, shall satisfy the requirements of this section, except that compliance with 13 CCR 1968.2(e)(4.2.2)(C), pertaining to 0.02 inch evaporative leak detection, and 13 CCR 1968.2(d)(1.4), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency provisions of 13 CCR 1968.2(i) do not apply. The deficiency provisions of paragraph (i) of this section and the evaporative leak detection requirement of paragraph (b)(4) of this section apply to manufacturers selecting this paragraph for demonstrating compliance. In addition, demonstration of compliance with 13 CCR 1968.2(e)(16.2.1)(C), to the extent it applies to the verification of proper alignment between the camshaft and crankshaft, applies only to vehicles equipped with variable valve timing.

* * * * *

(l) *Thresholds for California OBD II Compliance Option.* For the purposes of complying with the provisions set forth above in paragraph (j), vehicles certified to Tier 2 standards shall utilize multiplicative factors from the California vehicle type (i.e. LEV II, ULEV II) corresponding to the Tier 2 to which the vehicles are certified. Vehicles certified to Tier 2, Bin 4 emissions standards shall utilize the Tier 2 Bin 4 emission standards and the CARB ULEV II multiplicative factors to determine the appropriate OBD malfunction threshold for all pollutants except NO_X, for which they shall utilize that CARB SULEV II multiplicative factors. Vehicles certified to Tier 2, Bin 3 emissions standards shall utilize the Tier 2 Bin 3 emission standards and the CARB ULEV II multiplicative factors to determine the appropriate OBD malfunction threshold for all pollutants except NO_X, for which they shall utilize that CARB SULEV II multiplicative factors. Vehicles certified to Tier 2, Bin 2 emissions standards shall utilize the Tier 2 Bin 2 emission standards and the CARB SULEV II multiplicative factors to determine the appropriate OBD malfunction threshold. Vehicles certified to Tier 2 Bin 7 or higher shall utilize the CARB LEV II multiplicative factors to determine the appropriate OBD malfunction threshold.

* * * * *

■ 4. Section 86.1806–05 is amended by adding paragraphs (h)(3) and (m) and revising paragraph (j) to read as follows:

§ 86.1806–05 On-board diagnostics.

* * * * *

(h) * * *

(3) Beginning with the 2008 model year and beyond, ISO 15765–4.3: 2001 ''Road Vehicles-Diagnostics on Controller Area Network (CAN)—Part 4: Requirements for emission-related systems'', (December 14, 2001) shall be the only acceptable protocol used for standardized on-board to off-board communications for vehicles below 8500 pounds. For vehicles 8500 to 14000 pounds ISO 15765–4.3 or the SAE J1939 series of standards (SAE J1939–11, J1939–13, J1939–21, J1939–31, J1939–71, J1939–73, J1939–81). All other standardized on-board to off-board communications protocols: SAE J1850 ''Class B Data Communication Network Interface,'' (Revised, May 2001) in paragraph (h)(1)(i), ISO 9141–2 ''Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information,'' (February 1, 1994)

in (h)(2)(i), and ISO 14230–4 ''Road vehicles—Diagnostic systems—KWP 2000 requirements for Emission-related systems'', (June 1, 2000) in paragraph (h)(2)(ii) of this section will at that time no longer be accepted

* * * * *

(j) *California OBDII compliance option.* For heavy-duty engines weighing 14,000 pounds GVWR or less, demonstration of compliance with California OBD II requirements (Title 13 California Code of Regulations 1968.2 (13 CCR 1968.2)), as modified, approved and filed on April 21, 2003, shall satisfy the requirements of this section, except that compliance with 13 CCR 1968.2(e)(4.2.2)(C), pertaining to 0.02 inch evaporative leak detection, and 13 CCR 1968.2(d)(1.4), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency provisions of 13 CCR 1968.2(i) do not apply. The deficiency provisions of paragraph (i) of this section and the evaporative leak detection requirement of paragraph (b)(4) of this section apply to manufacturers selecting this paragraph for demonstrating compliance. In addition, demonstration of compliance with 13 CCR 1968.2(e)(16.2.1)(C), to the extent it applies to the verification of proper alignment between the camshaft and crankshaft, applies only to vehicles equipped with variable valve timing.

* * * * *

(m) *Thresholds for California OBD II Compliance Option.* For the purposes of complying with the provisions set forth above in paragraph (j), vehicles certified to Tier 2 standards shall utilize multiplicative factors from the California vehicle type (i.e. LEV II, ULEV II) corresponding to the Tier 2 to which the vehicles are certified. Vehicles certified to Tier 2, Bin 4 emissions standards shall utilize the Tier 2 Bin 4 emission standards and the CARB ULEV II multiplicative factors to determine the appropriate OBD malfunction threshold for all pollutants except NO_X, for which they shall utilize that CARB SULEV II multiplicative factors. Vehicles certified to Tier 2, Bin 3 emissions standards shall utilize the Tier 2 Bin 3 emission standards and the CARB ULEV II multiplicative factors to determine the appropriate OBD malfunction threshold for all pollutants except NO_X, for which they shall utilize that CARB SULEV II multiplicative factors. Vehicles certified to Tier 2, Bin 2 emissions standards shall utilize the Tier 2 Bin 2 emission standards and the CARB SULEV II multiplicative factors to determine the appropriate OBD malfunction threshold. Vehicles certified to Tier 2 Bin 7 or higher shall utilize the CARB LEV II multiplicative factors to determine the appropriate OBD malfunction threshold.

[FR Doc. 05–23669 Filed 12–19–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Chapter 2

Defense Federal Acquisition Regulation Supplement; Technical Amendment

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is revising the name of 48 CFR Chapter 2 from ''Department of Defense'' to ''Defense Acquisition Regulations System, Department of Defense.'' This change will facilitate the Government's implementation of the Federal Document Management System, as it will permit the DoD regulations issued under 48 CFR Chapter 2 to be indexed separately from other DoD regulations.

DATES: *Effective Date:* December 30, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

List of Subjects in 48 CFR Chapter 2

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, under the authority of 41 U.S.C. 421 and 48 CFR Chapter 1, 48 CFR Chapter 2 is amended by revising the name of the chapter to read ''Defense Acquisition Regulations System, Department of Defense'.

[FR Doc. 05–24220 Filed 12–19–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 201 and 213

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to add references to DoD guidance on contracting officers' representatives and DoD purchase, travel, and fuel card programs.

DATES: *Effective Date:* December 20, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350.

List of Subjects in 48 CFR Parts 201 and 213

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 201 and 213 are amended as follows:

■ 1. The authority citation for 48 CFR parts 201 and 213 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Section 201.602–2 is amended by revising the introductory text to read as follows:

201.602–2 Responsibilities.

Contracting officers may designate qualified personnel as their authorized representatives to assist in the technical monitoring or administration of a contract. Follow the procedures at PGI 201.602–2. A contracting officer's representative (COR)—

* * * * *

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

■ 3. Section 213.301 is amended by adding paragraph (4) to read as follows:

213.301 Governmentwide commercial purchase card.

* * * * *

(4) Guidance on DoD purchase, travel, and fuel card programs is available at *http://www.acq.osd.mil/dpap/pcard/pcardguidebook.htm.* Additional guidance on the fuel card program is available at *http://www.desc.dla.mil.*

[FR Doc. 05–24221 Filed 12–19–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 232

[DFARS Case 2003–D043]

Defense Federal Acquisition Regulation Supplement; Contract Financing

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to contract financing. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

EFFECTIVE DATE: December 20, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Sain, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0293; facsimile (703) 602–0350. Please cite DFARS Case 2003–D043.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm.*

This final rule is a result of the DFARS Transformation initiative. The DFARS changes include—

- Relocation of text addressing general contract financing payment issues from 232.906 to 232.007.
- Deletion of unnecessary text at 232.071 on the composition and responsibilities of the DoD Contract Finance Committee, and deletion of references to the Committee at 232.070(a) and 232.617(a).
- Deletion of text at 232.108 on financial consultation, and deletion of text at 232.207 on specifying amounts to be charged to foreign military sales accounts in approvals of financing requests. These issues are adequately addressed in the FAR.
- Deletion of text at 232.206(d) on instructions for distribution of financing payments to multiple appropriations accounts. Guidance on this subject is now included in section 204.7108 of the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi.*
- Amendment of 232.404(a)(9) to increase, from $500 to $2,500, the dollar value at or below which the requirements of FAR Subpart 32.4, Advance Payments for Non-Commercial Items, do not apply to high school and college publications for military recruitment efforts.
- Clarification of text at 232.501–3(b) on limitation of the Government's liability when the contract price exceeds the funds obligated under the contract.
- Deletion of unnecessary text at 232.605(b) regarding integrated accounting at DoD installations.
- Relocation of text on payment due dates, from 232.905(1) and (2), to 232.904 and 232.906, respectively.
- Deletion of unnecessary text at 232.905(f)(6) on electronic notification to the payment office of Government acceptance and approval. Electronic submission and processing of payment requests is addressed in Subpart 232.70.
- Addition of text at 232.906(a)(i) to address the requirement for contracting officers to insert the standard due date for interim payments on cost-reimbursement contracts for services.
- Deletion of unnecessary text at 232.1007 on specifying amounts to be charged to foreign military sales accounts.
- Deletion of text at 232.1108 on mandatory use of the Governmentwide commercial purchase card. This issue is addressed in 213.270.
- Deletion of informational and procedural text at 232.070(c), 232.409–1, 232.410, 232.501–2, 232.606, 232.610, 232.670, and 232.671. This text has been relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at *http://www.acq.osd.mil/dpap/dars/pgi.*

DoD published a proposed rule at 70 FR 23827 on May 5, 2005. No comments were received in response to the proposed rule. DoD has adopted the proposed rule as a final rule, with minor editorial changes at 232.007(a) and 232.906(a)(ii).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule updates, streamlines, and clarifies DFARS text, but makes no significant change to DoD contract financing policy.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 232

Government procurement.

Michele P. Peterson,
Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 232 is amended as follows:

■ 1. The authority citation for 48 CFR part 232 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

■ 2. Section 232.007 is added to read as follows:

232.007 Contract financing payments.

(a) DoD policy is to make contract financing payments as quickly as possible. Generally, the contracting officer shall insert the standard due dates of 7 days for progress payments, and 14 days for performance-based payments and interim payments on cost-type contracts, in the appropriate paragraphs of the respective payment clauses. For interim payments on cost-reimbursement contracts for services, see 232.906(a)(i).

(b) The contracting officer should coordinate contract financing payment terms with offices that will be involved in the payment process to ensure that specified terms can be met. Where justified, the contracting officer may insert a due date greater than, but not less than, the standard. In determining payment terms, consider—

(i) Geographical separation;

(ii) Workload;

(iii) Contractor ability to submit a proper request; and

(iv) Other factors that could affect timing of payment.

■ 3. Section 232.070 is amended by revising paragraphs (a) and (c) to read as follows:

232.070 Responsibilities.

(a) The Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)DPAP) is responsible for ensuring uniform administration of DoD contract financing, including DoD contract financing policies and important related procedures. Agency discretion under FAR part 32 is at the DoD level and is not delegated to the departments and agencies. Proposals by the departments and agencies, to exercise agency discretion, shall be submitted to OUSD(AT&L)DPAP.

* * * * *

(c) See PGI 232.070(c) for information on department/agency contract financing offices.

232.071 [Removed and Reserved]

■ 4. Section 232.071 is removed and reserved.

232.108 [Removed]

■ 5. Section 232.108 is removed.

232.206 [Amended]

■ 6. Section 232.206 is amended by removing paragraph (d).

232.207 [Removed]

■ 7. Section 232.207 is removed.

■ 8. The heading of Subpart 232.4 is revised to read as follows:

Subpart 232.4—Advance Payments for Non-Commercial Items

232.404 [Amended]

■ 9. Section 232.404 is amended in paragraph (a)(9) by removing ''$500'' and adding in its place ''$2,500''.

■ 10. Section 232.409–1 is revised to read as follows:

232.409–1 Recommendation for approval.

Follow the procedures at PGI 232.409–1 for preparation of the documents required by FAR 32.409–1(e) and (f).

■ 11. Section 232.410 is revised to read as follows:

232.410 Findings, determination, and authorization.

If an advance payment procedure is used without a special bank account, follow the procedures at PGI 232.410.

■ 12. Section 232.501–2 is revised to read as follows:

232.501–2 Unusual progress payments.

Follow the procedures at PGI 232.501–2 for approval of unusual progress payments.

■ 13. Section 232.501–3 is amended by revising paragraph (b) introductory text to read as follows:

232.501–3 Contract price.

(b) The contracting officer may approve progress payments when the contract price exceeds the funds obligated under the contract, provided the contract limits the Government's liability to the lesser of—

* * * * *

232.503–15 [Amended]

■ 14. Section 232.503–15 is amended in paragraph (d) introductory text, in the first sentence, by removing ''252.242–7004(f)(7)'' and adding in its place ''252.242–7004(e)(7)''.

232.605 [Amended]

■ 15. Section 232.605 is amended in paragraph (b) by removing the second sentence.

■ 16. Section 232.606 is revised to read as follows:

232.606 Debt determination and collection.

When transferring a case to the contract financing office, follow the procedures at PGI 232.606.

■ 17. Section 232.610 is revised to read as follows:

232.610 Demand for payment of contract debt.

When issuing a demand for payment of a contract debt, follow the procedures at PGI 232.610.

232.616 [Amended]

■ 18. Section 232.616 is amended by removing ''(232.108(1))'' and adding in its place ''(see 232.070(c))''.

■ 19. Section 232.617 is revised to read as follows:

232.617 Contract clause.

(a) The Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), may exempt the contracts in FAR 32.617(a)(2) through (5) and other contracts, in exceptional circumstances, from the administrative interest charges required by this subpart.

(7) Other exceptions are—

(A) Contracts for instructions of military or ROTC personnel at civilian schools, colleges, and universities;

(B) Basic agreements with telephone companies for communications services and facilities, and purchases under such agreements; and

(C) Transportation contracts with common carriers for common carrier services.

■ 20. Section 232.670 is revised to read as follows:

232.670 Transfer of responsibility for debt collection.

Follow the procedures at PGI 232.670 for transferring responsibility for debt collection.

■ 21. Section 232.671 is revised to read as follows:

232.671 Bankruptcy reporting.

Follow the procedures at PGI 232.671 for bankruptcy reporting.

■ 22. Section 232.903 is revised to read as follows:

232.903 Responsibilities.

DoD policy is to assist small disadvantaged business concerns by paying them as quickly as possible after invoices are received and before normal payment due dates established in the contract (see 232.906(a)).

■ 23. Section 232.904 is added to read as follows:

232.904 Determining payment due dates.

(d) In most cases, Government acceptance or approval can occur within the 7-day constructive acceptance period specified in the FAR Prompt Payment clauses. Government payment of construction progress payments can, in most cases, be made within the 14-day period allowed by the Prompt Payment for Construction Contracts clause. While the contracting officer may specify a longer period because the period specified in the contract is not reasonable or practical, such change should be coordinated with the Government offices responsible for acceptance or approval and for payment. Reasons for specifying a longer period include but are not limited to: the nature of the work or supplies or services, inspection or testing requirements, shipping and acceptance terms, and resources available at the acceptance activity. A constructive acceptance period of less than the cited 7 or 14 days is not authorized.

232.905 [Removed]

■ 24. Section 232.905 is removed.

■ 25. Section 232.906 is revised to read as follows:

232.906 Making payments.

(a)(i) Generally, the contracting officer shall insert the standard due date of 14 days for interim payments on cost-reimbursement contracts for services in the clause at FAR 52.232–25, Prompt Payment, when using the clause with its Alternate I.

(ii) The restrictions of FAR 32.906 prohibiting early payment do not apply

to invoice payments made to small disadvantaged business concerns. However, contractors shall not be entitled to interest penalties if the Government fails to make early payment.

232.1007 and 232.1108 [Removed]

26. Sections 232.1007 and 232.1108 are removed.

[FR Doc. 05–24218 Filed 12–19–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA–2005–20680, Notice No. 2]

RIN 2130–AB65

Revision of Method for Calculating Monetary Threshold for Reporting Rail Equipment Accidents/Incidents; Announcement of Reporting Threshold for Calendar Year 2006

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is amending a portion of the accident reporting regulations. Specifically, FRA is amending the method for calculating the monetary threshold for reporting rail equipment accidents/incidents. The amendment is necessary because, in 2001, the Bureau of Labor Statistics (BLS) ceased collecting and publishing railroad wage data used by FRA in the calculation. Consequently, FRA has had to seek a new source of publicly-available data. In the new formula, FRA uses wage data collected and maintained by the Surface Transportation Board (STB) in place of the unavailable BLS wage data. As equipment data remain available from the BLS, there is no change to the source of the equipment component of the reporting threshold. The purpose of the rule is to ensure and maintain comparability between different years of accident data by having the threshold keep pace with any increases or decreases in equipment and labor costs so that each year accidents involving the same minimum amount of railroad property damage are included in the reportable accident counts.

In addition, FRA is using the newly established formula to calculate a new accident/incident monetary reporting threshold for calendar year 2006. This final rule increases the monetary threshold for reporting rail equipment accidents/incidents from $6,700 to $7,700, and applies to accidents and incidents involving railroad property damage that occur on or after January 1, 2006.

DATES: *Effective Date:* This final rule is effective January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Arnel Rivera, Staff Director, Systems Support Division, RRS–22, Mail Stop 17, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–1331) or Roberta Stewart, Trial Attorney, Office of Chief Counsel, RCC–12, Mail Stop 10, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–6027).

SUPPLEMENTARY INFORMATION:

Background

FRA published a Notice of Proposed Rulemaking (NPRM) on April 19, 2005 (70 FR 20333), proposing to amend the formula for calculating the rail equipment accident/incident monetary reporting threshold, and requested comments. The NPRM proposed to substitute railroad employee wage data collected by the STB for obsolete BLS data that is no longer collected. This final rule adopts the proposed formula, and establishes a new monetary threshold for calendar year 2006.

A ''rail equipment accident/incident'' is a collision, derailment, fire, explosion, act of God, or other event involving the operation of railroad on-track equipment (standing or moving) that causes reportable damages greater than the reporting threshold for the year in which the event occurs to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and materials. 49 CFR 225.19(c). Each rail equipment accident/incident must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). 49 CFR 225.19(b) and (c). As revised, effective in 1997, paragraphs (c) and (e) of 49 CFR 225.19 provide that the dollar figure that constitutes the reporting threshold for rail equipment accidents/incidents will be adjusted, if necessary, every year in accordance with the procedures outlined in appendix B to part 225, to reflect any cost increases or decreases. 61 FR 30942, 30969 (June 18, 1996); 61 FR 60632, 60634 (Nov. 29, 1996); 61 FR 67477, 67490 (Dec. 23, 1996).

FRA has periodically adjusted the reporting threshold based on the prices of a market basket of railroad labor and materials. The purpose of these adjustments has been to maintain the comparability between different years of data by having the threshold keep pace with equipment and labor costs so that each year the equivalent group of accidents is included in the reportable accident counts.

Approximately three years have passed since the rail equipment accident/incident reporting threshold was last reviewed and revised. 67 FR 79533 (Dec. 30, 2002). At that time, FRA published an interim final rule carrying over the $6,700 threshold from calendar year 2002 to 2003 and subsequent years until adoption of a new threshold. 49 CFR 225.19(c). FRA last revised the monetary threshold formula in 1996. 61 FR 30940 (June 18, 1996); 61 FR 60632 (November 29, 1996). The calendar year 2002 threshold has been retained because the BLS ceased publishing certain data required to compute the wage component of the calculation, *i.e.*, the average hourly earnings of production workers for Class I railroads and the National Railroad Passenger Corporation (Amtrak), due to inadequate sampling data. Specifically, the Class I railroads and Amtrak did not provide the monthly hours and earnings data for production workers that BLS needed to publish these numbers for calendar year 2002. BLS did not foresee a better response rate in future years and, as a result, changed its methodology and the information that it publishes. Therefore, it was not possible for FRA to calculate a new threshold for calendar years 2003 and beyond based on the existing formula.

Congress has given FRA some direction for modifying the procedure for calculating the threshold in 49 U.S.C. 20901(b): ''[i]n establishing or changing a monetary threshold for the reporting of a railroad accident or incident, * * * damage cost calculations'' shall be based ''only on publicly available information obtained from (A) the Bureau of Labor Statistics; or (B) another department, agency or instrumentality of the United States Government if the information has been collected through objective, statistically sound survey methods or has been previously subject to a public notice and comment process in a proceeding of a Government department, agency or instrumentality.'' Congress allows an exception to this general rule only if the necessary data are not available from the sources described, and only after public notice and comment.

Pursuant to this 1992 direction from Congress, FRA issued an NPRM earlier this year proposing a new method for calculation of the monetary reporting threshold. 70 FR 20333 (April 19, 2005).

Proposal

Currently, the accident/incident reporting threshold adjustment is calculated utilizing two components. The first component is the average hourly earnings for Class I railroads and Amtrak workers. BLS was collecting these data and reporting them under LABSTAT Series Report, Standard Industrial Code (SIC) 4011 for Class I Railroad Average Hourly Earnings, Series ID EEU41401106, Not Seasonally Adjusted. These data are no longer available from BLS.

In order to update the reporting threshold, FRA has searched for a new source of the wage component used in the reporting threshold formula. FRA found that railroads report wage data to the STB, and proposed to use these data as an alternative to the obsolete BLS data. The Class I railroads and Amtrak report hours of service and compensation data quarterly to the STB, on Form A—STB Wage Statistics. Form A organizes hours of service and compensation by five reporting groups: Executives, Officials, and Staff Assistants (Group No. 100); Professional and Administrative (Group No. 200); Maintenance of Way and Structures (Group No. 300); Maintenance of Equipment and Stores (Group No. 400); and Transportation, other than train and engine (Group No. 500). By dividing the compensation by the corresponding hours of service, the wage rate for any reporting group can be found. In the NPRM, FRA proposed to use the average wage rate of reporting Groups No. 300 and 400 as a substitute for BLS wage data.

FRA believes that the STB wage data are a suitable substitute for several reasons. Most significantly, the data directly measure the wages for the two groups of employees whose skills are most used in repairing or replacing damaged railroad equipment. In contrast, BLS wage data were a broader measure of all Class I railroad and Amtrak employee wages. Alternative BLS wage data currently available also provide only broad measures. STB data are, additionally, consistent with Congressional requirements set forth in 49 U.S.C. 20901(b). The STB data are publicly available, although currently only in paper hardcopy, and the information is statistically sound. STB data are derived from a process that is virtually a census of Class I railroads and Amtrak (though the occasional railroad may be late in reporting) and should therefore represent a more accurate and statistically valid account of railroad wages than the BLS wage data.

To further ascertain the suitability of STB wage data as a substitute for unavailable BLS wage data, FRA recalculated the 1997 to 2002 reporting thresholds using STB data. This a posteriori comparison of STB- and BLS-based thresholds showed STB data are a reasonable substitute. The analysis also showed that weighting the wage component by 40% and the equipment component by 60%, rather than the 50/50 current weights, produced a threshold that better approximated the existing threshold. The STB-based threshold, however, does increase at a faster rate than the BLS-based threshold. With 40/60 weights on wages and equipment, the new reporting threshold formula changes to:

$$Tnew = Tprior * [1 + 0.4(Wnew - Wprior)/Wprior + 0.6(Enew - Eprior)/100]$$

where the broad definitions of the variables remain the same as before but the underlying definitions of ''Wnew'' and ''Wprior'' are revised to reflect the use of STB wage data.

In applying this new formula to periodically update the reporting threshold, FRA proposed using the latest data that would be available when the threshold is updated, instead of an average based on yearly data. As the threshold is typically calculated in the second half of the calendar year, and STB wage data are due 30 days after the close of a quarter, the latest STB data available will be second-quarter data. The calculation for the 2006 threshold will use the second-quarter 2005 wage data from the STB. For equipment costs, FRA is continuing to use the corresponding BLS railroad equipment index in the equation. As the equipment index is reported monthly rather than quarterly, the average for the months of April, May, and June will be inputted into the threshold calculation. The newly calculated threshold reflects the changes in wages and equipment from the last time the threshold was updated to the present.

As proposed in the NPRM, the procedure for adjusting the threshold is shown in the formula below. Additionally, the NPRM proposed that the weights in the threshold formula be adjusted from 50% on wages and 50% on equipment, to 40% on wages and 60% on equipment. It was found that the 40/60 weights produced a better approximation of the original accident threshold when the threshold was calculated using STB wage data.

New Formula

$$Tnew = Tprior * [1 + 0.4(Wnew - Wprior)/Wprior + 0.6(Enew - Eprior)/100]$$

Where:

Tnew = New threshold.

Tprior = Prior threshold. With reference to the threshold, ''prior'' refers to the previous threshold rounded to the nearest $100, as reported in the **Federal Register**.

Wnew = New average hourly wage rate, in dollars.

Wprior = Prior average hourly wage rate, in dollars.

Enew = New equipment average PPI value.

Eprior = Prior equipment average PPI value.

With reference to wages and equipment, ''prior'' refers to the previous wage and equipment averages used to calculate the prior threshold, Tprior. ''Prior'' does not necessarily refer to the wage and equipment averages for the immediately preceding year (although it may if the threshold is calculated annually). In calculating the threshold, the goal is to capture the change between the old wage and equipment prices and the new prices for these inputs.

New Reporting Threshold for Calendar Year 2006

The equation used to calculate the reporting threshold measures the changes in railroad wages and equipment costs over a period of time, and updates the previous reporting threshold by these amounts. The values for Wprior and Eprior are those that were used to calculate the 2002–2005 monetary reporting threshold.

The value for Wnew is derived from STB wage data collected on Form A—STB Wage Statistics. Railroads report earnings to the STB quarterly on this form. FRA uses second-quarter data reported for the Maintenance of Way and Structures Group (Group No. 300), and the Maintenance of Equipment and Stores Group (Group No. 400). A wage rate is calculated by dividing the compensation paid to employees in these groups by their corresponding service hours, using the ''Time Worked and Paid for at Straight Times Rates'' category. The wage rates for these two groups are averaged to produce a composite wage, which is then weighted by 40% in the threshold calculation.

The value for Enew is derived from BLS equipment index numbers that are used to measure changes in equipment costs. The equipment index is reported under LABSTAT Series Report, Producer Price Index (PPI) for Commodities, Series ID WPU144 for Railroad Equipment. As the index numbers are reported monthly, the index numbers for the months of April, May, and June are averaged to produce

a second-quarter equipment index number. The index numbers are divided by 100 to place them in the same decimal form as the wage rates.

Thus, the specific inputs to the equation are:

Tprior	Wnew	Wprior	Enew	Eprior
$6700	$21.05563	$20.61668	160.16667	135.6000

Using the above figures, the calculated Tnew, new threshold, is $7,744.64, which is rounded to the nearest $100 for a final new reporting threshold of $7,700. The new threshold is $1,000 more than the previous threshold, which had been last calculated for CY 2002. The equipment cost component of the reporting threshold increased the most, rising from about 136 to 160.

Appendix B is revised to show the new procedure and formula used by FRA for determining the reporting threshold. Additionally, § 225.19(e) is amended to reflect that the accident reporting threshold for calendar year 2006 is $7,700. Consistent with § 225.19(c), this reporting threshold will be adjusted annually.

Comments

No comments were received in response to the NPRM.

Notice and Comment Issues

In this final rule, FRA is taking two steps. First, FRA is revising the method for calculating the reporting threshold and adopting a new formula, after notice and comment. Second, FRA is using that new formula to calculate the monetary reporting threshold for calendar year 2006. The new threshold, based on the revised formula, is not subject to notice and comment. FRA finds that the current cost data inserted into this adopted formula and the cost data that they replace were obtained from reliable Federal government sources. FRA also finds that this rule imposes no additional burden, but rather provides a benefit by permitting the valid comparison of accident data over time. Accordingly, FRA concludes that notice and comment procedures with respect to the recalculation of the monetary reporting threshold are impracticable, unnecessary, and contrary to the public interest. By simply inserting values derived from reliable data into a formula adopted after notice and comment, FRA is not exercising discretion in a way that could be informed by further public comment. As a consequence, FRA is proceeding directly to this final rule with respect to the recalculation of the monetary reporting threshold.

For similar reasons, there is good cause for not publishing the rule at least 30 days before its effective date as is ordinarily required by 5 U.S.C. 553(d). All interested parties have had notice of the provisions of this final rule since the publication of the NPRM on April 19, 2005 (70 FR 20333), more than 30 days prior to the effective date of this rule.

Final Rule

The formula to calculate the monetary accident reporting threshold is adopted as proposed. Further, FRA has gathered the necessary data, has calculated a new threshold using the adopted formula, and is establishing the revised threshold dollar amount at $7,700. This revised threshold is effective beginning January 1, 2006.

Regulatory Impact and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979).

Regulatory Flexibility Act of 1980 and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has issued a final policy that formally establishes ''small entities'' as including railroads that meet the line-haulage revenue requirements of a Class III railroad. 49 CFR part 209, app. C. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. *Id.*

About 630 of the approximately 680 railroads in the United States are considered small entities by FRA. FRA certifies that this final rule will have no significant economic impact on a substantial number of small entities. To the extent that this rule has any impact on small entities, the impact will be neutral or insignificant. The frequency of rail equipment accidents/incidents, and therefore also the frequency of required reporting, is generally proportional to the size of the railroad. A railroad that employs thousands of employees and operates trains millions of miles is exposed to greater risks than one whose operation is substantially smaller. Small railroads may go for months at a time without having a reportable occurrence of any type, and even longer without having a rail equipment accident/incident. For example, current FRA data indicate that 2,738 rail equipment accidents/incidents were reported in 2002, with small railroads reporting 255 of them. In 2003, 2,992 rail equipment accidents/incidents were reported, and small railroads reported 271 of them. Data for 2004 show that 3,296 rail equipment accidents/incidents were reported, with small railroads reporting 309 of them. In each of those three calendar years, small railroads reported ten percent or less of the total number of rail equipment accidents/incidents. FRA notes that these data are accurate as of the date of issuance of this final rule, and are subject to minor changes due to additional reporting.

Absent this rulemaking (i.e., any increase in the monetary reporting threshold), the number of reportable accidents/incidents would increase, as keeping the 2002–2005 threshold in place would not allow it to keep pace with the increasing dollar amounts of wages and rail equipment repair costs. Therefore, this rule will be neutral in effect. Increasing the reporting threshold will slightly decrease the recordkeeping burden for railroads over time. Any recordkeeping burden would not be significant, and would affect the large railroads more than the small entities, due to the higher proportion of reportable rail equipment accidents/incidents experienced by large entities.

Paperwork Reduction Act of 1995

There are no new information collection requirements associated with this final rule. Therefore, no estimate of a public reporting burden is required.

Federalism Implications

Executive Order 13132, entitled, ''Federalism,'' issued on August 4, 1999, requires that each agency ''in a separately identified portion of the preamble to the regulation as it is to be

issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met * * *.'' This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rule will not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and the responsibilities among the various levels of government, as specified in the Executive Order 13132. Accordingly, FRA has determined that this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism assessment. Accordingly, a federalism assessment has not been prepared.

Environmental Impact

FRA has evaluated this regulation in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of [$120,700,000 or more (as adjusted for inflation)] in any 1 year and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The final rule will not result in the expenditure, in the aggregate, of $120,700,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

Privacy Act

Anyone is able to search the electronic form of all our comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

■ In consideration of the foregoing, FRA is amending part 225, chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 225—[AMENDED]

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49.

■ 2. Amending § 225.19 by revising the first sentence of paragraph (c) and revising paragraph (e) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(c) *Group II—Rail equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-track equipment (standing or moving) that result in damages higher than the current reporting threshold (*i.e.*, $6,700 for calendar years 2002 through 2005, and $7,700 for calendar year 2006) to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. * * *

* * * * *

(e) The reporting threshold is $6,700 for calendar years 2002 through 2005 and $7,700 for calendar year 2006. The procedure for determining the reporting threshold for calendar years 2006 and beyond appears as paragraphs 1–8 of appendix B to part 225.

■ 3. Revise appendix B to part 225 in its entirety to read as follows:

Appendix B to Part 225—Procedure for Determining Reporting Threshold

1. Wage data used in the calculation are collected from railroads by the Surface Transportation Board (STB) on Form A—STB Wage Statistics. Rail equipment data from the U.S. Department of Labor, Bureau of Labor Statistics (BLS), LABSTAT Series reports are used in the calculation. The equation used to adjust the reporting threshold has two components: (a) The average hourly earnings of certain railroad maintenance employees as reported to the STB by the Class I railroads and Amtrak; and (b) an overall rail equipment cost index determined by the

BLS. The wage component is weighted by 40% and the equipment component by 60%.

2. For the wage component, the average of the data from Form A—STB Wage Statistics for Group No. 300 (Maintenance of Way and Structures) and Group No. 400 (Maintenance of Equipment and Stores) employees is used.

3. For the equipment component, LABSTAT Series Report, Producer Price Index (PPI) Series WPU 144 for Railroad Equipment is used.

4. In the month of October, second-quarter wage data are obtained from the STB. For equipment costs, the corresponding BLS railroad equipment indices for the second quarter are obtained. As the equipment index is reported monthly rather than quarterly, the average for the months of April, May and June is used for the threshold calculation.

5. The wage data are reported in terms of dollars earned per hour, while the equipment cost data are indexed to a base year of 1982.

6. The procedure for adjusting the reporting threshold is shown in the formula below. The wage component appears as a fractional change relative to the prior year, while the equipment component is a difference of two percentages which must be divided by 100 to present it in a consistent fractional form. After performing the calculation, the result is rounded to the nearest $100.

7. The weightings result from using STB wage data and BLS equipment cost data to produce a reasonable estimation of the reporting threshold that was calculated using the threshold formula in effect immediately before calendar year 2006, a formula that assumed damage repair costs, at levels at or near the threshold, were split approximately evenly between labor and materials.

8. Formula:

New Threshold = Prior Threshold × [1 + 0.4(Wnew—Wprior)/Wprior + 0.6(Enew − Eprior)/100]

Where:

Wnew = New average hourly wage rate ($).
Wprior = Prior average hourly wage rate ($).
Enew = New equipment average PPI value.
Eprior = Prior equipment average PPI value.

Issued in Washington, DC, on December 14, 2005.

Clifford C. Eby,

Deputy Administrator, Federal Railroad Administration.

[FR Doc. 05–24267 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 041221358–5065–02; I.D. 121205E]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Quarter IV Fishery for *Loligo* Squid

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the directed fishery for *Loligo* squid in the Exclusive Economic Zone (EEZ) will be closed effective 0001hrs local time, December 18, 2005. Vessels issued a Federal permit to harvest *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) of *Loligo* squid per trip for the remainder of the year (through December 31, 2005). This action is necessary to prevent the fishery from exceeding its annual quota and allow for effective management of this stock.

DATES: Effective 0001 hours, December 18, 2005, through 2400 hours, December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, 978–281–9221, fax 978–281–9135, e-mail *don.frei@noaa.gov*.

SUPPLEMENTARY INFORMATION: Regulations governing the *Loligo* squid fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The 2005 specification of DAH for *Loligo* squid was set at 16,872.4 mt (70 FR 21971, April 28, 2005). This amount is allocated by quarter, as shown below.

TABLE. 1 *Loligo* SQUID QUARTERLY ALLOCATIONS

Quarter	Percent	Metric Tons[1]	Research Set-aside
I (Jan-Mar)	33.23	5,564.3	N/A
II (Apr-Jun)	17.61	2,948.8	N/A
III (Jul-Sep)	17.30	2,896.9	N/A
IV (Oct-Dec)	31.86	5,334.9	N/A
Total	100	16,744.9	255.1

[1]Quarterly allocations after 255.1 mt research set-aside deduction.

Section 648.22 requires NMFS to close the directed *Loligo* squid fishery in the EEZ when 80 percent of the quarterly allocation is harvested in Quarters I, II and III, and when 95 percent of the total annual DAH has been harvested. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Loligo* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 95 percent of the total DAH for *Loligo* squid has been harvested. Therefore, effective 0001 hours, December 18, 2005, the directed fishery for *Loligo* squid is closed and vessels issued Federal permits for *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) of *Loligo*. Such vessels may not land more than 2,500 lb (1.13 mt) of *Loligo* during a calendar day. The directed fishery will reopen effective 0001 hours, January 1, 2006, when the 2006 quota becomes available.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 14, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–24266 Filed 12–15–05; 2:38 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[Docket No. 040831251–5309–05; I.D. 082504A]

RIN 0648–AS47

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources; Correction

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

ACTION: Final rule; correcting amendment.

SUMMARY: NMFS issues this final rule, correcting amendment to the regulations governing the Bering Sea and Aleutian Islands crab fisheries. This action is necessary to clarify procedures and to correct discrepancies provided in a previous rulemaking. This final rule is intended to promote the goals and objectives of the Fishery Management Plan for Bering Sea/Aleutian Islands (BSAI) King and Tanner Crabs (FMP), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law.

DATES: Effective December 20, 2005.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008 or *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

In January 2004, the U.S. Congress amended section 313(j) of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801). As amended, section 313(j)(1) requires the Secretary of Commerce to approve and implement by regulation the Crab Rationalization Program (Program), as it was approved by the North Pacific Fishery Management Council (Council) between June 2002 and April 2003, and all trailing amendments, including those reported to Congress on May 6, 2003. In June 2004, the Council consolidated its actions on the Program into the Council motion, which is contained in its entirety in Amendment 18. Additionally, in June 2004, the Council developed Amendment 19, which represents minor changes necessary to implement the Program. The Notice of Availability for these amendments was published in the **Federal Register** on September 1, 2004 (69 FR 53397). NMFS published a proposed rule to implement Amendments 18 and 19 on October 29, 2004 (69 FR 63200). NMFS approved Amendments 18 and 19 on November 19, 2004. NMFS published a final rule to implement Amendments 18 and 19 on March 2, 2005 (70 FR 10174). NMFS published a final rule (70 FR 13097; March 18, 2005) to correct OMB control numbers provided in the final rule dated March 2, 2005 (70 FR 10174). NMFS also published a final rule (70 FR 33390; June 8, 2005) to correct certain regulations in the final rule dated March 2, 2005 (70 FR 10174).

Need for Corrections

NMFS seeks to ensure the final rule (March 2, 2005; 70 FR 10174) conforms to the statutory requirements and intent of the Program, to provide clarification regarding the Program's regulatory requirements, and to correct minor technical errors.

1. Statutory Conformance Corrections

These corrections are made to sections of the rule that do not currently conform to the statutory requirements of the Program. This correction ensures that the final rule conforms to statutory requirements.

Section 680.20 Arbitration System

Paragraph (a)(1) is amended by removing ''June 30, 2005'' and adding in its place ''June 30, 2008''. This correction ensures that the final rule conforms to statutory requirements.

Paragraph (h)(5)(iv) is amended by removing ''arbitration proceedings as provided'' and adding in its place ''arbitration proceedings except as provided''.

Section 680.40 Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) Issuance

Paragraph (c)(4)(vi) is amended by removing ''equation: Adj. Factor'' and adding in its place ''equation: Adj. Amount.''

2. Regulatory Intent Corrections and Clarifications

These corrections are clarifications that explain regulatory changes that are more substantive than typographical/editorial type corrections.

Section 679.5 Recordkeeping and Reporting Requirements (R&R)

Paragraph (a)(1)(iv)(C) is added to state that any catcher vessel that is using pot gear in the CR crab fisheries must use a combined groundfish/IFQ logbook to record all CR crab. This note was inadvertently omitted from the crab final rule. This regulatory text is found at § 680.5(a)(2)(i)(A); therefore, this is not a new requirement.

Paragraph (g)(3)(iii) is amended by removing the words ''and indicate the confirmation number of the original PTR'' from the last line of the paragraph. Paragraph (g)(4)(i) is revised by removing the last sentence from the paragraph. Removal of the confirmation number is necessary because in actual PTR use, NMFS discovered that the confirmation number was not needed for recordkeeping and that the confirmation number caused confusion.

The heading for paragraph (k)(1) is amended by removing ''Fish or fish product other than crab onboard'' and replacing it with ''Fish or fish product onboard.'' Early in the planning stages, the PTR was not to be used for crab. Later on, the decision was made to use the PTR to record crab product; however, this regulatory heading was inadvertently not changed.

Section 680.5 Recordkeeping and Reporting

Paragraph (b)(2) is amended by removing ''An RCR must'' and adding in its place ''An RCR and his or her designee(s) must''.

Paragraph (b)(3) is removed and reserved. Only the RCR and his or her designees must apply for a password. The information contained in this paragraph has been included in the eLanding report (see paragraph (d)(7)). Because it is the same information, only requested in a different place, this change does not add new information.

The heading of paragraph (c)(1) is amended by removing ''IERS application for user ID'' and adding in its place ''IERS processor registration.'' The three agencies involved in the IERS determined to change the name of the form, and the changed forms subsequently posted on the Internet. This change inadvertently was not reflected in the regulatory text. This revision ensures that the regulations are uniform with the form.

Paragraph (c)(1)(i) is amended to reflect actual practice that an RCR and designee(s) of the RCR must submit an application for User ID, instead of ''the crab IFQ permit holder, crab IFQ hired master, IPQ permit holder, or person who harvested Adak or CDQ crab.'' In addition, the web page address and specific reference to the landing reporting system, eLandings, are added. The name of the form required to obtain a User ID is changed to read ''IERS processor registration'' in the heading for paragraph (c)(1) and in paragraph (c)(1)(i).

Paragraph (c)(1)(ii) is amended to clarify how the IERS processor registration information will be processed. The form must be signed and mailed to the address on the form in addition to submittal by Internet.

Changes to paragraphs (c)(1)(i) and (ii) are necessary to indicate that only the RCR and his/her designees submit landing data; therefore, only these participants are required to submit an IERS processor registration form. These changes also clarify that applicants may obtain IERS processor registration forms from the NMFS Alaska Region home page.

The heading for paragraph (c)(2) is amended by removing ''Contents of IERS application for user ID'' and adding in its place ''Contents of IERS processor registration.''

The introductory paragraph (c)(2) is amended by removing ''The IERS application for user ID'' and adding in its place ''The application for IERS processor registration.''

Paragraph (d)(4)(i) is amended by removing ''within 6 hours of the end of each weekly reporting period'' and adding in its place ''by Tuesday noon after the end of each weekly reporting period.'' The time limit for submitting this catcher/processor report in existing regulatory text actually means the report would need to be submitted between midnight and 6:00; this is because the weekly reporting period ends at 2400 hr, Alaska local time. In addition to the inconvenience to the regulated community, this is also difficult for NMFS, because the Internet server isn't processing return receipts during that time, and no staff are available for technical support. The original paragraph does not reflect the intent of the time limit for submitting of the crab landing report, which was intended to match the time limit for submitting the groundfish weekly production report. This revision fixes that problem.

Paragraph (d)(7)(i) is amended by removing ''RCR permit number'' and adding in its place ''RCR permit number, IFQ permit number, and IPQ permit number, as appropriate.'' The regulations currently request the IFQ permit number and IPQ permit number in paragraph (b)(3). In actual practice the IFQ and IPQ permit number are requested in the landing report. In addition, no other person than the RCR and his/her designees need to obtain a password; therefore, with this action, paragraph (b)(3) is removed and reserved.

Paragraph (d)(7)(xxi) is amended by removing ''scale weight of live crab in pounds;'' and adding in its place ''sold weight of live crab in pounds.'' This change is necessary to align the regulations with actual practice.

Section 680.23 Equipment and Operational Requirements

Paragraph (b)(4) is amended by removing ''by the State in which the product is landed'' and adding in its place ''by a state in which CR crab is landed''. Current regulations require that a catcher/processor offload crab product and weigh that product on a scale approved by the state in which the crab is landed. Rationale for this change is as follows. In some cases, crab catcher/processors may offload product in more than one state. Because scale approval requirements are similar and adequate in all states, it does not make sense for a catcher/processor to be required to have the offload scale approved by more than one state. Regulations at § 680.23(b)(4) are revised to allow a crab catcher/processor to use a scale approved by any state where CR crab is landed.

Section 680.42 Limitations on Use of QS, PQS, IFQ, and IPQ

Paragraph (b)(3)(iii) is amended by removing ''QS or IFQ'' and adding in its place ''PQS.'' This corrects an inadvertent error.

Paragraph (c)(2) is amended by removing ''CPC QS used'' and adding in its place ''CPC IFQ used''. This corrects an inadvertent error.

Paragraph (c)(4) is amended by removing ''IFQ'' in two places and adding in its place ''CVO or CPO IFQ.'' This corrects an inadvertent error.

Figures 16 and 17 to Part 679

Figures 16 and 17 to Part 679 are removed. These figures relate to the License Limitation Program boundaries that were revised in the crab final rule. The removal of these figures clarifies potential confusion.

3. Technical Corrections

The following typographical and editorial corrections are made in this rule.

Section 679.5 Recordkeeping and Reporting (R&R)

Paragraph (l)(1)(iii)(B) is amended by removing ''Table 14'' and adding in its place ''Tables 14a and 14b.''

Section 680.20 Arbitration System

Paragraph (h)(3)(iv) is amended by removing ''a crab fishery'' and adding in its place ''each crab fishery.'' This change is necessary for clarification.

Section 680.42 Limitations on Use of QS, PQS, IFQ, and IPQ

Paragraphs (a)(2)(i)(A), (B), and (C) are changed to correct inadvertent typographical errors.

Paragraph (a)(2)(i)(A) is amended by removing ''2.0% = 240,00'' and adding in its place ''2.0% = 240,000''.

Paragraph (a)(2)(i)(B) is amended by removing ''2.0% = 600,00'' and adding in its place ''2.0% = 600,000''.

Paragraph (a)(2)(i)(C) is amended by removing ''2.0% = 120,00'' and adding in its place ''2.0% = 120,000''.

Paragraph (a)(3)(ii) is amended by removing ''(a)(2)(i)'' and adding in its place ''(a)(3)(i)''.

Paragraph (a)(4)(ii) is amended by removing ''(a)(2)(i)'' and adding in its place ''(a)(4)(i)''.

Table 9 to Part 680

Table 9 is amended by removing ''totally'' from Column B for BST and adding in its place ''total''.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this final rule is necessary for the conservation and management of the BSAI crab fisheries. The Regional Administrator also has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable laws.

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

Pursuant to 5 U.S.C. 553 (b)(B), the Assistant Administrator for Fisheries, NOAA (AA) finds good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable, unnecessary, and contrary to the public interest. Through this action, NOAA seeks to ensure that the final rule conforms to the statutory requirements and intent of the Program, provide clarification regarding the Program's regulatory requirements and correct minor technical errors. Prior notice and an opportunity for public comment on this action would be impracticable, unnecessary, and contrary to the public interest for the following reasons.

First, corrections are necessary to ensure the rule's conformance with the Program's statutory requirements. Accordingly, NMFS has no discretion as to whether to implement them. As such, prior notice and an opportunity for public comment are unnecessary as the agency has no choice but to ensure its regulations are consistent with the statute. Second, corrections and clarifications to ensure the rules

compliance with the intent of the Program are necessary to ensure consistency and to accurately describe the various provisions of the regulations. Prior notice and an opportunity for public comment on these measures are impracticable and contrary to the public interest due to the ongoing nature of the fisheries. Finally, the editorial changes made by this rule are non-substantive. As a result, prior notice and an opportunity for comment on these changes are unnecessary.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

The changes made by this rule are not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d). The waiver of the 30-day delay in effective date requirement of 5 U.S.C. 553(d) is necessary to provide the regulated community with timely, adequate and accurate information with which to prosecute the ongoing fisheries.

List of Subjects in 50 CFR Parts 679 and 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 5, 2005.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons discussed in the preamble, 50 CFR parts 679 and 680 are corrected by making the following correcting amendments:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57; 16 U.S.C. 1540(f).

■ 2. In § 679.5, add paragraph (a)(1)(iv)(C); revise the heading for paragraph (k)(1) and revise paragraphs (g)(3)(iii), (g)(4)(i), and (l)(1)(iii)(B) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(1) * * *

(iv) * * *

(C) Any catcher vessel that is using pot gear in the CR crab fisheries must use a combined groundfish/IFQ logbook to record all CR crab.

* * * * *

(g) * * *

(3) * * *

(iii) If any information on the original PTR changes prior to the first destination of the shipment, submit a revised PTR by facsimile or electronic file to OLE, Juneau, AK (907–586–7313), by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the change occurred.

(4) * * *

(i) *Original or revised PTR.* Whether a submittal is an original or revised PTR.

(k) * * *

(1) *Fish or fish product onboard.* * * *

* * * * *

(l) * **

(1) * * *

(iii) * * *

(B) Port of landing and port code from Tables 14a and 14b to this part;

* * * * *

PART 679—[AMENDED]

■ 3. Remove Figures 16 and 17 to Part 679.

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 4. The authority citation for part 680 continues to read as follows:

Authority: 16 U.S.C. 1862.

■ 5. In § 680.5, revise paragraph (b)(2), (c)(1) paragraph heading, (c)(1)(i), (c)(1)(ii), (c)(2) paragraph heading and first sentence, and remove and reserve paragraph (b)(3) to read as follows:

§ 680.5 Recordkeeping and reporting (R&R).

* * * * *

(b) * * *

(2) An RCR and his or her designee(s) must enter his or her authorized user ID and password to access the IERS.

* * * * *

(c) * * *

(1) *IERS processor registration.* (i) Before an RCR and his or her designee(s) can use the eLandings system to report landings, he/she must request authorization to use the system, reserve a particular user ID, and receive a password. Each RCR and his or her designee(s) must provide information needed to process account access into the IERS by completing an IERS Processor Registration at *http://www.fakr.noaa.gov/sustainablefisheries/crab/crfaq.htm*. Upon receiving the signed registration, the IERS will validate that all required information is submitted, that the information entered is in correct format, and that the requested user ID is not already in use. The IERS will generate a PDF document from the information entered by the applicant.

(ii) The user must print, sign, and submit the application to the address provided on the registration form. A user ID will be activated after a signed registration form is received. The signature of an applicant on the form means that the applicant agrees to use access privileges to the IERS for purposes of submitting legitimate fishery landing reports and to safeguard the user ID and password to prevent their use by unauthorized persons. In addition, signature of the RCR ensures that the applicant is authorized to submit landing reports for the processor permit number(s) listed.

* * * * *

(2) *Contents of the IERS processor registration.* The application for IERS processor registration must contain the following information: * * *

* * * * *

§ 680.5 [Corrected]

■ 6. Correct § 680.5(d) as follows:

■ a. In paragraph (d)(4)(i), remove ''within 6 hours of the end'' and add in its place ''by Tuesday noon after the end'';

■ b. In paragraph (d)(7)(i), remove ''RCR permit number'' and add in its place ''RCR permit number, IFQ permit number, and IPQ permit number, as appropriate;'' and

■ c. In paragraph (d)(7)(xxi), remove ''Scale weight of live crab in pounds'' and add in its place ''Sold weight of live crab in pounds.''

§ 680.20 [Corrected]

■ 7. Correct § 680.20 as follows:

■ a. Paragraph (a)(1), remove ''June 30, 2005'' and add in its place ''June 30, 2008'';

■ b. Paragraph (h)(3)(iv)(A), remove ''a crab QS fishery'' and add in its place ''each crab fishery''; and

■ c. Paragraph (h)(5)(iv), remove ''arbitration proceeding as provided'' and add in its place ''arbitration proceeding except as provided''.

§ 680.23 [Corrected]

■ 8. In § 680.23, paragraph (b)(4), remove ''approved by the State in which the product is landed'' and add in its place ''approved by a state in which CR crab is landed''.

§ 680.40 [Corrected]

■ 9. In § 680.40, paragraph (c)(4)(vi), remove ''Adj. Factor'' and add in its place ''Adj. Amount.''

§ 680.42 [Corrected]

■ 10. Correct § 680.42 as follows:

■ a. Paragraph (a)(3)(ii), remove ''(a)(2)(i)'' and add in its place ''(a)(3)(i)'';

■ b. Paragraph (a)(4)(ii), remove ''(a)(2)(i)'' and add in its place ''(a)(4)(i);''

■ c. Paragraph (b)(3)(iii), remove ''QS or IFQ'' and add in its place ''PQS;''

■ d. Paragraph (c)(2), remove ''CPC QS used'' and add in its place ''CPC IFQ used;'' and

■ e. Paragraph (c)(4), remove ''IFQ'' in two places and add in its place ''CVO or CPO IFQ.''

■ 11. In § 680.42, correct table entries in paragraphs (a)(2)(i)(A), (B), and (C) to read as follows:

§ 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.

(a) * * *
(2) * * *
(ii) * * *

Fishery	CVO/CPO Use Cap in QS Units	CVC/CPC Use Cap in QS Units
(A) Percent of the initial QS pool for BBR	1.0 %= 3,880,000	2.0% = 240,000
(B) Percent of the initial QS pool for BSS	1.0% = 9,700,000	2.0% = 600,000
(C) Percent of the initial QS pool for BST	1.0% = 1,940,000	2.0% = 120,000
* * * * *		

■ 12. In Table 9 to Part 680, correct the entry for Bering Sea Tanner crab (BST) to read as follows:

Table 9 to Part 680 Initial Issuance of Crab PQS by Crab QS Fishery

Column A: For each crab QS fishery	Column B: The Regional Administrator shall calculate PQS for any qualified person based on that person's total legal purchase of crab in each of the crab QS fisheries for any ...
* *	* * *
Bering Sea Tanner Crab (BST)	Equivalent to 50 percent of the total legally processed crab in the Bering Sea snow crab fishery during the qualifying years established for that fishery, and 50 percent of the total legally processed crab in the Bristol Bay red king crab fishery during the qualifying years established for that fishery.
* *	* * *

[FR Doc. 05–24152 Filed 12–19–04; 8:45 am]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 243
Tuesday, December 20, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 31

[PRM–31–5]

Organization of Agreement States; Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; request for comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received a petition for rulemaking filed by the Organization of Agreement States (OAS). The petitioner is requesting that the NRC amend its regulations to require specific licensing for devices that are currently regulated by a combination of general licensing and registration, and to revise the compatibility category for 10 CFR 31.6 from ''B'' to ''C''. The petitioner believes that these actions are needed to establish a higher national standard of regulation for higher risk generally licensed (GL) devices, and to allow retention of a tool used by Agreement States to track the location and movement of device manufacturers and service providers in their State.

This action also addresses a request filed by the Bureau of Radiation Control (BRC) of the Florida Department of Health for the NRC to change the compatibility category of 10 CFR 31.5(c)(13)(I) from category ''B'' to category ''C''. Florida BRC believes that NRC regulations are less stringent and that assigning a compatibility category ''B'' will require the State to reduce its current health, safety, and security regulatory control of GL devices.

DATES: Submit comments by March 6, 2006. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include PRM–31–5 in the subject line of your comments. Comments submitted in writing or in electronic form will be made available to the public for inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission. Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

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

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

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

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

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

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301 415–7163 or Toll Fee: 1–800–368–5642 or e-mail: *mtl@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 18, 2000, (65 FR 79162), the NRC issued a final rule that amended the requirements applicable to certain generally licensed industrial devices containing byproduct material. The final rule, among other actions, included more explicit provisions for a registration and accounting program. The final rule also modified the quarterly transfer reporting requirements for manufacturers and initial distributors of these industrial devices.

Section 274b of the Atomic Energy Act (Act) provides for agreements under which the NRC relinquishes and a State assumes regulatory responsibility for the use of byproduct, source and small quantities of special nuclear material within a State. The December 18, 2000, final rule was a matter of compatibility under the Policy Statement on Adequacy and Compatibility of Agreement Statements issued September 3, 1997 (62 FR 46517). The provisions of 10 CFR 31.5 and 31.6 were designated as Category B because the provisions affected a program element with significant transboundary implications.

Petitioner's Issue

The petitioner believes that certain devices containing higher level of activity, which are currently regulated under a general license in 10 CFR 31.5, would be best regulated under a specific license in 10 CFR part 30. The petitioner states that multiple Agreement States have already established more stringent requirements for GL devices to address accountability problems, source melt incidents and other issues related to such devices in their States, and that the decision by the NRC to revise the compatibility category of 10 CFR 31.5 from ''D'' to ''B'' will require these Agreement States to reduce their current regulatory control of GL devices in order

to be compatible with less stringent NRC regulations. The petitioner states also that the NRC decision to revise the compatibility category of 10 CFR 31.6 from ''C'' to ''B'' removes the ability of Agreement States to directly track the movement of many individuals and companies servicing GL devices and thus indirectly verify the location of these devices. The petitioner asserts that regulation of GL devices containing higher levels of activity should be under more rather than less regulatory oversight to further enhance the accountability and security of these devices.

Petitioner's Interest

The petitioner is a non-profit, voluntary, scientific and professional society incorporated in the District of Columbia. The membership of the OAS consists of State radiation control program directors and staff from the 33 Agreement States who are responsible for implementation of their respective radioactive material programs. The purpose of the OAS is to provide a mechanism for the Agreement States to work with each other and with the NRC on regulatory issues associated with their respective agreements.

The petitioner offers that Agreement States are those States that have entered into an Agreement with the NRC under section 274b. of the Act. The Agreement States regulate most types of radioactive material, including reactor fission byproducts, source material (uranium and thorium) and special nuclear materials in quantities not sufficient to form a critical mass, in accordance with the compatibility requirements of the Act. The petitioner notes that NRC periodically reviews the performance of each Agreement State to assure adequate protection of public health and safety and compatibility with its regulatory requirements.

The petitioner further states that Agreement States issue radioactive material licenses, promulgate regulations and enforce these regulations under the authority of each individual state's laws. The Agreement States exercise their licensing and enforcement programs under direction of their governors in a manner that is compatible with the licensing programs of the NRC. The 33 existing Agreement States currently license and regulate approximately 16,800 radioactive material licenses, whereas the NRC regulates approximately 4,400 licenses.

History of Issue

In July 1996, the joint NRC-Agreement State Working Group, approved by the Commission to evaluate problems with licensees maintaining control over and accountability for devices containing radioactive material provided their recommendations to the NRC. One of the recommendations was that the NRC establish a registration program for GL devices containing specific isotopes above certain quantity limits that posed a comparatively higher risk of exposure to the public or property damage.

The petitioner states that on December 18, 2000, the NRC issued a final rule, effective on February 16, 2001, that revised portions of 10 CFR parts 30, 31, and 32 to add new requirements for manufacturers, distributors and users of GL devices. The combined changes were called the ''Generally Licensed Device Rule,'' which included a revision that established a new registration program for certain GL devices in 10 CFR 31.5(c)(13) that was based on the earlier recommendations of the working group. In addition, the petitioner states the NRC changed the compatibility category for 10 CFR 31.5 from ''D'' to ''B'' and for 10 CFR 31.6 from ''C'' to ''B''. Agreement States were given until February 16, 2004 to adopt the new regulations.

The petitioner states that in a letter dated July 28, 2004, the NRC presented the results of a survey of Agreement State compliance with adopting the new Generally Licensed Device Rule which showed that 12 of the 33 Agreement States had not adopted the new GL device requirements.

The petitioner states further that during the May 2004 National Conference on Radiation Control and the September 2004 Organization of Agreement States annual meeting, the Agreement States discussed problem areas associated with the current system of regulating certain devices under a general license. These problem areas include:

- The compatibility change from ''D'' to ''B'' in 10 CFR 31.5 limits States that choose to be more restrictive in regulating GL devices.
- The compatibility change from ''C'' to ''B'' in 10 CFR 31.6 allows device manufacturers/service providers to service devices in Agreement States for less than 180 days without obtaining reciprocity or notifying State radiation control programs at a time when State programs believe enhanced tracking is required.
- New materials security requirements have not been factored into general license device regulations.
- Low awareness of regulatory requirements by some general licensees due to high turnover in the industrial sector and minimal interaction with regulator.

Petitioner's Proposal

The OAS proposes the following amendments to 10 CFR part 31, and changes in compatibility category.

1. Section 31.5 (a) would be revised to read as follows:

(a) A general license is hereby issued to commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and Federal, State or local government agencies to acquire, receive, possess, use or transfer, in accordance with the provisions of paragraphs (b), (c) and (d) of this section, byproduct material contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition or for producing light or an ionized atmosphere, provided each device contains less than 370 MBq (10 mCi) of cesium-137, 3.7 MBq (0.1 mCi) of strontium-90, 37 MBq (1 mCi) of cobalt-60 or 37 MBq (1 mCi) of americium-241 or any other transuranic element (*i.e.*, element with atomic number greater than uranium (92)), based on the activity indicated on the label.

2. In § 31.5 paragraph (c)(13) would be deleted in its entirety.

3. Revise the compatibility category of § 31.6 from ''B'' to ''C''.

Petitioner's Justification

OAS stated that the newly formed OAS Rulemaking and Compatibility Committee surveyed the 33 Agreement State radiation control programs to determine the reaction to the change in compatibility of 10 CFR 31.5 and 31.6 and the potential to specifically license devices currently regulated under a general license. Thirty-one States responded to the survey, as follows:

- Eighty-seven percent of the responding States disagree with the CY 2000 Commission decision to revise the compatibility category of 10 CFR 31.5 and 31.6 (27 of 31 States).
- Ninety percent of the responding States currently allow a specific license for devices that may be generally licensed (28 of 31 states).
- Ninety-seven percent of the responding States support the OAS taking action in this area (30 of 31 states).

The OAS believes that requiring specific licensing of the higher risk gauging devices identified by the 1995 NRC-Agreement State joint working group can further enhance control and

accountability of GL devices. OAS states that while the GL device rule was an improvement over past regulation of these devices, there are still on-going problems with the regulation of GL gauging devices, including:

- Low awareness of regulatory requirements by general licensees.
- No routine inspection of GL devices for compliance with requirements.
- No regulatory review prior to purchase.
- Continued incidents involving loss of control of real or suspected GL devices.

OAS believes that specific licensing of higher activity GL gauging devices would provide the following advantages:

1. Allow regulatory review (through the license application process) of higher-activity device purchases prior to receipt.
2. Increase security of the higher risk gauging devices to minimize the possibility of these devices being used in malicious acts.
3. Increase licensee awareness of regulatory requirements by virtue of the specific license application process and periodic inspections.
4. Improve licensee control of devices, which may reduce the number of potential orphan sources.

Petitioner's Conclusion

The OAS understands and agrees with the desire of the Commission and device manufacturers for more uniform regulation of devices within the NRC and Agreement States. At the same time, the Agreement States' desire to assure better accountability for sources and devices that are within the states' jurisdiction. The Agreement States believe that the manufacture and distribution of the devices is best addressed uniformly by the methods described in this petition. Therefore, the OAS is proposing that 10 CFR 31.5 be amended to require specific licensing for devices that are currently regulated by a combination of general licensing and registration. This action would establish a higher national standard of regulation for identified higher risk devices. In addition, the OAS is proposing that the compatibility category for 10 CFR 31.6 be revised from ''B'' to ''C'' to allow retention of a tool used by States to track the location and movement of device manufacturers and service providers in their State. This would allow Agreement States the opportunity to assess and monitor the radiation safety programs of device manufacturer representatives working within the State. The OAS believes the NRC and Agreement States can implement the proposed changes with limited impact on regulatory agencies and licensees, resulting in improved regulation and control of radioactive materials.

Florida's Request

In addition to requesting comment on the petition by the OAS, NRC is seeking comment on a request by the Florida BRC. The issues raised in Florida's request are closely related to those in the OAS petition, so NRC is seeking comment on both the OAS petition and the Florida request at the same time.

Florida, an Agreement State, requested that the NRC change the compatibility category of 10 CFR 31.5(c)(13)(I) from category ''B'' to ''C''. Florida believes that the decision of whether and how to register additional types and quantities of generally (GL) devices beyond what the NRC requires should be a decision left to the State with the authority for regulating the devices. Florida states that it has had well-established requirements for the registration and regulation of GL devices for many years before the NRC adopted regulations to register certain GL devices. Florida states that NRC's decision to assign a compatibility category ''B'' for 10 CFR 31.5(c)(13)(I), will require it to reduce its current health, safety, and security regulatory control of GL devices in order to be compatible with the less stringent NRC regulations.

Florida states that they issue and currently regulate over 1500 radioactive material licenses, promulgate regulations and enforce these regulations under the authority of Chapter 404, Florida Statutes, and Chapter 64 E–5, Florida Administrative Code. Florida notes that the NRC periodically reviews the performance of its programs, thereby assuring compatibility with the NRC's regulatory requirements.

Florida requires registration of all GL devices with the exception of some tritium exit signs. Their program includes source registration, fees, annual inventories and inspections.

Florida is concerned that the December 18, 2000, final rule, effective on February 16, 2001, revised portions of 10 CFR parts 30, 31, and 32 to add new requirements for manufacturers, distributors and users of GL devices, and that part of the revision established a new registration program for certain GL devices in 10 CFR 31.5 ©)(13) and assigned a compatibility category of ''B''. According to Florida, it has instituted a number of changes required by the rule as legally binding license conditions and also is working on promulgating rules to address these issues, with the exception of the new registration requirements that would force it to adopt less stringent registration and accountability standards for certain GL devices containing radioactive material.

Florida notes that NRC's procedures in Management Directive 5.9, for categorizing program elements or regulations, states that to be included in Category ''B'', an NRC program element is to be one that applies to activities that have direct and significant effects in multiple jurisdictions (emphasis added). Examples include: transportation requirements, approval of products that are distributed nationwide, and definitions of products. Florida believes the registration of additional GL devices would not have a direct and significant effect in multiple jurisdictions.

Florida asserts that States and the NRC have had different GL requirements for years with little discussion of any transboundary problems, and that any actions concerning the registration of additional GL devices in Florida would be between the State and individuals in Florida. According to Florida, this registration process does not have any direct and significant effect on device manufacturers or distributors, the transportation of the devices, the requirements for approval, or the movement of devices into or out of Florida.

In the request, Florida cites its ability to register, inventory, and inspect all GL devices, as providing many benefits for the safety and security of its citizens and visitors and therefore to move to NRC's registration scheme would require it to cease to be able to register and account for over 1,000 radioactive sources in GL devices currently being regulated. Florida believes that its ability to continue to register all GL devices clearly meets the essential objective of NRC's Generally Licensed Device Rule.

Florida notes also that NRC's categorization criteria further states that for a program element to be included in Category ''C'', it should be one that the essential objective should be adopted by an Agreement State to avoid conflicts, duplications, or gaps in the regulation of agreement material on a nationwide basis and that, if not adopted, would result in an undesirable consequence.

Florida believes that 10 CFR 31.5(c)(13)(I) meets the criteria for, and should be categorized as, compatibility category ''C'' in accordance with NRC Management Directive 5.9.

Dated at Rockville, Maryland, this 14th day of December, 2005.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–24250 Filed 12–19–05; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23358; Directorate Identifier 2005–NM–206–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747–400, 747–400D, and 747SR Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain 747–100, –200, and –300 series airplanes. The existing AD currently requires repetitive inspections to detect cracking of certain lower lobe fuselage frames, and repair if necessary. This proposed AD would retain all the requirements of the existing AD, and add airplanes to the applicability. This proposed AD results from reports indicating that fatigue cracks were found in lower lobe frames on the left side of the fuselage. We are proposing this AD to detect and correct fatigue cracking of certain lower lobe fuselage frames, which could lead to fatigue cracks in the fuselage skin, and consequent rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by February 3, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2005–23358; Directorate Identifier 2005–NM–206–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 the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

On March 22, 1999, we issued AD 99–07–12, amendment 39–11097 (64 FR 15298, March 31, 1999), for certain Boeing Model 747–100, –200, and –300 series airplanes. That AD requires repetitive inspections to detect cracking of certain lower lobe fuselage frames, and repair if necessary. That AD resulted from reports indicating that fatigue cracks were found in lower lobe frames on the left side of the fuselage. We issued that AD to detect and correct fatigue cracking of certain lower lobe fuselage frames, which could lead to fatigue cracks in the fuselage skin, and consequent rapid decompression of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 99–07–12, the manufacturer has issued new service information that expands the applicability to include 747–400 and –400D series airplanes, line numbers 696 to 1152 inclusive.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2408, Revision 1, dated April 4, 2002 (the original revision of that alert service bulletin, dated April 25, 1996, was referenced as the appropriate source of service information for accomplishing the required actions in AD 99–07–12). The procedures in Revision 1 of the alert service bulletin are essentially the same as the procedures in the original revision for the airplanes affected by AD 99–07–12 (identified in the service bulletin as Group 1 airplanes). These procedures include repetitive inspections to detect cracking of certain lower lobe fuselage frames, and repair if necessary. For the 747–400 and –400D series airplanes that are added to the effectivity of the service bulletin (identified as Group 2 airplanes), the service bulletin specifies contacting the manufacturer for information about how to repair frames that have crack damage.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 99–07–12 and would retain the requirements of the existing AD. This proposed AD also would add airplanes to the applicability and require accomplishing the actions specified in the service bulletin described previously, except as discussed under ''Difference Between

the Proposed AD and the Service Bulletin.''

Difference Between the Proposed AD and the Service Bulletin

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Explanation of Change to Applicability

We have revised the applicability of the AD to identify the model designations as published in the most recent type certificate data sheet for the affected model.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Clarification of Inspection Terminology

In this proposed AD, the ''detailed visual inspection'' specified in the Boeing service bulletin is referred to as a ''detailed inspection.'' We have also changed references to a ''detailed visual inspection'' in the existing AD to refer to a ''detailed inspection.'' We have included the definition for a detailed inspection in a note in the proposed AD.

Explanation of Change to Certain References to Other AD

AD 99–07–12 refers to AD 93–08–12 amendment 39–8559 (58 FR 27927, May 12, 1993), in the section titled ''Interim Action,'' and in paragraphs (a) and (d), and Note 3 of that AD. Since we issued AD 99–07–12 we have superseded AD 93–08–12 with AD 2005–20–30 amendment 39–14327 (70 FR 59252, October 12, 2005). Therefore, this proposed AD refers to AD 2005–20–30 rather than to AD 93–08–12.

Changes to Paragraph Identifiers in Existing AD

This proposed AD would retain all requirements of AD 99–07–12. Since AD 99–07–12 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requrement in AD 99–07–12	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (g).
Paragraph (c)	Paragraph (h).
Paragraph (d)	Paragraph (i).

Interim Action

This is considered to be interim action only until the accomplishment of AD 2005–20–30 for Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, and 747–300, and 747SR series airplanes. AD 2005–20–30 requires a detailed inspection to detect cracks in the Section 46 lower lobe frames, and repair if necessary, in accordance with Boeing Service Bulletin 747–53–2349, Revision 2, dated April 3, 2003. The initial inspection required by AD 2005–20–30 is required prior to the accumulation of 22,000 total flight cycles. We find that earlier inspection (*i.e.*, prior to accumulation of 15,000 total flight cycles) of the lower lobe frames is warranted, as proposed by this AD.

This is also considered to be interim action for Boeing Model 747–400 and 747–400D airplanes only until the accomplishment of an action similar to AD 2005–20–30 for these airplanes. On September 16, 2005, we issued NPRM Docket No. FAA–2005–22526 (70 FR 56860, September 29, 2005), Directorate Identifier 2005–NM–008–AD. That NPRM proposes to require repetitive inspections for cracking of certain fuselage internal structure, and repair if necessary.

Costs of Compliance

There are about 681 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 99 airplanes of U.S. registry.

The actions that are required by AD 99–07–12 and retained in this proposed AD take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of both the retained and proposed actions for U.S. operators is $12,870, or $130 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 removing amendment 39–11097 (64 FR 15298, March 31, 1999) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–23358; Directorate Identifier 2005–NM–206–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 3, 2006.

Affected ADs

(b) This AD supersedes AD 99–07–12.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747–400, 747–400D, and 747SR series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2408, Revision 1, dated April 4, 2002.

Unsafe Condition

(d) This AD results from reports indicating that fatigue cracks were found in lower lobe frames on the left side of the fuselage. We are issuing this AD to detect and correct fatigue cracking of certain lower lobe fuselage frames, which could lead to fatigue cracks in the fuselage skin, and consequent rapid decompression of the airplane.

Compliance

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

Restatement of the Requirements of AD 99–07–12, With Additional Information for Group 2 Airplanes

Initial Inspections

(f) For airplanes on which the initial detailed internal inspection of the Section 46 lower lobe frames required by paragraph (f)(2) or (i)(2) of AD 2005–20–30, amendment 39–14327, has not been accomplished: Perform a detailed visual inspection to detect cracking of the lower lobe fuselage frames from Body Station 1820 to Body Station 2100, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2408, dated April 25, 1996; or Boeing Alert Service Bulletin 747–53A2408, Revision 1, dated April 4, 2002; as applicable; at the later of the applicable times specified in paragraph (f)(1), (f)(2), or (f)(3) of this AD.

(1) For all airplanes: Prior to the accumulation of 15,000 total flight cycles; or

(2) For Group 1 airplanes identified in Revision 1 of the service bulletin: Within 1,500 flight cycles or 18 months after May 5, 1999 (the effective date of AD 99–07–12), whichever occurs first.

(3) For Group 2 airplanes identified in Revision 1 of the service bulletin: Within 1,500 flight cycles or 18 months after the effective date of this AD, whichever occurs first.

Note 1: Paragraph (f)(2) or (i)(2) of AD 2005–20–30 requires a detailed inspection to detect cracks in the Section 46 lower lobe frames, in accordance with Boeing Service Bulletin 747–53–2349, Revision 2, dated April 3, 2003. The initial inspection is required prior to the accumulation of 22,000 total flight cycles; or within 1,000 flight cycles after June 11, 1993 (the effective date of AD 93–08–12, amendment 39–8559), or November 16, 2005 (the effective date of AD 2005–20–30), depending on previous inspections accomplished; whichever occurs later.

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

Repetitive Inspections

(g) If no cracking is detected during the inspection required by paragraph (f) of this AD, repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

Corrective Actions

(h) If any cracking is detected during any inspection required by paragraph (f) of this AD, prior to further flight, accomplish paragraphs (h)(1) and (h)(2) of this AD:

(1) Within 20 inches of the crack location on the frame, perform a detailed inspection of the adjacent structure to detect cracking. If any cracking is detected during any detailed inspection done in accordance with paragraph (f) or (h)(1) of this AD, prior to further flight, repair in accordance with paragraph (h)(1)(i) or (h)(1)(ii) of this AD, as applicable.

(i) For Group 1 airplanes: Using a method approved in accordance with the procedures specified in paragraph (j) of this AD. The Boeing 747 Structural Repair Manual, Subject 53–10–04, Figure 67 or 90, is one approved method.

(ii) For Group 2 airplanes: Using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(2) Repeat the inspection required by paragraph (f) of this AD thereafter at intervals not to exceed 3,000 flight cycles.

Optional Terminating Inspection

(i) Accomplishment of the initial detailed inspection of the Section 46 lower lobe frames required by paragraph (f)(2) or (i)(2) of AD 2005–20–30 constitutes terminating action for the requirements of this AD only for airplanes identified in Boeing Alert Service Bulletin 747–53A2408, Revision 1, dated April 4, 2002, as Group 1 airplanes.

Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously in accordance with AD 99–07–12, amendment 39–11097, are approved as AMOCs for the corresponding provisions of this AD.

Issued in Renton, Washington, on December 13, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24242 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23357; Directorate Identifier 2005–NM–207–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 777–200 series airplanes. This proposed AD would require installing a new washer between the lower wing surface and the jam nut of the sump drain valve assembly. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent energy from a lightning strike on the bushing for the sump drain valve from arcing to the inside of the center fuel tank wall, which could create an ignition source in the fuel tank and result in a fuel tank explosion.

DATES: We must receive comments on this proposed AD by February 3, 2006.

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

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

and follow the instructions for sending your comments electronically.

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

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

FOR FURTHER INFORMATION CONTACT: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6500; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–23357; Directorate Identifier 2005–NM–207–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

The FAA has examined the underlying safety issues involved in recent fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with another latent failure condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

We have received a report indicating that small gaps may be present between the bushing of the sump drain valve and the lower wing surface in the center fuel tank, on certain Boeing Model 777–200 series airplanes. If a lightning strike occurs on the bushing, arcs can go across the small gaps between the bushing and the lower wing surface, and into the inside of the fuel tank wall. The bushing does not have an engineered bond path to the wing surface. In addition, the layer of sealant between the bushing and the inner surface of the fuel tank could be too thin to contain the energy in the arcs. This condition, if not corrected, could create an ignition source in the center fuel tank and result in a fuel tank explosion.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 777–28–0045, dated September 1, 2005. The service bulletin describes procedures for installing a new washer between the lower wing surface and the jam nut of the sump drain valve assembly. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

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

Costs of Compliance

There are about 88 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 22 airplanes of U.S. registry. The proposed actions would take about 4 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $360 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $13,640, or $620 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2005–23357; Directorate Identifier 2005–NM–207–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 3, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 777–28–0045, dated September 1, 2005.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent energy from a lightning strike on the bushing for the sump drain valve from arcing to the inside of the center fuel tank wall, which could create an ignition source in the fuel tank and result in a fuel tank explosion.

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.

Installation

(f) Within 60 months after the effective date of this AD, install a new washer between the lower wing surface and the jam nut of the sump drain valve assembly in both wings, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–28–0045, dated September 1, 2005.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on December 13, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24243 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–198–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) Airplanes; and Model MD–88 Airplanes

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

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) airplanes; and Model MD–88 airplanes. That proposed AD would have required repetitive inspections and functional tests of the static port heater assemblies, an inspection of the static port heaters and insulators, and corrective actions if necessary. This new action revises the proposed AD by adding repetitive inspections of the static port heaters and insulators and revising the functional test of the static port heater. The actions specified by this new proposed AD are intended to prevent an electrical short of the static port heater from sparking and igniting the insulation blanket adjacent to the static port heater, which could result in smoke and/or fire in the cabin area. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 17, 2006.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–198–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–198–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 AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed AD 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 AD. 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 AD. 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–198–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–198–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) was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 8, 2004 (69 FR 10636). That NPRM was applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) airplanes; and Model MD–88 airplanes. That NPRM would have required repetitive inspections and functional tests of the static port heater assemblies, an inspection of the static port heaters and insulators, and corrective actions if necessary. That NPRM was prompted by studies that revealed that the wiring of the static port heater assembly may be damaged. That condition, if not corrected, could result in an electrical short of the static port heater and consequent sparking and ignition of the insulation blanket adjacent to the static port heater, which could result in smoke and/or fire in the cabin area.

Actions Since Issuance of Previous Proposal

The airplane manufacturer informed the FAA that the functional test of the left and right primary and alternate static port heater assemblies must be revised to prevent damaging the aircraft fuselage skin. An operator informed the airplane manufacturer that performing the current functional test would overheat and damage the aircraft fuselage skin. Therefore the airplane manufacturer has revised the functional test and issued Boeing Service Bulletin DC9–30–097, Revision 2, dated May 27, 2005, which references the revised functional test (Boeing Service Bulletin DC9–30–097, Revision 01, dated January 24, 2003, is cited as the appropriate source of service information for doing functional tests specified in the original NPRM). We have revised this supplemental NPRM to reference Revision 2 of Boeing Service Bulletin DC9–30–097 as the appropriate source of service information for accomplishing certain proposed inspections, replacements, and functional tests.

We have also considered the following comments we received in response to the original NPRM:

Agrees With Original NPRM

One commenter generally agrees with the original NPRM.

Request To Add Repetitive Inspections

The National Transportation Safety Board (NTSB) requests that the inspection specified in paragraph (b)(2) of the original NPRM be changed from a one-time inspection to a repetitive inspection. The NTSB is concerned that incorrect stacking of the heater and insulator may occur after the one-time inspection. The NTSB states that repetitive inspections at the same interval as the inspection specified in paragraph (b)(1) of the original NPRM would identify incorrect stacking without placing an undue burden on operators.

We agree with the NTSB that the inspection specified in paragraph (b)(2) of the supplemental NPRM be changed to a repetitive inspection. Incorrect stacking of the heater and insulator will cause higher-than-normal operating temperature locally in the insulation blanket, which would lead to quicker deterioration and aging of the rubber, causing it to crack and lead to electrical shorting or arcing. In consideration of this unsafe condition and the potential for incorrect stacking, we have determined that a repetitive inspection of the heater and insulator for incorrect stacking is necessary. We have revised paragraph (b) of the supplemental NPRM accordingly.

Request To Withdraw the Original NPRM

Two commenters request that the original NPRM be withdrawn. One commenter, the airplane manufacturer, contends that the unsafe condition no longer exists. The commenter states that the unsafe condition was addressed by Boeing Alert Service Bulletin MD90–30A023, including Appendix, dated March 14, 2001 (for Model MD–90–30 airplanes); and by Boeing Alert Service Bulletin MD80–30A092, including Appendix, dated March 14, 2001 (for Model DC–9–81, –82, –83, and –87 airplanes, and Model MD–88 airplanes). The commenter notes that those service bulletins were mandated by AD 2001–10–11, amendment 39–12237 (66 FR 28651, May 24, 2001), and by AD 2001–10–10, amendment 39–12236 (66 FR

28643, May 24, 2001). The commenter states that those ADs require inspecting the wiring of the primary and alternate static port heaters, determining if the type of insulation blanket installed is metallized Mylar, and modifying the insulation blankets if necessary.

The commenter also states that a review of operators' reports indicates that only two events resulted in smoke in the cabin, both on one operator's Model MD–88 airplanes. One event resulted in the issuance of the service bulletins described previously, and the other event report stated that a smoke smell was ''evident.'' The commenter notes that ''in the three years since the release of these service bulletins and the related ADs, no other static port heater smoke/fire events have been reported from the entire MD–80/90 fleet.'' The commenter believes that the actions in the original NPRM are purely an enhancement; thus, the NPRM should be withdrawn.

The other commenter states that the cause of the smoke in the cabin was determined to be an electrical short of the static port heater, which caused a spark that ignited the metallized Mylar insulation blanket adjacent to the heater. The commenter contends that Boeing Alert Service Bulletin MD80–30A092 was issued to address the unsafe condition by inspecting the static port heater wiring and modifying or removing the metallized Mylar insulation blankets. The commenter notes that it accomplished this service bulletin to comply with AD 2001–10–10 and found no faults in any of the static port heaters. The commenter believes this addresses the unsafe condition and therefore the original NPRM is not needed.

We do not agree with the commenters' requests to withdraw the original NPRM. Although no other static port heater smoke/fire events have been reported since we issued ADs 2001–10–10 and 2001–10–11, the potential for sparks from an electrical short of the static port heater to ignite the insulation blanket adjacent to the static port heater and result in smoke and/or fire in the cabin area still exists. While ADs 2001–10–10 and 2001–10–11 require only a one-time inspection of the wiring of the static port heaters, this supplemental NPRM would require repetitive functional tests and inspections of the static port heater assemblies and wiring. The proposed repetitive inspections are required to identify and remove marginal static port heaters before they fail and generate sparks. Therefore, we have not withdrawn this supplemental NPRM.

Request To Revise Airplane Maintenance Manual (AMM) Reference

One commenter requests that the reference to AMM 30–32–00 be revised to AMM 30–30–00. The commenter believes the reference in paragraph (b)(2) of the original NPRM is in error as it is not reflected in either the DC–9 or the MD–80 AMMs.

We agree with the commenter that the reference should be revised to Boeing Model DC–9 AMM 30–30–00 for Model DC–9 airplanes only. For Model DC–9 airplanes, AMM 30–30–00 contains the instructions for performing a general visual inspection of the left and right primary and alternate static port heater and insulator for proper installation. For Model MD–80 airplanes, Boeing Model MD–80 AMM 30–30–01 contains the same instructions. We have revised paragraph (b)(2) of the supplemental NPRM accordingly.

Request To Remove Model DC–9 Airplanes From the Applicability

One commenter requests that Model DC–9–10, –20, –30, –40, and –50 series airplanes be removed from the applicability of the original NPRM. The commenter states that the original NPRM addresses known problems on the Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) airplanes, and Model MD–88 airplanes, and extends a proposed solution to Model DC–9–10, –20, –30, –40, and –50 series airplanes. The commenter notes that the shorted wiring at the static port heater blanket caused or contributed to an instance of a metallized Mylar insulation blanket being ignited. The commenter believes the unsafe condition does not apply to Model DC–9–10, –20, –30, –40, and –50 series airplanes because those models do not use metallized Mylar insulation blankets.

We do not agree with the commenter to remove Model DC–9–10, –20, –30, –40, and –50 series airplanes from the applicability in this supplemental NPRM. The unsafe condition exists for airplanes on which there is a static port heater regardless of the type of insulation blanket adjacent to the heater. An electrical short of the static port heater from sparking could ignite the insulation blanket adjacent to the static port heater and result in smoke and/or fire in the cabin area. We have not revised the supplemental NPRM in this regard.

Request To Revise Compliance Times

The same commenter requests that the compliance times specified in paragraph (b) of the original NPRM be revised. The commenter notes that the initial inspection specified in the original NPRM is to be done within 18 months. However, the commenter proposes that the initial inspection be done within 36 months. The commenter contends that the area of inspection is not normally opened during the light checks that occur every 18 months and that the area would be open for the heavy checks that occur every 36 months. The commenter also suggests doing the repetitive inspections at intervals not to exceed 36 months instead of intervals not to exceed 48 months as specified in paragraph (b) of the original NPRM. The commenter concludes that their proposed compliance times would alleviate much of its labor impact.

We do not agree with the commenter to revise the compliance times in paragraph (b) of the supplemental NPRM. In developing an appropriate compliance time, we considered the safety implications, and normal maintenance schedules for timely accomplishment of the inspections specified in the supplemental NPRM. In consideration of all of these factors, we determined that the compliance times, as proposed, represent an appropriate interval in which the inspections can be accomplished, while still maintaining an adequate level of safety. Operators are always permitted to accomplish the requirements of an AD at a time earlier than the specified compliance time; therefore, an operator may choose to do the repetitive inspections at intervals earlier than 48 months. We have not revised the supplemental NPRM in this regard.

Request To Allow Further Flight Subject to the Conditions of the Maintenance Equipment List (MEL)

One commenter requests that provisions should be made to allow further flight subject to the conditions of the MEL when damaged or inoperative static port heater assemblies are found during an inspection specified by the original NPRM. The commenter notes that the original NPRM specifies that, if damage is found or the heater fails a functional test, the damaged or inoperative static port heater assembly must be replaced before further flight. The commenter states that the FAA-approved MEL item 30–6 allows the static port heaters to be inoperative for takeoff and landing under certain conditions, for up to 10 days. The commenter believes that provisions to allow the operator to collar the circuit breaker and permit further flight subject to the MEL should be made in the event of parts shortages or other unforeseen circumstances.

We do not agree with the commenter to make provisions to allow further flight subject to the conditions of the MEL when damaged or inoperative static port heater assemblies are found. MEL item 30–6 is based on meteorological conditions, which are subject to change, during takeoff and landing. We have not revised the supplemental NPRM in this regard. However, under the provisions of paragraph (e) of the supplemental NPRM, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Exclude Certain Airplanes From Initial Inspection

One commenter requests that airplanes on which the metallized Mylar insulation blankets have been replaced be excluded from the initial inspection specified in paragraph (b) of the original NPRM. The commenter notes that it is well into its metallized Mylar insulation blanket replacement program for its Model MD–80 fleet. The commenter states that the reason to exclude these airplanes is because of the lack of findings during the inspection of the static port heaters in all of its airplanes in 2001.

We disagree with the commenter. As stated previously, the identified unsafe condition is on all airplanes specified in the applicability of the supplemental NPRM regardless of whether the insulation blankets are made of metallized Mylar. Therefore, even if the metallized Mylar insulation blankets have been removed or replaced, operators must do the inspections specified in paragraph (b) of the supplemental NPRM to inspect both the wiring in the static port connecter for damage and to inspect for proper installation of the static port heater and insulator. These inspections are required in order to address the identified unsafe condition. We have not revised the supplemental NPRM in this regard. However, under the provisions of paragraph (e) of the supplemental NPRM, we may consider requests for approval of an AMOC if sufficient data are submitted to substantiate that such an AMOC would provide an acceptable level of safety.

Request To Allow Replacement of a Heater as a Means of Compliance With the Initial Inspection

One commenter requests that replacing a static port heater in accordance with Boeing Service Bulletin MD80–34–289 be allowed as a means of compliance with the initial inspection specified in paragraph (b) of the original NPRM. The commenter states that most of its primary static ports and primary static port heaters were replaced during the accomplishment of Boeing Service Bulletin MD80–34–289 to comply with the requirements for domestic reduced vertical separation minimums (RVSM).

We do not agree with the commenter's request to allow replacement of the static port heater in accordance with Boeing Service Bulletin MD80–34–289, dated February 25, 1997, as a means of compliance with the initial inspection specified in paragraph (b) of the supplemental NPRM. The service bulletin, titled ''Navigation—Attitude Indication—Inspect for Reduced Vertical Separation Minimums (RVSM) Requirements,'' is for RVSMs that started being implemented March 27, 1997. However, the replacement procedure specified in the service bulletin does not comply with paragraph (b)(2) of the supplemental NPRM, which requires performing a general visual inspection of the static port heater and insulator for proper installation. We have not revised the supplemental NPRM in this regard. However, under the provisions of paragraph (e) of the final rule, we may approve requests for an alternate method of compliance (AMOC) if data are submitted to substantiate that such an AMOC would provide an acceptable level of safety.

Request To Clarify Drawing That Is Not Applicable to Certain Airplanes

One commenter notes that ''Condition 2'' of the service bulletin refers to McDonnell Douglas drawing SR09340158. However, the commenter states that the drawing is applicable to Model MD–80 airplanes, not to Model DC–9 airplanes. We infer from this that the commenter is requesting clarification of a drawing specified in Boeing Service Bulletin DC9–30–097, Revision 01, dated January 24, 2003.

We do not agree with the commenter that the drawing is not applicable to Model DC–9 airplanes. McDonnell Douglas drawing SR09340158 is applicable to both Model MD–80 airplanes and Model DC–9 airplanes. Because Model DC–9–80 (MD–80) airplanes are a derivative of the Model DC–9 airplanes, Boeing uses DC–9 and MD–80 drawings interchangeably. We have not revised the supplemental NPRM in this regard.

Request To Revise Cost Impact

Two commenters request that the Cost Impact section in the original NPRM be revised. One commenter notes that Boeing Service Bulletin DC9–30–097 estimates the labor to do the visual inspections and functional tests of the left and right primary and alternate static port heater assemblies to be 3.2 hours. The commenter estimates 6.0 labor hours to be more accurate. The other commenter notes that the service bulletin estimates either 2.8 or 3.2 labor hours to gain access, do the general visual inspection, and do the test. The commenter states that the original NPRM specifies only one labor hour to do the general visual inspection and test, and one labor hour to do the other inspection. The commenter also points out that the original NPRM does not include labor hours to do repairs ''as required'' and does not include the cost to replace any damaged or inoperative blankets, at approximately $500 to $1,000 each.

While we do not object to the figures provided by the commenters, we do not agree to revise the Cost Impact section in the supplemental NPRM. The cost information describes only the direct costs of the specific actions in the supplemental NPRM that will be required, based on data provided by the manufacturer for the number of work hours necessary to do the proposed actions. We recognize that, in doing the actions required by an AD, operators may incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which may vary significantly among operators, are almost impossible to calculate. The economic analysis of an AD also does not consider the costs of ''on-condition'' actions (that is, actions needed to correct an unsafe condition and costs of associated parts) because, regardless of AD direction, those actions would be required to correct an unsafe condition identified in an airplane and ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. We have not revised the supplemental NPRM in this regard.

Clarification of AMOC Paragraph

We have revised this supplemental NPRM to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

Since the changes described above expand the scope of the original NPRM, the FAA has determined that it is

necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 1,836 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,125 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed general visual inspection for wire damage and functional test, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection for wire damage and functional test on U.S. operators is estimated to be $73,125, or $65 per airplane, per inspection cycle.

It would also take approximately 1 work hour per airplane to accomplish the proposed general visual inspection for proper installation, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection for proper installation on U.S. operators is estimated to be $73,125, or $65 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 proposed 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:

McDonnell Douglas: Docket 2003–NM–198–AD.

Applicability: McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes, and Model MD–88 airplanes; certificated in any category; as identified in Boeing Service Bulletin DC9–30–097, Revision 2, dated May 27, 2005.

Compliance: Required as indicated, unless accomplished previously.

To prevent an electrical short of the static port heater from sparking and igniting the insulation blanket adjacent to the static port heater, which could result in smoke and/or fire in the cabin area, accomplish the following:

Service Bulletin References

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin DC9–30–097, Revision 2, dated May 27, 2005.

Inspection and Functional Test

(b) Within 18 months after the effective date of this AD, do the actions in paragraphs (b)(1) and (b)(2) of this AD. Repeat the actions thereafter at intervals not to exceed 48 months.

(1) Perform a general visual inspection of the left and right primary and alternate static port heater assemblies for wire damage; and perform a functional test of the left and right primary and alternate static port heater assemblies; in accordance with the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is: ''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 ensure visual access to all surfaces in the inspection area. This level of inspection is made under normal available lighting conditions such as daylight, hangar lighting, flashlight or drop-light 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.''

(2) Perform a general visual inspection of the left and right primary and alternate static port heater and insulator for proper installation in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO). Inspecting for proper installation in accordance with ''Heater, Static—Removal/Installation'' of Airplane Maintenance Manual (AMM) 30–30–01 for Model MD–80 airplanes or ''Pitot and Static—Maintenance Practices'' of AMM 30–30–00 for Model DC–9 airplanes, as applicable, is one approved method. Before further flight, correct any improper installation in accordance with a method approved by the Manager, Los Angeles ACO. Correcting improper installation in accordance with AMM 30–30–01 or AMM 30–30–00, as applicable, is one approved method. For an inspection method or corrective method to be approved by the Manager, Los Angeles ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Wire Damage or Heater Failures

(c) If wire damage is found and/or the heater assembly fails the functional test during the general visual inspection and functional test required by paragraph (b)(1) of this AD: Before further flight, replace the damaged or inoperative static port heater assembly with a new or serviceable static

port heater assembly in accordance with the service bulletin.

Actions Accomplished In Accordance With Previous Issue of Service Bulletin

(d) Inspections, functional tests, and corrective actions accomplished before the effective date of this AD in accordance with Boeing Service Bulletin DC9–30–097, dated February 15, 2002; and Boeing Service Bulletin DC9–30–097, Revision 01, dated January 24, 2003; are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance

(e)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance 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.

Issued in Renton, Washington, on December 12, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24246 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–194–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

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

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 airplanes, that would have required repetitive inspections and functional tests of the static port heater assemblies, an inspection of the static port heaters and insulators, and corrective actions if necessary. This new action revises the proposed AD by adding repetitive inspections of the static port heaters and insulators and revising the functional test of the static port heater assemblies. The actions specified by this new proposed AD are intended to prevent an electrical short of the static port heater from sparking and igniting the insulation blanket adjacent to the static port heater, which could result in smoke and/or fire in the cabin area. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 17, 2006.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–194–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–194–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 AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed AD 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 AD. 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 AD. 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–194–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–194–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 McDonnell Douglas Model MD–90–30 airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 8, 2004 (69 FR 10638). That NPRM would have required repetitive inspections and functional tests of the static port heater assemblies, an inspection of the static port heaters and insulators, and corrective actions if necessary. That NPRM was prompted by studies that revealed that the wiring of the static port heater assembly may be damaged. That condition, if not corrected, could result in an electrical short of the static port heater and consequent sparking and ignition of the insulation blanket adjacent to the static port heater, which could result in smoke and/or fire in the cabin area.

Actions Since Issuance of Previous Proposal

The airplane manufacturer informed the FAA that the functional test of the left and right primary and alternate static port heater assemblies must be revised to prevent damaging the aircraft fuselage skin. An operator informed the airplane manufacturer that performing the current functional test will overheat and damage the aircraft fuselage skin. Therefore, the airplane manufacturer has revised the functional test and issued Boeing Service Bulletin MD90–30–026, Revision 1, dated May 27, 2005, which references the revised functional test (Boeing Service Bulletin MD90–30–026, dated February 15, 2002, is cited as the appropriate source of service information for doing functional tests specified in the original NPRM). We have revised the supplemental NPRM to reference Revision 1 of Boeing Service Bulletin MD90–30–026 as the appropriate source of service information for accomplishing certain proposed inspections, replacements, and functional tests.

We have also considered the following comments we received in response to the original NPRM:

Request To Add Repetitive Inspections

The National Transportation Safety Board (NTSB) requests that the inspection for incorrect stacking specified in paragraph (b)(2) of the NPRM be changed from a one-time inspection to a repetitive inspection. The NTSB is concerned that, after the one-time inspection specified in the NPRM, incorrect stacking may still occur. The NTSB states that repetitive inspections would address any incorrect stacking that may occur in the future. The NTSB also states that the repetitive inspection interval could be the same as the one for the inspection specified in paragraph (b)(1) of the NPRM, and therefore would not place an undue burden on operators.

We agree with the NTSB that the inspection required in paragraph (b)(2) of the supplemental NPRM be changed to repetitive inspections. Incorrect stacking of the heater and insulator will cause higher-than-normal operating temperature locally in the insulation blanket, which would lead to quicker deterioration and aging of the rubber, causing it to crack and lead to electrical shorting or arcing. In consideration of this unsafe condition and the potential for incorrect stacking, we have determined that repetitive inspections of the heater and insulator for incorrect stacking is necessary. We have revised paragraph (b) of the supplemental NPRM accordingly.

Request To Withdraw the NPRM

One commenter, the airplane manufacturer, requests that the NPRM be withdrawn. The commenter contends that the unsafe condition no longer exists. The commenter states that the unsafe condition was addressed by Boeing Alert Service Bulletin MD90–30A023, including Appendix, dated March 14, 2001 (for Model MD–90–30 airplanes), which was mandated by AD 2001–10–11, amendment 39–12237 (66 FR 28651, May 24, 2001), and by Boeing Alert Service Bulletin MD80–30A092, including Appendix, dated March 14, 2001 (for Model DC–9–81, –82, –83, and –87 airplanes, and Model MD–88 airplanes), which was mandated by AD 2001–10–10, amendment 39–12236 (66 FR 28643, May 24, 2001). The commenter states that those ADs require inspecting the wiring of the primary and alternate static port heaters, determining if the type of insulation blanket installed is metallized Mylar, and modifying the insulation blankets if necessary.

The commenter also states that a review of operator's reports indicates only two events resulted in smoke in the cabin, both on one operator's MD–88 airplanes. One event resulted in the issuance of the service bulletins described previously, and the other event report stated a smoke smell was ''evident.'' The commenter notes that ''in the three years since the release of these service bulletins and the related ADs, no other static port heater smoke/fire events have been reported from the entire MD–80/90 fleet.''

The commenter concludes that the unsafe condition no longer exists, and that the actions in the NPRM are purely an enhancement. Therefore, the commenter requests that the NPRM be withdrawn.

We do not agree with the commenter's request to withdraw the NPRM. Although no other static port heater smoke/fire events have been reported since we issued ADs 2001–10–10 and 2001–10–11, the potential for sparks from an electrical short of the static port heater to ignite the insulation blanket adjacent to the static port heater and result in smoke and/or fire in the cabin area still exists. While ADs 2001–10–10 and 2001–10–11 require only a one-time inspection of the wiring of the static port heaters, this supplemental NPRM would require repetitive functional tests and inspections of the static port heater assemblies and wiring. The proposed repetitive inspections are required to identify and remove marginal static port heaters before they fail and generate sparks. Therefore, we have not withdrawn this supplemental NPRM.

Request To Revise Airplane Maintenance Manual (AMM)

One commenter requests that AMM 30–32–00 be revised to include the procedures to check the insulator for proper installation.

We partially agree with the commenter's request. Operators should note that the procedures to check the insulator for proper installation are located in Boeing Model MD–90–30 AMM 30–32–01, which is a subparagraph of AMM 30–32–00. We have revised the reference to the AMM in paragraph (b)(2) of this supplemental NPRM accordingly.

Request To Revise Service Bulletin

The same commenter requests that Boeing Service Bulletin MD90–30–026, dated February 15, 2002 (cited as the appropriate source of service information for the NPRM), be revised to include the inspection for proper installation as required by the NPRM. The commenter notes that the service bulletin does not include an inspection for proper installation.

We do not agree with the commenter's request. We have consulted with the manufacturer and have concluded that the AMM provides the necessary information to properly complete the inspection. Therefore, there is limited value in revising the service bulletin to include this information. No change is made to the supplemental NPRM in this regard.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this supplemental NPRM to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

Since certain changes described above expand the scope of the original NPRM, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 116 airplanes of the affected design in the worldwide fleet. The FAA estimates that 22 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed general visual inspection for

wire damage and functional test, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection for wire damage and functional test on U.S. operators is estimated to be $1,430, or $65 per airplane, per inspection cycle.

It would also take approximately 1 work hour per airplane to accomplish the proposed general visual inspection for proper installation, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection for proper installation on U.S. operators is estimated to be $1,430, or $65 per airplane, per inspection cycle.

The cost impact figure discussed above is 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:

McDonnell Douglas: Docket 2003–NM–194–AD.

Applicability: Model MD–90–30 airplanes, certificated in any category, as identified in Boeing Service Bulletin MD90–30–026, Revision 1, dated May 27, 2005.

Compliance: Required as indicated, unless accomplished previously.

To prevent an electrical short of the static port heater from sparking and igniting the insulation blanket adjacent to the static port heater, which could result in smoke and/or fire in the cabin area, accomplish the following:

Service Bulletin References

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin MD90–30–026, Revision 1, dated May 27, 2005.

Inspection and Functional Test

(b) Within 18 months after the effective date of this AD, do the actions in paragraphs (b)(1) and (b)(2) of this AD. Repeat the actions thereafter at intervals not to exceed 48 months.

(1) Perform a general visual inspection of the left and right primary and alternate static port heater assemblies for wire damage; and perform a functional test of the left and right primary and alternate static port heater assemblies; in accordance with the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is: ''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 ensure visual access to all surfaces in the inspection area. This level of inspection is made under normal available lighting conditions such as daylight, hangar lighting, flashlight or drop-light 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.''

(2) Perform a general visual inspection of the left and right primary and alternate static port heater and insulator for proper installation in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO). Inspecting for proper installation in accordance with ''Static Port Heaters—Maintenance Practices'' of McDonnell Douglas MD–90–30 Airplane Maintenance Manual (AMM) 30–32–01 is one approved method. Before further flight, correct any improper installation in accordance with a method approved by the Manager, Los Angeles ACO. Correcting improper installation in accordance with ''Static Port Heaters—Maintenance Practices'' of AMM 30–32–01 is one approved method. For an inspection method or corrective method to be approved by the Manager, Los Angeles ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Wire Damage or Heater Failures

(c) If wire damage is found and/or the heater assembly fails the functional test during the general visual inspection and functional test required by paragraph (b)(1) of this AD: Before further flight, replace the damaged or inoperative static port heater assembly with a new or serviceable static port heater assembly in accordance with the service bulletin.

Actions Accomplished According to Previous Issue of Service Bulletin

(d) Actions accomplished before the effective date of this AD according to Boeing Service Bulletin MD90–30–026, dated February 15, 2002, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance

(e)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles ACO, FAA, is authorized to approve alternative methods of compliance 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.

Issued in Renton, Washington, on December 12, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24247 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–23026; Airspace Docket No. 05–AAL–39]

Proposed Revision of Class E Airspace; Sand Point, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise the Class E airspace at Sand Point, AK. Three new Standard Instrument Approach Procedures (SIAPs), a revised Departure Procedure (DP) and a revised SIAP are being published for the Sand Point Airport. Adoption of this proposal would result in revised Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Sand Point, AK.

DATES: Comments must be received on or before February 3, 2006.

ADDRESSES: Send comments on the 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–2005–23026/ Airspace Docket No. 05–AAL–39, 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.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

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–2005–23026/Airspace Docket No. 05–AAL–39.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (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, 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 numbers 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

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would revise the Class E airspace at Sand Point, AK. The intended effect of this proposal is to modify Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Sand Point, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed three new SIAPs, revised the DP, and modified one SIAP for the Sand Point Airport. The new approaches are: (1) Area Navigation (Global Positioning System) (RNAV (GPS)) Runway (RWY) 13, original; (2) Non-directional Beacon (NDB)/Distance Measuring Equipment (DME) RWY 13, original; (3) NDB/DME RWY 31, original. The unnamed revised DP is published in the front of the U.S. Terminal Procedures Alaska Vol 1. The revised SIAP is the NDB RWY 13, Amendment 1. Modified Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface within the Sand Point Airport area would be established by this action. The proposed airspace is sufficient to contain aircraft executing the new and revised instrument procedures at the Sand Point Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 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.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to modify the Class E airspace sufficiently to contain aircraft executing instrument procedures at Sand Point Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

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 14 CFR 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, *Airspace Designations and Reporting Points,* dated September 1, 2005, and effective September 15, 2005, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Sand Point, AK[Revised]

Sand Point Airport, AK
(Lat. 55°18′54″ N., long. 160°31′22″ W)
Borland NDB/DME
(Lat. 55°18′56″ N., long. 160°31′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Sand Point Airport and within 3 miles each side of the 172° bearing of the Borland NDB/DME extending from the 6.4-mile radius to 13.9 miles south of the airport and within 5 miles either side of the 318° bearing of the Borland NDB/DME extending from the 6.4-mile radius to 17 miles northwest of the airport; and that airspace within 5 miles either side of the 324° bearing of the Borland NDB/DME extending from the 6.4-mile radius to 17 miles northwest of the airport, and that airspace extending upward from 1,200 feet above the surface within a 25-mile radius of the Borland NDB/DME.

* * * * *

Issued in Anchorage, AK, on December 13, 2005.

Anthony M. Wylie,

Manager, Safety, Area Flight Service Operations.

[FR Doc. 05–24228 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 51

[EPA–OAR–2005–0148; FRL–8010–5]

Advance Notice To Solicit Comments, Date and Information for Determining the Emissions Reductions Achieved in Ozone Nonattainment and Maintenance Areas From the Implementation of Rules Limiting the VOC Content of AIM Coatings; Second Extension of the Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking; second extension of the comment period.

SUMMARY: The EPA is extending the comment period a second time for an advanced notice of proposed rulemaking (ANPR) published on August 31, 2005 (70 FR 51694). The first extension of comment period published in the **Federal Register** on October 13, 2005 (70 FR 59680). In the August 31, 2005, document, EPA solicited comments, data and information for determining how to calculate the reduction in volatile organic compounds (VOC) emissions achieved in ozone nonattainment and maintenance areas from the implementation of rules which limit the VOC content of architectural coatings (commonly referred to as architectural industrial maintenance, or AIM, coatings). In addition to submitting comments, data and information, interested parties may also request to meet with EPA to present their recommended approaches and rationales. Pursuant to requests of the Ozone Transport Commission and the California Air Resources Board and to allow more time in general, EPA is extending the comment period an additional 60 days to February 16, 2006.

DATES: Comments must be received on or before February 16, 2006. Requests to meet with EPA should be made on or before January 30, 2006.

ADDRESSES: Submit comments, identified by Docket ID No. EPA–OAR–2005–0148, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *A-and-R-Docket@epa.gov* attention Docket No. EPA–OAR–2005–0148.
- Fax: 202–566–1741.
- Mail: Docket ID No. EPA–OAR–2005–0148, Environmental Protection Agency Docket Center, Mail Code: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 10460. Please include duplicate copies, if possible.
- Hand Delivery: Docket ID No. EPA–OAR–2005–0148, Environmental Protection Agency Docket Center, EPA West Building, Room–102, 1301 Constitution Avenue, NW., Washington, DC. Please include duplicate copies, if possible. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–OAR–2005–0148. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identify

or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/docket.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This docket facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (202) 566–1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m, Monday through Friday, excluding legal holidays. The telephone number for the public Reading room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, Air Protection Division, Office of Air Programs, Mail Code: 3AP20; Environmental Protection Agency, Region 3, 1650 Arch St., Philadelphia, PA 19103–2029; telephone (215) 814–2104, *spink.marcia epa.gov*, or Makeba A. Morris, Air Protection Division, Air Quality Planning Branch, Mail Code; 3AP21; Environmental Protection Agency, Region 3, 1650 Arch St., Philadelphia, PA 19103–2029; telephone number: (215) 814–2187; fax number: (215) 814–2124; e-mail address: *morris.makeba@epa.gov*. To schedule a meeting with EPA, please contact David Sanders, Ozone Policy & Strategies Group, Air Quality Strategies & Standards Division, Mail Code C539–02, Office of Air Quality Planning & Standards, Research Triangle Park, NC 27711, telephone (919) 541–3356, or by e-mail at *sanders.dave@epa.gov*.

Dated: December 14, 2005.

William L. Wehrum,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 05–24260 Filed 12–19–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2005–IA–0006; FRL–8010–8]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the State Implementation Plan (SIP) submitted by the state of Iowa. These revisions include the general rulemaking that Iowa completes for the purpose of updating various rules, making clarifications and other minor revisions. EPA is also proposing approval of revisions to the Iowa Operating Permits Program for the purpose of updating and clarifying various rules included in the general rulemaking. These revisions add new definitions, as well as an administrative correction to a previously submitted rule. Approval of these revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the State's revised air program rules.

DATES: Comments on this proposed action must be received in writing by January 19, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2005–IA–0006 by one of the following methods:

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

2. E-mail: Heather Hamilton at *Hamilton.heather@epa.gov.*

3. Mail: Heather Hamilton, 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: Heather Hamilton, 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: Heather Hamilton at (913) 551–7039, or by e-mail at *Hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's submittal 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: December 12, 2005.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 05–24258 Filed 12–19–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 215, 230, 252, and 253

[DFARS Case 2003–D014]

Defense Federal Acquisition Regulation Supplement; Contract Pricing and Cost Accounting Standards

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text addressing contract pricing matters and cost accounting standards administration. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before February 21, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D014, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Defense Acquisition Regulations Web Site: http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil*. Include DFARS Case 2003–D014 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Bill Sain, OUSD (AT&L) DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Mr. Bill Sain, (703) 602–0293.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm.*

This proposed rule is a result of the DFARS Transformation initiative. The proposed DFARS changes include:

- Addition of text at 215.403–1(c) and 230.201–5(a)(1) to implement Section 817 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314) regarding exceptions to cost or pricing data requirements and waiver of cost accounting standards.
- Deletion of 215.404–1(d), Cost realism analysis, because FAR 15.404–1 contains sufficient policy on this subject.
- Deletion of unnecessary introductory text at redesignated 215.404–71–4(f), Facilities capital employed, Values: Normal and designated ranges.
- Deletion of the definition of ''Acceptable estimating system'' from 215.407–5–70(a)(1), and relocation of the definition to the contract clause at 252.215–7002, Cost Estimating System Requirements; addition of a cross-reference in 215.407–5–70(a)(1) to the relocated definition; elimination of 215.407–5–70(b)(1)(iii) and (iv) and relocation of the language to the new definition at 252.215–7002(a); and deletion of duplicative language at 252.215–7002(b).
- Revision of 230.201–5(a)(1)(A) to address the authority of the Director, Defense Procurement and Acquisition Policy, to grant cost accounting standards waivers, in accordance with Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65).
- Removal of 230.7000, Contract facilities capital estimates; 230.7001, Use of DD Form 1861; 230.7002, Preaward facilities capital applications; and 230.7004–2, DD Form 1861, and relocation of text on these subjects to 215.404–4, Profit, since these sections pertain to the calculation of weighted guidelines for profit, rather than cost accounting standards.
- Elimination of 230.7003, Postaward facilities capital applications, and 230.7004–1, Forms CASB–CMF, since these sections duplicate CAS 414, Cost of Money as an Element of the Cost of Facilities Capital; FAR 31.205–10, Cost of Money; and the implementing contract clauses.
- Elimination of the definitions at 230.7100(a) and (b), since these definitions are provided in the cost accounting standards (CAS); elimination of the definition at 230.7100(c), because it conflicts with CAS; and elimination of the definition at 230.7100(d), because it is unnecessary.
- Elimination of 230.7101, Calculations, and 230.7102, Determining imputed cost of money, because they are adequately covered in CAS 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction (48 CFR 9904.417).
- Removal of 230.7103, Preaward capital employed application, and relocation of that coverage to 215.404–73(b)(2)(i), Offsets for facilities capital cost of money, since it applies to offsets in determining profit, rather than cost accounting standards.
- Relocation of the following text to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). Additional information on PGI is available at *http://www.acq.osd.mil/dpap/dars/pgi.*
- 215.403–1(c)(1), Adequate price competition.
- 215.403–5, Instructions for submission of cost or pricing data or information other than cost or pricing data.
- 215.404–2, Information to support proposal analysis.
- 215.404–3, Subcontract pricing considerations.
- 215.404–70, DD Form 1547, Record of Weighted Guidelines Method Application.
- 215.404–71–2(b), (d), and (e), Performance risk.
- 215.404–71–3(b), (d), (e), and (f)(3), Contract type risk and working capital adjustment.
- 215.404–71–4, Facilities capital employed (partial relocation).
- 215.404–71–5(b) and (c), Cost efficiency factor.
- 215.404–76, Reporting profit and fee statistics.
- 215.406–1, Prenegotiation objectives.
- 215.406–3, Documenting the negotiation.
- 215.407–4, Should-cost review.
- 215.407–5–70(e) and (f), Estimating systems '' Disclosure, maintenance, and review requirements.
- 215.470(b) and (c), Estimated data prices, except that the first sentence of (b) remains in DFARS, and is revised for clarity.
- 230.201–5(a)(1), Waiver (partial relocation).
- 253.215–70, DD Form 1547, Record of Weighted Guidelines Application.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities

within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule updates, clarifies, and relocates DFARS text, but makes no significant change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD will also consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D014.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 215, 230, 252, and 253

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Parts 215, 230, 252, and 253 as follows:

1. The authority citation for 48 CFR Parts 215, 230, 252, and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.403–1 is revised to read as follows:

215.403–1 Prohibition on obtaining cost or pricing data.

(c) See PGI 215.403–1(c) for guidance on standards for exceptions from cost or pricing data requirements.

(3) *Commercial items.* By November 30th of each year, the departments and agencies shall provide a report to the Director, Defense Procurement and Acquisition Policy (DPAP), ATTN: DPAP/Policy, of all commercial item exceptions granted under FAR 15.403–1(b)(3), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of $15,000,000 or more. See PGI 215.403–1(c)(3) for the format and guidance for the report. The Director, DPAP, will submit a consolidated report to the congressional defense committees.

(4) *Waivers.* (A) The head of the contracting activity may apply the exceptional circumstances authority when a determination is made that:

(1) The property or services cannot reasonably be obtained under the contract, subcontract, or modification, without the granting of the waiver;

(2) The price can be determined to be fair and reasonable without the submission of certified cost or pricing data; and

(3) There are demonstrated benefits to granting the waiver.

(B) By November 30th of each year, the departments and agencies shall provide a report to the Director, DPAP, ATTN: DPAP/Policy, of all waivers granted under FAR 15.403–1(b)(4), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of $15,000,000 or more. See PGI 215.403–1(c)(4)(B) for the format and guidance for the report. The Director, DPAP, will submit a consolidated report to the congressional defense committees.

(C) DoD has waived the requirement for submission of cost or pricing data for the Canadian Commercial Corporation and its subcontractors.

(D) DoD has waived cost or pricing data requirements for nonprofit organizations (including educational institutions) on cost-reimbursement-no-fee contracts. The contracting officer shall require:

(1) Submission of information other than cost or pricing data to the extent necessary to determine price reasonableness and cost realism; and

(2) Cost or pricing data from subcontractors that are not nonprofit organizations when the subcontractor's proposal exceeds the cost or pricing data threshold at FAR 15.403–4(a)(1).

3. Section 215.403–5 is revised to read as follows:

215.403–5 Instructions for submission of cost or pricing data or information other than cost or pricing data.

When the solicitation requires contractor compliance with the Contractor Cost Data Reporting System, follow the procedures at PGI 215.403–5.

215.404–1 [Amended]

4. Section 215.404–1 is amended by removing paragraph (d).

5. Sections 215.404–2 and 215.404–3 are revised to read as follows:

215.404–2 Information to support proposal analysis.

See PGI 215.404–2 for guidance on obtaining field pricing or audit assistance.

215.404–3 Subcontract pricing considerations.

Follow the procedures at PGI 215.404–3 when reviewing a subcontractor's proposal.

6. Section 215.404–4 is amended by revising paragraph (b)(1) introductory text to read as follows:

215.404–4 Profit.

(b) * * *

(1) Contracting officers shall use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action when cost or pricing data is obtained, except for cost-plus-award-fee contracts (see 215.404–74, 216.405–2, and FAR 16.405–2) or contracts with Federally Funded Research and Development Centers (FFRDCs) (see 215.404–75). There are three structured approaches—

* * * * *

7. Section 215.404–70 is revised to read as follows:

215.404–70 DD Form 1547, Record of Weighted Guidelines Method Application.

Follow the procedures at PGI 215.404–70 for use of DD Form 1547 whenever a structured approach to profit analysis is required.

8. Section 215.404–71–2 is amended by revising paragraphs (b), (d), and (e) to read as follows:

215.404–71–2 Performance risk.

* * * * *

(b) *Determination.* See PGI 215.404–71–2(b) for guidance on determining the risk factors to be included in DD Form 1547.

* * * * *

(d) *Evaluation criteria for technical.* See PGI 215.404–71–2(d) for guidance on evaluation criteria and examples of when above and below normal values should be applied.

(e) *Evaluation criteria for management/cost control.* See PGI 215.404–71–2(e) for guidance on evaluation criteria and examples of when above and below normal values should be applied.

9. Section 215.404–71–3 is amended by revising paragraphs (b), (d), (e), and (f)(3) to read as follows:

215.404–71–3 Contract type risk and working capital adjustment.

* * * * *

(b) *Determination.* See PGI 215.404–71–3(b) for guidance on determining the risk factors to be included in DD Form 1547.

* * * * *

(d) *Evaluation criteria.* See PGI 215.404–71–3(d) for guidance on evaluation criteria and examples of

when above and below normal values should be applied.

(e) *Costs financed.* See PGI 215.404–71–3(e) for guidance for determining the amount included in DD Form 1547.

(f) * * *

(3) An example is available at PGI 215.404–71–3(f)(3).

10. Section 215.404–71–4 is revised to read as follows:

215.404–71–4 Facilities capital employed.

(a) *Description.* This factor focuses on encouraging and rewarding capital investment in facilities that benefit DoD. It recognizes both the facilities capital that the contractor will employ in contract performance and the contractor's commitment to improving productivity.

(b) *Contract facilities capital estimates.* The contracting officer shall estimate the facilities capital cost of money and capital employed using:

(1) An analysis of the appropriate Forms CASB-CMF and cost of money factors (48 CFR 9904.414 and FAR 31.205–10); and

(2) DD Form 1861, Contract Facilities Capital Cost of Money.

(c) *Use of DD Form 1861.* See PGI 215.404–71–4(c) for information on the purpose of DD Form 1861 and instructions for completion of the form.

(d) *Preaward facilities capital applications.* Follow the procedures at PGI 215.404–71–4(d) for establishing cost and price objectives.

(e) *Determination.* See PGI 215.404–71–4(e) for guidance on determining the amounts and values to be included in DD Form 1547.

(f) *Values: Normal and designated ranges.*

Asset type	Normal value	Designated range
Land	0%	N/A.
Buildings	0%	N/A.
Equipment	17.5%	10% to 25%.

(g) *Evaluation criteria.* See PGI 215.404–71–4(g) for guidance on evaluation criteria and examples of when above and below normal values should be applied.

11. Section 215.404–71–5 is amended by revising paragraph (b) and removing paragraph (c). The revised text reads as follows:

215.404–71–5 Cost efficiency factor.

* * * * *

(b) See PGI 215.404–71–5(b) for guidance on appropriate use of the special cost efficiency factor.

12. Section 215.404–73 is amended by revising paragraph (b)(2)(i) to read as follows:

215.404–73 Alternate structured approaches.

* * * * *

(b) * * *

(2) * * *

(i) The contracting officer shall reduce the overall prenegotiation profit objective by the amount of facilities capital cost of money under Cost Accounting Standard 414, Cost of Money as an Element of the Cost of Facilities Capital (48 CFR 9904.414). Cost of money under CAS 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction (48 CFR 9904.417), should not be used to reduce the overall prenegotiation profit objective. The profit amount in the negotiation summary of the DD Form 1547 must be net of the offset.

* * * * *

13. Sections 215.404–76, 215.406–1, and 215.406–3 are revised to read as follows:

215.404–76 Reporting profit and fee statistics.

Follow the procedures at PGI 215.404–76 for reporting profit and fee statistics.

215.406–1 Prenegotiation objectives.

See PGI 215.406–1 for guidance on establishing prenegotiation objectives.

215.406–3 Documenting the negotiation.

Follow the procedures at PGI 215.406–3 for documenting the negotiation.

14. Section 215.407–4 is revised to read as follows:

215.407–4 Should-cost review.

See PGI 215.407–4 for guidance on determining whether to perform a program or overhead should-cost review.

15. Section 215.407–5–70 is amended by revising paragraphs (a)(1), (b)(1), (e), and (f) to read as follows:

215.407–5–70 Disclosure, maintenance, and review requirements.

(a) * * *

(1) *Acceptable estimating system* is defined in the clause at 252.215–7002, Cost Estimating System Requirements.

* * * * *

(b) * * *

(1) DoD policy is that all contractors have acceptable estimating systems that consistently produce well-supported proposals that are acceptable as a basis for negotiation of fair and reasonable prices.

* * * * *

(e) *Review procedures.* Follow the procedures at PGI 215.407–5–70(e) for establishing and conducting estimating system reviews.

(f) *Disposition of survey team findings.* Follow the procedures at PGI 215.407–5–70(f) for disposition of the survey team findings.

* * * * *

16. Section 215.470 is amended by revising paragraph (b), removing paragraph (c), and redesignating paragraph (d) as paragraph (c). The revised text reads as follows:

215.470 Estimated data prices.

* * * * *

(b) When data are required to be delivered under a contract, include DD Form 1423, Contract Data Requirements List, in the solicitation. See PGI 215.470(b) for guidance on the use of DD Form 1423.

* * * * *

PART 230—COST ACCOUNTING STANDARDS ADMINISTRATION

17. Section 230.201–5 is revised to read as follows:

230.201–5 Waiver.

(a)(1)(A) The military departments and the Director, Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics):

(1) May grant CAS waivers that meet the conditions in FAR 30.201–5(b)(1); and

(2) May grant CAS waivers that meet the conditions in FAR 30.201–5(b)(2), provided the cognizant Federal agency official granting the waiver determines that:

(i) The property or services cannot reasonably be obtained under the contract, subcontract, or modification, as applicable, without granting the waiver;

(ii) The price can be determined to be fair and reasonable without the application of the Cost Accounting Standards; and

(iii) There are demonstrated benefits to granting the waiver.

(B) Follow the procedures at PGI 230.201–5(a)(1) for submitting waiver requests to the Director, Defense Procurement and Acquisition Policy.

(2) The military departments shall not delegate CAS waiver authority below the individual responsible for issuing contracting policy for the department.

(e) By November 30th of each year, the military departments shall provide a report to the Director, Defense Procurement and Acquisition Policy,

ATTN: DPAP/Policy, of all waivers granted under FAR 30.201–5(a), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of $15,000,000 or more. See PGI 230.201–5(e) for the format and guidance for the report. The Director, Defense Procurement and Acquisition Policy, will submit a consolidated report to the CAS Board and the congressional defense committees.

Subparts 230.70 and 230.71—[Removed]

18. Subparts 230.70 and 230.71 are removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

19. Section 252.215–7002 is amended as follows:

a. By revising the clause date;

b. In paragraph (a), by revising the paragraph heading and adding a definition of ''Acceptable estimating system''; and

c. By revising paragraph (b). The revised and added text reads as follows:

252.215–7002 Cost estimating system requirements.

* * * * *

COST ESTIMATING SYSTEM REQUIREMENTS (XXX 2005)

(a) *Definitions.*

Acceptable estimating system means an estimating system that—

(1) Is maintained, reliable and consistently applied;

(2) Produces verifiable, supportable and documented cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;

(3) Is consistent with and integrated with the Contractor's related management systems; and

(4) Is subject to applicable financial control systems.

* * * * *

(b) *General.* The Contractor shall establish, maintain, and comply with an acceptable estimating system.

* * * * *

PART 253—FORMS

20. Section 253.215–70 is revised to read as follows:

253.215–70 DD Form 1547, Record of Weighted Guidelines Application.

Follow the procedures at PGI 253.215–70 for completing DD Form 1547.

[FR Doc. 05–24219 Filed 12–19–05; 8:45 am]

BILLING CODE 5001–08–P

Notices

Federal Register

Vol. 70, No. 243

Tuesday, December 20, 2005

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

December 14, 2005.

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 information. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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.

Economic Research Service

Title: Generic Clearance to Conduct Formative Research for the Development of Dietary Behavior Evaluation Measures.

OMB Control Number: 0536–NEW.

Summary of Collection: The Economic Research Service (ERS) of the Department of Agriculture (USDA) has a requirement to conduct formative research to develop measures of dietary behavior associated with dietary quality that will be widely usable with the general public and with low-income and food assistance recipient populations across the United States. Nutrition has been shown to have important effects on obesity, child development, learning, lifelong health, and productivity. Poor food behaviors have been linked to four leading causes of death, reduced quality of life, increased cost of living, and premature death. While these food-related problems affect many Americans, there is a lack of reliable, valid questionnaires or other short, practical population measures to assess such import information as: nutrition-and-food-related knowledge, attitude, and behaviors; food assistance program participation and its determinants; and program satisfaction. Development of new questionnaires and related measures and assessment of their reliability and validity will require formative research. This formative research will provide information leading to standardized dietary outcome measures that can be used to assess dietary quality of the general public, low-income Americans, and food assistance recipients, and to examine the impact of USDA food assistance programs on the dietary well being of food assistance recipients.

Need and Use of the Information: ERS will collect information to develop standardized measures of dietary behavior for practical use in assessing dietary quality among the general public and among low-income population and food assistance recipient population across the United States, its change over time or with exposure to food assistance and nutrition information programs. If this information is not collected, USDA's ability to measure the impact of nutrition education efforts will be impaired.

Description of Respondents: Individuals or households.

Number of Respondents: 3,200.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,400.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–24232 Filed 12–19–05; 8:45 am]

BILLING CODE 3410–18–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 15, 2005.

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.

Foreign Agricultural Agency

Title: Emergency Relief From Duty-Free Imports of Perishable Products Under the Andean Trade Promotion and Drug Eradication Act (ATPDEA).

OMB Control Number: 0551–0033.

Summary of Collection: The Andean Trade Preference Act (the Act) (19 U.S.C. 3201 *et seq.*) was signed into law on December 4, 1991 and expired December 4, 2001. Section 3104 of H.R. 3009, the ''Trade Act of 2002'' amended section 208(b) of the Act to extend the termination date to December 31, 2006, retroactive to December 4, 2001. The Act authorizes the President to provide duty-free treatment to imports from Bolivia, Colombia, Ecuador, and Peru, except for those few products specifically excluded. Section 204(d) provides, in part, that a petition for emergency import relief may be filed with the Secretary of Agriculture at the same time a petition for import relief is filed with the United States International Trade Commission (ITC). Emergency import relief is limited to restoration of MFN tariffs during the period of the ITC's investigation.

Need and Use of the Information: The Foreign Agricultural Service will collect the following information to be included in a petition: A description of the imported perishable product concerned; country of origin of imports; data indicating increased imports are a substantial cause of serious injury to the domestic industry producing a like or directly competitive product; evidence of serious injury; and a statement indicating why emergency action would be warranted. The information collected provides essential data for the Secretary regarding specific market conditions with respect to the industry requesting emergency relief.

Description of Respondents: Business or other for-profit; Farms; Individuals or households.

Number of Respondents: 1.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 23.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–24253 Filed 12–19–05; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Modoc Resource Advisory Committee, Alturas, California, USDA Forest Service.

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 Modoc National Forest's Modoc Resource Advisory Committee will meet Monday, January 9th, 2006 and February 6th, 2006 and March 6th in Alturas, California for business meetings. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting January 9th begins at 4 pm., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include existing and future projects that meet the intent of Pub. L. 106–393. Time will also be set aside for public comments at the beginning of the meeting.

The business meeting February 6th begins at 4 pm; at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include existing and future projects that meet the intent of Pub. L. 106–393. Time will also be set aside for public comments at the beginning of the meeting.

The business meeting March 6th begins at 4 pm; at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include existing and future projects that meet the intent of Pub. L. 106–393. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Stan Sylva, Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Public Affairs Officer Louis J Haynes at (530) 233–8846.

Stanley G. Sylva,

Forest Supervisor.

[FR Doc. E5–7548 Filed 12–19–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD NOVEMBER 4, 2005 THROUGH DECEMBER 14, 2005

Firm	Address	Date petition accepted	Product
La Rinascente Pasta, LLC.	808 Natali Drive, Hope, ND 58046	11/4/05	Pasta.
Pantaloni Manufacturing, Inc.	320 South Washington Street, Boyertown, PA 19512.	11/9/05	Men's and women's clothing.
Haven Manufacturing Corp.	370 Sterling Industrial Road, Brunswick, GA 31525.	11/14/05	Pipe and metal tubing cutting, processing and inspection machinery.
Automotive Lifts and Machinery, Corp.	200 Benchmark Industrial Drive, Streator, IL 61364.	11/18/05	Hydraulic automotive lifting jacks and hoists for cars and trucks.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD NOVEMBER 4, 2005 THROUGH DECEMBER 14, 2005—Continued

Firm	Address	Date petition accepted	Product
Glaspro, Inc, dba Zap Skimers.	101 Pond Cypress Road, Venice, FL 34292	11/21/05	Recreational skimboards and surfboards.
Latronics Corp	1001 Lloyd Avenue, P.O. Box 469, Latrobe, PA 15650.	11/21/05	Hermetic seals and machined components.
Comdaco, Inc	2000 N. Jesse James Road, Excelsior Springs, MO 64024.	11/29/05	Rubber gaskets, washers and seals.
Cap America, Inc	One Cap America Drive, Fredericktown, MO 63645.	11/29/05	Caps.
Catawissa Lumber & Specialty Co., Inc.	1 Cemetery Street, P.O. Box 176, Catawissa, PA 17820.	11/4/05	Hardwood furniture and kitchen components.
Genesee Group NY, Inc	975 John Street, West Henrietta, NY 14586–9780.	12/2/05	Metal parts and accessories.
Treatco, Inc	2300 N. Broadway Street, Wichita, KS 67219	12/2/05	Natural pet treats.
Hypogard USA, Inc	7301 Ohms Lane, Suite 200, Edina, MN 55439–2335.	12/7/05	Blood glucose and urine monitoring strips for diabetic testing.
Northwest Seed, Inc	Hwy 111 W., P.O. Box 335, Oregon, MO 64473	12/13/05	Soy nut snack foods.
Frankoma, Inc	9549 Frankoma Road, P.O. Box 789, Sapulpa, OK 74066.	12/2/05	Ceramic tableware.
Dyecraftsmen, Inc	437 Whittenton Street, P.O. Box 551, Tauton, MA 02780.	12/13/05	Dyed yarn.
Wald LLC	800 East 5th Street, Maysville, KY 41056	12/13/05	Bicycle components.
Touchstone Designs, LLC.	7249 Commerce Drive, Mentor, OH 44060	12/14/05	Electric lamps and lighting fixtures,
Wilkes Pools Corporation.	Interstate 80, Exit 242, Mifflinville, PA 18631	12/14/05	Swimming pools.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Chief Counsel, Room 7005, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in section 315.9 of EDA's interim final rule (70 FR 47002) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: December 14, 2005.

Benjamin Erulkar,

Chief Counsel.

[FR Doc. E5–7554 Filed 12–19–05; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Zhan Gao, Technology Business Services, University Laboratories, Allways, Inc., Donghua Xue

In the Matter of Zhan Gao, 12731 Mill Heights, Herndon, VA 20171; Respondent: and Technology Business Services, 12731 Mill Heights, Herndon, VA 20171; University Laboratories, 12731 Mill Heights, Herndon, VA 20171; Allways, Inc., 12731 Mill Heights, Herndon, VA 20171; Donghua Xue, 12731 Mill Heights, Herndon, VA 20171; Related Persons

Order Denying Export Privileges

A. Denial of Export Privileges of Zhan Gao

On March 5, 2004, in the U.S. District Court in the Eastern District of Virginia, Zhan Gao (''Gao'') was convicted of two felonies, including one violation of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA'') and one violation of the Internal Revenue Code (26 U.S.C. 7206 (2000)). As to the IEEPA count, Gao was found guilty of knowingly and willfully having exported and caused to be exported from the United States to the People's Republic of China, 80 microprocessors, which were Commerce Control List items, without obtaining the required license from the Department of Commerce. These items were controlled for national security reasons for export to China and valued at approximately $500,000. Gao was sentenced to seven months in prison.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. §§ 2491–2420 (2000)) (''Act'') [1] and Section 766.25 of the Export Administration Regulations [2] (''Regulations'') provide, in pertinent part, that ''[t]he Director of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny export privileges of any person who has been convicted of a violation of * * * IEEPA,'' for a period not to exceed 10 years from the date of conviction. 15 CFR 766.25(a) and (d). In addition, Section 750.8 of the Regulations states that BIS's Office of Exporter Services may revoke any BIS licenses previously issued in which the person had an interest in at the time of her conviction.

I have received notice of Gao's conviction for violating the IEEPA, and have provided notice and an opportunity for Gao to make a written submission to the Bureau of Industry and Security as provided in Section 766.25 of the Regulations. Having

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 2, 2005 (70 FR 45273, August 5, 2005), has continued the Regulations in effect under the IEEPA.

[2] The Regulations are currently codified at 15 CFR parts 730–774 (2005).

received no submission from Gao, I, following consultations with the Export Enforcement, including the Director, Office of Export Enforcement, have decided to deny Gao's export privileges under the Regulations for a period of 10 years from the date of Gao's conviction.

B. Denial of Export Privileges of Related Persons

In addition, pursuant to Sections 766.25(h) and 766.23 of the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, may take action to name persons related to the Respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business in order to prevent evasion of the Order. On March 18, 2005, I gave notice to Technology Business Services, University Laboratories, Allways, Inc. and Donghua Xue, Gao's husband, notifying them that their export privileges under the Regulations could be denied for up to 10 years as BIS believed these entities were related to Gao and including them in the Gao Order was necessary to prevent evasion. The basis for considering the addition of these entities was the fact that Gao had used these entities to conduct the illegal business that was subject of the criminal conviction and all are operated out of her home in Virginia.

Donghue Xue responded to the notification and did not raise any objections to naming the above referenced related persons. I have therefore decided to name Technology Business Services, University Laboratories, Allways, Inc. and Donghua Xue as related persons to Zhan Gao, thereby denying their export privileges as well.

I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Gao and Technology Business Services, University Laboratories, Allways, Inc. and Donghua Xue had an interest at the time of Gao's conviction. The 10-year denial period ends on March 5, 2014.

Accordingly, it is hereby

Ordered

I. Until March 5, 2014, Zhan Gao, 12731 Mill Heights, Herndon, VA 20171, and when acting for or on her behalf, her employees, agents or representatives, (''the Denied Person'') and the following persons related to the Denied Person as defined by Section 766.23 of the Regulations, Technology Business Services, University Laboratories, Allways, Inc. and Donghua Xue, all at 12731 Mill Heights, Herndon, Virginia 20171, and when acting for or on his or their behalf, his or their employees, agents or representatives, (''the Related Persons'') (together, the Denied Persons and the Related Persons are ''Person Subject To This Order'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulation.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Persons Subject To This Order any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Persons Subject To This Order of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Persons Subject To This Order acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Persons Subject To This Order of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Persons Subject To This Order in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Persons Subject To This Order, or service any item, of whatever origin, that is owned, possessed or controlled by the Persons Subject To This Order if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. In addition to the Related Persons named above, after notice and opportunity for comment as provided in section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Gao by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until March 5, 2014.

VI. In accordance with Part 756 of the Regulations, Gao and any of the Related Persons may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Gao and each Related Person. This Order shall be published in the **Federal Register**.

Dated: December 14, 2005.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 05–24234 Filed 12–19–05; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–846

Brake Rotors from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 20, 2005.

FOR FURTHER INFORMATION CONTACT: Erin C. Begnal or Tom Killiam, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1442 or (202) 482–5222, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 27, 2005, the Department of Commerce (''Department'') initiated an administrative review of the antidumping duty order on brake rotors from the People's Republic of China. The review was initiated for 27 individually named firms. The period of review (POR) is April 1, 2004, through March 31, 2005. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 66 FR 30694 (May 27, 2005). Of the 27 named firms for which the Department initiated an administrative review, 18 firms had shipments of subject merchandise during the POR that are subject to review. Two of the 18 firms are also participating in the proceeding as new shippers. After consulting with the two new shippers, they agreed to have the Department rescind their administrative reviews in accordance with 19 CFR 351.214(j). *See Memorandum to the File from Carrie Blozy Regarding the 8th Administrative Review of Brake Rotors from the People's Republic of China*, dated July 28, 2005. As a result, this administrative review will cover 16 firms.

However, due to the large number of firms subject to this administrative review, and the Department's experience regarding the resulting administrative burden to review each company for which a request has been made, the Department exercised its authority to limit the number of respondents selected for individual review by sampling, and conducted the sampling on November 16, 2005. *See* Section 777A(c) of the Tariff Act of 1930, as amended (''the Act''); *see also* November 16, 2005, *Memorandum to the File from Erin Begnal, Antidumping Duty Administrative Review: Brake Rotors from the People's Republic of China* (November 16, 2005, Sampling Memorandum).

The following respondents were selected for individual review pursuant to the sampling procedure: Qingdao Meita Automotive Industry Co., Ltd., Yantai Winhere Auto–Part Manufacturing Co., Ltd., Xiangfen Hengtai Brake Systems Co., Ltd., Hongfa Machinery (Dalian) Group Co., Ltd., and Longkou Haimeng Machinery Co., Ltd. *See* November 16, 2005, Sampling Memorandum.

The preliminary results of this administrative review are currently due by December 31, 2005.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the specified time periods, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

The Department has determined that completion of the preliminary results within the originally anticipated time limit, December 31, 2005, is impracticable. For the first time in this proceeding, the Department employed a sampling methodology to select respondents. In order to obtain necessary information and to afford parties opportunities to comment on the Department's respondent selection methodology, the Department did not conduct its respondent selection sampling procedure until November 16, 2005. *See* section 777A(b) of the Act (where the Department determines to limit the selection of respondents by sampling, the Department ''shall, to the greatest extent possible, consult with the exporters and producers regarding the method to be used to select exporters, producers or types of products''). The Department requires additional time to analyze the parties' responses to the questionnaires issued on November 16, 2005, as well as to issue any necessary supplemental questionnaires and to conduct verifications. Consequently, it is not practicable to complete the review within the time specified under the Act. Therefore, the Department is extending the time limit for completion of these preliminary results by 120 days to April 30, 2006, in accordance with Section 751(a)(3)(A) of the Act.

Additionally, on April 29, 2005, Shanxi Zhongding Auto Parts Co., Ltd. agreed to waive the time limits of its new shipper review, on April 29, 2005, pursuant to 19 CFR 351.214(j)(3), and agreed to have its review conducted concurrently with the eighth administrative review of this order for the period April 1, 2004, through March 31, 2005. Therefore, the preliminary results of this new shipper review will also be extended by 120 days to April 30, 2006. The deadline for the final results of these reviews continues to be 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 13, 2005.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E5–7561 Filed 12–19–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–846

Brake Rotors from the People's Republic of China: Extension of Time Limit for Final Results of the Twelfth New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 20, 2005.

FOR FURTHER INFORMATION CONTACT: Kit Rudd or Nicole Bankhead, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1385 and (202) 482–9068, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2005, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of the new shipper review of the antidumping duty order on brake rotors from the People's Republic of China (''PRC''). *See Brake Rotors From the People's Republic of China: Preliminary Results of the Twelfth New Shipper Review*, 70 FR 56634 (''*Preliminary Results*''). The final results are currently due on December 19, 2005.

Extension of Time Limit for Final Results

Pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''the Act''), and section 351.214(i)(1) of the Department's regulations, the Department shall issue final results in a new shipper review of an antidumping

duty order 90 days after the date on which the preliminary results are issued. Section 351.214(i)(2) of the Department's regulations state, however, that if the Department determines that a new shipper review is extraordinarily complicated, the Department may extend the 90-day period to 150 days. The Department finds that the complicated nature of this review necessitates an extension of time beyond the 90-day period to complete the final results.

On October 17, 2005, the Department granted the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers (''Petitioner'') an extension of time to file publicly available information to value certain factors of production in the final results of the review. In addition, on October 25, 2005, the Department granted respondents Laizhou Wally Automobile Co., Ltd. (''Wally'') and Dixion Brake System (Longkou) Ltd. an extension of time to file their case briefs and rebuttal briefs. As a result of these extensions, the Department requires additional time to analyze the complex issues contained in the parties' comments and briefs, including the Petitioner's argument regarding the *bona fide* nature of Wally's sales.

Therefore, for the reasons cited above, we are extending the time limit for the completion of the final results of this review by 30 days, until no later than January 18, 2006. This notice is published in accordance with section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(2) of the Department's regulations.

Dated: December 13, 2005.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E5–7563 Filed 12–19–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–827

Notice of Continuation of Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 20, 2005.

FOR FURTHER INFORMATION CONTACT: Maureen Flannery at (202) 482–3020 or Paul Stolz at (202) 482–4474, AD/CVD Operations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230.

SUMMARY: The U.S. Department of Commerce (Department), pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), has determined that revocation of the antidumping duty order on certain cased pencils (pencils) from the People's Republic of China (PRC) would likely lead to continuation or recurrence of dumping. On December 6, 2005, the International Trade Commission (ITC), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on pencils from the PRC would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on pencils from the PRC.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2005, the Department initiated, and the ITC instituted, a sunset review of the antidumping duty order on pencils from the PRC, pursuant to section 751(c) of the Act. *See Initiation of Five–Year (Sunset) Reviews*, 70 FR 38101 (July 1, 2005) and *Cased Pencils from China*, 70 FR 38192 (July 1, 2005). As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail were the order revoked. *See Certain Cased Pencils from the People's Republic of China (PRC); Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order*, 70 FR 67427 (November 7, 2005). On November 15, 2005, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on pencils would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Cased Pencils from China*, 70 FR 72652 (December 6, 2005).

Scope of the Order

Imports covered by this order are shipments of certain cased pencils of any shape or dimension (except as noted below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man–made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non–cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above–referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: 1) length: 13.5 or more inches; 2) sheath diameter: not less than one–and-one quarter inches at any point (before sharpening); and 3) core length: not more than 15 percent of the length of the pencil.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Determination

As a result of the determinations by the Department and the ITC that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on pencils from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order is the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five–year review of this order not later than November 2010.

We are issuing and publishing the results and notice in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: December 13, 2005.

Stephen J. Claeys,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–7560 Filed 12–19–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE.

International Trade Administration

A–122–822

Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Certain Corrosion–Resistant Carbon Steel Flat Products from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 20, 2005.

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Sean Carey, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3586 or (202) 482–3964, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 2005, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on certain corrosion–resistant carbon steel flat products from Canada for the period of August 1, 2003, through July 31, 2004 *(see Certain Corrosion–Resistant Carbon Steel Flat Products from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 53621 (September 9, 2005)) *(Preliminary Results)*. The current deadline for the final results of this review is January 7, 2006.

Extension of Time Limit for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the final results in an administrative review within 120 days of the date on which the preliminary results were published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to 180 days from the date of publication of the preliminary results.

Because of the Department's recent verification after the issuance of its preliminary determination, additional time is required to release and analyze its findings, and to afford interested parties the opportunity to comment on the verification findings of the three Canadian producers of subject merchandise: Dofasco Inc., Sorevco Inc., and Stelco Inc. Therefore, the Department finds that it is not practicable to complete the review by the original deadline of January 7, 2006. Consequently, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of the final results of the review until no later than March 8, 2006, which is 180 days from the publication of the preliminary results.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: December 13, 2005.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E5–7562 Filed 12–19–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: 2005–P–072]

RIN 0651–AB98

Request for Comments on Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) has, in response to recent case law, revised its guidelines to be used by USPTO personnel in their review of patent applications to determine whether the claims in a patent application are directed to patent eligible subject matter. The USPTO is requesting comments from the public regarding these interim examination guidelines.

Comment Deadline Date: To be ensured of consideration, written comments must be received on or before June 30, 2006. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to *AB98.Comments@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, or by facsimile to (571) 273–0125, marked to the attention of Linda Therkorn. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office prefers that the comments be submitted on a DOS formatted 3 1/2 inch disk accompanied by a paper copy.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the Office Internet Web site (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Linda Therkorn, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at 571–272–8800, or Ray Chen, Office of the Solicitor, by telephone at 571–272–9035, by mail addressed to: Mail Stop Comments, P.O. Box 1450, Alexandria, VA, 22313–1450, or by facsimile transmission to 571–273–0125, marked to the attention of Linda Therkorn or Ray Chen.

SUPPLEMENTARY INFORMATION: The USPTO has published a notice setting forth interim guidelines for the examination of patent applications for patent subject matter eligibility under 35 U.S.C. 101. *See Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility,* 1300 *Off. Gaz. Pat. Office* 142 (Nov. 22, 2005) (Patent Subject Matter Eligibility Interim Guidelines).

The Patent Subject Matter Eligibility Interim Guidelines are based on the USPTO's current understanding of the law and are believed to be fully consistent with binding precedent of the U.S. Supreme Court, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) and the Federal Circuit's predecessor courts. The Patent Subject Matter Eligibility Interim Guidelines do not constitute substantive rule making and hence do not have the force and effect of law. The Patent Subject Matter Eligibility Interim Guidelines have been designed to assist USPTO personnel in analyzing claimed subject matter for compliance with substantive law. Rejections will be based upon the substantive law and it is these rejections which are appealable. Consequently,

any failure by USPTO personnel to follow the Patent Subject Matter Eligibility Interim Guidelines is neither appealable nor petitionable.

The Patent Subject Matter Eligibility Interim Guidelines merely revise USPTO examination practice for consistency with the USPTO's current understanding of the case law regarding patent subject matter eligibility under 35 U.S.C. 101. Therefore, the Patent Subject Matter Eligibility Interim Guidelines are interpretive or relate only to agency practice and procedure, and prior notice and an opportunity for public comment are not required under 5 U.S.C. 553(b)(A) (or any other law). Nevertheless, the USPTO is providing this opportunity for public comment because the USPTO desires the benefit of public comment on the Patent Subject Matter Eligibility Interim Guidelines.

The USPTO is particularly interested in comments addressing the following questions:

(1) While the Patent Subject Matter Eligibility Interim Guidelines explain that physical transformation of an article or physical object to a different state or thing to another establishes that a claimed invention is eligible for patent protection, Annex III to the Patent Subject Matter Eligibility Interim Guidelines explains that identifying that a claim transforms data from one value to another is not by itself sufficient for establishing that the claim is eligible for patent protection. Therefore, claims that perform data transformation must still be examined for whether there is a practical application of an abstract idea that produces a useful, concrete, and tangible result. Is the distinction between physical transformation and data transformation appropriate in the context of the Patent Subject Matter Eligibility Interim Guidelines? If not, please explain why and provide support for an alternative analysis.

(2) Is the USPTO interpretation of *State Street Bank & Trust Co.* v. *Signature Financial Group Inc.,* 149 F. 3d 1368, 47 USPQ2d 1596 (Fed. Cir. 1998), as holding that if there is no physical transformation, a claimed invention must necessarily, either expressly or inherently, produce a useful, concrete, and tangible result (rather than just be ''capable of'' producing such a result) either too broad or too narrow? If so, please suggest an alternative interpretation and reasons therefor.

(3) As the courts have yet to define the terms ''useful,'' ''concrete,'' and ''tangible'' in the context of the practical application requirement, are the explanations provided in the Patent Subject Matter Eligibility Interim Guidelines sufficient? If not, please suggest alternative explanations.

(4) What role should preemption have in the determination of whether a claimed invention is directed to a practical application of a 35 U.S.C. 101 judicial exception?

(5) Annex IV to the Patent Subject Matter Eligibility Interim Guidelines explains why the USPTO considers claims to signals *per se*, whether functional descriptive material or non-functional descriptive material, to be nonstatutory subject matter. Does the USPTO analysis represent a reasonable extrapolation of relevant case law? If not, please explain why and provide support for an alternative analysis. If claims directed to a signal *per se* are determined to be statutory subject matter, what is the potential impact on internet service providers, satellites, wireless fidelity (WiFi ®), and other carriers of signals?

The USPTO also notes that the U.S. Supreme Court has granted certiorari in *Laboratory Corp. of America Holdings* v. *Metabolite Laboratories, Inc.,* S.Ct. No. 04–607 (*LabCorp*). *See* 546 U.S. ____ (Nov. 2, 2005). The USPTO expects that a decision in *LabCorp* will be rendered sometime before the end of June 2006. Since the Court's decision in *LabCorp* may impact the broader question of patent subject matter eligibility under 35 U.S.C. 101, the USPTO is extending the period for public comment on the USPTO's Patent Subject Matter Eligibility Interim Guidelines until June 30, 2006. The USPTO will publish a notice further extending the period for public comment on the USPTO's Patent Subject Matter Eligibility Interim Guidelines if necessary to permit the comments to take into account the Court's decision in *LabCorp.*

Dated: December 14, 2005.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E5–7552 Filed 12–19–05; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before January 19, 2006.

FOR FURTHER INFORMATION OR A COPY CONTACT: David Van Wagner, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5481; FAX: (202) 418–5527; e-mail: *dvanwagner@cftc.gov* and refer to OMB Control No. 3038–0048.

SUPPLEMENTARY INFORMATION:

Title: Off-Exchange Agricultural Trade Options (OMB Control No. 3038–0048). This is a request for extension of a currently approved information collection.

Abstract: Off-Exchange Agricultural Trade Options, OMB Control No. 3038–0048—Extension.

In April 1998, the Commodity Futures Trading Commission (Commission or CFTC) removed the prohibition on off-exchange trade options on the enumerated agricultural commodities subject to a number of regulatory conditions. 63 FR 18821 (April 16, 1998). Thereafter, the Commission streamlined the regulatory or paperwork burdens in order to increase the utility of agricultural trade options while maintaining basic customer protections. 64 FR 68011 (Dec. 6, 1999).

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 the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on October 12, 2005 (70 FR 59319).

Burden statement: The respondent burden for this collection is estimated to average 5.59 hours per response.

Respondents/Affected Entities: 360.

Estimated number of responses: 411.

Estimated total annual burden on respondents: 2,391 hours.

Frequency of collection: On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0048 in any correspondence.

David Van Wagner, Division of Market Oversight, U.S. Commodity

Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581; and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: December 15, 2005.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–24254 Filed 12–19–05; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission (''Commission'').

DATE AND TIME: Wednesday, February 15, 2006, commencing at 10 a.m.

PLACE: 1155 21st Street, NW., Washington, DC, Lobby Level Hearing Room (Room 1000).

STATUS: Open.

MATTERS TO BE CONSIDERED: Public Hearing on Self-Regulation and Self-Regulatory Organizations (''SROs'').

CONTACT PERSONS AND ADDRESSES: Requests to appear and supporting materials should be mailed to the Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581, attention Office of the Secretariat; transmitted by facsimile at 202–418–5521; or transmitted electronically to *secretary@cftc.gov.* Reference should be made to ''SRO Hearing.'' For substantive questions on requests to appear and supporting materials, please contact Stephen Braverman, Deputy Director, (202) 418–5487; Rachel Berdansky, Special Counsel, (202) 418–5429; or Sebastian Pujol Schott, Attorney-Advisor, (202) 418–5641, Division of Market Oversight.

SUPPLEMENTARY INFORMATION: In a separate **Federal Register** release published today, the Commission extended the comment period for ''Self-Regulation and Self-Regulatory Organizations in the Futures Industry'' [1] (''Requests for Comments'') by 14 days. The comment period now closes on January 23, 2006. The Request for Comments seeks public input on a range of SRO issues, including governance, board and disciplinary committee composition, conflicts of interest within self-regulation, and the ability of independent, board-level regulatory oversight committees to insulate self-regulatory functions form improper influence. The Request for Comments also notes that it will form the basis of an upcoming public Commission meeting on self-regulation and self-regulatory organizations (''SRO Hearing''). The Commission's 2004 Request for Comments on SRO Governance and industry developments since the initiation of the SRO Study will be considered.[2]

The Commission hereby announces that the SRO Hearing will commence on Wednesday, February 15, 2006, at 10 a.m., at the Commission's headquarters in Washington, DC. An agenda will be provided as the hearing date approaches. All individuals or organizations wishing to appear before the Commission must submit to the Secretariat, at the above address, a request to appear. Such request must be received by January 13, 2006, and must include the name of the individual appearing; the entity that he or she represents, if any; a concise statement of interest and qualifications; and a brief summary or abstract of his or her statement. The Commission will invite a representative number of individuals or organizations to appear at the hearing from those submitting requests to appear. A transcription of the hearing will be made and entered into the Commission's public comment files, which will remain open for the receipt of written comments until March 2, 2006.

The Commission believes that providing interested members of the public with an opportunity to appear before it, responds to questions, and address differing viewpoints will enhance its decision-making as the SRO Study nears conclusion.

Issued in Washington, DC on December 15, 2005, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–24293 Filed 12–16–05; 11:25 am]

BILLING CODE 6351–01–M

[1] 70 FR 71090 (November 25, 2005).

[2] 69 FR 32326 (June 9, 2004).

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0145]

Federal Acquisition Regulation; Information Collection; Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification

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 (9000–0145).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning use of data universal numbering system (DUNS) as primary contractor identification. This OMB clearance expires on April 30, 2006.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before February 21, 2006.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT Mr. Ernest Woodson, Contract Policy Division, GSA, (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Data Universal Numbering System (DUNS) number is the nine-digit identification number assigned by Dun and Bradstreet Information Services to an establishment. The Government uses the DUNS number to identify contractors in reporting to the Federal Procurement Data System (FPDS). The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data on all contracts in excess of the micro-purchase threshold to the Federal Procurement Data Center which collects, processes, and disseminates official statistical data on Federal contracting. Contracting officers insert the Federal Acquisition Regulation (FAR) provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations they expect will result in contracts in excess of the micro-purchase threshold and do not contain FAR 52.204–7, Central Contractor Registration. This provision requires offerors to submit their DUNS number with their offer. If the offeror does not have a DUNS number, the provision provides instructions on obtaining one.

B. Annual Reporting Burden

Respondents: 35,694.
Responses Per Respondent: 4.00.
Annual Responses: 142,776.
Hours Per Response: .0200. (Averaged)
Total Burden Hours: 2,852.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification, in all correspondence.

Dated: December 13, 2005.

Gerald Zaffos,

Director, Contract Policy Division.

[FR Doc. E5–7516 Filed 12–19–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 19, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 13, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Paul Douglas Teacher Scholarship Program Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden: Responses: 57. Burden Hours: 684.

Abstract: This program has not received funding since 1995. It was originally designed to assist State agencies to provide scholarships to talented and meritorious students who were seeking teaching careers at the preschool, elementary, and secondary levels.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2902. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *Kim.Rudolph@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to Kim Rudolph, Docket Manager at her e-mail address *Kim.Rudolph@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–7519 Filed 12–19–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 19, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New

Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated:

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: Study of Teacher Preparation in Early Reading Instruction.

Frequency: One time.

Affected Public: Businesses or other for-profit; Individuals or household.

Reporting and Recordkeeping Hour Burden: Responses: 100. Burden Hours: 1,500.

Abstract: The Study of Teacher Preparation in Early Reading Instruction will assess the extent to which school of education coursework related to elementary reading is aligned with the National Reading Panel (NRP) Report as well as assess new teachers' preparation to teach the five essential components of reading as identified by the NRP report and specified in the Reading First program statute.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2904. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kim Rudolph, Docket Manager at her e-mail address *Kim.Rudolph@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–7520 Filed 12–19–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 21, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 14, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: Regulations for Equity in Athletics Disclosure Act (EADA).

Frequency: Annually.

Affected Public:

Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,800.

Burden Hours: 9,900.

Abstract: The EADA amended the Higher Education Act of 1965, as amended (HEA), to require coeducational institutions of higher education that participate in any program under Title IV of the HEA and have an intercollegiate athletic program, annually to make available upon request a report on institutional financing and student and staff participation in men's and women's intercollegiate athletics. The Higher Education Amendments of 1998 amended the EADA to require additional disclosures, to require that an institution submit its report to the Department of Education, and to require the Department to report to Congress on gender equity in intercollegiate athletics and to make its report and institutions' EADA reports publicly available.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2958. When you access the information collection, click on ''Download Attachments'' to view.

Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *Kim.Rudolph@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to Kim Rudolph, Docket Manager at her e-mail address *Kim.Rudolph@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–7538 Filed 12–19–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 19, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 14, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision

Title: Impact Evaluation of Charter School Strategies-Student, Parent, Principal, and Authorizer Surveys.

Frequency: One time.

Affected Public: Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 3,150.

Burden Hours: 1,513.

Abstract: This OMB package requests clearance for a set of data collection activities to be used in the Impact Evaluation of Charter School Strategies that includes surveys of students, their parents, principals, and charter school authorizers. This submission represents the second in a two-stage clearance process. The first stage resulted in a January 2005 approval (OMB 1850–0799) for the evaluation design, sampling and analysis plan, and for initial data collection activities necessary for random assignment (consent form, baseline form, and school records collection). The current submission requests approval for three modest enhancements to the design and for the specific instruments that were only briefly described in the earlier package.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2876. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *Kim.Rudolph@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to Kim Rudolph, Docket Manager at her e-mail address *Kim.Rudolph@ed.gov* 703–620–3655. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–7539 Filed 12–19–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 19, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each

proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 14, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Application Package for the REAP Small, Rural School Achievement Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 4,552.

Burden Hours: 4,830.

Abstract: LEAs will apply for funding under the REAP Small, Rural School Achievement Program. This collection consists of an additional form to the Spreadsheet and Instructions which will address the second tier of the Department's strategy for completing the funding process. The additional form will serve as the application package for LEAs under the REAP Small, Rural Schools Achievement Program.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2896. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kim Rudolph, Docket Manager at her e-mail address *Kim.Rudolph@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–7540 Filed 12–19–05; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2005–0016, FRL–8010–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements Under EPA's National Partnership for Environmental Priorities, EPA ICR Number 2076.02, OMB Control Number 2050–0190

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for an existing approved collection. This ICR is scheduled to expire on April 30, 2006. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 21, 2006.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2005–0016, to EPA online using EDOCKET (our preferred method), by e-mail to *RCRA–docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, RCRA Docket, mail code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Newman Smith, Office of Solid Waste (5302W), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8757; fax number: 703–308–8433; e-mail address: *smith.newman@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number RCRA–2005–0016, which is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket*.

Affected entities: Entities potentially affected by this action are those which generate, store, and treat hazardous waste.

Title: Reporting and Recordkeeping Requirements Under EPA's National Program for Environmental Priorities (formerly, Reporting and Recordkeeping Requirements under EPA's National Waste Minimization partnership Program)

Abstract: EPA currently has an ongoing national program that, through source reduction, reuse, and recycling, encourages a reduction in use or the minimization of release of hazardous chemicals. Participation in the National Partnership for Environmental Priorities (previously the National Waste Minimization Partnership Program) is completely voluntary. EPA will use five

forms to collect information from participants, called partners, which can be prepared and submitted in a hard copy or electronically. Participation begins when the first of these forms, an Enrollment Form, is submitted and accepted by EPA. The form asks for basic site identification information as well as information on the company's chemical reduction goals under the program.

Partners will also have an opportunity to complete and submit the second optional form titled Application for Certificate of Accomplishment. They may submit this form when they accomplish the goals they established for their initial participation in the program. These certificate applications will enable the Agency to confirm a partners' progress and to measure the overall success of the program. Evaluation and acceptance of these certificate applications is also the basis the Agency uses to recognize partner accomplishments in a formal (*e.g.*, at an awards ceremony or by congratulatory letter) manner, if appropriate. This partner recognition is important as a motivation in enlisting new partners and in encouraging current partners to declare additional reduction goals.

A third form is an optional, one-time Case Studies Submission Form. This form enables a partner to describe its waste minimization techniques, implementation problems, lessons learned, benefits, and relevant implications. The case studies will assist the Agency in better understanding waste minimization approaches and technologies. The information may also help the Agency in sharing lessons learned and effective strategies among the facilities generating hazardous waste, in order to promote continued and effective waste minimization efforts. Sharing effective waste reduction strategies with others is a fundamental objective of the partnership program.

The fourth and fifth forms provide current partners the opportunity to revise current goals or to submit additional goals. They are titled the Add Our New Goals Form and the Goal Revision Form. Other than their titles, both forms are actually the same as the enrollment form described above.

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.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 14 hours per response. 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.

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.

Dated: December 13, 2005.

Matthew Hale,

Director, Office of Solid Waste.

[FR Doc. E5–7558 Filed 12–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0039, FRL–8110–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements of the HCFC Allowance System, EPA ICR Number 2014.03, OMB Control Number 2060–0948

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for to renew an existing approved collection. This ICR is scheduled to expire on June 30, 2006. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 21, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0039, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov*
- *Fax:* 202–566–1741
- *Mail:* Docket #, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Docket ID No. EPA–HQ–OAR–2003–0039, Air and Radiation Docket at EPA West, 1301 Constitution Avenue NW., Room B108, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0039. EPA's policy is that all comments received will be included in the public docket without change and may be

made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Cindy Axinn Newberg, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation, Mail Code 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9729 and email address: *newberg.cindy@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2003–0039, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Air and Radiation, Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under DATES.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

[Docket ID No. EPA–HQ–OAR–2003–0039]

Affected entities: Entities potentially affected by this action are:

Category	NAICS code	SIC code	Examples of regulated entities
Chlorofluorocarbon gas manufacturing	325120	2869	Chlorodifluoromethane manufacturers; Dichlorofluoroethane manufacturers; Chlorodifluoroethane manufacturers.
Chlorofluorocarbon gas importers			Chlorodifluoromethane importers; Dichlorofluoroethane importers; Chlorodifluoroethane importers; Chlorodifluoromethane exporters; Dichlorofluoroethane exporters; Chlorodifluoroethane exporters.
Chlorofluorocarbon gas exporters			Insulation and cushioning, foam plastics (except polystyrene) manufacturing.
Urethane and Other Foam Product (Except Polystyrene) Manufacturing	326150	3086	

Title: Reporting and Recordkeeping Requirements of the HCFC Allowance System.

ICR numbers: EPA ICR No. 2014.03, OMB Control No. 2060–0498.

ICR status: This ICR is currently scheduled to expire on June 30, 2006. 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 title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: In order to continue to meet its obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and the Clean Air Act Amendments of 1990 (CAAA), EPA maintains an allowance system for class II controlled substances or hydrochlorofluorocarbons (HCFCs). Under the Protocol, the U.S. is obligated to limit HCFC consumption (defined by the Protocol as production plus imports, minus exports) under a specific cap. The U.S. is also a signatory to amendments that froze HCFC production on January 1, 2004. EPA is controlling U.S. production and import of HCFCs by granting baseline allowances based on the historical activity levels of producers and importers. Since each allowance will be equal to 1 kilogram of HCFC, EPA will be able to monitor the quantity of HCFCs being produced, imported, exported, transformed, or destroyed. There are two types of allowances: Consumption allowances and production allowances. Transfers of production and consumption allowances among producers and importers are allowed. Producers, importers, and exporters are required to submit to EPA quarterly reports of the quantity of HCFCs in each of their transactions; they are also required to report the quantity of HCFCs transformed or destroyed. EPA requires all producers, importers, and exporters maintain records such as Customs entry forms, bills of lading, sales records, and canceled checks to support their quarterly reports. The quarterly reports may be faxed or mailed to EPA and soon may be submitted electronically, where they are handled as confidential business information. EPA stores the submitted information in a computerized database designed to track allowance balances and transfer activities. When electronic reporting is available, EPA will change its guidance document and revise the ICR if there is any change in burden hours. EPA uses collected information to ensure that the U.S. maintains compliance with the Protocol caps, to report annually to the United Nations Environment Programme the U.S. activity in HCFCs, and to ensure that allowance holders are in compliance. The respondents are producers, importers, and exporters of HCFCs; and entities granted HCFC–141b exemption allowances.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is currently estimated to average less than one hour per response. 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 which have subsequently changed; 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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 52.

Frequency of response: quarterly, annual, or one-time only.

Estimated total average number of responses for each respondent: 114.

Estimated total annual burden hours: 3,292 hours for respondents.

Estimated total annual costs: $472,197 for respondents. This includes the current OMB-approved estimated burden cost of $253,089 and an estimated cost of $219,108 for capital investment or maintenance and operational costs. There is no change of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received, historical information with complying with the requirements of this ICR, and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: December 12, 2005.

Drusilla Hufford,

Division Director, Stratospheric Protection Division.

[FR Doc. E5–7559 Filed 12–19–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 4, 2006.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Jacinto Rodrigues and Joaquina Rodrigues, both of Warren, New Jersey; to acquire voting shares of CGD–USA Holding Company, Inc., New York, New York, and thereby indirectly acquire Crown Bank, N.A., Ocean City, New Jersey.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. The Ferguson Family Control Group, consisting of Carolyn Ferguson Pryor, Jackson, Mississippi; Nancy Ferguson Rasco, Hot Springs, Arkansas; Rebecca Ferguson Ehrlicher, Memphis, Tennessee; the Carolyn F. Pryor Trust, DeWitt, Arkansas (Carolyn Ferguson Pryor and DeWitt Bank & Trust, DeWitt, Arkansas, as co–trustees); the Nancy F.

Rasco Trust, DeWitt, Arkansas (Nancy Ferguson Rasco and DeWitt Bank & Trust as co-trustees); the Rebecca F. Ehrlicher Trust, DeWitt, Arkansas (Rebecca Ferguson Ehrlicher and DeWitt Bank & Trust as co–trustees); the Charles W. Rasco III Marital Trust (DeWitt Bank & Trust as trustee); and the Elmer Ferguson Farms, Inc., DeWitt, Arkansas; to retain voting shares of DBT Financial Corporation, DeWitt, Arkansas, and thereby indirectly acquire additional voting shares of DeWitt Bank and Trust Company, DeWitt, Arkansas.

Board of Governors of the Federal Reserve System, December 15, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–7555 Filed 12–19–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E5-7262) published on page 73747 of the issue for Tuesda, December 13, 2005.

Under the Federal Reserve Bank of New York heading, the entry for Community Partners Bancorp, Middletown, New Jersey, is revised to read as follows:

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Community Partners Bancorp, Middletown, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Two River Community Bank, Middletown, New Jersey, and The Town Bank, Westfield, New Jersey.

Comments on this application must be received by January 6, 2006.

Board of Governors of the Federal Reserve System, December 15, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–7556 Filed 12–19–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA'') (44 U.S.C. 3501–3520). The FTC is seeking public comments on its proposal to extend through December 31, 2008 the current PRA clearances for information collection requirements contained in four product labeling rules enforced by the Commission. Those clearances expire on December 31, 2005.

DATES: Comments must be received on or before January 19, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Apparel Rules: FTC File No. P948404'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *paperworkcomment@ftc.gov.* However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1]

Comments should also be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC website, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed as follows:

For the Fur Act Regulations, Wool Act Regulations, and Textile Act Regulations, contact Carol Jennings, Attorney, Enforcement Division, Bureau of Consumer Protection 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2996.

For the Care Labeling Rule, contact Connie Vecellio, Attorney, Enforcement Division, Bureau of Consumer Protection, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2996.

SUPPLEMENTARY INFORMATION: On September 28, 2005, the FTC sought comment on the information collection requirements associated with regulations under the Fur Act, 16 CFR Part 301 (OMB Control Number 3084–0099); regulations under the Wool Act, 16 CFR Part 300 (OMB Control Number 3084–0100); regulations under the Textile Act, 16 CFR Part 303 (OMB Control Number 3084–0101); and the Care Labeling Rule, 16 CFR 423 (OMB Control Number 3084–0103). See 70 FR 56692. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR Part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the rules. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before January 19, 2006.

Staff's burden estimates for the four rules in question are based on data from the Bureau of Census, U.S. Customs and International Trade Commission, the Department of Labor, and data or other input from industry sources. The relevant information collection requirements within these rules and corresponding burden estimates follow.

1. Regulations Under the Fur Products Labeling Act, 15 U.S.C. 69 et seq. (''Fur Act''), 16 CFR Part 301 (OMB Control Number: 3084–0099)

The Fur Act prohibits the misbranding and false advertising of fur products. The Fur Act Regulations, 16

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

CFR 301, establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing these regulations. The Regulations also provide a procedure for exemption from certain disclosure provisions under the Fur Act.

Estimated annual hours burden: 168,000 hours, rounded to the nearest thousand (54,080 hours for recordkeeping + 113,633 hours for disclosure).

Recordkeeping: The Regulations require that retailers, manufacturers, processors, and importers of furs and fur products keep certain records in addition to those they may keep in the ordinary course of business. Staff estimates that 1,300 retailers incur an average recordkeeping burden of about 13 hours per year (16,900 hours total); 115 manufacturers and fur processors combined incur an average recordkeeping burden of about 52 hours per year (5,980 total); and 1,200 importers of furs and fur products incur an average recordkeeping burden of 26 hours per year (31,200 hours total). The combined recordkeeping burden for the industry is approximately 54,080 hours annually.

Disclosure: Staff estimates that 1,400 respondents (100 manufacturers + 1,300 retail sellers of fur garments) each require an average of 20 hours per year to determine label content (28,000 hours total), and an average of five hours per year to draft and order labels (7,000 hours total). Staff estimates that the total number of garments subject to the fur labeling requirements is approximately 3,000,000.[2] Staff estimates that for approximately half of these garments, labels are attached manually, requiring approximately two minutes per garment for a total of 50,000 hours annually. For the remaining 1,500,000, the process of attaching labels is semi-automated and requires an average of approximately two seconds per item, for a total of 1,000 hours (rounded to the nearest thousand). Thus, the total burden for attaching labels is 51,000 hours, and the total burden for labeling garments is 86,000 hours per year.

Staff estimates that the incremental burden associated with the Regulations' invoice disclosure requirement, beyond the time that would be devoted to preparing invoices in its absence, is approximately 30 seconds per invoice.[3] The invoice disclosure requirement applies to fur garments, which are generally sold individually, and fur pelts, which are generally sold in groups of at least 50, on average. Assuming invoices are prepared for sales of 3,000,000 garments and 160,000 groups (an estimated 8 million pelts ÷ 50) each of imported and domestic pelts, the invoice disclosure requirement entails an estimated total burden of 26,333 hours.

Staff estimates that the Regulations' advertising disclosure requirements impose an average burden of one hour per year for each of the approximately 1,300 domestic fur retailers, or a total of 1,300 hours.

Thus, staff estimates the total disclosure burden to be approximately 113,633 hours (86,000 hours for labeling + 26,333 hours for invoices + 1,300 hours for advertising).

Estimated annual cost burden: $2,153,000, rounded to the nearest thousand (solely relating to labor costs).

Task	Hourly rate	Burden hours	Labor cost
Determine label content	$ 20.00	28,000	$560,000
Draft and order labels	13.00	7,000	91,000
Attach labels	[4] 8.50	51,000	433,500
Invoice disclosures	13.00	26,333	342,329
Prepare advertising disclosures	18.00	1,300	23,400
Recordkeeping	13.00	54,080	703,040
Total			2,153,269

[4] Per industry sources, most fur labeling is done in the U.S., and this rate is reflective of an average domestic hourly wage for such tasks. Conversely, attaching labels with regard to the others regulations discussed herein is mostly performed by foreign labor, as detailed in note 5.

[2] The total number of fur garments, fur-trimmed garments, and fur accessories is estimated to be approximately 3,500,000, based on International Trade Commission data. Of that number, approximately 500,000 items are estimated to be exempt from the labeling requirements pursuant to 16 CFR 301.39 (items where either the cost of the fur trim to the manufacturer or the manufacturer's selling price for the finished product is less than $150 are exempt).

[3] The invoice disclosure burden for PRA purposes excludes the time that respondents would spend for invoicing, apart from the Fur Act Regulations, in the ordinary course of business. See 5 CFR 1320.3(b)(2).

Staff believes that there are no current start-up costs or other capital costs associated with the Regulations. Because the labeling of fur products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Regulations' labeling requirements. Industry sources indicate that much of the information required by the Fur Act and its implementing Regulations would be included on the product label even absent the regulations. Similarly, invoicing, recordkeeping, and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Act or the Regulations.

2. Regulations Under the Wool Products Labeling Act, 15 U.S.C. 68 et seq. (''Wool Act''), 16 CFR Part 300 (OMB Control Number: 3084–0100)

The Wool Act prohibits the misbranding of wool products. The Wool Act Regulations, 16 CFR 300, establish disclosure requirements that assist consumers in making informed purchasing decisions and recordkeeping requirements that assist the Commission in enforcing the Regulations.

Estimated annual hours burden: 407,000 hours, rounded to the nearest thousand (80,000 recordkeeping hours + 326,667 disclosure hours).

Recordkeeping: Staff estimates that approximately 4,000 wool firms are subject to the Regulations' recordkeeping requirements. Based on an average annual burden of 20 hours per firm, the total recordkeeping burden is 80,000 hours.

Disclosure: Approximately 8,000 wool firms, producing or importing about 500,000,000 wool products annually, are subject to the Regulations' disclosure requirements. Staff estimates the burden of determining label content to be 15 hours per year per respondent, or a total of 120,000 hours, and the burden of drafting and ordering labels to be 5 hours per respondent per year, or a total of 40,000 hours. Staff believes that the process of attaching labels is now fully automated and integrated into other production steps for about 40 percent of all affected products. For the remaining 300,000,000 items (60 percent of 500,000,000), the process is semi-automated and requires an average of approximately two seconds per item, for a total of 166,667 hours per year. Thus, the total estimated annual burden for all respondents is 326,667 hours. Staff believes that any additional burden associated with advertising disclosure requirements would be minimal (less than 10,000 hours) and can be subsumed within the burden estimates set forth above.

Estimated annual cost burden: $4,460,000, rounded to the nearest thousand (solely relating to labor costs).

Task	Hourly rate	Burden hours	Labor cost
Determine label content	$20.00	120,000	$2,400,000
Draft and order labels	13.00	40,000	520,000
Attach labels	[5] 3.00	166,667	500,001
Recordkeeping	13.00	80,000	1,040,000
Total			4,460,001

[5] For products that are imported, this work generally is done in the country where they are manufactured. According to information compiled by an industry trade association using data from the International Trade Commission, the U.S. Customs Service, and the U.S. Census Bureau, approximately 90% of apparel and other textile products used in the United States is imported. With the remaining 10% attributable to U.S. production at an approximate domestic hourly wage of $8.50 to attach labels, staff has calculated a weighted average hourly wage of $3 per hour attributable to U.S. and foreign labor combined. The estimated percentage of imports supplied by particular countries is based on trade data for 2001 compiled by the Office of Textiles and Apparel, International Trade Administration, U.S. Department of Commerce. Wages in major textile exporting countries, factored into the above hourly wage estimate, were based on data published in February 2000 by the U.S. Department of Labor, Bureau of International Labor Affairs (See ''Wages, Benefits, Poverty Line, and Meeting Workers'' Needs in the Apparel and Footwear Industries of Selected Countries,'' Table I–2: ''Prevailing or Average Wages in the Manufacturing Sector and in the Footwear and Apparel Industries in Selected Countries, Latest Available Year'').

Staff believes that there are no current start-up costs or other capital costs associated with the Regulations. Because the labeling of wool products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Regulations. Based on knowledge of the industry, staff believes that much of the information required by the Wool Act and its implementing regulations would be included on the product label even absent their requirements. Similarly, recordkeeping and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Regulations.

3. Regulations Under the Textile Fiber Products Identification Act, 15 U.S.C. 70 et seq. (''Textile Act''), 16 CFR Part 303 (OMB Control Number: 3084–0101)

The Textile Act prohibits the misbranding and false advertising of textile fiber products. The Textile Act Regulations, 16 CFR 303, establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing the Regulations. The Regulations also contain a petition procedure for requesting the establishment of generic names for textile fibers.5

Estimated annual hours burden: approximately 8,011,000 hours, rounded to the nearest thousand (600,000 recordkeeping hours + 7,411,111 disclosure hours).

Recordkeeping: Staff estimates that approximately 24,000 textile firms are subject to the Textile Regulations' recordkeeping requirements. Based on an average burden of 25 hours per firm, the total recordkeeping burden is 600,000 hours.

Disclosure: Approximately 32,000 textile firms, producing or importing about 19.9 billion textile fiber products annually, are subject to the Regulations' disclosure requirements.[6] Staff

[6] The apparent consumption of garments in the U.S. in 2004 was 18.4 billion. Staff estimates that 1 billion garments are exempt from the Textile Act (*i.e.*, any kind of headwear and garments made from something other than a textile fiber product, such as leather) or are subject to a special exemption for hosiery products sold in packages where the label information is contained on the package. Based on available data, staff estimates that an additional 3 billion household textile products (non-garments, such as sheets, towels, blankets) were consumed.

Continued

estimates the burden of determining label content to be 20 hours per year per respondent, or a total of 640,000 hours and the burden of drafting and ordering labels to be 5 hours per respondent per year, or a total of 160,000 hours. Staff believes that the process of attaching labels is now fully automated and integrated into other production steps for about 40 percent of all affected products. For the remaining 11.9 billion items (60 percent of 19.9 billion), the process is semi-automated and requires an average of approximately two seconds per item, for a total of 6,611,111 hours per year. Thus, the total estimated annual burden for all respondents is 7,411,111 hours. Staff believes that any additional burden associated with advertising disclosure requirements or the filing of generic fiber name petitions would be minimal (less than 10,000 hours) and can be subsumed within the burden estimates set forth above.

Estimated annual cost burden: $42,513,000, rounded to the nearest thousand (solely relating to labor costs).

Task	Hourly rate	Burden hours	Labor cost
Determine label content	$ 20.00	640,000	$12,800,000
Draft and order labels	13.00	160,000	2,080,000
Attach labels	[7] 3.00	6,611,111	19,833,333
Recordkeeping	13.00	600,000	7,800,000
Total			42,513,333

[7] See note 5.

Staff believes that there are no current start-up costs or other capital costs associated with the Regulations. Because the labeling of textile products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Regulations' labeling requirements. Industry sources indicate that much of the information required by the Textile Act and its implementing rules would be included on the product label even absent their requirements. Similarly, recordkeeping, invoicing, and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Regulations.

4. The Care Labeling Rule, 16 CFR Part 423 (OMB Control Number: 3084–0103)

The Care Labeling Rule, 16 CFR Part 423, requires manufacturers and importers to attach a permanent care label to all covered textile clothing in order to assist consumers in making purchase decisions and in determining what method to use to clean their apparel. Also, manufacturers and importers of piece goods used to make textile clothing must provide the same care information on the end of each bolt or roll of fabric.

Estimated annual hours burden: 6,889,000 hours, rounded to the nearest thousand (solely relating to disclosure [8]).

Staff estimates that approximately 24,700 manufacturers or importers of textile apparel, producing about 17.4 billion textile garments annually, are subject to the Rule's disclosure requirements. The burden of developing proper care instructions may vary greatly among firms, primarily based on the number of different lines of textile garments introduced per year that require new or revised care instructions. Staff estimates the burden of determining care instructions to be 43 hours each year per respondent, for a cumulative total of 1,062,100 hours. Staff further estimates that the burden of drafting and ordering labels is 2 hours each year per respondent, for a total of 49,400 hours. Staff believes that the process of attaching labels is fully automated and integrated into other production steps for about 40 percent of the approximately 17.4 billion garments that are required to have care instructions on permanent labels.[9] For the remaining 10.4 billion items (60 percent of 17.4 billion), the process is semi-automated and requires an average of approximately two seconds per item, for a total of 5,777,778 hours per year. Thus, the total estimated annual burden for all respondents is 6,889,278 hours.

Estimated annual cost burden: $39,218,000, rounded to the nearest thousand (solely relating to labor costs).

Task	Hourly rate	Burden hours	Labor cost
Determine care instructions	$20.00	1,062,100	$21,242,000
Draft and order labels	13.00	49,400	642,200
Attach labels	[10] 3.00	5,777,778	17,333,334
Total			39,217,534

[10] See note 5.

Staff believes that there are no current start-up costs or other capital costs associated with the Rule. Because the labeling of textile products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Rule's labeling requirements. Based on knowledge of the industry, staff believes that much of the information required by the Rule would be included on the

However, approximately .5 billion of all of these combined products (garments and non-garments) are subject to the Wool Products Labeling Act, not the Textile Fiber Products Identification Act, because they contain some amount of wool. Thus, the estimated net total products subject to the Textile Fiber Products Identification Act is 19.9 billion.

[8] The Care Labeling Rule imposes no specific recordkeeping requirements. Although the Rule requires manufacturers and importers to have reliable evidence to support the recommended care instructions, companies may provide as support current technical literature or rely on past experience.

[9] About 1 billion of the 18.4 billion garments produced annually are either not covered by the Care Labeling Rule (gloves, hats, caps, and leather, fur, plastic, or leather garments) or are subject to an exemption that allows care instructions to appear on packaging (hosiery).

product label even absent those requirements.

William Blumenthal,

General Counsel.

[FR Doc. E5–7531 Filed 12–19–05; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Occupational Health and Safety Research, Program Announcement 04038 and Small Grants in Occupational Safety and Health, Program Announcement 04021

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Occupational Health and Safety Research, Program Announcement 04038 and Small Grants in Occupational Safety and Health, Program Announcement 04021.

Time and Date: 1 p.m.–3 p.m., January 13, 2006 (Closed).

Place: National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., Mailstop E–74, Atlanta, GA 30333 Telephone Number (404) 498–2582.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Considered: The meeting will include the review, discussion, and evaluation of applications received in response to: Occupational Health and Safety Research, Program Announcement 04038 and Small Grants in Occupational Safety and Health, Program Announcement 04021.

Contact Person For More Information: Charles Rafferty, Ph.D., Scientific Review Administrator, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., Mailstop E–74, Atlanta, GA 30333, Telephone Number (404) 498–2582. The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 13, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E5–7550 Filed 12–19–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Notice of Approval of Supplemental New Animal Drug Application; Tilmicosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice that it has approved a supplemental new animal drug application (NADA) filed by Elanco Animal Health. The approved NADA provides for the veterinary prescription use of an injectable solution of tilmicosin phosphate for respiratory disease in cattle and sheep. This supplemental NADA adds user safety information to product labeling.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.gov.*

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 140–929 for MICOTIL 300 (tilmicosin phosphate), an injectable solution available by veterinary prescription for use in the treatment and control of respiratory disease in cattle and in the treatment of respiratory disease in sheep. This supplemental NADA adds user safety information to product labeling related to the mechanism of toxicity and medical intervention. In accordance with section 512(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(i)) and part 514 (21 CFR part 514) in §§ 514.105(a) and 514.106(a), the Center for Veterinary Medicine is providing notice that this supplemental NADA is approved as of December 2, 2005. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and § 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: December 8, 2005.

Bernadette Dunham,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 05–24269 Filed 12–19–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0485]

Regulatory Process for Pediatric Mechanical Circulatory Support Devices (Ventricular Assist Devices)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public meeting: Regulatory Process for Pediatric Mechanical Circulatory Support Devices (Ventricular Assist Devices). The topics of discussion are the agency's activities regarding the regulation and approval of circulatory support devices used for temporary support in pediatric patients.

Date and Time: The public meeting will be held on January 20, 2006, from 9 a.m. to 12 p.m. The agency is requiring registration by December 30, 2005.

Location: The public meeting will be held at the Center for Devices and Radiological Health, rm. 20B, 9200 Corporate Blvd., Rockville, MD 20850.

Contact: Eric Chen, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., 301–443–8262, ext. 146, e-mail: *eac@cdrh.fda.gov*, or Michael Berman (HFZ–170), 12725 Twinbrook Pkwy., 301–827–4744, e-mail: *mrb@cdrh.fda.gov*. If you need special accommodations due to a disability, please contact Eric Chen, at least 7 days in advance of the meeting.

Registration: There is no fee to attend the workshop; however, because space is limited, registration is required. Please submit registration information (including name, title, firm name, address, e-mail address, telephone number, and fax number) by December 30, 2005 (see *Contact*). Background information for the workshop will be

available to the public on the Internet at *http://www.fda.gov/cdrh/meetings/012006workshop/index.html.*

SUPPLEMENTARY INFORMATION: This workshop helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health by providing the medical device community with guidance on the approval process for mechanical circulatory support devices (ventricular assist devices) used in pediatric patients in need of temporary support (left side, right side, or both sides). During the public workshop, FDA will present information regarding the approval process for these devices. Specifically, FDA will address applications for premarket approval, humanitarian use designations, humanitarian device exemptions, and investigational device exemptions. FDA will also present information regarding preclinical engineering qualification of pediatric mechanical circulatory support devices and invited experts will discuss medical and surgical topics. Following each presentation, and at the close of the meeting, FDA will conduct a question and answer session with the participating audience. After the workshop, presentations can be accessed by the public on the Internet at *http://www.fda.gov/cdrh/meetings/012006workshop/index.html.*

This workshop helps to implement the objectives of section 406 of the FDA Modernization Act (21 U.S.C. 393) and the FDA Plan for Statutory Compliance, which include working more closely with stakeholders and ensuring access to needed scientific and technical expertise. The workshop also furthers the goals of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) by providing outreach activities by Government agencies directed to small businesses.

Dated: December 12, 2005.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 05–24271 Filed 12–19–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Notification of Intent To Use Schedule III, IV, or V Opioid Drugs for the Maintenance and Detoxification Treatment of Opiate Addiction Under 21 U.S.C. 823(g)(2) (OMB No. 0930–0234)—Revision

The Drug Addiction Treatment Act of 2000 (''DATA,'' Pub. L. 106–310) amended the Controlled Substances Act (21 U.S.C. 823(g)(2)) to permit practitioners (physicians) to seek and obtain waivers to prescribe certain approved narcotic treatment drugs for the treatment of opiate addiction. The legislation sets eligibility requirements and certification requirements as well as an interagency notification review process for physicians who seek waivers.

To implement these new provisions, SAMHSA developed a notification form (SMA–167) that facilitates the submission and review of notifications. The form provides the information necessary to determine whether practitioners (*i.e.*, independent physicians and physicians in group practices (as defined under section 1877(h)(4) of the Social Security Act) meet the qualifications for waivers set forth under the new law. Use of this form will enable physicians to know they have provided all information needed to determine whether practitioners are eligible for a waiver.

However, there is no prohibition on use of other means to provide requisite information. The Secretary will convey notification information and determinations to the Drug Enforcement Administration (DEA), which will assign an identification number to qualifying practitioners; this number will be included in the practitioner's registration under 21 U.S.C. 823(f).

Practitioners may use the form for two types of notification: (a) New, and (b) immediate. Under ''new'' notifications, practitioners may make their initial waiver requests to SAMHSA. ''Immediate'' notifications inform SAMHSA and the Attorney General of a practitioner's intent to prescribe immediately to facilitate the treatment of an individual (one) patient under 21 U.S.C. 823(g)(2)(E)(ii).

The form collects data on the following items: Practitioner name; state medical license number and DEA registration number; address of primary location, telephone and fax numbers; e-mail address; name and address of group practice; group practice employer identification number; names and DEA registration numbers of group practitioners; purpose of notification new, immediate, or renewal; certification of qualifying criteria for treatment and management of opiate dependent patients; certification of capacity to refer patients for appropriate counseling and other appropriate ancillary services; certification of maximum patient load, certification to use only those drug products that meet the criteria in the law. The form also notifies practitioners of Privacy Act considerations, and permits practitioners to expressly consent to disclose limited information available on *http://www.buprenorphine.samhsa.gov.*

Since July 2002, SAMHSA has received approximately 6,400 notifications and has certified over 5,500 physicians. Eighty-one percent of the notifications were submitted by mail or by facsimile, with approximately twenty percent submitted through the Web based online system. Approximately 60 percent of the certified physicians have consented to disclosure on *http://www.buprenorphine.samhsa.gov.*

Respondents may submit the form electronically, through a dedicated Web page that SAMHSA will establish for the purpose, as well as via U.S. mail.

The following table summarizes the estimated annual burden for the use of this form.

Purpose of submission	Number of respondents	Responses per respondent	Burden per response (hr.)	Total burden (hrs)
Initial Application for Waiver	2,000	1	.066	132
Notification to Prescribe Immediately	50	1	.083	3

Purpose of submission	Number of respondents	Responses per respondent	Burden per response (hr.)	Total burden (hrs)
Total	2,050			135

Written comments and recommendations concerning the proposed information collection should be sent by January 19, 2006 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: December 14, 2005.

Anna Marsh,

Director, Office of Program Services.

[FR Doc. E5–7542 Filed 12–19–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 / 800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770 / 888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200 / 800–735–5416

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories *, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702 / 800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319–377–0500

Gamma-Dynacare Medical Laboratories *, A Division of the Gamma-Dynacare, Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288 / 800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400 / 800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900 / 800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings,10788 Roselle St., San Diego, CA 92121, 800–882–7272 (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 550 17th Ave., Suite 300, Seattle, WA 98122, 206–923–7020/800–898–0180 (Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of Pathology of Seattle, Inc.; DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700 (Formerly: NOVAMANN (Ontario), Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital AirpoToxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7897x7

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories),

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152 (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750 (Formerly: Associated Pathologists Laboratories, Inc.)

Quest Diagnostics Incorporated, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010 (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories)

Quest Diagnostics Incorporated, 282 South Presidents Drive, Suite C, West Valley City, UT 84120, 801–606–6301/800–322–3361, (Formerly: Northwest Toxicology, a LabOne Company; LabOne, Inc., dba Northwest Toxicology; NWT Drug Testing, NorthWest Toxicology, Inc.; Northwest Drug Testing, a division of NWT Inc.)

Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276

Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400, (Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anna Marsh,

Director, Office Program Services, SAMHSA.

[FR Doc. 05–24252 Filed 12–19–05; 8:45 am]

BILLING CODE 4160–20–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: Application for Participation in the National Flood Insurance Program.

OMB Number: 1660–0004.

Abstract: The NFIP provides flood insurance to communities that apply for participation and make a commitment to adopt and enforce land use control measures that are designed to protect development from future flood damages. The application form will enable FEMA to continue to rapidly process new community applications and to thereby more quickly provide flood insurance protection to the residents of the communities. Participation in the NFIP is mandatory in order for flood related Presidentially-declared communities to receive Federal disaster assistance.

Affected Public: State, local or Tribal Governments.

Number of Respondents: 150.

Estimated Time per Respondent: 4 Hours.

Estimated Total Annual Burden Hours: 600 Hours.

Frequency of Response: Once.

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: 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 January 19, 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: December 13, 2005.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E5–7533 Filed 12–19–05; 8:45 am]

BILLING CODE 9110–12–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: Exemption of State-Owned Properties Under Self-Insurance Plan.

OMB Number: 1660–0013.

Abstract: The application for exemption is made to the Federal Insurance Administration by the Governor or other duly authorized official of the State accompanied by sufficient supporting documentation which certifies that the plan of self-insurance upon which the application for exemption is based meets or exceeds the standards set forth in 44 CFR 75.11. Upon determining that the State's plan of self-insurance equals or exceeds the standards, the Administrator then certifies that the State is exempt from the requirements for the purchase of flood insurance for State-owned structures and their contents.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government: State, Local or Tribal Government.

Number of Respondents: 20.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 100.

Frequency of Response: Once.

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: 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 January 19, 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: December 13, 2005.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E5–7535 Filed 12–19–05; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1618–DR]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–1618–DR), dated December 9, 2005, and related determinations.

EFFECTIVE DATE: December 9, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 9, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Alaska, resulting from a severe fall storm, tidal surges, and flooding from September 22–26, 2005, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as

you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Director, under Executive Order 12148, as amended, Dennis Hunsinger, of FEMA, is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster:

Bering Strait Regional Education Attendance Area, Kashunamiut Regional Education Attendance Area, Lower Kuskokwim Regional Education Attendance Area, and the Northwest Arctic Borough for Public Assistance.

Bering Strait Regional Education Attendance Area, Kashunamiut Regional Education Attendance Area, Lower Kuskokwim Regional Education Attendance Area, and the Northwest Arctic Borough are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E5–7534 Filed 12–19–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1612–DR]

Indiana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1612–DR), dated November 8, 2005, and related determinations.

EFFECTIVE DATE: December 7, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Director, Department of Homeland Security, under Executive Order 12148, as amended, Marianne C. Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Brad Gair as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E5–7532 Filed 12–19–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension Agency Information Collection Activity Under OMB Review: Application for Participation in Biometric Device Performance Qualification Testing Program

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on October 14, 2005, 70 FR 60097.

DATES: Send your comments by January 19, 2006. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with 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 valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to:

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

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Application for Participation in Biometric Device Performance Qualification Testing Program.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0031.

Forms(s): Biometric Product Qualification Application Form.

Affected Public: Biometric Device Manufacturers.

Abstract: Section 4011—Provision for the Use of Biometric or Other Technology, of Title IV—Transportation Security, in the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458, 118 Stat. 3638, 3712, Dec. 17, 2004), directs TSA to issue guidance for use of biometric technology in airport access control systems including a list of qualified biometric device products and vendors by March 31, 2005. In compliance, TSA has developed a process that examines the fitness of the technology for application to airport access control systems. TSA will ask biometric device manufacturers, who wish to have their devices considered for use in airport access control systems, to submit an application containing detailed information describing their devices.

TSA intends to make the forms, which provide the basis for the device manufacturer's application to this process, widely available to the interested manufacturers through ''Current Announcements'' in the ''Business Opportunities'' link within the TSA website: *http://www.tsa.gov/public.* The online application will be made via that website. TSA will use the information to evaluate the products' readiness for performance testing.

Number of Respondents: 100.

Estimated Annual Burden Hours: An estimated 800 hours annually.

Issued in Arlington, Virginia, on December 14, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. E5–7557 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Comprehensive Conservation Plan for Bon Secour National Wildlife Refuge in Baldwin and Mobile Counties, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service announces that a Final Comprehensive Conservation Plan for Bon Secour National Wildlife Refuge is available for distribution. The plan was prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, and describes how the refuge will be managed for the next 15 years. The compatibility determinations for wildlife observation, photography, and hiking; swimming and beach use; recreational fishing; environmental education and interpretation; and scientific research are also available within the plan.

ADDRESSES: A copy of the plan may be obtained by writing to Robert Cail, Refuge Manager, Bon Secour National Wildlife Refuge, 12295 State Highway 180, Gulf Shores, Alabama 36542; or by calling 251/540–7720; fax 251/540–7301. The plan may also be accessed and downloaded from the Service's Web site *http://southeast.fws.gov/planning/.*

SUPPLEMENTARY INFORMATION: Bon Secour National Wildlife Refuge is located on the Gulf coast of Alabama, 8 miles west of the city of Gulf Shores in Baldwin and Mobile Counties. The planning study area was divided into five separate management units along the Fort Morgan Peninsula and Little Dauphin Island. Although the refuge was established in 1980, to date, only 6,978 acres have been acquired within the 12,570-acre acquisition boundary, including the 575 acres leased from the State of Alabama. The Service has management jurisdiction along the shoreline above mean high tide, except on Little Dauphin Island, which contains 560 acres of submerged bottoms. The potential wildlife habitat values of beach/dune, maritime forest, and estuarine habitat provided the impetus to purchase the properties.

Management efforts since 1985 have emphasize acquiring land, securing staff to operate the refuge, and initiating conservation programs that benefit endangered wildlife species. However, Service acquisition of key properties, such as inholdings and beach/dune habitat, may not be realized within the 15-year planning period due to budget constraints and landowner preferences. The five units within the acquisition boundary have a significant ''edge,'' which contributes to the predation of birds, sea turtles, and beach mice. Edge effect is the tendency of a transitional zone between communities to contain a greater variety of species and more dense populations of species than any surrounding communities.

Implementing the comprehensive conservation plan will enable the refuge to fulfill its critical role in the conservation and management of fish and wildlife resources along coastal Alabama, and to provide quality environmental education and wildlife-dependent recreation opportunities for refuge visitors. The Service analyzed four alternatives for managing the refuge and selected Alternative D to guide management direction over the next 15 years.

Under alternative D, fishing will continue with greater emphasis on the quality of the experience. Education and interpretation will be promoted with regular programs and partnerships with local schools. Wildlife observation and photography opportunities will be expanded, including a kayak trail and observation towers, highlighting refuge management programs and unique wildlife habitats. A user fee and permit system will be implemented to facilitate night fishing at Mobile Point. Depending upon the availability of funds, a visitor center and headquarters office will be constructed, which will include space for interpretation and environmental education. Also based on the availability of funds, a biological technician, outdoor recreation planner, seasonal maintenance worker, and full-time law enforcement officer will be added to accomplish objectives outlined in the plan.

Research studies on the refuge will be fostered and partnerships developed with agencies and universities, providing needed resources and equipment sites, all while meeting the needs of the refuge's wildlife and habitat management programs. Research will also benefit conservation efforts throughout the central Gulf coast to preserve, enhance, restore, and manage coastal barrier island habitat. New surveys on birds, reptiles, and amphibians will be initiated to develop baseline information.

Under this alternative, the refuge will continue to seek acquisition of all lands within the present acquisition boundary. Pristine lands that provide quality habitat and connectivity to existing refuge lands will be priority

acquisitions. Equally important acquisition tools to be used include: transfer lands, partnerships with conservation organizations, conservation easements with adjacent landowners, and leases/cooperative agreements with state agencies.

Public comments were requested, considered, and incorporated throughout the planning process. Public outreach included open houses, public meetings, technical workgroups, planning update mailings, and **Federal Register** notices. During the comment period on the draft document, the Service received a total of 30 comments. All substantive issues raised have been addressed either through revisions of the final comprehensive conservation plan or in responses contained in the appendix dealing with public comments.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: August 24, 2005.

Jeffrey M. Fleming,

Acting Regional Director.

[FR Doc. 05–24240 Filed 12–19–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and/or marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
111397	Donald S. Priest	70 FR 62321; October 31, 2005	November 15, 2005.
110435	David C. West	70 FR 58736; October 7, 2005	November 14, 2005.
109575	Louis A. Souza	70 FR 58736; October 7, 2005	November 14, 2005.
110014	Stephen W. Mayes	70 FR 58736; October 7, 2005	November 14, 2005.
110044	Raymond T. Cuppy	70 FR 58736; October 7, 2005	November 14, 2005.

ENDANGERED MARINE MAMMALS AND MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
100361	Mote Marine Laboratory	70 FR 51839; August 31, 2005	November 10, 2005.
106376	Paul W. Prudler	70 FR 46183; August 9, 2005	October 3, 2005.
110049	Michael J. Vorst	70 FR 58736; October 7, 2005	November 28, 2005.

Dated: December 9, 2005.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E5–7536 Filed 12–19–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by January 19, 2006.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–115741

Applicant: Winston C. Stalcup, Alpharetta, GA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–113776

Applicant: Scott E. Behnken, Brookville, OH.

The applicant requests a permit to import a polar bear (Ursus maritimus) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Dated: December 9, 2005.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E5–7537 Filed 12–19–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 121305B]

Endangered and Threatened Species: Notice of Availability for the Final Recovery Plan for the Gulf of Maine Distinct Population Segment of Atlantic Salmon

AGENCIES: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; and United States Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of recovery plan of Atlantic salmon.

SUMMARY: The National Marine Fisheries Service (NMFS) and the United States Fish and Wildlife Service (FWS)(collectively, the Services) announce the availability of the final recovery plan for the Gulf of Maine (GOM) distinct population segment (DPS) of Atlantic salmon (*Salmo salar*).

ADDRESSES: Requests for a copy of the final recovery plan should be addressed to the Atlantic Salmon Recovery Coordinator, NMFS, Northeast Regional Office, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930. A copy of the Final Recovery Plan can also be downloaded from the following web address: *http://www.nmfs.noaa.gov/pr/recovery*.

FOR FURTHER INFORMATION CONTACT: Jessica Pruden, NMFS Atlantic Salmon Recovery Coordinator, (978) 281–9328 extension 6532.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 *et seq.*) (ESA) requires the development of recovery plans for listed species unless such a plan would not promote the recovery of a particular species. Recovery Plans describe actions considered necessary for the conservation and recovery of listed species, establish criteria for downlisting or delisting such species, and estimate the time and costs required to implement recovery actions. On December 17, 2000, the Services listed the GOM DPS of Atlantic salmon as endangered under the ESA (65 FR 69459). On June 18, 2004, the Services published a draft recovery plan for the DPS, and solicited public comments (69 FR 34184).

The GOM DPS includes all naturally reproducing remnant populations of Atlantic salmon from the Kennebec River downstream of the former Edwards Dam site, northward to the mouth of the St. Croix River. DPS salmon taken for hatchery rearing for broodstock purposes and any captive progeny from these salmon are also included as part of the DPS. These hatchery-held fish, however, do not count toward delisting or reclassification goals as these goals refer to the status of naturally-spawned salmon in the wild.

At the time of listing, there were at least eight rivers in the geographic range of the GOM DPS known to still support wild Atlantic salmon populations: the Dennys, East Machias, Machias, Pleasant, Narraguagus, Ducktrap and Sheepscot Rivers, and Cove Brook. At the time of listing, the Services deferred a decision whether the DPS range included the mainstem of the Penobscot River and its tributaries above the former site of the Bangor Dam. Presently a status review is underway to determine the relationship of large river systems (e.g., the Penobscot and Kennebec Rivers) to the DPS as currently delineated. This review will also determine the status of current salmon populations within these large river systems, as well as any other additional salmon populations present outside the geographic range of the DPS. Decisions regarding the status of these populations may have significant implications for the recovery strategy and recovery criteria. The Services will consider the implications of these decisions and, if necessary, amend or modify the recovery plan accordingly.

The GOM DPS has declined to critically low levels. Adult returns, and estimates of juvenile abundance and survival have continued to decline since the listing. In 2004, total adult returns to the eight rivers still supporting wild Atlantic salmon populations within the DPS were estimated to range from 60 to 113 individuals. Therefore, while full recovery will encompass the full range of the DPS from the Kennebec to the St. Croix River, the initial focus of the recovery program is to stabilize populations in the eight populations in the DPS that were extant at the time of the listing

The recovery plan contains a synopsis of the biology and distribution of Atlantic salmon, a description of factors affecting species recovery, an outline of actions needed to recover the species, and an implementation schedule for completing the recovery tasks. The recovery plan, prepared with the assistance of the Maine Atlantic Salmon Commission (ASC), provides a framework for addressing a multitude of threats threatening the survival and conservation of the GOM DPS of Atlantic salmon.

The Services published a notice of availability of the draft recovery plan for the GOM DPS of Atlantic salmon in the **Federal Register** on June 18, 2004 (69 FR 34184). The Services distributed the draft recovery plan for public review and comment. During the 90-day public comment period, the Services held two formal public hearings, as well as numerous meetings and briefings with Federal, state, local and private stakeholders to discuss the recovery plan and solicit comments.

The Services received comments from a wide range of stakeholders and interested parties including state, Federal and local government agencies; local stakeholder groups; non-

governmental organizations; industry groups; and private citizens. The comments received ranged from endorsements of the plan to disagreement with specific as well as general elements contained in the plan. Many of the comments received provided technical corrections and additional information that the Services' considered and applied as appropriate in preparing the final recovery plan.

The Maine ASC coordinated the review of the draft plan by state agencies. The state agencies involved in the plan review were the Maine ASC, Maine Department of Marine Resources (DMR), Maine Department of Inland Fisheries and Wildlife (IFW), Maine Department of Environmental Protection (DEP), Maine Department of Agriculture, Food, and Rural Resources (DAFRR), Maine Bureau of Pesticide Control (BPC), Maine Department of Conservation (DOC), Maine Bureau of Parks and Lands (BPL), Maine Forest Service (MFS), Maine Geological Service (MGS), Maine Department of Transportation (DOT), and Maine State Planning Office (SPO).

In addition to public review, the recovery plan underwent peer-review. The Services and the State identified and contacted 27 peer reviewers with specific technical and other relevant expertise, requesting review and comment on the draft recovery plan. These individuals were asked to review relevant sections of the plan for technical accuracy and completeness. The peer-reviewers were also asked to identify any specific issues or information that the Services should consider in the preparation of a final recovery plan. The Services received eight responses from the individuals contacted.

In conjunction with efforts to prepare a final recovery plan, the Services and the Maine ASC conducted a 2-day Threats Assessment Workshop in December 2004. The Services assembled a team of technical experts from Maine ASC, NOAA Fisheries and USFWS to conduct a structured threats analysis to evaluate the geographic extent and life stage affected by threats, and the severity of these effects. During this workshop, the Services and workshop participants reviewed and considered the recommendations of the National Research Council's (NRC) (2004) report on Atlantic Salmon in Maine, as well as relevant public and peer review comments received during the comment period. The workshop resulted in the following threats being identified in the final recovery plan as high priority for action to reverse the decline of Atlantic salmon populations in the GOM DPS: (1) Acidified water and associated aluminum toxicity which decrease juvenile survival; (2) aquaculture practices, which pose ecological and genetic risks; (3) avian Predation; (4) changing land use patterns (e.g., development, agriculture, forestry); (5) climate change; (6) depleted diadromous fish communities; (7) incidental capture of adults and parr by recreational fishermen; (8) introduced fish species that compete or prey on Atlantic salmon; (9) low marine survival; (10) poaching of adults in DPS rivers; (11) recovery hatchery program (potential for artificial selection/domestication); (12) sedimentation; and (13) water extraction.

The public and peer review comments received during the public comment period have been fully considered in the preparation of this recovery plan. In response to comments received, the Services have made revisions to the draft plan as appropriate. In addition, the Services have reviewed and considered the recommendations of the 2004 NRC report on Atlantic Salmon in Maine and incorporated the recommendations as appropriate.

Comments and Responses

The majority of the comments received on the draft recovery plan were editorial and were incorporated as received. More substantive comments and responses to these comments are summarized below.

Threats Assessment

Comment 1: A number of comments were submitted questioning the relationship between the threats assessment and the text related to those identified threats and/or their priorities in the implementation table. It was suggested that better documentation of the risk assessment method used to identify the top threats would be instructive for the reader. Others commented that some of the threats were more applicable to some watersheds and not to others. Finally, some questioned the estimates of costs in the Implementation Schedule and the State of Maine suggested that they could assist the Federal Services, with the assistance of the Recovery Team, to refine these estimates.

Response: A workshop was held with state and Federal agency experts to conduct a threats assessment. The purpose of this workshop was to address the concerns submitted by the public with the goal of expanding the section of the recovery plan to include an explanation of the process utilized and factors considered in conducting the threats assessment. Another goal was to attempt to link the threats assessment to the implementation schedule and to ensure consistency in addressing threats throughout the body of the recovery plan. The final plan includes a revised threat assessment that was the product of the workshop mentioned above.

Water Use

Comment 2: Some comments recommended that the plan take a broader approach to addressing water use related to hydrologic manipulation of river flow. Others stated that the terms ''excessive or unregulated withdrawals'' were not accurate or instructive and stated that the Plan did not adequately acknowledge the existing state regulatory programs that are in place to guard against threats to habitat due to water withdrawal. It was suggested that too much emphasis was placed on water withdrawal in the plan and that the plan should focus on a solution-based approach as agreed to by private and public, state and Federal partners in the Downeast Rivers Water Use Management Plan (WUMP) developed under the State Atlantic Salmon Conservation Plan instead of focusing on water-use permitting.

The Downeast Salmon Federation (DSF) commented that the draft plan should specifically state that the Water Use Management Plan (WUMP) is not comprehensive enough to truly deserve the name, and that a reader of the recovery plan unfamiliar with the WUMP might conclude that these ''plans'' address cumulative as well as individual withdrawals. DSF commented that the WUMP actually addresses only those withdrawals made by the larger industry users and does not do a thorough or precautionary job of planning or managing water use in these watersheds. Lastly, DSF commented that the documents referred to as the WUMP provide a basis from which to move forward, but are lacking in addressing the impact of the full range of irrigators within these watersheds.

Response: The Recovery Plan endorses the implementation of the WUMP as an important recovery action for the DPS. The Services agree with the comment that the practical threat of water use is much less today than it was in 1995 when the State Conservation Plan was being developed. As explained in the draft recovery plan, the WUMP is a significant accomplishment and provides an excellent foundation as a planning document. In order for it to be effective as a tool for the protection and recovery of Atlantic salmon, however, the WUMP needs to be endorsed by the

state regulatory agencies and consistently applied in the State of Maine in both organized and unorganized territories. While voluntary compliance with the WUMP by growers may be reducing the practical threat of water withdrawals to salmon and their habitat today, it does not provide security into the future that this threat will remain reduced.

Forestry

Comment 3: Some comments were submitted concurring with the conclusion in the draft plan that current timber harvesting activities do not represent a significant threat under current management measures and harvest practices. Other commenters questioned the basis for this conclusion. They cited the following potential impacts from forest practices: sedimentation, thermal loading, altering water chemistry, altering hydrology and limiting large woody debris. Other commenters raised concerns that changes in land ownership could lead to increased harvesting and impacts to Atlantic salmon and their habitat. One comment requested that the Services review the state laws that govern forest management and timber harvesting and another comment specifically stated that the State of Maine's Forest Practices Act provides little protection to smaller order streams. In addition, some stated that there was little to no enforcement of existing forest laws and regulations. Some commenters contend that the draft plan does not adequately describe the forestry issue. DSF stated that forestry practices impact watershed productivity particularly when first order streams do not receive adequate protection from cutting activities. These commenters state that these streams receive the least protection under current law and the least emphasis under current conservation easement strategies and as a result these water bodies are experiencing the most abuse and neglect.

Response: In the recovery plan the Services acknowledge that forestry practices can negatively impact Atlantic salmon habitat. Due to state laws and best management practices (BMPs), widespread problems with forestry practices have not been documented. These impacts can occur, however, and in some cases the protective measures currently in place are best management practices that are not regulatory in nature. In general, landowners are required to protect water quality and to utilize best management practices to ensure that water quality is not negatively impacted by harvesting. The BMPs are not prescriptive in nature, however, and instead require what is necessary to achieve the outcome of preventing negative impacts to water quality. Foresters are provided with a range of BMPs and training in those techniques, but the ultimate decision of what specific techniques to apply is left to their discretion in light of the site specific circumstances. We acknowledge that land ownership patterns are changing in Maine and we cannot take for granted the excellent relationship we have had with landowners in the past who have voluntarily adopted protective measures for Atlantic salmon. Efforts to work with new landowners are ongoing and Project SHARE has been very instrumental in this effort. It will be important during implementation of the recovery plan for the Services to continue to work with landowners and the Maine Forest Service to ensure that salmon habitat is not negatively impacted by forestry practices.

Land Acquisition and Riparian Buffers

Comment 4: Some suggested land acquisition and conservation easements should be pursued in areas that are threatened with serious, immediate, development pressure, where the relationship between specific land use changes and habitat degradation is firmly established and where high value habitat is at risk. Others argued that the case for riparian buffer protection is based on the presumed impacts of sedimentation, removal of shade and associated increases in stream temperature, alteration of natural processes that create large woody debris, low dissolved oxygen from nutrient enrichment, runoff of chemical contaminants from agricultural and silvicultural lands. These individuals asserted that there is little evidence that these potential impacts are actually a threat to the GOM DPS.

Response: The available scientific literature provides a strong basis for the need for a riparian buffer zone to prevent adverse impacts to water quality. Purchasing all of the land in the riparian habitat in the Gulf of Maine DPS of Atlantic salmon is not possible and is not necessary for salmon protection and recovery. The major focus of the GOM DPS recovery program is to ensure that buffers are adequate in a particular region to prevent adverse impacts to water quality in that region. For example, if Atlantic salmon in a particular stream is threatened by elevated temperatures, but not threatened by sedimentation, then riparian buffers should be in place to prevent increases in water temperature but necessarily to reduce sedimentation. Our focus is, therefore, on ensuring that regulations and best management practices to protect water quality are fully implemented and evaluated. Where opportunities present themselves, the purchase of land and conservation easements has been and likely will continue to be an important tool in the effort to protect important riparian areas adjacent to salmon habitat.

Aquaculture

Comment 5: Comments were provided stating that the section in the draft plan on aquaculture was outdated and requesting that the final recovery plan acknowledge progress made to address the threat of aquaculture. Other comments identified areas where actions to address the threat from aquaculture needed to be strengthened and specifically cited disease management, the establishment of aquaculture free-zones and bay management planning.

Response: We have updated the section in the recovery plan related to aquaculture. As noted in the comments, the Services have been working with the aquaculture industry and the State of Maine for a number of years to implement measures to minimize the potential for aquaculture practices to negatively impact Atlantic salmon and their habitat. As correctly noted in the comments, significant progress has been made recently to incorporate a number of these protective measures in permit conditions. Aquaculture free-zones have been considered, but not implemented due to the lack of adequate sites sufficiently removed from the Gulf of Maine DPS. Bay management planning is an excellent tool for ensuring that aquaculture practices are well coordinated and that cumulative impacts are identified and assessed. We have included a discussion on bay management in the final recovery plan.

Habitat Quality and Restoration

Comment 6: Comments were submitted stating that the recovery plan needed to identify habitat as a limiting factor to Atlantic salmon throughout Maine and placing habitat restoration as a top priority. One comment stated that poor large parr survival indicated that habitat in the rivers may be marginal and that greater emphasis should be placed on investigating this further. Comments suggested that a greater emphasis needed to be placed on restoring the structure and function of these rivers. Another comment recommended that the size and scale of riparian buffer zones needs to be carefully assessed to determine if they

are adequate to meet the needs of Atlantic salmon and the rest of the ecosystem.

Response: The plan does identify habitat quality as a significant threat to the recovery of Atlantic salmon. As explained in the plan, assessment activities have documented significant mortality occurring to large parr during their last winter in the river, and to also smolts are they migrate out of the river. These research findings indicate that there are problems with habitat quality. Research and management efforts are now concentrated on specifically identifying limiting factors in the freshwater, estuarine and marine environments. Examples include assessment of embeddedness and substrate permeability and its relationship to productivity and consideration of a pilot liming study to evaluate the benefits of buffering the river as smolts migrate into saltwater. In addition, the final recovery plan discusses the need to investigate the potential role of diminished habitat complexity in the conservation of the DPS.

Ecosystem Restoration

Comment 7: Comments recommended that the plan needed to go further in incorporating an ecosystem approach to recovering the DPS and should consider rivers as entire systems. One comment stated that non-native species should not be stocked into rivers within the DPS and another recommended pursing the restoration of alewives. Other comments stated that to restore salmon we need to restore the other species with which it co-evolved over the years.

Response: The goal of the Endangered Species Act is to conserve the ecosystems upon which endangered and threatened species depend. The plan acknowledges that recovery of endangered Atlantic salmon depends on recovery of the rivers, estuaries and marine environment. Recovery includes restoration of other diadromous species which provide important benefits to Atlantic salmon including serving as predator buffers and contributing marine derived nutrients to the ecosystem.

Changing Land-Use Patterns

Comment 8: A comment recommended that changing land-use patterns (i.e., development and sprawl) needs to be addressed more thoroughly in the plan. It was also suggested that habitat protection needs to be guided by an ecosystem management approach that looks at what is happening across the landscape. One comment stated that if the long term effects of historical land-use and impacts from current land-use are not addressed rapidly and aggressively we will not see the restoration of self-sustaining Atlantic salmon populations in Maine.

Response: The recovery plan focuses on threats to Atlantic salmon habitat so the impacts of changing land-use patterns are addressed in a variety of sections. As noted in the comment, development can impact Atlantic salmon habitat by contributing sediments, chemicals and nutrients and increasing water temperature. Land-use changes will continue to be monitored during implementation of the recovery plan with a focus on how those changes increase impacts to salmon habitat.

Stakeholder and Community Involvement

Comment 9: Comments stated that the plan does not identify many areas where non-agency organizations and stakeholders are involved and recommended that the plan identify more ways to include stakeholders and the local knowledge that these individuals and groups possess. Another comment stated that the Watershed Councils are essential for salmon recovery and must have the backing of state and Federal agencies involved in salmon restoration. It further suggested that the ''Implementation Schedule'' should include funding to support the full time staff needed to keep the Watershed Councils functioning as an effective component of salmon restoration efforts.

Response: The recovery plan acknowledges the critical role that local citizens and organizations have and will continue to play in recovery of Atlantic salmon. These individuals serve as the eyes and ears in these watersheds and are frequently the first to identify specific habitat problems that need to be addressed and opportunities for habitat enhancement. The implementation schedule identifies the actions at the local level and the funding estimated to be necessary to carry out those activities. Included in these estimates are the personnel resources needed to carry out these tasks.

Hatcheries

Comment 10: A number of comments were submitted on the existing hatchery program. One comment suggested that the plan identify the need to assess whether hatchery-reared fish, which are essentially land-locked, are capable of transitioning to saltwater water. Another comment suggested that there should not be a ''broodstock retirement'' program as currently exists and that instead these brood fish should be producing progeny for other rivers to establish experimental populations. It was suggested that stocking of additional streams might provide a surprising result in terms of a few returning adults and perhaps a catch and release fishery at some point in the future which could go a long way toward rebuilding popular support for the recovery program as a whole.

Response: The recovery plan supports the recommendation from the 2004 NRC report that the hatchery program should be reviewed. The issues identified above, including the source of the fish taken into the hatchery, the use of spent broodstock, life stage to be stocked, and evaluation of hatchery products should all be included in a review as recommended in the final recovery plan. The recovery plan also includes a recommendation to evaluate additional stocking in other rivers within the DPS.

West Greenland Fishery

Comment 11: A comment suggested that the management and establishment of commercial quotas should not be left solely up to NASCO and stated that NASCO failed to follow advice from the International Council for the Exploration of the Sea (ICES) to adopt the zero quota for the WGF in 2001 and 2002. It suggested that the plan recommend a continued suspension of a commercial fishery for Atlantic salmon until such time as rivers within the United States have self-sustaining populations. It further recommended that the recovery plan explicitly support the existing 5-year Greenland Conservation agreement and call for the continued elimination of the West Greenland Fishery as a priority recovery action.

Response: NASCO is the international organization created with the purpose of international coordination and cooperation for Atlantic salmon conservation and management. It is the forum for the Untied States to engage Denmark, on behalf of Greenland, in discussions on management of Atlantic salmon fisheries. The recovery plan identifies the commercial catch of Atlantic salmon off the coast of Greenland as a threat to the recovery of the Gulf of Maine DPS. The model utilized by ICES to provide management advice to NASCO estimates pre-fishery abundance off Greenland and subtracts the spawning escapement needs for all the rivers represented in that mixed stock and then allocates a portion of the remainder to the Greenland fishery. While this, in theory, offers adequate protection to all stocks contributing to the mixed stock off Greenland, some stocks may be disproportionately

affected by the fishery. For instance, if Canadian and Northern European stocks recovery more quickly than U.S. and Southern European stocks then the pre-fishery abundance may increase enough to allow for a commercial harvest off Greenland yet the stocks in the southern portion of the range may still be significantly lower than spawning escapement goals. Continued involvement in the international management forum and involvement of conservation organizations is necessary to ensure adequate protection of U.S. stocks.

Penobscot and Other Large Rivers

Comment 12: Several commenters stated that the Recovery Plan does not adequately address the relationship and importance of the Penobscot to the listed rivers. These comments stated that this is a serious omission in the draft recovery plan, and that the recovery plan's failure to adequately recognize the importance of the Penobscot to the listed rivers is a serious omission and needs to be rectified in the final plan. Likewise, the plan needs to look at the role of Maine's other large salmon rivers, particularly those within the geographic range of the DPS, i.e., the Kennebec, Androscoggin and St. Croix rivers, as well as the Saco River.

Response: The recovery plan is for the listed entity the Gulf of Maine DPS of Atlantic salmon that was listed in 2000. At the time of the listing, the mainstem Penobscot River was excluded from the Gulf of Maine DPS due to outstanding data and analysis. The plan properly focuses on the threats to Atlantic salmon and their habitat as listed and identifies actions necessary to avoid or minimize those threats in the future.

Acid Rain

Comment 13: A comment offered support for efforts to mitigate the effects of acid rain on the DPS, but stated that the draft plan does not place adequate emphasis on mitigating the underlying causes of acid rain. The comment recommended that the Services place a high priority on consulting with the EPA on identifying point sources of air pollution contributing to acid rain.

Response: The available information on acid deposition in Maine indicates that, as a result of air pollution regulations, acid deposition is decreasing. The current problems appear to be caused by the removal of buffering capacity in these rivers over time which now allows acid pulses to cause effects to Atlantic salmon. The mitigation effort appears to be necessary to provide buffering capacity until such time as the habitat recovers from the years of significant acid rain deposition and leaching of buffering capacity from the watersheds.

Elevated Water Temperature

Comment 14: A comment stated that the draft recovery plan does not adequately discuss the threat of elevated water temperature.

Response: There is no question in the literature as to the negative effects of high temperature. The best available data seems to show a significant number of days when the temperature goes above the thresholds for feeding and survival. The draft recovery plan identifies elevated water temperature as a threat to Atlantic salmon. As noted in the comment, temperatures have been recorded at levels higher than that preferred and sometimes even tolerable for salmon. The recovery plan also identifies activities that can cause increased water temperature including removal of vegetation in the riparian zone and water withdrawals.

Education

Comment 15: A comment stated that education is an essential component to species or population restoration and will require substantial investment and commitment on the part of all of the players in this recovery. The commenter stated that the recovery plan's implementation schedule lacks funding and commitment for education.

Response: The Recovery Plan states that education and outreach programs are a critical component of successful conservation and recovery plans. The Recovery Plan states that public information and outreach programs help build public support and a strong constituency for Atlantic salmon recovery and conservation in Maine. The Recovery Plan recommends that efforts to increase and improve public awareness of Atlantic salmon conservation should continue through media, educational material, public forums and workshops, demonstration projects and technical assistance. The Recovery Plan notes that virtually all successful conservation programs include education and public outreach programs. Public awareness is important to the success of Atlantic salmon recovery efforts in Maine.

The Recovery Plan states that education and outreach programs inform the general public and interested parties, such as land owners, business and industry, state and local government about the Atlantic salmon recovery process. Education and information campaigns help promote Atlantic salmon as an important national resource and encourage individual and group involvement in the recovery process. The Recovery Plan recommends that a comprehensive and coordinated Education and Outreach Plan for the Gulf of Maine DPS of Atlantic salmon should be developed. This plan should include a strategy to coordinate the efforts of Federal, state and local organizations currently involved in education and outreach programs. The plan should identify target audiences, review existing programs and materials, evaluate the role of public display of Atlantic salmon, identify education and outreach needs, identify responsibilities and costs and develop strategies for dissemination of information and materials.

Governance

Comment 16: A comment suggested that the plan should include a discussion on governance and referenced the 2004 NRC report which also suggested that this issue should be investigated. The comment suggested that the Services should pull language from the 2004 NRC report and the comments received to help create this new section. The DSF suggests a review of the literature on the topic of natural resource ''co management'' and referenced lobster fisheries co-management in Maine as one example of an alternative and reasonably successful structure that should be reviewed.

Response: The Recovery Plan recommends that Federal and state agencies and local governments should continue to work cooperatively to recover the DPS. Where necessary, interagency communication and coordination should be strengthened. Existing coordination and communication mechanisms between Federal and state agencies and local conservation organizations and other constituency groups should be reviewed and strengthened. The Plan acknowledges that there are many organizations and groups involved in the protection and recovery of Atlantic salmon. Ensuring inter-organizational coordination and communication mechanisms are in place will increase the effectiveness and efficiency of these groups. The implementation schedule in the recovery plan identifies responsible entities for each of the recovery plan actions. There are a number of organizations, agencies, individuals and industries involved in Atlantic salmon protection and recovery as noted in the 2004 NRC report. By assigning responsibility appropriately for carrying out activities, the plan describes roles for each of these groups in recovery

implementation. The recovery plan implementation team will also coordinate actions and help reduce the potential for overlap. The Recovery Plan has been revised to include an expanded discussion of the issue of governance as it relates to the recovery of the DPS. The Services agree that the complexity of the multiple state, Federal, local and private groups involved in salmon recovery or related activities presents specific challenges that must be addressed if recovery is to be successful.

River-Specific Recovery Planning

Comment 17: Several comments stated that the recovery plan did not address recovery action at a river-specific scale. These individual state that the plan does not make any attempt to address individual rivers, identify unique threats to salmon in each and describe actions necessary to address each threat. In addition, the comments state that the threats identified in the plan are not the most important in all watersheds.

Response: The Recovery Plan considers threats to the DPS at a river-specific scale and discusses regional differences that exist between various watersheds and regions in Maine. The Recovery Plan identifies site-specific management actions for all the threats the Services have identified under section 4(a)(1) of the ESA five-factor analysis. The Services acknowledge that the Recovery Plan does not present comprehensive river specific recovery strategies for each of the rivers still known to support wild salmon populations. The Services agree that recovery implementation may be further facilitated by the development of watershed or river-specific management plans that would include and highlight those threats and accompanying actions applicable within that particular area. The Recovery Plan acknowledges ongoing recovery implementation activities that are currently responsive to the specific circumstances within individual watersheds (e.g., NPS surveys, nutrient management plans in the Sheepscot, liming project Downeast). Management plans for specific issues of concern have been developed, or are envisioned, for many of the rivers and watersheds within the DPS. For example, the Maine ASC has been working to develop river-specific fisheries management plans for individual DPS rivers. The State of Maine, working in cooperation with multiple public and private partners, has developed a water use management plan (WUMP) for the Narraguagus and Pleasant rivers and for Mopang Stream (a tributary to the Machias River). The WUMP was developed to address a specific issue (i.e., agricultural water use) that was a concern in these three rivers. In a number of instances, local conservation organizations have begun the process of developing river-specific management plans for specific issues.

Pesticides

Comment 18: The Services received a number of comments related to pesticides. Comments provided by the State of Maine questioned the factual basis of statements in the draft plan that drift of hexazinone from aerial applications has been documented. The State stated that it had no documentation of hexazinone drift in its records. The DSF commented that the plan did not adequately present the extent of pesticide use and the threat to the DPS posed by DPS by this activity. The Services received comments that the threat from pesticides warrants consultation between the Services and the EPA on the effects of pesticide registration on the DPS. This commenter stated that pesticides should not be used until this consultation has taken place. Further, these comments stated the view that the recovery plan does not place a high enough priority on measures to control pesticide use. Lastly, the comments stated that no pesticides can be discharged into DPS waters without a CWA, NPDES permit.

Response: The Services have revised the recovery plan based on public comments received. An assessment of the magnitude and severity of the threat posed to the survival and recovery of the DPS by chemical contaminants resulted in the conclusion that pesticides currently are not a high-level threat to the DPS recovery. The recovery plan identifies a number of recovery actions related to continued monitoring of any threat to the DPS related to pesticides. Should water quality or other data indicate that pesticides applied in accordance with approved labeling instructions may be adversely affecting the DPS, the Services will consult with the U.S. Environmental Protection Agency (EPA) to address any potential impact to the DPS.

Implementation of the Plan

NMFS and the FWS are committed to the implementation of the Gulf of Maine DPS of Atlantic salmon Recovery Plan. The recovery plan may be revised in the future on the basis of new information. Public notice and an opportunity for public review and comment would be provided prior to final approval of a revised recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*)

Dated: December 14, 2005.

Angela Somma,

Chief, Endangered Species Division, National Marine Fisheries Service.

Dated: December 2, 2005.

Marvin E. Moriarty,

Regional Director, Region 5U.S. Fish and Wildlife Service.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110905A]

Notice of Intent to Conduct Public Scoping and to Prepare an Environmental Impact Statement Related to the Port of Vancouver's Columbia Gateway Site Habitat Conservation Plan

AGENCIES: Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; scoping meetings.

SUMMARY: The U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services) advise interested parties of their intent to conduct public scoping under the National Environmental Policy Act (NEPA) to gather information to prepare an Environmental Impact Statement (EIS) related to a permit application from the Port of Vancouver, Washington, for the incidental take of listed species. The permit application would be associated with the Port of Vancouver Columbia Gateway Site Habitat Conservation Plan adjacent to the Columbia River in Vancouver, WA.

DATES: The public scoping meeting will be held on January 4, 2006, from 4–7 p.m. in Vancouver, WA.

Written comments should be received on or before January 19, 2006.

ADDRESSES: The public scoping meeting will be held at the Fruit Valley Community Center, 3203 Unander Avenue, Vancouver, WA 98660–1100.

All comments concerning the preparation of the EIS and the NEPA

process should be addressed to: Greg M. Smith, FWS, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266–1325, facsimile (503) 231–6195, or Laura Hamilton, NMFS, 510 Desmond Drive SE, Suite 103, Lacey, WA 98503–1273, facsimile (360) 753–9517. Comments may be submitted by e-mail to the following address: *ColumbiaGatewayHCP.nwr@noaa.gov*. In the subject line of the e-mail, include the document identifier: Columbia Gateway HCP–EIS.

FOR FURTHER INFORMATION CONTACT: Greg M. Smith, FWS (503) 231–6179; or Laura Hamilton, NMFS (360) 753–5820.

SUPPLEMENTARY INFORMATION:

Statutory Authority

Section 9 of the Endangered Species Act (ESA) (16 U.S.C. 1538) and implementing regulations prohibit the taking of animal species listed as endangered or threatened. The term ''take'' is defined under the ESA (16 U.S.C. 1532(19)) as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. ''Harm'' is defined by FWS regulation to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3). NMFS' definition of ''harm'' includes significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, spawning, migrating, rearing, and sheltering (64 FR 60727, November 8, 1999).

Section 10 of the ESA and implementing regulations specify requirements for the issuance of incidental take permits (ITPs) to non-Federal landowners for the take of endangered and threatened species. Any proposed take must be incidental to otherwise lawful activities, not appreciably reduce the likelihood of the survival and recovery of the species in the wild, and minimize and mitigate the impacts of such take to the maximum extent practicable. In addition, the applicant must prepare a habitat conservation plan (HCP) describing the impact that will likely result from such taking, the strategy for minimizing and mitigating the take, the funding available to implement such steps, alternatives to such taking, and the reason such alternatives are not being implemented.

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Under NEPA, a reasonable range of alternatives to proposed projects is developed and considered in the Services' environmental review. Alternatives considered for analysis in an EIS may include: variations in the scope of covered activities; variations in the location, amount, and type of conservation; variations in permit duration; or a combination of these elements. In addition, the EIS will identify potentially significant direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, socioeconomics, and other environmental issues that could occur with the implementation of the applicant's proposed actions and alternatives. For potentially significant impacts, an EIS may identify avoidance, minimization, or mitigation measures to reduce these impacts, where feasible, to a level below significance.

Background

An EIS for the Columbia Gateway HCP would analyze the potential issuance of two ITPs, one by NMFS and one by the FWS. To obtain an ITP, the applicant must prepare an HCP that meets the issuance criteria established by the ESA and Service regulations (50 CFR 17.22(b)(2), 17.32(b)(2), and 222.307). Should a permit or permits be issued, the permit(s) may include assurances under the Services' ≥No Surprises≥ regulations.

The Port of Vancouver (Port) is seeking ITPs from the Services that would provide ESA regulatory certainty for a proposed expansion of water-dependent and water-related development at the Columbia Gateway site. This industrial development would consist of the infrastructure necessary to support marine terminals on Parcel 3 (approximately 517 acres), and offsite transportation facilities necessary to move material to and from Parcel 3. These offsite transportation facilities include a proposed rail line to connect Columbia Gateway with the existing Burlington Northern Santa Fe mainline, and the extension of 26th Avenue within the City of Vancouver to provide an alternate route between the site and Interstate 5, to accommodate increased cargo and employee trips that would occur as a result of the project.

In addition to Parcel 3, the Columbia Gateway site includes Parcels 2, 4, and 5, and the Port's Rufener property. Parcel 2 is a 31-acre tract near Parcel 3, Parcels 4 (112 acres) and 5 (430 acres) are located north of the Vancouver Lake Flushing Channel, and the Rufener property (206 acres) is located east of Vancouver Lake and west of the Fruit Valley neighborhood. To compensate for wildlife habitat impacts that would be caused by proposed development activities on Parcel 3, the Port proposes to provide habitat mitigation on Parcels 4 and 5 and the Rufener property. Some industrial facilities would also be developed on the Rufener property. A portion of Parcel 2 may be used as a transportation corridor to access Parcel 3.

Species for which the Port seeks incidental take coverage include 15 species of fish and one species of wildlife. Three of the fish species are currently listed as endangered under the ESA, including Upper Columbia River Spring-run Chinook (*Oncorhynchus tshawytscha*), Upper Columbia River steelhead (*O. mykiss*), and Snake River sockeye (*O. nerka*). Nine fish species are currently listed as threatened under the ESA, including Lower Columbia River Chinook, Upper Willamette Chinook, Snake River Fall-Run Chinook, Snake River Spring/Summer-Run Chinook, Columbia River chum (*O. keta*), Lower Columbia River steelhead, Middle Columbia River steelhead, Upper Willamette River steelhead, and Snake River Basin steelhead. The bald eagle (*Haliaeetus leucocephalus*) is also listed as threatened. The Lower Columbia River coho evolutionary significant unit (*O. kisutch*) is proposed for listing. The Pacific lamprey (*Lampetra tridentata*) and coastal cutthroat trout (*O. clarki clark*i) are species of concern. One additional species, the sandhill crane (*Grus canadensis*), will be addressed in the conservation measures contained in the HCP; however, the Port is not seeking ITP coverage for this species. The bald eagle, Pacific lamprey, coastal cutthroat trout and sandhill crane are under the jurisdiction of the FWS, and the remaining species are under the jurisdiction of NMFS.

The draft HCP to be prepared by the Port in support of the ITP applications will describe the impacts of take on proposed covered species, and will propose a conservation strategy to minimize and mitigate those impacts on each covered species to the maximum extent practicable. The Port will develop habitat conservation measures for fish and wildlife, and their associated habitat, with assistance from the Services. Habitat conservation measures for the bald eagle will follow the Washington Department of Fish and Wildlife Bald Eagle Management Plan, developed for the site with the FWS and

the Port. Other conservation and mitigation strategies will include:

• Regulated wetland (Clean Water Act section 404) impacts as a result of development on Parcel 3 would be mitigated on Parcels 4 and 5 (approximately 542 acres).

• Natural resource protection and mitigation planning would be primarily shaped by regulatory requirements.

• Wetland and wildlife habitat impacts from development of the road and rail infrastructure would be mitigated on the Port's Rufener property.

• Limited mitigation and habitat areas would be retained along the shoreline and the Flushing Channel on Parcel 3.

The draft HCP will identify HCP alternatives considered by the Port and will explain why those alternatives were not selected. The Services are responsible for determining whether the HCP satisfies ESA section 10 permit issuance criteria.

Under NEPA, a reasonable range of alternatives to a proposed project must be developed and considered in the Services' environmental review. The Services have identified the following preliminary alternatives for public evaluation during the scoping period:

Alternative 1: No Action - Under the No Action Alternative, the ITPs would not be issued by the Services and the HCP would not be approved. The Port would be required to comply with all local, state, and Federal laws and regulations through the appropriate permitting processes.

Alternative 2: Proposed Alternative - There would be full implementation of the HCP, which includes a set of site-specific wetland, riparian, and upland habitat conservation measures that would be specific to the Columbia Gateway site and associated rail and road improvements.

Alternative 3: The HCP would be modified by changing or adding measures to further reduce the amount and risk of incidental take. These measures could involve different road and/or rail alignments, industrial development configurations, approaches to ESA compliance, conservation commitments, adaptive management, permit timeframes, covered lands, covered species, eligible parties and other covered activities.

Additional project alternatives may be developed based on input received from the public scoping process.

Request for Comments

The primary purpose of the scoping process is for the public to assist the Services in developing the EIS by identifying important issues and alternatives related to the applicant's proposed action. The scoping workshop will allocate time for presentations by the Services and the Port, followed by informal questions and discussions.

Written comments from interested parties are welcome to ensure that the full range of issues related to the proposed permit request are identified. All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices listed in the **ADDRESSES** section of this notice.

The Services request that comments be specific. In particular, we request information regarding: direct, indirect, and cumulative impacts that implementation of the proposed HCP or other alternatives could have on endangered and threatened and other covered species, and their communities and habitats; other possible alternatives that meet the purpose and need; potential adaptive management and/or monitoring provisions; funding issues; existing environmental conditions in the plan area; other plans or projects that might be relevant to this proposed project; permit duration; maximum acreage that should be covered; specific species that should or should not be covered; specific landforms that should or should not be covered; and minimization and mitigation efforts. NMFS and FWS estimate that the draft EIS will be available for public review in the summer of 2006.

The environmental review of this project will be conducted in accordance with the requirements of the NEPA of 1969 as amended (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality Regulations (40 CFR parts 1500 1508), other applicable Federal laws and regulations, and applicable policies and procedures of the Services. This notice is being furnished in accordance with 40 CFR 1501.7 of the NEPA regulations to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS.

Reasonable Accommodation

Persons needing reasonable accommodations to attend and participate in the public meeting should contact Greg Smith (see **FOR FURTHER INFORMATION CONTACT**). To allow sufficient time to process requests, please call no later than December 28, 2005. Information regarding the applicant's proposed action is available in alternative formats upon request.

Dated: November 29, 2005.

David J. Wesley,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

Dated: December 14, 2005.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E5–7564 Filed 12–19–05; 8:45 am]

BILLING CODES 4310–55–S, 3510–22–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(NV–912–0777)]

Notice of Public Meeting, Mojave Southern Great Basin Resource Advisory Council Meetings

AGENCY: Bureau of Land Management.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Mojave Southern Great Basin Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Mojave Southern Great Basin RAC meetings will be held January 20, 2006; March 23, 2006; June 15 and 16, 2006; and August 17, 2006.

ADDRESSES: The Mojave Southern Great Basin RAC meetings will be held January 20, 2006 and March 23, 2006 at the BLM Las Vegas Field Office, located at 4701 N. Torrey Pines Dr., Las Vegas, NV; June 15, 2006, at the Bristlecone Convention Center 150 Sixth St., Ely, NV; and August 17, 2006 at the Beatty Community Center, 100 A–Ave. South, Beatty, NV.

The Mojave Southern Great Basin RAC meetings will usually begin at 8 a.m. and adjourn at approximately 4 p.m. Public comment periods regarding matters on the agenda will be held at 9:30 a.m. during each meeting.

FOR FURTHER INFORMATION CONTACT: Hillerie C. Patton, BLM Las Vegas Field Office Public Affairs Specialist at 702–515–5046.

SUPPLEMENTARY INFORMATION: The Mojave Southern Great Basin RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public issues in Southern Nevada. Topics of discussion during Mojave Southern RAC meetings may include land use planning, Environmental Impact Statements, recreation, fire

management, invasive species management, energy and minerals management, travel management, wilderness, wild horse herd management, cultural resource management, and other issues as appropriate.

These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Dated: December 14, 2005.

Juan Palma,

Las Vegas Field Manager, Designated Federal Officer for the Mojave Southern Great Basin RAC.

[FR Doc. 05–24241 Filed 12–19–05; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Los Vaqueros Reservoir Expansion Investigation, Contra Costa County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA), the Department of the Interior, Bureau of Reclamation (Reclamation) will prepare an EIS to evaluate expanding the existing Los Vaqueros Reservoir and alternatives to improve water supply reliability and water quality for Bay Area water users, particularly those receiving water from the Sacramento-San Joaquin Delta; and contribute to lower cost implementation of the CALFED Environmental Water Account (EWA). Pursuant to the California Environmental Quality Act, Contra Costa Water District will prepare an EIR on the proposed project concurrent with the EIS preparation. A joint EIS/EIR document will be prepared.

Reclamation was directed in Public Law 108–7, (Omnibus Appropriations Act of 2003) to conduct a feasibility-level investigation of the potential expansion of Los Vaqueros Reservoir.

DATES: Four scoping meetings will be held to solicit public input on the scope of the environmental document, alternatives, concerns and issues to be addressed in the EIS. The scoping meeting dates are:

- Tuesday, January 24, 2006, 1:30 to 3:30 p.m., Sacramento, CA.
- Tuesday, January 24, 2006, 6 to 8 p.m. Antioch, CA.
- Wednesday January 25, 2006, 6 to 8 p.m., Livermore, CA.
- Thursday, January 26, 2006, 6 to 8 p.m., Concord, CA.

Submit written comments on the scope of the environmental document to Reclamation at the address below by February 28, 2006.

ADDRESSES: The scoping meeting locations are:

- Sacramento—Department of Water Resources, the Bonderson Building, 901 P Street, Public Hearing Room first floor, Sacramento, CA 95814.
- Antioch—Legion Hall, Veteran's Memorial Building 403 West 6th Street, Antioch, CA 94509.
- Livermore—Martinelli Event Center, Agricultural Center, 3585 Greenville Road, Livermore, CA 94550.
- Concord—Contra Costa Water District, 1331 Concord Ave., Concord, CA 94520.

Written comments on the scope of the environmental document should be sent to Ms. Patricia Roberson, Bureau of Reclamation, Mid Pacific Regional Office, 2800 Cottage Way, Sacramento CA 95825–1898; by e-mail at *proberson@mp.usbr.gov*; or faxed to (916) 978–5094. Further information on the investigation, including the interim results, can be found at *http://www.usbr.gov/mp/vaqueros/.*

FOR FURTHER INFORMATION CONTACT: Patricia Roberson, Reclamation Project Manager at the above address, (916) 978–5074; or Ms. Marguerite Naillon, Project Manager, Contra Costa Water District, P.O. Box H2O, Concord, CA 94524, (925) 688–8018. If you would like to be included on the EIS/EIR mailing list, please contact Jennifer Allen, CirclePoint, at (415) 227–1100 ext. 33 or *j.allen@circlepoint.com.*

SUPPLEMENTARY INFORMATION:

Background

One of the five potential surface storage projects described in the CALFED Bay-Delta Program's long-term plan is the expansion of the existing Los Vaqueros Reservoir, an existing 100,000-acre-foot off-stream surface storage facility, located in Contra Costa County, California. The existing facility is owned and operated by the Contra Costa Water District (CCWD).

The primary study area includes the Los Vaqueros Reservoir watershed and associated dam and reservoir facilities, which are situated in the coastal foothills west of the Delta and east of the Bay Area, the central and south Delta, and service areas of Bay Area water agencies that may be directly affected by the project. The Bay Area water agencies that may be directly affected include Contra Costa Water District, Alameda County Water District, Santa Clara Valley Water district, and Alameda County Flood Control and Water Conservation District—Zone 7. Due to the potential influence on other programs and projects, an extended study area is defined to include the service area of the San Francisco Public Utilities Commission and the Central Valley of California.

Planning studies to date have focused on identifying water resources problems, needs, and opportunities in the primary study area, developing a set of planning objectives to help guide the remainder of the feasibility study, and formulating a set of initial alternatives. These elements of the study are summarized below.

Problems, Needs, and Opportunities

Water Supply Reliability. Deliveries of imported water to the Bay Area for drinking water supply are significantly reduced during dry years and critically dry years. Periods of multiple dry years can also occur, such as the droughts of 1928–1935 and 1976–1977, and most recently 1987–1992. These dry periods cause most local supplies, such as groundwater and locally stored runoff, to be depleted. At the same time, deliveries of imported water from the SWP and CVP are curtailed. Bay Area water agencies need to improve water supply reliability not only to reduce deficiencies during a drought, but also as an alternative supply in case of a catastrophic event or emergency in the Delta, such as a chemical spill or levee failure.

Environmental Opportunities. The Sacramento/San Joaquin Delta is the largest estuary on the West Coast and provides essential habitat for a diverse array of fish and wildlife. A variety of factors have contributed to the decline of fish species in the Delta, including the loss of habitat and water resources development. Water deliveries from the Delta have been curtailed in recent years to help protect threatened and endangered fish populations and their habitats. However, while pumping curtailments and other actions in the Delta have been beneficial to fish, they often have had adverse impacts on cities, farms, and businesses that depend on water supplies pumped from or through the Delta. Consequently, the Environmental Water Account (EWA) was developed to provide water project

operators with additional flexibility in meeting or exceeding fishery requirements in the Delta.

Water Quality. Although State water quality standards have been maintained, the quality of water supplies from the Delta has generally declined because of salinity intrusion resulting from water resources development; polluted runoff from urban, agricultural, and other development; and changes to the physical environment. Because Bay Area water agencies typically blend water from various sources to attain a desired quality, water quality in the study area is a function of both water source and volume. Water providers in the study area use imported supplies from the Delta and local groundwater and surface water supplies.

Planning Objectives

The planning objectives identified below were developed based on the problems, needs, and opportunities in the study area.

- Increase water supply reliability for water providers within the study area, principally to help meet municipal and industrial water demands during drought periods, with a focus on enlarging Los Vaqueros Reservoir.
- Use an expanded Los Vaqueros Reservoir to develop replacement water supplies for the long-term EWA, if the cost of water provided from an expanded reservoir is found to be less than the cost of water for continued implementation of that program.
- To the extent possible through pursuit of the water supply reliability and environmental water objectives, improve the quality of water deliveries to municipal and industrial customers in the study area.

In addition to the study objectives, various planning constraints, principles, and criteria were identified and are being used to help guide the investigation. These criteria include the Contra Costa Water District's principles of participation.

Initial Alternatives

From the Planning Objectives, a number of water resources management measures were identified. The most effective of these measures were used to formulate a set of initial alternatives. The initial action alternatives, still under refinement, include the following elements:

- Different ways to increase reservoir capacity: Raise the existing dam in-place or replace it completely with a new dam;
- Different ways/points of connection to deliver water to Bay Area users via facilities of the State Water Project;
- Different reservoir expansion sizing and operations geared to meet the project objectives: Water supply reliability, EWA needs, and/or water quality.

Specific measures and combinations of measures in these initial alternatives will likely change in future studies and some may be combined with others or dropped from further consideration. Other measures and combinations of measures may emerge during the scoping process and warrant development into alternatives. In addition to the action alternatives, the No Action alternative will also be evaluated. Additional information on these initial alternatives is contained in the Los Vaqueros Expansion Investigation, California, Initial Alternatives Information Report at *http://www.usbr.gov/mp/vaqueros/.*

Additional Information

The environmental review will be conducted pursuant to NEPA, the Endangered Species Act, and other applicable Federal law, to analyze the potential environmental impacts of implementing a range of feasible alternatives, including Los Vaqueros Reservoir expansion. Public input on the range of alternatives to be considered will be sought through the initial public scoping meetings.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. E5–7541 Filed 12–19–05; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–344, 391–A, 392–A and C, 393–A, 394–A, 396, and 399–A (Second Review)]

Certain Bearings From China, France, Germany, Italy, Japan, Singapore, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: December 9, 2005.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), 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 investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On October 12, 2005, the Commission established a schedule for the conduct of the final phase of the subject investigations (70 FR 60556, October 18, 2005). Subsequently, the Commission received a request from an interested party to change the scheduled date for the public hearing. The Commission, therefore, is revising its schedule.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than April 20, 2006; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on April 25, 2006; the prehearing staff report will be placed in the nonpublic record on April 7, 2006; the deadline for filing prehearing briefs is April 21, 2006; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on May 2, 2006; the deadline for filing posthearing briefs is May 11, 2006; the Commission will make its final release of information on June 6, 2006; and final party comments are due on June 8, 2006.

For further information concerning these investigations see the

Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: December 13, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–7511 Filed 12–19–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–696 (Second Review)]

Pure Magnesium From China

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on pure magnesium from China.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on pure magnesium from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review 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).

EFFECTIVE DATE: December 5, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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 this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On December 5, 2005, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (70 FR 52122, September 1, 2005) was adequate but that the respondent interested party group response was inadequate. The Commission also found that other circumstances warranted conducting a full review.[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 14, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–7510 Filed 12–19–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1090 (Final)]

Superalloyed Degassed Chromium From Japan

Determination

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Japan of superalloy degassed chromium, provided for in subheading 8112.21.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective March 4, 2005, following receipt of a petition filed with the Commission and Commerce by Eramet Marietta Inc., Marietta, OH, and the Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5–0639, Belpre, OH. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of superalloy degassed chromium from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation 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** of September 7, 2005 (70 FR 53252). The hearing was held in Washington, DC, on November 3, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 15, 2005. The views of the Commission are contained in USITC Publication 3825 (December 2005), entitled *Superalloy Degassed Chromium from Japan: Investigation No. 731–TA–1090 (Final).*

By order of the Commission.

Issued: December 15, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–7553 Filed 12–19–05; 8:45 am]

BILLING CODE 7020–02–P

[1] Chairman Stephen Koplan and Commissioner Jennifer A. Hillman dissenting.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before January 19, 2006 to be assured of consideration.

ADDRESSES: Send comments to Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for these information collections on September 29, 2005 (70 FR 56931 and 56932). No comments were received. NARA has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (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 the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Application for attendance at the Institute for the Editing of Historical Documents.

OMB number: 3095–0012.

Agency form number: None.

Type of review: Regular.

Affected public: Individuals, often already working on documentary editing projects, who wish to apply to attend the annual one-week Institute for the Editing of Historical Documents, an intensive seminar in all aspects of modern documentary editing techniques taught by visiting editors and specialists.

Estimated number of respondents: 25.

Estimated time per response: 1.5 hours.

Frequency of response: On occasion, no more than annually (when respondent wishes to apply for attendance at the Institute).

Estimated total annual burden hours: 37.5 hours.

Abstract: The application is used by the NHPRC staff to establish the applicant's qualifications and to permit selection of those individuals best qualified to attend the Institute jointly sponsored by the NHPRC, the Wisconsin Historical Society, and the University of Wisconsin. Selected applicants forms are forwarded to the resident advisors of the Institute, who use them to determine what areas of instruction would be most useful to the applicants.

You can also use NARA's Web site at *http://www.archives.gov/nhprc/forms/editing-application.pdf* to review and fill-in the application.

2. *Title:* National Historical Publications and Records Commission Grant Program.

OMB number: 3095–0013.

Agency form number: None.

Type of review: Regular.

Affected public: Nonprofit organizations and institutions, state and local government agencies, Federally acknowledged or state-recognized Native American tribes or groups, and individuals who apply for NHPRC grants for support of historical documentary editions, archival preservation and planning projects, and other records projects.

Estimated number of respondents: 148 per year submit applications; approximately 100 grantees among the applicant respondents also submit semiannual narrative performance reports.

Estimated time per response: 54 hours per application; 2 hours per narrative report.

Frequency of response: On occasion for the application; semiannually for the narrative report. Currently, the NHPRC considers grant applications 2 times per year; respondents usually submit no more than one application per year.

Estimated total annual burden hours: 8,392 hours.

Abstract: The NHPRC is changing the way it provides information about its grant program. The previously all inclusive grant guidelines booklet is being replaced by a suite of announcements where the information will be specific to the grant opportunity named. The basic information collection remains the same. The grant proposal is used by the NHPRC staff, reviewers, and the Commission to determine if the applicant and proposed project are eligible for an NHPRC grant, and whether the proposed project is methodologically sound and suitable for support. The narrative report is used by the NHPRC staff to monitor the performance of grants.

You can also use NARA's Web site at *http://www.archives.gov/nhprc/guidelines/index.html* to review the guidelines. The forms used to apply for a grant can be found at *http://www.archives.gov/nhprc/forms/.*

Dated: December 7, 2005.

L. Reynolds Cahoon,

Senior Advisor on Electronic Records.

[FR Doc. E5–7551 Filed 12–19–05; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 52, Appendix D, AP1000 Design Certification, Final Rule.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Semi-annually.

5. *Who will be required or asked to report:* Applicant for a combined license.

6. *An estimate of the number of annual responses:* 2 (1 response plus 1 recordkeeper).

7. *The estimated number of annual respondents:* 1.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* Approximately 39 additional burden hours (5 hours reporting plus 34 hours recordkeeping).

9. *An indication of whether section 3507(d), Public Law 104–13 applies:* It is applicable.

10. *Abstract:* The NRC is proposing to amend its regulations to certify the AP1000 standard plant design under subpart B of 10 CFR part 52. This action is necessary so that applicants or licensees intending to construct and operate an AP1000 design may do so by

referencing the AP1000 design certification rule (DCR). This proposed DCR, as set out in Appendix D, is nearly identical to the AP600 DCR in Appendix C of the 10 CFR part 52. The information collection requirements for part 52 were based largely on the requirements for licensing nuclear facilities under 10 CFR part 50. The applicant for certification of the AP1000 design is Westinghouse Electric Company LLC.

A copy of the supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance packages are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by February 21, 2006.

John A. Asalone, Office of Information and Regulatory Affairs (3150–0151), NEOB–10202, Office of Management and Budget, Washington DC 20503.

Comments can also be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 12th day of December 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Office, Office of Information Services.

[FR Doc. E5–7517 Filed 12–19–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382]

Entergy Operations, Inc.; Waterford Steam Electric Station, Unit 3; Exemption

1.0 Background

Entergy Operations, Inc. (the licensee) is the holder of Facility Operating License No. NPF–38 which authorizes operation of Waterford Steam Electric Station, Unit 3 (Waterford 3). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of one pressurized-water reactor located in St. Charles Parish, Louisiana.

2.0 Request/Action

Sections IV.F.2.b and c of Appendix E, to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50 require the licensee at each site to conduct an exercise of its onsite emergency plan and of its offsite emergency plans biennially with full or partial participation by each offsite authority having a role under the offsite plan. During such biennial exercises, the NRC evaluates onsite and the Federal Emergency Management Agency (FEMA) evaluates offsite emergency preparedness activities, including interaction with the various State and local emergency management agencies. The licensee successfully conducted a full-participation emergency preparedness exercise on May 21, 2003, and it was evaluated by the NRC and FEMA.

The licensee had scheduled a plume exposure pathway exercise for December 7, 2005. However, due to Hurricanes Katrina and Rita, the State of Louisiana was unable to support the exercise. Under the current regulations, the licensee would have had until December 31, 2005, to complete its next biennial full or partial-participation emergency preparedness exercises consisting of both onsite and offsite exercises. By letter dated October 24, 2005, the licensee requested an exemption from Section IV.F.2.c of Appendix E to 10 CFR part 50. Though not referenced in the licensee's request, the NRC staff has determined that an exemption from Section IV.F.2.b of Appendix E to 10 CFR part 50 is also necessary, since the last full participation onsite exercise was completed on May 21, 2003. The licensee commits to conduct the next biennial full participation emergency preparedness exercise on June 28, 2006. Future onsite and offsite exercises will be scheduled biennially from the year 2005.

3.0 Discussion

The Commission, pursuant to 10 CFR 50.12(a)(1), may grant exemptions from the requirements of 10 CFR Part 50 that are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. The Commission, however, pursuant to 10 CFR 50.12(a)(2), will not consider granting an exemption unless special circumstances are present. Under 10 CFR 50.12(a)(2)(ii), special circumstances are present when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

The underlying purposes for conducting a biennial exercise are to ensure that emergency organization personnel are familiar with their duties and to test the adequacy of emergency plans. In order to accommodate the scheduling of exercises, the NRC has allowed licensees to schedule the exercises at any time during the calendar biennium. Conducting the Waterford 3 exercise in calendar year 2006 places the exercise past the previously scheduled biennial calendar year of 2005.

Since the last exercise conducted at Waterford 3 on May 21, 2003, Waterford 3 has conducted two emergency response team tabletops (site drills without state or parish participation) on August 8 and December 9, 2003, and Waterford 3 site-wide drills (which includes state and parish participation) on March 11, June 17, September 30, and December 2, 2004, and February 17, and August 4, 2005. The licensee also states:

> Emergency response team tabletops are conducted prior to each site-wide drill. The local parishes had limited participation (communication only) in each of the site-wide drills. The Louisiana Office of Homeland Security and Emergency Preparedness also participated to a limited extent (communications only) in these drills. The Louisiana Department of Environmental Quality participated in all the site-wide drills by manning the Waterford 3 Emergency Operations Facility and the Emergency News Center. The NRC and FEMA did not participate in any of the tabletops or site-wide drills. Although these drills were not evaluated by NRC and FEMA, the results were critiqued by the drill participants, our emergency response organization, and the parish and state officials who participated in the drills. The drills were also evaluated by our Quality Assurance Department. An emergency preparedness medical drill at Ochsner Medical Center (Ochsner) took place on July 23, 2003, and FEMA evaluated a medical drill at Ochsner on August 6, 2003. Issues identified during all emergency preparedness drills and in the critiques that follow all the drills have been resolved or are being resolved under our corrective action program.

The Waterford 3 emergency response, along with the parish and state emergency response, were further tested

as a result of Hurricane Katrina. Many of the elements of the Waterford 3 emergency response were implemented in the preparation, response, and restoration efforts for Hurricane Katrina. This includes activation of the Waterford 3, parish and state emergency response organizations, evacuation and re-entry of the population, environmental sampling, and assisting Waterford 3 in the plans for restart of the unit.

The NRC staff considers the intent of the regulatory requirement is met by having conducted these series of drills and the emergency response to Hurricane Katrina. The NRC staff considers that these measures are adequate to maintain an acceptable level of emergency preparedness during this period, satisfying the underlying purposes of the rule. Therefore, the special circumstances of 10 CFR 50.12(a)(2)(ii) are satisfied. In addition, the staff has concluded that the above drills and exercises provide adequate protection of the public health and safety and are consistent with the common defense and security.

Only temporary relief from the regulation is provided by the requested exemption, since Waterford 3 will resume their normal biennial exercise schedule in 2007. The licensee has made a good faith effort to comply with the regulation. The exemption is being sought by the licensee in response to a request by the State of Louisiana to postpone the exercise. Louisiana was unable to support the original schedule for the exercise due to a series of severe weather events. FEMA, in its letter dated October 14, 2005, to the State of Louisiana, stated, ''* * * we concur that the Waterford-3 Radiological Emergency Preparedness (REP) Exercise currently scheduled for December 7, 2005, * * * should be postponed due to the effects of Hurricanes Katrina and Rita on the local infrastructure * * *.''

The NRC staff, having considered the schedule and resource issues with those agencies that participate in and evaluate the offsite portion of the exercises, concludes that the licensee made a good faith effort to meet the requirements of the regulation. The NRC staff, therefore, concludes that the exemption request meets the special circumstances of 10 CFR 50.12(a)(2)(v) and should be granted.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Additionally, special circumstances are present, which make conducting the exercise impracticable in 2005, and which allow the underlying purposes of the regulation to be served with a postponement. Therefore, the Commission hereby grants Entergy Operations, Inc. an exemption from the requirements of 10 CFR part 50, Appendix E, Sections IV.F.2.b and c for Waterford 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (70 FR 73311).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 13th day of December, 2005.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E5–7544 Filed 12–19–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Company, Surry Power Station, Unit Nos. 1 and 2; Exemption

1.0 Background

The Virginia Electric and Power Company (the licensee) is the holder of Renewed Facility Operating License Nos. DPR–32 and DPR–37 that authorizes operation of the Surry Power Station, Unit Nos. 1 and 2 (Surry). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a two pressurized-water reactors located in Surry County, Virginia.

2.0 Request/Action

Section IV.F.2.b of Appendix E, to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, requires the licensee at each site to conduct an exercise of its onsite emergency plan biennially. Section IV.F.2.c of Appendix E, to 10 CFR Part 50, states that the offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the plan. During such biennial full participation exercises, the NRC staff evaluates the onsite emergency preparedness activities, and the Federal Emergency Management Agency (FEMA) evaluates the offsite emergency preparedness activities, including interaction with its various State and local emergency management agencies. The licensee successfully conducted a full participation exercise at Surry on July 15, 2003.

The licensee had scheduled a full participation Radiological Emergency Preparedness Exercise for December 6, 2005. Because the Virginia Department of Emergency Management (DEM) is currently constructing a new Emergency Operations Center (EOC) and this EOC is not scheduled to be fully operational until January 2, 2006, the Virginia DEM requested approval from FEMA to delay the emergency exercise until February 7, 2006, in order to allow the Virginia DEM to test its new EOC during the exercise at Surry. By letter dated May 20, 2005, FEMA approved Virginia DEM's request to delay this exercise until the first week of February 2006. Under the current regulations, the licensee would have until December 31, 2005, to complete its next full participation exercise. The licensee plans to conduct a Federally observed full participation emergency exercise on February 7, 2006. Future full participation exercises will be scheduled biennially from the year 2005.

By letter dated September 15, 2005, the licensee requested an exemption from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.b and c regarding the biennial exercise and participation of the offsite response organizations during a biennial emergency exercise at Surry. Subsequently, the NRC staff has determined that the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.b and c are applicable to the circumstances of the licensee's request and that an exemption from those requirements is appropriate.

3.0 Discussion

Pursuant to 10 CFR 50.12(a)(1), the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security. However, pursuant to 10 CFR 50.12(a)(2), the Commission will not consider granting an exemption unless special circumstances are present. Under 10 CFR 50.12(a)(2)(ii), special circumstances are present when application of the regulation in the

particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

The underlying purpose for conducting a biennial exercise is to ensure that emergency response organization personnel are familiar with their duties and to test the adequacy of emergency plans. In order to accommodate the scheduling of full participation exercises, the NRC staff has allowed licensees to schedule the exercises at any time during the calendar biennium. Conducting the full participation exercise at Surry in calendar year 2006 places the exercise past the previously scheduled biennial calendar year of 2005.

Since the last full participation exercise conducted at Surry on July 15, 2003, the licensee conducted Full Scale Plume exercises on April 13, 2004, and December 6, 2005, and also performed an unannounced plume phase exercise on August 25, 2004. In addition, four training exercises were conducted. The NRC staff considers the intent of this requirement met by having conducted these series of exercises and drills. The NRC staff considers these measures to be adequate to maintain an acceptable level of emergency preparedness during this period, satisfying the underlying purpose of the rule. Therefore, the special circumstances of 10 CFR 50.12(a)(2)(ii) are satisfied.

Only temporary relief from the regulation is provided by the requested exemption since Surry will resume its normal biennial exercise schedule in 2007. The licensee has made a good faith effort to comply with the regulation. The exemption is being sought by the licensee in response to a request by the Virginia DEM to postpone the exercise. The Virginia DEM requested this delay to allow for the completion of the new EOC, which is not scheduled for completion until January 2, 2006. In its letter dated May 20, 2005, FEMA stated that it supports the schedule change from December 6, 2005, to the first week of February 2006.

The NRC staff, having considered the schedule and resource issues with those agencies that participate in and evaluate the offsite portion of the full participation exercises, concludes that the licensee made a good faith effort to meet the requirements of the regulation. Therefore, the NRC staff concludes that the exemption request meets the special circumstances of 10 CFR 50.12(a)(2)(v) and should be granted.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.b and c for Surry, Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (70 FR 72666).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 9th day of December 2005.

For the Nuclear Regulatory Commission.

Edwin M. Hackett,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E5–7546 Filed 12–19–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

FPL Energy Seabrook, LLC, Seabrook Station Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment pursuant to Title 10 of the Code of Federal Regulations (10 CFR) part 50, for Facility Operating License No. NPF–86 issued to FPL Energy Seabrook, LLC (the licensee), for operation of Seabrook Station, Unit No. 1 (Seabrook), located in Rockingham County, New Hampshire. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would extend the expiration date of the operating license for Seabrook from October 17, 2026, to March 15, 2030.

The proposed action is in accordance with the licensee's application for amendment dated March 28, 2005, as supplemented September 23, 2005.

The Need for the Proposed Action

The current operating licensed term for Seabrook ends on October 17, 2026. This is 40 years from the date of the zero-power operating license, which was issued on October 17, 1986. The amendment would extend the expiration date of the operating license from October 17, 2026, to March 15, 2030. The extended date for termination of the operating license would be 40 years after issuance of the full-power operating license which was issued on March 15, 1990. This would allow the licensee to recapture approximately 41 months of additional plant operation for the unit. This proposed amendment is not a request for license renewal pursuant to 10 CFR Part 54.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no significant environmental considerations involved with the proposed action. The extension of the operating licenses does not affect the design or operation of the plant, does not involve any modifications to the plant or any increase in the licensed power for the plant, and will not create any new or unreviewed environmental impacts that were not considered in the Final Environmental Statement (FES) related to the operation of Seabrook, NUREG–0895, dated December 1982. The evaluations presented in the FES were of the environmental impacts of generating power at Seabrook and the basis for granting a 40-year operating license for Seabrook. The environmental impacts of the proposed action are based on the evaluations in the FES. It should be noted that the Seabrook license was amended on February 28, 2005, to allow an increase in maximum core power by 5.2% (from 3411 megawatts thermal (MWt) to 3587 MWt). The environmental assessment of the power uprate was published in the **Federal Register** on February 14, 2005 (70 FR 7525).

The FES which, in general, assesses various impacts associated with operation of the facility in terms of annual impacts, and balances these against the anticipated annual energy production benefits.

The offsite exposure from releases during postulated accidents has been previously evaluated in the Updated Final Safety Analysis Report (UFSAR) for Seabrook. The results are acceptable when compared with the criteria defined in 10 CFR Part 100, as

documented in the Commission's Safety Evaluation Report, NUREG–0896, dated March 1983, and its nine supplements. As a result of this action there is no change in the types, frequency, or consequences of design-basis accidents.

The NRC staff has concluded that the impacts associated with the addition of approximately 41 months to the license expiration date are not significantly different from the operating license duration assessed in the Seabrook FES. Therefore, the staff concluded that the FES sufficiently addresses the environmental impacts associated with a full 40-year operating period for Seabrook.

The annual occupational exposure of workers at the plant, station employees and contractors, is reported in the Annual Operating Report submitted by the licensee. The lowest exposure value is for a year without a refueling outage, and the highest value is for a year with a refueling outage. In Section 5.9.3.1.1 of the FES, the average occupational exposure for a pressurized water reactor was reported as 440 person-rems. Therefore, the expected annual occupational exposure for the proposed extended period of operation does not change previous conclusions presented in the FES on occupational exposure.

The offsite exposure from releases during routine operations has been previously evaluated in Section 5.9.3 of the FES. During the low-power license, the plant was restricted to no more than five percent of rated power for no longer than 0.75 effective full power hours, and the generation of radioactivity at the plant was significantly smaller than would have occurred if the plant were at full-power operation. Therefore, the addition of approximately 41 months of operation that the licensee has requested does not change previous conclusions presented in the FES on annual public doses.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concluded that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the FES for Seabrook.

Agencies and Persons Consulted

On December 8, 2005, the staff consulted with the New Hampshire State official, Mr. Mike Nawoj, and the Massachusetts State official, Mr. James Muckerheid, regarding the environmental impact of the proposed action. The State officials had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 28, 2005 as supplemented September 23, 2005. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 6th day of December 2005.

For the Nuclear Regulatory Commission.

Darrell J. Roberts,

Branch Chief, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E5–7515 Filed 12–19–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Notice of Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of December 19, 26, 2005, January 2, 9, 16, 23, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Matters To Be Considered:

Week of December 19, 2005

There are no meetings scheduled for the Week of December 19, 2005.

Week of December 26, 2005—Tentative

There are no meetings scheduled for the Week of December 26, 2005.

Week of January 2, 2006—Tentative

There are no meetings scheduled for the Week of January 2, 2006.

Week of January 9, 2006—Tentative

Tuesday, January 10, 2006

9:30 a.m.—Briefing on International Research and Bilateral Agreements. (Contact: Roman Shaffer, 301–415–7606).

This meeting will be webcast live at the Web address: *http://www.nrc.gov.*

Wednesday, January 11, 2006

9:30 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW). (Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address: *http://www.nrc.gov*.

Thursday, January 12, 2006

9:30 a.m.—Discussion of Security Issues (Closed—Ex. 1 & 2).

Week of January 16, 2006—Tentative

Thursday, January 19, 2006

1:30 p.m.—Discussion of Security Issues (Closed—Ex. 1 & 3).

Week of January 23, 2006—Tentative

There are no meetings scheduled for the Week of January 23, 2006.

* The schedule for Commission meetings is subject to change on short

notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: December 15, 2005.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 05–24323 Filed 12–16–05; 2:18 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 23, 2005 to December 8, 2005. The last biweekly notice was published on December 6, 2005 (70 FR 72667).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a

notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station (OCNGS), Ocean County, New Jersey

Date of amendment request: October 18, 2005.

Description of amendment request: The licensee proposes to revise the OCNGS Technical Specifications Surveillance Requirement 4.4.B.1 to provide an alternative means for testing the electromatic relief valves located on the main steam system. The proposed change would allow demonstration of the capability of the valves to perform their function without requiring that the valves be cycled with steam pressure while installed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The licensee's analysis is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change modifies Technical Specifications (TS) Surveillance Requirement (SR) 4.4.B.1 to provide an alternative means for testing the Electromatic Relief Valves (EMRVs). Accidents are initiated by the malfunction of plant equipment, or the failure of plant structures, systems, or components. The performance of EMRV testing is not a precursor to any accident previously evaluated and does not change the manner in which the valves are operated. The proposed testing requirements will not contribute to the failure of the relief valves nor any plant structure, system, or component. AmerGen Energy Company, LLC (AmerGen) has determined that the proposed change in testing methodology provides an equivalent level of assurance that the relief valves are capable of performing their intended safety functions. Thus, the proposed change does not affect the probability of an accident previously evaluated.

The performance of EMRV testing provides confidence that the EMRVs are capable of depressurizing the reactor pressure vessel (RPV). This will protect the reactor vessel from overpressurization and allow the Core Spray system to inject into the RPV as designed. The proposed change involves the manner in which the EMRVs are tested, and has no effect on the types or amounts of

radiation released or the predicted offsite doses in the event of an accident. The proposed testing requirements are sufficient to provide confidence that the EMRVs are capable of performing their intended safety functions. In addition, a stuck open EMRV accident is analyzed in the Updated Final Safety Analysis Report (section 15.6.1). Since the proposed testing requirements do not alter the assumptions for the stuck open EMRV accident, the consequences of any accident previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not affect the assumed accident performance of the EMRVs, nor any plant structure, system, or component previously evaluated. The proposed change does not involve the installation of new equipment, and installed equipment is not being operated in a new of different manner. The change in test methodology ensures that the EMRVs remain capable of performing their safety functions. No set points are being changed which would alter the dynamic response of plant equipment. Accordingly, no new failure modes are introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will allow testing of the EMRV actuation electrical circuitry, including the solenoid, and mechanical actuation components, without causing the EMRV to open. Accordingly, in-situ EMRV cycling is avoided, reducing the potential for valve seat leakage. The valves will be tested in accordance with the Inservice Test (IST) Program that involves testing the valve at a test facility using steam. The combination of the IST and proposed actuator test provides confidence that the EMRVs will perform their design function.

The proposed change does not affect the EMRV set points or the operational criteria that directs the EMRVs to be manually opened during plant transients. There are no changes proposed which alter the set points at which protective actions are initiated, and there is no change to the operability requirements for equipment assumed to operate for accident mitigation.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for licensee: Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LCC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Darrell J. Roberts.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 27, 2005.

Description of amendment request: This amendment proposes revisions to the Technical Specification (TS) Surveillance Requirements (SR) 4.5.2e (Safety Injection), 4.6.2.1d (Containment Spray), and 4.7.3b (Component Cooling Water/Auxiliary Component Cooling Water), by removing the words ''during shutdown.'' Additionally, a revision to delete TS SR 4.7.12.1c (Essential Services Chilled Water) is requested.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Deletion of TS SR 4.7.12.1c is an administrative change since there are no valves in the essential services chilled water system for which the TS SR 4.7.12.1c is applicable. The deletion of the ''during shutdown'' restriction from TS SRs 4.5.2e (Safety Injection), 4.6.2.1d (Containment Spray), and 4.7.3b (Component Cooling Water/Auxiliary Component Cooling Water) does not impact system operation nor does it reduce TS SRs. Component actuations that will be allowed to be performed online for these TS SRs are either already actuated online for other TS SRs or the components to be actuated online are currently stroked online in accordance with the Inservice Testing Program. Therefore, the accident mitigation features of the plant for previously evaluated accidents are not affected by the proposed amendment.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Deletion of TS SR 4.7.12.1c is an administrative change since there are no valves in the essential services chilled water system for which the TS SR 4.7.12.1c is applicable. The deletion of the ''during shutdown'' restriction from TS SRs 4.5.2e (Safety Injection), 4.6.2.1d (Containment Spray), and 4.7.3b (Component Cooling Water/Auxiliary Component Cooling Water) does not impact system operation nor does it reduce TS SR. Component actuations that will be allowed to be performed online for these TS SRs are either already actuated online for other TS SRs or the components to be actuated online are currently stroked online in accordance with the Inservice Testing Program. Therefore, the proposed change introduces no new mode of plant operation and no new possibility for an accident is introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

There are no automatic valves in the essential services chilled water system that actuate on an SIAS [safety injection actuation signal]. Deletion of the ''during shutdown'' limitation does not change the TS test requirements or surveillance frequency. Therefore, existing TS surveillance requirements are not reduced by the proposed change, thus no margins of safety are reduced.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N.S. Reynolds, Esquire, Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817

NRC Branch Chief: David Terao

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of amendment request: November 7, 2005

Description of amendment request: The amendment would revise the Technical Specifications (TSs), to adopt NRC-approved Revision 4 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–449, ''Steam Generator Tube Integrity.'' The proposed amendment includes changes to the TS definition of Leakage, TS 3/4.4.6, ''Reactor Coolant System Leakage,'' TS 3/4.4.5, ''Steam Generators,'' and adds TS 6.19, ''Steam Generator (SG) Program,'' and TS 6.9.7, ''Steam Generator Tube Inspection Report.'' The proposed changes are necessary in order to implement the guidance for the industry initiative on Nuclear Energy Institute (NEI) 97–06, ''Steam Generator Program Guidelines.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on March 2, 2005 (70 FR 10298), on possible amendments adopting TSTF–449, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on May 6, 2005 (70 FR 24126). The licensee affirmed the applicability of the following NSHC determination in its application dated November 7, 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change requires a SG Program that includes performance criteria that will provide reasonable assurance that the SG tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown and all anticipated transients included in the design specification). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational LEAKAGE.

A SGTR [steam generator tube rupture] event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a SGTR event, a bounding primary to secondary LEAKAGE rate equal to the operational LEAKAGE rate limits in the licensing basis plus the LEAKAGE rate associated with a double-ended rupture of a single tube is assumed.

For other design basis accidents such as a MSLB [main steamline break], rod ejection, and reactor coolant pump locked rotor the tubes are assumed to retain their structural integrity (i.e., they are assumed not to rupture). These analyses typically assume that primary to secondary LEAKAGE for all SGs is 1 gallon per minute or increases to 1 gallon per minute as a result of accident induced stresses. The accident induced leakage criterion introduced by the proposed changes accounts for tubes that may leak during design basis accidents. The accident induced leakage criterion limits this leakage to no more than the value assumed in the accident analysis.

The SG performance criteria proposed change to the TS identify the standards against which tube integrity is to be measured. Meeting the performance criteria provides reasonable assurance that the SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident.

The performance criteria are only a part of the SG Program required by the proposed change to the TS. The program, defined by NEI 97–06, Steam Generator Program Guidelines, includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring. The proposed changes do not, therefore, significantly increase the probability of an accident previously evaluated.

The consequences of design basis accidents are, in part, functions of the DOSE EQUIVALENT I–131 in the primary coolant and the primary to secondary LEAKAGE rates resulting from an accident. Therefore, limits are included in the plant technical specifications for operational leakage and for DOSE EQUIVALENT I–131 in primary coolant to ensure the plant is operated within its analyzed condition. The typical analysis of the limiting design basis accident assumes that primary to secondary leak rate after the accident is 1 gallon per minute with no more than [500 gallons per day or 720 gallons per day] in any one SG, and that the reactor coolant activity levels of DOSE EQUIVALENT I–131 are at the TS values before the accident.

The proposed change does not affect the design of the SGs, their method of operation, or primary coolant chemistry controls. The proposed approach updates the current TSs and enhances the requirements for SG inspections. The proposed change does not adversely impact any other previously evaluated design basis accident and is an improvement over the current TSs.

Therefore, the proposed change does not affect the consequences of a SGTR accident and the probability of such an accident is reduced. In addition, the proposed changes do not affect the consequences of an MSLB, rod ejection, or a reactor coolant pump locked rotor event, or other previously evaluated accident.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed performance based requirements are an improvement over the requirements imposed by the current technical specifications. Implementation of the proposed SG Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The result of the implementation of the SG Program will be an enhancement of SG tube performance. Primary to secondary LEAKAGE that may be experienced during all plant conditions will be monitored to ensure it remains within current accident analysis assumptions.

The proposed change does not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. In addition, the proposed change does not impact any other plant system or component. The change enhances SG inspection requirements.

Therefore, the proposed change does not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of [a] SG is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change is expected to result in an improvement in the tube integrity by implementing the SG Program to manage SG tube inspection, assessment, repair, and plugging. The requirements established by the SG Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the current TSs.

For the above reasons, the margin of safety is not changed and overall plant safety will be enhanced by the proposed change to the TS.

The NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Richard J. Laufer.

Florida Power and Light Company, Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: October 21, 2005.

Description of amendment request: The proposed amendment will revise the Technical Specifications to allow operation with a reduced reactor coolant system (RCS) flow rate of 300,000 gpm and a reduction in the maximum thermal power to 89 percent of the rated thermal power. The definition of rated thermal power remains unchanged at 2700 MWt. The flow rate of 300,000 gpm is expected to conservatively bound an analyzed steam generator tube plugging level of 42 percent per steam generator. The re-analysis performed to support this reduction in RCS flow used Westinghouse WCAP–9272–P–A methodology, the same methodology approved for St. Lucie Unit 2 in License Amendment 138.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

None of the proposed changes to the Technical Specifications results in operation of the facility that adversely affects the initiation of any accident previously evaluated. There is no adverse impact on any plant system. Plant systems will continue to function as designed, and all performance requirements for these systems remain acceptable. The analysis, performed to support the proposed changes, has included evaluations and/or analyses of all the analyzed accident analyses, including the effects of changes on the SG tube sleeve design. The analyses and evaluations have verified that the accident analyses acceptance criteria continue to be met. Dose consequences acceptance criteria have been verified to be met for analyzed events. Therefore, the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed changes to the Technical Specifications. Although the allowable tube plugging level is increased, the criteria for tube plugging/sleeving and the tube integrity considerations remain unchanged. The proposed changes have no adverse effects on any safety-related systems and do not challenge the performance or integrity of any safety-related system. The DNBR [Departure from Nucleate Boiling Ratio] limits and trip setpoints associated with the respective reactor protection system functions have verified that the accident analyses criteria continue to be met. Therefore, this amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The safety analyses of all analyzed design basis accidents, supporting the proposed changes to the Technical Specifications, continue to meet the applicable acceptance criteria with respect to the radiological consequences, specified acceptable fuel design limits (SAFDLs), primary and secondary overpressurization, and 10 CFR 50.46 requirements. The DNBR and the setpoint analyses are performed on a cycle-specific basis to verify that the reactor protection system functions continue to provide adequate protection against fuel design limits. Evaluation of the steam line break and LOCA [Loss of Coolant Accident] mass and energy releases determined that the overall containment response remains acceptable. The performance requirements for all systems have been verified to be acceptable from design basis accidents' consideration. The proposed amendment, therefore, will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Michael L. Marshall, Jr.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: July 25, 2005.

Description of amendment request: The proposed amendment would add new Technical Specifications requirements to provide limiting conditions for operation (LCOs) and action statements and corresponding surveillance requirements for the Emergency Service Water (ESW) system. In the absence of such new requirement, the current requirement at Section 3.5.A.4 simply specifies that the unit be shutdown within 24 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Emergency Service Water (ESW) System is not an accident initiator. The proposed change provides operability requirements and surveillance requirements to ensure the ESW System is operable as required for accident mitigation. The proposed operability requirements and allowed outage time is consistent with the requirements for the systems supported by the ESW System. The [calculated radiological] dose to the public and the Control Room operators [due to a postulated accident] are unaffected by the proposed change. The proposed LCO provides direction with respect to actions to be taken when support systems are inoperable.

The proposed Technical Specifications does not introduce new equipment operating modes, nor does the proposed change alter existing system relationships. The proposed amendment does not introduce new failure modes.

Therefore, the proposed amendment will not significantly increase the probability or the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not introduce new equipment operating modes, nor do they alter existing system relationships. The proposed changes do not introduce new failure modes. They do not alter the equipment required for accident mitigation and they appropriately consider the effects on supported systems when a support system is inoperable. When support systems are inoperable, actions are specified consistent with safe plant operation.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed change provides specifications for the ESW System that are consistent with current Technical Specification requirements for other equipment. The proposed changes ensure that the ESW and other support systems will be available when required and provides adequate alternative actions when the support systems are not available. The allowed outage times for the ESW subsystem is consistent with that allowed for other equipment required for accident mitigation. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Branch Chief: L. Raghavan.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 31, 2005.

Description of amendment request: Omaha Public Power District (the licensee) has proposed to revise the Updated Safety Analysis Report (USAR) Safety Analysis, General, Section 14.1,

as well as the radiological consequences analyses for the events of Seized Rotor (SR), Section 14.6.2.8; Main Steam Line Break (MSLB), Section 14.12.6; Control Element Assembly Ejection (CEAE), Section 14.13.4; and Steam Generator Tube Rupture (SGTR), Section 14.14.3. The USAR sections for radiological consequences of events need to be revised because of the planned replacement of the steam generators and pressurizer in the fall of 2006.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the USAR discuss the changes to the Seized Rotor (SR), Control Element Assembly Ejection (CEAE), Steam Generator Tube Rupture (SGTR) and Main Steam Line Break (MSLB) events resulting from the installation of the replacement steam generators (RSGs) and the replacement pressurizer (RPZR). These changes do not affect an accident initiator previously evaluated in the USAR or the Technical Specifications and will not prevent any safety systems from performing their accident mitigating function as discussed in the USAR or the Technical Specifications.

In all events evaluated, with the exception of the Control Room dose of the MSLB concurrent iodine spike case, there is no margin reduction. The Control Room dose of the MSLB concurrent iodine spike case is increased from 2.5 rem to 4.5 rem. The calculated doses resulting from the proposed changes to USAR Sections 14.1.6, 14.6.2.8, 14.12.6, 14.13.4 and 14.14.3 remain below the regulatory limits set by 10 CFR 50.67.

Therefore, these changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are the result of changes in the analysis of the radiological consequences of the SR, CEAE, SGTR and MSLB events of the replacement of the steam generators (SGs) and the pressurizer. The proposed changes do not modify or install any safety related equipment. They do, however, change the licensing basis by using fuel gap fractions from Reference 7.6 in accordance with previously accepted license applications by other licensees and by assuming shorter concurrent iodine spike durations in accordance with Section 2.2 of Appendix E of RG 1.183, since the activity released during the eight-hour spike duration exceeds the available release.

Therefore, these changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The calculated doses resulting from the proposed changes to USAR Sections 14.1.6, 14.6.2.8, 14.12.6, 14.13.4 and 14.14.3 remain below the regulatory limits set by 10 CFR 50.67. In all events evaluated, with the exception of the Control Room dose of the MSLB concurrent iodine spike case, there is no margin reduction. The Control Room dose of the MSLB concurrent iodine spike case is increased from 2.5 rem to 4.5 rem. This margin reduction is primarily due to the significant delay in the reactor coolant reaching 212 F with the RSGs and RPZR (i.e., at 159.2 hours versus the 10.94 hours applicable to the original steam generators). This analysis has conservatively used a spike duration of 4 hours. If the updated analysis took credit for the percentage of defective fuels associated with Technical Specification concentrations when developing the duration of the concurrent iodine spike (i.e., used 0.28% defective fuel versus the conservatively assumed 1% defective fuel used in the analysis), the analysis would have resulted in an estimated spike duration of 2 hours instead of 4 hours and the control room dose would be significantly reduced.

Therefore, the proposed changes do not involve a significant reduction in the safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Branch Chief: David Terao.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: November 8, 2005.

Description of amendment request: The proposed amendment would revise the Fort Calhoun Station (FCS) Technical Specifications (TS) to add a new Limiting Condition for Operation 2.8.3(6) and modify Table 3–4, Table 3–5, and Design Features 4.3.1 to address criticality control during spent fuel cask loading operations in the spent fuel pool. This request applies only to spent fuel cask loading in the spent fuel pool and does not affect the licensing basis or invalidate our existing exemption from the criticality monitoring requirements of Title 10, Code of Federal Regulations (CFR) 70.24 for new and spent fuel storage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

These proposed changes affect only operations in the spent fuel pool during spent fuel cask loading operations. Plant power operations and other spent fuel pool operations are not affected. There are no changes to the design or operation of the power plant that could affect system, component or accident functions resulting from these changes.

Fuel loading into the spent fuel casks in the spent fuel pool will not require any significant changes to spent fuel pool structures, systems, or components, nor will their performance requirements be altered. The potential to handle a spent fuel cask was considered in the original design of the plant. Therefore, the response of the plant to previously analyzed Part 50 accidents and related radiological releases will not be adversely impacted, and will bound those postulated during cask loading activities in the cask loading area.

Accordingly, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

These proposed changes affect only operations in the spent fuel pool during spent fuel cask loading operations. Plant power operations and other spent fuel pool operations are not affected. No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed changes. All systems, structures, and components previously required for mitigation of an event remain capable of fulfilling their intended design function with these changes to the TS.

Fuel handling procedures and associated administrative controls for movement of spent fuel in the spent fuel pool remain applicable and are being appropriately augmented to accommodate spent fuel cask loading operations. Additionally, the soluble boron concentration required to maintain k_{eff} ≤0.95 for postulated accidents associated with cask loading operations was also evaluated. The results of the analyses, using a methodology previously approved by the NRC, demonstrate that the amount of soluble boron assumed to be in the pool water during these postulated accidents (800 ppm [part per million]) is much less than the value at which the spent fuel pool is normally maintained (approximately 1900 ppm).

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

An NRC-approved methodology was used to perform the criticality analyses that provide the basis to incorporate a boron concentration and a new burnup versus enrichment curve into the plant Technical Specifications to ensure criticality safety margins are maintained during spent fuel cask loading. Spent fuel casks at FCS are loaded in the spent fuel pool in an area adjacent to the spent fuel racks. No physical segregation such as a wall or gate exists between the spent fuel racks and spent fuel cask loading area. The cask loading area floor is approximately two feet lower than the floor on which the spent fuel racks are located. Therefore, the spent fuel pool water flows in and around the spent fuel racks and spent fuel casks being loaded in a common pool. Neutronic coupling between fuel in the spent fuel racks and fuel in the spent fuel cask has been appropriately considered in the criticality analysis, including accident events that postulate mis-loading of a fresh fuel assembly into the cask and dropping a fuel assembly between the spent fuel racks and spent fuel cask during loading.

The normal condition criticality analysis was performed assuming no soluble boron in the spent fuel pool water and credit for fuel burnup. The proposed new Technical Specification requirement to permit only fuel assemblies with the minimum required burnup versus enrichment to be loaded into the spent fuel cask preserves this analysis basis. The accident condition criticality analysis was performed assuming a minimum of 800 ppm boron in the spent fuel pool during cask loading operations. All analyses account for uncertainties at a 95[-] percent probability/95-percent confidence level. The proposed new Technical Specification requirement to maintain a minimum boron concentration of 800 ppm in the spent fuel pool during spent fuel cask loading operations preserves this analysis basis. For defense-in-depth, the spent fuel pool boron concentration is typically maintained at approximately 1900 ppm during normal operations and would not be expected to be reduced during spent fuel cask loading operations.

Therefore, there is no significant reduction in a margin of safety as a result of this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Branch Chief: David Terao.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: October 19, 2005.

Description of amendment requests: The proposed change allows a delay time for entering a supported system Technical Specification (TS) when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.8 is added to the TS to provide this allowance and define the requirements and limitations for its use.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–372, Revision 4. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on November 24, 2004 (69 FR 68412), on possible amendments concerning TSTF–372, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on May 4, 2005 (70 FR 23252). The licensee affirmed the applicability of the following NSHC determination in its application dated October 19, 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on allowance provided by proposed LCO 3.0.8 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.8. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering supported system TS when inoperability is due solely to inoperable snubbers, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in Regulatory Guide 1.177. A bounding risk assessment was performed to justify the proposed TS changes. The proposed LCO 3.0.8 defines limitations on the use of the provision and includes a requirement for the licensee to assess and manage the risk associated with operation with an inoperable snubber. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: David Terao.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: October 19, 2005.

Description of amendment requests: The proposed amendments would

update the Technical Specification (TS) 5.3, ''Unit Staff Qualifications,'' operator minimum qualification requirements contained in the March 28, 1980, NRC letter to all licensees with the more recent NRC-approved operator qualification requirements contained in American National Standards Institute/American Nuclear Society (ANSI/ANS) 3.1–1993. In addition, the proposed changes remove the TS 5.3.1 plant staff retraining and replacement training program requirements which have been superseded by requirements contained in section 50.120 of Title 10 of the Code of Federal Regulations (10 CFR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change is an administrative change to revise the Technical Specification (TS) 5.3.1 licensed operator minimum qualification requirements and remove the plant staff retraining and replacement training program requirements from the TS. The proposed change does not directly impact accidents previously evaluated. The Diablo Canyon Power Plant (DCPP) licensed operator training program is accredited by the National Academy for Nuclear Training (NANT) and is based on a systems approach to training consistent with the requirements of 10 CFR 55. Although licensed operator qualifications and training may have an indirect impact on accidents previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR 55 rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and is based on a systems approach to training. The DCPP plant staff retraining and replacement training program meets the requirements of 10 CFR 50.120.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The proposed change is administrative in nature and does not affect the plant design, hardware, system operation, or operating procedures. The DCPP licensed operator training program is accredited by the NANT and is based on a systems approach to training consistent with the requirements of 10 CFR 55. Although licensed operator qualifications and training may have an indirect impact on accidents previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR 55 rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and is based on a systems approach to training. The DCPP plant staff retraining and replacement training program meets the requirements of 10 CFR 50.120.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change is administrative in nature and does not affect the plant design, hardware, system operation, or operating procedures. The change does not exceed or alter a design basis or safety limit and thus does not reduce the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: David Terao.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 19, 2005.

Description of amendment request: The amendment would relocate the Technical Specification response time testing tables to the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment[s] relocate the instrument response time limits for the reactor trip system (RTS) and engineered safety feature actuation system (ESFAS) from the technical specifications to the Updated Final Safety Analysis Report (UFSAR). The proposed amendment[s] conform to the guidance given in Enclosures 1 and 2 of Generic Letter 93–08. Neither the response time limits nor the surveillance requirements for performing response time testing will be altered by this submittal. The overall RTS and ESFAS functional capabilities will not be changed and assurance that action requirements of the reactor trip and engineered safety features systems are completed within the time limits assumed in the accident analyses is unaffected by the proposed amendment[s].

Therefore, operation of the facility in accordance with the proposed amendment[s] will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Response: No.

The proposed amendment[s] will not change the physical plant or the modes of plant operation defined in the operating license[s]. The change does not involve the addition or modification of equipment nor does it alter the design or operation of plant systems.

Therefore, operation of the facility in accordance with the proposed amendment[s] will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The measurement of instrumentation response times at the frequencies specified in the technical specification provides assurance that actions associated with the reactor trip and engineered safety features systems are accomplished within the time limits assumed in the accident analyses. The response time limits and the measurement frequencies remain unchanged by the proposed amendment[s].

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Darrell J. Roberts.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: November 15, 2005.

Description of amendment request: The amendment would revise the Virgil

C. Summer Nuclear Station Technical Specifications (TS) 3/4.3.1, ''Reactor Trip System Instrumentation,'' and TS 3/4.3.2, ''Engineered Safety Feature Actuation System Instrumentation,'' to implement the allowed outage time and bypass test time changes approved by the Nuclear Regulatory Commission in the Westinghouse topical report WCAP–14333–P–A, Rev. 1, ''Probabilistic Risk Analysis of the Reactor Trip System and Engineered Safety Features Actuation System Test Times and Completion Times,'' dated October 1998.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since no hardware changes are proposed. The same reactor trip system (RTS) and engineered safety feature actuation system (ESFAS) instrumentation will continue to be used. The protection systems will continue to function in a manner consistent with the plant design basis. These changes to the Technical Specifications do not result in a condition where the design, material, and construction standards that were applicable prior to the changes are altered.

The proposed changes will not modify any system interface. The proposed changes will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on safety-related equipment assumed to function during an accident. There will be no changes to normal plant operating parameters or accident mitigation performance. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR [final safety analysis report]. The determination that the results of the proposed changes are acceptable was established in the NRC SE [safety evaluation] issued for WCAP [Westinghouse Commercial Atomic Power report]-14333, dated July 15, 1998. Implementation of the proposed changes will result in an insignificant risk impact. The proposed changes to Action 16 of TS [Technical Specification] 3/4.3.2 are also acceptable as demonstrated by meeting the acceptance criteria contained in Regulatory Guides 1.174 and 1.177.

The proposed changes to the AOTs [allowable outage times] and bypass test times, reduce the potential for inadvertent reactor trips and spurious ESF [engineered safety feature] actuations, and therefore do not increase the probability of any accident previously evaluated. The proposed changes do not change the response of the plant to any accidents and have an insignificant impact on the reliability of the RTS and ESFAS signals. The RTS and ESFAS will remain highly reliable and the proposed changes will not result in a significant increase in the risk of plant operation. This is demonstrated by showing that the impact on plant safety as measured by the increase in CDF [core damage frequency] is less than 1.0E–06 per year and the increase in LERF [large early release frequency] is less than 1.0E–07 per year. In addition, for the AOT and bypass test time changes, the ICCDP [incremental conditional core damage probability] and ICLERP [incremental conditional large early release probability] values are less than 5.0E–07 and 5.0E–08, respectively. The proposed changes meet the acceptance criteria in Regulatory Guides 1.174 and 1.177. Therefore, since the RTS and ESFAS will continue to perform their functions with high reliability as originally assumed, and the increase in risk as measured by the ''CDF, ''LERF, ICCDP, ICLERP risk metrics is within the acceptance criteria of Regulatory Guides 1.174 and 1.177, there will not be a significant increase in the consequences of any accidents.

The proposed changes to the bypass test times and AOTs do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event to within the applicable acceptance criteria. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed changes are consistent with safety analysis assumptions and resultant consequences.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no hardware changes or any changes in the method by which any safety-related plant system performs its safety function. The proposed changes will not affect the normal method of plant operation. No performance requirements will be affected or eliminated. The proposed changes will not result in a physical alteration to any plant system or a change in the method by which any safety-related plant system performs its safety function. There will be no setpoint changes or changes to accident analysis assumptions.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not affect the acceptance criteria for any analyzed event nor is there a change to any Safety Analysis Limit (SAL). There will be no effect on the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the DNBR [departure from nucleate boiling ratio] limits, FQ, FDH, LOCA [loss-of-coolant accident] PCT [peak cladding temperature], peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria continue to be met.

Redundant RTS and ESFAS trains are maintained, and diversity with regard to the signals that provide reactor trip and engineered safety features actuation is also maintained. All signals credited as primary or secondary, and all operator actions credited in the accident analyses will remain the same. The proposed changes will not result in plant operation in a configuration outside the design basis. The calculated impact on risk is insignificant and meets the acceptance criteria contained in Regulatory Guides 1.174 and 1.177. Although there was no attempt to quantify any positive human factors benefit due to increased AOTs and bypass test times, it is expected that there would be a net benefit due to the reduced potential for spurious reactor trips and actuations associated with testing and maintenance activities.

Implementation of the proposed changes is expected to result in an overall improvement in safety, as follows:

Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation will be realized. This is due to less frequent distraction of the operators and shift supervisor to attend to RTS and ESFAS instrumentation Actions with short AOTs.

The increased AOTs will provide more time for trouble shooting and repair activities, therefore reducing the potential for spurious trips and actuations.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Pursuant to 10CFR50.91, the preceding analyses provide a determination that the proposed Technical Specification changes pose no significant hazard as delineated by 10CFR50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.929(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Branch Chief: Evangelos C. Marinos.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: November 2, 2005.

Description of amendment request: The proposed change allows entry into a mode or other specified condition in the applicability of a Technical Specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TSs would be eliminated, several notes or specific exceptions are revised to reflect the related changes to LCO 3.0.4, and Surveillance Requirement 3.0.4 is revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated November 2, 2005.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Branch Chief: Evangelos C. Marinos.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents

located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: January 27, 2005, as supplemented on November 2, 2005.

Brief description of amendments: The amendments modify Technical Specifications (TSs) requirements to adopt the provisions of Industry/TS Task Force (TSTF) change TSTF–359, ''Increased Flexibility in Mode Restraints.''

Date of issuance: December 2, 2005

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment Nos.: 276 and 253

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** May 10, 2005 (70 FR 24648)

The supplemental letter dated November 2, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated December 2, 2005.

No significant hazards consideration comments received: No

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: November 16, 2004, as supplemented by letters dated May 3, July 6, September 13, October 6, October 24 and November 15, 2005

Brief description of amendments: The amendments revised the Technical Specifications, on a one-time basis, to allow the nuclear service water system headers for each unit to be taken out of service for up to 14 days each for system upgrades.

Date of issuance: November 17, 2005

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance

Amendment Nos.: 228/223 *Renewed Facility Operating License Nos. NPF–35 and NPF–52:* Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** April 26, 2005 (70 FR 21454)

The supplements dated May 3, July 6, September 13, October 6, October 24, and November 15, 2005, provided additional information that clarified the application, did not expand the scope of the November 16, 2004 application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 17, 2005.

No significant hazards consideration comments received: No

Duke Energy Corporation, Docket Nos. 50–269 and 50–270, Oconee Nuclear Station, Units 1 and 2, Oconee County, South Carolina

Date of application of amendments: August 18, 2005, as supplemented by letter dated September 15, 2005

Brief description of amendments: The amendments revised the Technical Specifications 3.5.2.6 and 3.5.3.6 to accommodate the replacement of the reactor building emergency sump suction inlet trash racks and screens with strainers.

Date of Issuance: November 1, 2005

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 348/350

Renewed Facility Operating License Nos. DPR–38 and DPR–47: Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** August 31, 2005 (70 FR 51852)

The supplement dated September 15, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 1, 2005.

No significant hazards consideration comments received: No

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: March 8, 2005, as supplemented by letters dated April 19, July 12, September 21, November 14, and November 15, 2005

Brief description of amendment: The amendment enables the licensee to make changes to the Updated Safety Analysis Report (USAR) to reflect the use of the non-single-failure-proof Fuel Building Cask Handling Crane for dry spent fuel cask component lifting and handling operations.

Date of issuance: December 1, 2005

Effective date: As of the date of issuance, with the implementation to begin immediately and be completed by the next periodic update to the USAR, in accordance with 10 CFR 50.71(e).

Amendment No.: 149

Facility Operating License No. NPF–47: The amendment allows revision of the USAR.

*Date of initial notice in **Federal Register:*** April 26, 2005 (70 FR 21455). The supplemental letters dated April 19, July 12, September 21, November 14, and November 15, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 2005.

No significant hazards consideration comments received: No

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 25, 2005

Brief description of amendment: The amendment deleted from the Cooper Nuclear Station Technical Specifications temporary footnotes that have expired and are no longer in effect.

Date of issuance: December 5, 2005

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 213

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** July 5, 2005 (70 FR 38721)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 5, 2005.

No significant hazards consideration comments received: No

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: January 28, 2005

Brief description of amendments: The amendments replace the reference to American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) with a reference to ASME Code for Operation and Maintenance of Nuclear Power Plants in Technical Specification 5.5.6.

Date of issuance: December 7, 2005

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment Nos.: 228 and 204

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 24, 2005 (70 FR 29799)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 7, 2005.

No significant hazards consideration comments received: No

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 9, 2005, as supplemented by letters dated October 24 and November 3, 2005

Brief description of amendment: The amendment revises Surveillance Requirements (SRs) 3.7.3.1 and 3.7.3.2 and adds SR 3.7.3.3 in TS 3.7.3, ''Main Feedwater Isolation Valves (MFIVs) and Main Feedwater Regulating Valves (MFRVs) and Main Feedwater Regulating Valve Bypass Valves (MFRVBVs).'' The amendment also adds Figure 3.7.3–1 to the TSs to specify the acceptable MFIV stroke, or closure, time with respect to steam generator pressure.

Date of issuance: November 17, 2005

Effective date: Effective as of its date of issuance, and shall be implemented no later than entry into Mode 3 during the startup from Refueling Outage 15, which is scheduled for the spring of 2007. Completion of the baseline testing of the main feedwater isolation valves, which is described in the licensee's letters dated September 9 and October 24, 2005, and in Section 4.1.4 of the Safety Evaluation for this amendment, shall be completed as part of the implementation of this amendment.

Amendment No.: 170

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 16, 2005 (70 FR 54776)The supplemental letters dated October 24 and November 3, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 17, 2005.

No significant hazards consideration comments received: No

Dated at Rockville, Maryland, this 12th day of December 2005.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 05–24142 Filed 12–19–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Privacy Act of 1974, as Amended; Revisions to Existing System of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing public notice of its intent to modify an existing system of records, NRC–20, ''Official Travel Records—NRC,'' to incorporate the collection and use of travel charge card records, including credit data, to comply with the Consolidated Appropriations Act, 2005 (Pub. L. 108–447).

DATES: The revised system of records will become effective without further notice on January 30, 2006 unless comments received on or before that date cause a contrary decision. If changes are made based on NRC's review of comments received, a new final notice will be published.

ADDRESSES: Comments may be provided to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Written comments should also be transmitted to the Chief of the Rules and Directives Branch, either by means of facsimile transmission to (301) 415–5144, or by e-mail to *nrcrep@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Sandra S. Northern, Privacy Program Officer, FOIA/Privacy Act Team, Records and FOIA/Privacy Services Branch, Information and Records Services Division, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6879; e-mail: *ssn@nrc.gov.*

SUPPLEMENTARY INFORMATION: NRC is proposing to add new categories of records in the system to include charge card applications, terms and conditions for use of charge cards, charge card training documentation, monthly reports regarding accounts, credit data, and related documentation; update the authority for the system by adding Section 639 of the Consolidated Appropriations Act, 2005 (Pub.L. 108–447); and incorporate three new routine uses which will allow disclosure of information to the charge card issuing bank, the Department of Interior, National Business Center, to collect severe travel card delinquencies by employee salary offset, and to a consumer reporting agency to obtain credit reports.

A report on the proposed revisions is being sent to OMB, the Committee on Homeland Security and Governmental Affairs of the U.S. Senate, and the Committee on Government Reform of the U.S. House of Representatives as required by the Privacy Act and OMB Circular No. A–130, Appendix I, ''Federal Agency Responsibilities for Maintaining Records About Individuals.'' NRC's actions are also consistent with OMB Circular A–123, ''Management's Responsibility for Internal Control.''

Accordingly, the NRC proposes to amend NRC–20 to read as follows:

NRC–20

SYSTEM NAME:

Official Travel Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Financial Services, Office of the Chief Financial Officer, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in part, within the organization where the employee actually works for administrative purposes, at the locations listed in Addendum I, Parts 1 and 2, published on September 24, 2004 (69 FR 57579).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, prospective NRC employees, consultants, and invitational travelers for NRC programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain requests and authorizations for official travel, travel

vouchers, passports, and related documentation; charge card applications, terms and conditions for use of charge cards, charge card training documentation, monthly reports regarding accounts, credit data, and related documentation; all of which may include, but are not limited to, an individual's name, address, social security number, and telephone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701; 31 U.S.C. 716, 1104, 1108, 3511, 3512, 3701, 3711, 3717, 3718; Federal Travel Regulations, 41 CFR Parts 301–304; Federal Property Management Regulations, 41 CFR Part 101–41; Executive Order 9397; Section 639 of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To the U.S. Treasury for payment;

b. To the Department of State or an embassy for passports or visas;

c. To the General Services Administration and the Office of Management and Budget for required periodic reporting;

d. To the charge card issuing bank;

e. To the Department of Interior, National Business Center, for collecting severe travel card delinquencies by employee salary offset;

f. To a consumer reporting agency to obtain credit reports; and g. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure Pursuant to 5 U.S.C. 552a(b)(12):

Disclosures of information to a consumer reporting agency, other than to obtain credit reports, are not considered a routine use of records. Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) (1970)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3) (1996)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders, on computer media, and on magnetic tape.

RETRIEVABILITY:

Records are accessed by name, social security number, authorization number, and voucher payment schedule number.

SAFEGUARDS:

Maintained in key locked file cabinets and in conserver files in a passcode locked room. Passports and visas are maintained in a locked file cabinet. For electronic records, an identification number, a password, and assigned access to specific programs are required in order to retrieve information.

RETENTION AND DISPOSAL:

Paper records are retained for 6 years and 3 months after period covered by account, then destroyed through disposal in a Classified and Sensitive Unclassified Waste container in accordance with GRS 9. Electronic records are deleted after the expiration of the retention period authorized for the disposable hard copy file or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Payment Policy and Obligations Team, Division of Financial Services, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR Part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information is provided by the individual, NRC Agency staff, NRC contractors, the charge card issuing bank, the consumer reporting agency, and outside transportation agents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated at Rockville, Maryland, this 13th day of December, 2005.

For the Nuclear Regulatory Commission.

Edward T. Baker III,

Director, Office of Information Services.

[FR Doc. E5–7547 Filed 12–19–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Availability of and Solicitation of Public Comments on Report on Seismic Considerations for the Transition Break Size

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: On November 7, 2005, the Nuclear Regulatory Commission (NRC) published for public comment a proposed rule in the **Federal Register** (70 FR 67598) on Risk-Informed Changes to Loss-of-Coolant Accident Technical Requirements. Under the proposed § 50.46a rule, nuclear power plant licensees would be allowed to implement a voluntary, risk-informed alternative to the current requirements for analyzing the performance of emergency core cooling systems (ECCS) during loss-of-coolant accidents (LOCAs). In addition, the proposed rule would establish procedures and criteria for requesting changes in plant design and procedures based upon the results of the new analyses of ECCS performance during LOCAs. In the **Federal Register** notice associated with the publication of the proposed alternative § 50.46a rule, the Commission noted that the potential for seismically-induced pipe breaks was not considered in determining the area of the transition break sizes [1] (TBSs). The Commission stated that work was ongoing to investigate the possible effect of seismically-induced pipe breaks on the TBS selections and committed to put a report on the NRC Web site to facilitate public comment on the technical aspects of the issue. The NRC staff has completed its report and has posted it on the Rulemaking Forum Web site, *http://ruleforum.llnl.gov.*

DATES: Comment period expires on February 6, 2006. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

[1] Different values for TBS were specified for PWRs and BWRs.

ADDRESSES: You may submit comments on the seismic report and the proposed rule by any one of the following methods. Please include the following number, RIN 3150–AH29, in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

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

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

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

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

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

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

FOR FURTHER INFORMATION CONTACT: Richard Dudley, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone (301) 415–1116; e-mail: *rfd@nrc.gov.*

Dated at Rockville, Maryland, this 14th day of December, 2005.

For the Nuclear Regulatory Commission.

Eileen McKenna,

Chief, Financial, Policy and Rulemaking Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E5–7545 Filed 12–19–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form 10–SB; OMB Control No. 3235–0419; SEC File No. 270–367.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form 10–SB is used to register classes of securities of small business issuers pursuant to Section 12 of the Securities Exchange Act of 1934 to provide material information necessary for informed investment decisions. Every issuer subject to Section 13(a) and 15(d) under the Exchange Act must file a periodic report with the Commission containing information about its business and financial condition. The information provided on Form 10–SB is mandatory and is available to the public upon request. We estimate that Form 10–SB takes approximately 133 hours per response and is filed by 254 respondents. It is estimated that 25% of the 33,782 annual burden hours (8,446 burden hours) would be prepared by the company.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 12, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7526 Filed 12–19–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Regulation BTR; OMB Control No. 3235–0579; SEC File No. 270–521.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Regulation Blackout Trade Restriction (''Regulation BTR'') clarifies the scope and application of Section 306(a) of the Sarbanes-Oxley Act of 2002 (''Act''). Section 306(a)(6) of the Act requires an issuer to provide timely notice to its directors and executive officers and to the Commission of the imposition of a blackout period that would trigger the statutory trading prohibition of Section 306(a)(1). The information provided under Regulation BTR is mandatory and is available to the public. Approximately 1,230 issuers file Regulation BTR notices annually. We estimate that it takes 2 hours per response for an issuer to draft a notice to directors and executive officers for a total annual burden of 2,460 hours. The issuer prepares 75% of the 2,460 annual burden hours for a total reporting

burden of (1,230 × 2 hrs × .75) 1,845 hours. In addition, we estimate that an issuer distributes a notice to five directors and executive officers at an estimated 5 minutes per notice (1,230 blackout period × 5 notices × 5 minutes) for a total reporting burden of 512 hours. The combined annual reporting burden is (1,845 hours + 512 hours) 2,357 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 12, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7527 Filed 12–19–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Regulation G; OMB Control No. 3235–0576; SEC File No. 270–518.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Regulation G under the Securities Exchange Act of 1934 (the ''Exchange Act'') requires registrants that publicly disclose material information that includes a non-GAAP financial measure to provide a reconciliation to the most directly comparable GAAP financial measure. Regulation G implemented the requirements of Section 401 of the Sarbanes-Oxley Act of 2002. The information provided under Regulation G is mandatory and is available to the public. We estimate that approximately 14,000 public companies must comply with Regulation G approximately six times a year for a total of 84,000 responses annually. We estimated that it takes approximately .5 hours per response (84,000 × .5 hours) for a total reporting burden of 42,000 hours annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 12, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7528 Filed 12–19–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17a–5(c); SEC File No. 270–199; OMB Control No. 3235–0199.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 17a–5(c) [17 CFR 240.17a–5(c)] under the Securities Exchange Act of 1934 requires certain broker-dealers who carry customer accounts to provide statements of the broker-dealer's financial condition to their customers. Paragraph (5) of Rule 17a–5(c) provides a conditional exemption from this requirement. It is estimated that approximately 375 broker-dealer respondents with approximately 109 million public customer accounts incur an average burden of 130,000 hours per year to comply with this rule.

Rule 17a–5(c) does not contain record retention requirements. Compliance with the rule is mandatory. Responses are not confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: December 12, 2005.

Jonathan Katz,

Secretary.

[FR Doc. E5–7529 Filed 12–19–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 10b–17. SEC File No. 270–427; OMB. Control No. 3235–0476.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously

approved collection of information discussed below.

Rule 10b–17, Untimely announcements of record dates (17 CFR 240.10b–17), requires any issuer of a class of securities publicly traded by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to give notice of the following actions relating to such class of securities: (1) A dividend; (2) a stock split; or (3) a rights or other subscription offering. Notice shall be (1) given to the National Association of Securities Dealers, Inc.; (2) in accordance with the procedures of the national securities exchange upon which the securities are registered; or (3) may be waived by the Commission.

The information required by Rule 10b–17 is necessary for the execution of the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers. The consequence of not requiring the information collection pursuant to Rule 10b–17 is that sellers who have received distributions as recordholders may dispose of the cash or stock dividends or other rights received as recordholders without knowledge of possible claims of purchasers.

It is estimated that, on an annual basis, there are approximately 29,430 respondents and that each response takes about 10 minutes to complete, thus imposing approximately 4,905 burden hours annually (29,430 × 10 minutes). We believe that the average hourly cost to produce and file a response under the rule is about $50. Therefore, the annual reporting cost burden for complying with this rule is about $245,250 (4,905 × $50).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 12, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7530 Filed 12–19–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27185; File No. 812–13094]

Lincoln National Life Insurance Company, et al., Notice of Application

December 14, 2005.

AGENCY: The Securities and Exchange Commission (''Commission'').

ACTION: Notice of Application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (''1940 Act'').

Applicants: Lincoln National Life Insurance Company (''Lincoln Life''); Lincoln National Variable Annuity Account C (''Lincoln Life Account C''), and Lincoln Life Variable Annuity Account Q (''Lincoln Life Account Q'', and together with Lincoln Life Account C, the ''Separate Accounts'').

Filing Date: The application was filed on May 28, 2004 and amended on December 7, 2005.

Summary of Application: Lincoln Life and the Separate Accounts (''Applicants'') request an order pursuant to Section 26(c) of the 1940 Act to permit the Separate Accounts to substitute (a) shares of AllianceBernstein Variable Products Series Fund, Inc. (''AllianceBernstein VP'') Growth and Income Portfolio—Class B for shares of AllianceBernstein VP Growth Portfolio—Class B; (b) shares of Delaware VIP Trust (''Delaware VIP'') Diversified Income Series—Standard Class for shares of Delaware VIP Global Bond Series—Standard Class; (c) shares of Scudder VIT Equity 500 Index Fund—Class A for shares of Janus Aspen Series (''Janus Aspen'') Worldwide Growth—Institutional Class; (d) shares of AllianceBernstein VP Growth and Income Portfolio—Class B for shares of Neuberger Berman Advisors Management Trust (''Neuberger Berman AMT'') Partners—I Class; and (e) American Funds Insurance Series (''American Funds'') Growth Fund—Class 2 for Putnam Variable Trust (''Putnam VT'') Health Sciences Fund—Class IB. The shares are held by certain of the Separate Accounts to fund certain group and individual variable annuity contracts (collectively, the ''Contracts'') issued by Lincoln Life.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 4, 2006 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. Applicants: Brian Burke, Esq., Lincoln National Life Insurance Company, 1300 South Clinton Street, Fort Wayne, IN 46802.

FOR FURTHER INFORMATION CONTACT: Ellen J. Sazzman, Senior Counsel, at (202) 551–6762 or Harry Eisenstein, Branch Chief, at (202) 551–6795, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 100 F Street, NE., Washington, DC 20549 (tel. 202–551–5850).

Applicants' Representations

1. Lincoln Life, located at 1300 South Clinton Street, Fort Wayne, Indiana 46802, is a stock life insurance company incorporated under the laws of the State of Indiana on June 12, 1905. Lincoln Life is principally engaged in offering life insurance policies and annuity policies and is licensed in all states (except New York) and the District of Columbia, Guam, and the Virgin Islands. Lincoln Life is the depositor and sponsor of the Separate Accounts. Lincoln Life is wholly owned by Lincoln National Corporation (''LNC''), a publicly held insurance holding company incorporated under Indiana law on January 5, 1968.

2. The Board of Directors of Lincoln Life established Lincoln Life Account C pursuant to the laws of the State of Indiana on June 3, 1981 as a unit investment trust. Lincoln Life Account C is registered under the 1940 Act as a unit investment trust (File No. 811–03214). The assets of Lincoln Life Account C support certain individual variable annuity contracts. Security interests in Lincoln Life Account C offered through such contracts have been registered under the Securities Act

of 1933 (''1933 Act'') (File Nos. 33–25990, 333–50817, 333–68842, and 333–112927). However, this application affects only contracts registered under File No. 33–25990.

3. The Board of Directors of Lincoln Life established Lincoln Life Account Q pursuant to the laws of the State of Indiana on November 3, 1997 as a unit investment trust. Lincoln Life Account Q is registered under the 1940 Act as a unit investment trust (File No. 811–08569). The assets of Lincoln Life Account Q support certain group contracts. Security interests in Lincoln Life Account Q offered through such contracts have been registered under the 1933 Act (File No. 333–43373).

4. The Separate Accounts are comprised of sub-accounts established to receive and invest net purchase payments under the Contracts. Each sub-account invests exclusively in the shares of a specified portfolio and supports the Contracts.

5. The Contracts permit their owners to allocate each Contract's accumulated cash or contract value among available sub-accounts, each of which invests in a different investment portfolio of an underlying mutual fund. The Contracts offer thirty-nine investment options.

6. Currently, transfers of cash and/or contract value can be made among and between the sub-accounts available as investments under the Contracts without the imposition of a transfer charge. However, Applicants reserve the right to impose a charge of $10 per transfer on Contracts issued through Lincoln Life Account C if such transfer exceeds the maximum number of transfers allowed in a contract year, which varies from six to twelve, depending on the contract. Market timing restrictions may also apply to transfers under Contracts issued by Lincoln Life Account C. The only restrictions for Contracts issued through Lincoln Life Account Q, except for those relating to market timing, are that transfers are restricted to once every thirty days and Applicants reserve the right to further limit the number of transfers. When transfer restrictions are imposed, Lincoln Life and the Separate Accounts reserve the right to waive these restrictions.

7. Under the Contracts, Lincoln Life reserves the right to substitute shares of one investment company for shares of another investment company.

8. Lincoln Life has performed a thorough review of all the investment options available under the Contracts and has determined that several existing funds offered under the Contracts warrant replacement.

9. As described below, Applicants propose to make certain substitutions of shares of the Substitute Funds (listed in Column II) for shares of the Replaced Funds (listed in Column I) held in sub-accounts of their respective Separate Accounts.

Column I (Replaced funds)	Column II (Substitute funds)
AllianceBernstein Variable Products Series Fund, Inc. (''AllianceBernstein VP''):	
Growth Portfolio—Class B	AllianceBernstein VP Growth and Income Portfolio—Class B.
Delaware VIP Trust (''Delaware VIP''):	
Global Bond Series—Standard Class	Delaware VIP Diversified Income Series—Standard Class.
Janus Aspen Series (''Janus Aspen''):	
Worldwide Growth—Institutional Class	Scudder VIT Equity 500 Index Fund—Class A.
Neuberger Berman Advisors Management Trust (''Neuberger Berman AMT''):	
Partners—I Class	AllianceBernstein VP Growth and Income Portfolio—Class B.
Putnam Variable Trust (''Putnam VT''):	American Funds Insurance Series (''American Funds''):
Health Sciences Fund—Class IB	Growth Fund—Class 2

10. The investment objective of the AllianceBernstein VP Growth Portfolio (Replaced Fund) is to provide long-term growth of capital. Current income is incidental to the portfolio's objective. The portfolio invests primarily in equity securities of companies with favorable earnings outlooks, and long-term growth rates are expected to exceed that of the United States (''U.S.'') economy over time. The portfolio emphasizes investments in large- and mid-cap companies. The portfolio also may invest up to 25% of its total assets in lower-rated fixed-income securities and convertible bonds and generally up to 20% of its assets in foreign securities. The portfolio applies the principles of growth investing to select securities. The portfolio uses fundamental company analysis to select stocks that it believes are good candidates to provide long-term growth of capital.

11. The investment objective of the AllianceBernstein VP Growth and Income Portfolio (Substitute Fund) is to seek reasonable income and reasonable opportunity for appreciation through investments primarily in dividend-paying common stocks of good quality (both income and capital appreciation). To pursue this goal, the portfolio invests primarily in dividend-paying common stocks of large, well established ''blue-chip'' companies. The portfolio may also invest in fixed-income and convertible securities and in securities of foreign issuers. The basic strategy of the portfolio is to seek income producing securities that represent good long-term investment opportunities.

12. The investment objectives of the AllianceBernstein VP Growth Portfolio (Replaced Fund) and the AllianceBernstein Growth and Income Portfolio (Substitute Fund) are substantially similar. Both funds seek growth of capital (capital appreciation) over time with AllianceBernstein Growth and Income Portfolio seeking greater emphasis on income. While their specific investment strategies differ, both funds are stock funds seeking primarily domestic stock investments with good long-term growth prospects. AllianceBernstein Growth and Income Portfolio also seeks good quality dividend paying prospects. Each fund normally invests primarily in stocks of large-sized domestic companies with the ability to invest in foreign stocks as well. While each of these funds seeks to achieve its objective through somewhat different investment strategies, Applicants believe that an investor in the AllianceBernstein VP Growth Portfolio is generally attempting to achieve the same long-term goal as that sought by the AllianceBernstein Growth and Income Portfolio investors.

13. The investment objective of the Delaware VIP Global Bond Series (Replaced Fund) is to seek current income consistent with preservation of principal. The Series invests primarily in fixed-income securities that may also provide the potential for capital appreciation. The Series is a global

fund. Under normal circumstances, the Series will invest at least 80% of its net assets in debt obligations. In selecting investments, the Series' investment manager strives to identify fixed-income securities that provide high income potential, considers the value of anticipated future interest and principal payments, and generally prefers to purchase securities in countries where the currency is undervalued or fair-valued compared to other countries because these securities may offer greater return potential. The Series may invest a portion of its assets in high yield securities based on the investment manager's view of market conditions. The Series is considered ''non-diversified'' under federal laws and rules that regulate mutual funds. The Series is limited to a 25% investment in any one issuer, but is not subject to this limit on a per country basis.

14. The investment objective of the Delaware VIP Diversified Income Series (Substitute Fund) is to seek maximum long-term total return consistent with reasonable risk. The Series invests primarily in bonds allocated among three sectors of the fixed-income market. These sectors include: The High Yield Sector, the Investment Grade Sector, and the International Sector. In determining how much of the Series to allocate to each sector, the Series' investment manager reviews economic and market conditions and interest rate trends as well as the potential risks and rewards associated with each sector. The Series' assets will periodically be reallocated. Under normal circumstances, as little as 5% or as much as 50% of the Series' assets may be invested in each of the High-Yield Sector and International Sector. Under normal circumstances, there is no minimum or maximum limit on the amount of the Series' assets that may be invested in the Investment Grade Sector.

15. The investment objectives of the Delaware VIP Global Bond Series (Replaced Fund) and the Delaware VIP Diversified Income Series (Substitute Fund) are similar. The Delaware VIP Global Bond Series seeks current income consistent with preservation of principal and the Delaware VIP Diversified Income Series seeks maximum long-term total return consistent with reasonable risk. Both funds seek to invest the majority of their assets in fixed income securities. Both funds also invest a portion of their fund assets in international fixed-income securities. While each of these funds seeks to achieve its objective through somewhat different investment strategies, Applicants believe that an investor in the Delaware VIP Global Bond Series is generally attempting to achieve the same long-term goal as that sought by the Delaware VIP Diversified Income Series investors.

16. The investment objective of the Janus Aspen Worldwide Growth Portfolio (Replaced Fund) is long-term growth of capital in a manner consistent with the preservation of capital. The portfolio invests primarily in common stocks of companies of any size located throughout the world. The portfolio normally invests in issuers from at least five different countries, including the United States. The portfolio may, under unusual circumstances, invest in fewer than five countries or even a single country. The portfolio manager applies a ''bottom up'' approach in choosing investments. In other words, the portfolio manager looks at companies one at a time to determine if a company is an attractive investment opportunity and if it is consistent with the portfolio's investment policies. If the portfolio manager is unable to find such investments, the portfolio's uninvested assets may be held in cash or similar investments. Within the parameters of its specific investment policies, the Portfolio will limit its investment in high-yield/high-risk bonds to less than 35% of its net assets.

17. The investment objective of the Scudder VIT Equity 500 Index Fund (Substitute Fund) is to seek to replicate, as closely as possible, before the deduction of expenses, the performance of the Standard & Poors 500 Composite Stock Price Index (the ''S&P 500 Index'') which emphasizes stocks of large U.S. companies. Under normal circumstances the fund intends to invest at least 80% of its assets, determined at the time of purchase, in stocks of companies included in the S&P 500 Index and in derivative instruments, such as futures contracts and options, that provide exposure to the stocks of companies in the S&P 500 Index. The fund invests for capital appreciation, not income; any dividend and interest income is incidental to the pursuit of this objective. Over the long term, the investment advisor seeks a correlation between the performance of the fund, before expenses, and the S&P 500 Index of 98% or better. A figure of 100% would indicate perfect correlation.

18. The investment objectives of the Janus Aspen Worldwide Growth Portfolio (Replaced Fund) and the Scudder VIT Equity 500 Index Fund (Substitute Fund) are substantially similar in that the funds seek long-term growth and capital (capital appreciation), respectively. Both funds invest in common stocks with potential for capital appreciation. Both funds invest in large capitalization domestic equity securities, with Janus Aspen Worldwide Growth Portfolio also investing a substantial portion of its assets in large capitalization foreign equity securities. While each of these funds seeks to achieve its objective through somewhat different investment strategies, Applicants believe that an investor in the Janus Aspen Worldwide Growth Portfolio is generally attempting to achieve the same long-term goal as that sought by the Scudder VIT Equity 500 Index Fund investors.

19. The investment objective of the Neuberger Berman AMT Partners Portfolio (Replaced Fund) is to seek growth of capital. To pursue this goal, the portfolio invests mainly in common stocks of mid- to large-capitalization companies. The portfolio seeks to reduce risk by diversifying among many companies and industries. The manager looks for well-managed companies with strong balance sheets whose stock prices are undervalued. The portfolio has the ability to change its goal without shareholder approval, although it does not currently intend to do so.

20. The investment objective of the AllianceBernstein VP Growth and Income Portfolio (Substitute Fund) is to seek reasonable income and reasonable opportunity for appreciation through investments primarily in dividend-paying common stocks of good quality (both income and capital appreciation). To pursue this goal, the Portfolio invests primarily in dividend-paying common stocks of large, well established ''blue-chip'' companies. The Portfolio may also invest in fixed-income and convertible securities and in securities of foreign issuers. The basic strategy of the fund is to seek income producing securities that represent good long-term investment opportunities.

21. The investment objectives of the Neuberger Berman AMT Partners Portfolio (Replaced Fund) and the AllianceBernstein Growth and Income Portfolio (Substitute Fund) are substantially similar. Both funds seek growth of capital (capital appreciation) over time, with AllianceBernstein Growth and Income Portfolio seeking greater emphasis on income. While their specific investment strategies differ somewhat, both funds are stock funds seeking primarily domestic investments with good long-term growth prospects. Neuberger Berman AMT Partners Portfolio employs a ''value oriented investment approach, while the AllianceBernstein Growth and Income Portfolio places emphasis on dividend paying high quality equity investments. Each fund normally invests primarily in stocks of large-sized domestic stock

companies. While each of these funds seeks to achieve its objective through somewhat different investment strategies, Applicants believe that an investor in the Neuberger Berman AMT Partners Portfolio is generally attempting to achieve the same long-term goal as that sought by the AllianceBernstein Growth and Income Portfolio investors.

22. The investment objective of the Putnam VT Health Sciences Fund (Replaced Fund) is to seek capital appreciation. The fund invests mainly in common stocks of companies in the health sciences industries, with a focus on growth stocks. Under normal circumstances, the fund invests at least 80% of the fund's net assets in securities of (a) companies that derive at least 50% of their assets, revenues or profits from the pharmaceutical, health care services, applied research and development and medical equipment and supplies industries, or (b) companies with the potential for growth as a result of their particular products, technology, patents or other market advantages in the health sciences industries. The fund invests mainly in mid-sized and large companies. The fund may invest in foreign investments.

23. The investment objective of the American Funds Growth Fund (Substitute Fund) is growth of capital. The fund seeks to make investments grow by investing primarily in common stocks of companies that appear to offer superior opportunities for growth of capital. The fund may invest up to 15% of its assets in equity securities of issuers domiciled outside the U.S. and Canada and not included in Standard & Poor's 500 Composite Index. The fund is designed for investors seeking capital appreciation through stocks.

24. The investment objectives of the Putnam VT Health Sciences Fund (Replaced Fund) and the American Funds Growth Fund (Substitute Fund) are substantially similar in that the funds seek growth of capital and capital appreciation, respectively. Both funds are domestic stock funds and invest the majority of fund assets in equity securities of issuers domiciled in the U.S. Both funds invest in ''growth'' equity securities, with the Putnam VT Health Sciences Fund focusing principally on Health Sciences related ''growth'' equity securities. While each of these funds seeks to achieve its objective through somewhat different investment strategies, Applicants believe that an investor in the Putnam VIT Health Sciences Fund is generally attempting to achieve the same long-term goal as that sought by the American Funds Growth Fund investors.

25. The chart on the following pages compares the average annual total returns for the Replaced Funds and the Substitute Funds for the past five calendar year periods.

	Total return of replaced funds for the periods indicated below						Investment advisor/affiliated w/applicants?	Fund affiliated w/applicants?	Current investment option
	Calendar year 2004 (percent)	Calendar year 2003 (percent)	Calendar year 2002 (percent)	Calendar year 2001 (percent)	Calendar year 2000 (percent)	Calendar year 1999 (percent)			
REPLACED FUNDS:									
AllianceBernstein VP Growth Portfolio—Class B (Inception date: 6/1/99).	14.5	34.7	−28.3	−23.7%	−17.8	N/A	Alliance Capital Management LP/Non-Affiliate.	Non-Affiliate ..	Yes.
Delaware VIP Global Bond Series—Standard Class (Inception date: 5/2/96).	13.0	20.4	25.1	−0.5	0.9	−3.6	Delaware Management Company/Affiliate.	Affiliate	Yes.
Janus Aspen Worldwide Growth Portfolio—Institutional Class (Inception date: 9/13/89).	4.8	24.0	−25.5	−22.4	−15.7	64.5	Janus Capital Management LLC/ Non-Affiliate.	Non-Affiliate ..	Yes.
Neuberger Berman AMT Partners Portfolio (Inception date: 3/22/84).	19.0	35.1	−24.1	−2.8	0.7	7.4	Neuberger Berman Management Inc./ Non-Affiliate.	Non-Affiliate ..	Yes.
Putnam VT Health Sciences Fund—Class IB (Inception date: 5/1/98).	7.1	18.4	−20.3	−19.8	38.9	−3.9	Putnam Investment Management, LLC/Non-Affiliate.	Non-Affiliate ..	Yes.
SUBSTITUTE FUNDS:									
AllianceBernstein VP Growth and Income Portfolio—Class B (Inception date: 6/1/99).	11.2	32.2	−22.3	0.2	13.6	N/A	Alliance Capital Management LP/ Non-Affiliate.	Non-Affiliate ..	Yes.
Delaware VIP Diversified Income Series—Standard Class (Inception date: 5/16/03).	8.5	N/A	N/A	N/A	N/A	N/A	Delaware Management Company/Affiliate.	Affiliate	Yes.
Scudder VIT Equity 500 Index Fund—Class A (Inception date: 10/1/97).	10.6	28.2	−22.3	−12.2	−9.2	20.4	Deutsche Asset Management, Inc./Non-Affiliate.	Non-Affiliate ..	Yes.
American Funds Growth Fund—Class 2 (Inception date: 2/8/84).	12.5	36.8	−24.5	−18.2%	4.5%	57.3%	Capital Research and Management Company/Non-Affiliate.	Non-Affiliate ..	Yes.

26. The following chart shows the approximate size (as of December 31, 2004), expense ratios, management fees, and 12b–1 fees for each of the Replaced Funds for Calendar Year 2004.

Replaced Funds	Net Assets† at December 31, 2004 (in thousands)	Gross calendar year 2004 expense ratio◊ (percent)	Net calendar year 2004 expense ratio◊ (percent)	Gross calendar year 2004 mgmt. fee (percent)	Net calendar year 2004 mgmt. fee (percent)	Calendar year 2004 12b–1 fee (percent)
AllianceBernstein VP Growth Portfolio—Class B (Inception date: 6/1/99)	290,000	1.13	1.13	0.75	0.75	0.25
Delaware VIP Global Bond Series—Standard Class (Inception date: 5/2/96)	86,000	0.93	0.93	0.75	0.75	N/A
Janus Aspen Worldwide Growth Portfolio—Institutional Class (Inception date: 9/13/89)	2,491,921	0.63	0.63	0.60	0.60	N/A
Neuberger Berman AMT Partners Portfolio (Inception date: 3/22/84)	590,000	0.91	0.91	0.83	0.83	N/A
Putnam VT Health Sciences Fund—Class IB (Inception date: 5/1/98)	162,000	1.10	1.10	0.70	0.70	0.25

† Reflects total assets of share class, where applicable, of the fund.
◊ Total annual expenses.

27. The next chart provides the approximate size (as of 12/31/04), expense ratios, management fees, and 12b–1 fee for each of the Substitute Funds for Calendar Year 2004.

Substitute Funds	Net Assets† at December 31, 2004 (in thousands)	Gross calendar year 2004 expense ratio◊ (percent)	Net calendar year 2004 expense ratio◊ (percent)	Gross calendar year 2004 mgmt. fee (percent)	Net calendar year 2004 mgmt. fee (percent)	Calendar year 2004 12b–1 fee (percent)
AllianceBernstein VP Growth and Income Portfolio—Class B (Inception date: 6/1/99) [1]	2,672,000	0.85	0.85	0.55	0.55	0.25
Delaware VIP Diversified Income Series—Standard Class (Inception date: 5/16/03) [2]	62,000	0.98	0.80	0.65	0.65	N/A
Scudder VIT Equity 500 Index Fund—Class A (Inception date: 10/1/97)	790,000	0.29	0.29	0.20	0.20	N/A
American Funds Growth Fund—Class 2 (Inception date: 2/8/84)	12,055,000	0.61	0.61	0.35	0.35	0.25

◊ Total annual expenses.
† Reflects total assets of share class, where applicable, of the Fund.
[1] Expense information reflects a resolution of the AllianceBernstein board on September 7, 2004 making the Management Fee effective for the entire year of 2004.
[2] The investment advisor for the Delaware VIP Diversified Income Series is Delaware Management Company (DMC). Since inception through April 30, 2005, the advisor contractually agreed to waive its management fee and/or reimburse the Series for expenses to the extent that total expenses (excluding any taxes, interest, brokerage fees, extraordinary expenses and certain insurance expenses) would not exceed 0.80%. Without such an arrangement, the total operating expense for the Series would have been 0.98% for the fiscal year 2004. Effective May 1, 2005 through April 30, 2006, DMC has contractually agreed to waive its management fee and/or reimbursed the Series for expenses to the extent that total expenses (excluding any taxes, interest, brokerage fees, extraordinary expenses and certain insurance expenses) will not exceed 0.80%. Under its Management Agreement, the Series pays a management fee based on average daily net assets as follows: 0.65% on the first $500 million, 0.60% on the next $500 million, 0.55% on the next $1,500 million, 0.50% on assets in excess of $2,500 million, all per year.

28. The Applicants proposed substitutions would effectively consolidate the Lincoln Life assets of each Substitute Fund held by the Separate Accounts with those of the corresponding Replaced Fund, with a goal of each Substitute Fund having an expense ratio that is equal to or lower than the Replaced Fund. In the following comparisons, ''expense ratio'' refers to both gross and net expense ratios, and ''management fee'' includes both gross and net management fees, as well as any applicable 12b–1 fees.

29. AllianceBernstein VP Growth and Income Portfolio (Substitute Fund) has a lower expense ratio (.85%) and management fee (.55%) and is larger than the AllianceBernstein VP Growth Portfolio (Replaced Fund) which has an expense ratio of 1.13% and a management fee of .75%. Both funds have the same 12b–1 fee (.25%). AllianceBernstein VP Growth and Income Portfolio also has performed better for three time periods and lower for two time periods compared to the AllianceBernstein VP Growth Portfolio (the 1999 calendar year time period is not comparable).

Fees and expenses	Replaced Fund AllianceBernstein VP Growth Portfolio (percent)	Substitute Fund AllianceBernstein VP Growth and Income Portfolio (percent)
	Class B	Class B
Management Fee	0.75	0.55
12b–1 Fee	0.25	0.25
Other Expenses	0.13	0.05
Total Expenses	1.13	0.85

Fees and expenses	Replaced Fund AllianceBernstein VP Growth Portfolio (percent)	Substitute Fund AllianceBernstein VP Growth and Income Portfolio (percent)
	Class B	Class B
Waivers	.....	.....
Net Expenses	1.13	0.85

30. Delaware VIP Diversified Income Series (Substitute Fund) has a lower expense ratio (on a net basis after applicable contractual waivers) (.80%) and management fee (on a net basis after applicable contractual waivers) (.65%) and is smaller than the Delaware VIP Global Bond Series (Replaced Fund) which has an expense ratio of .93% and a management fee of .75%. Both the Substitute Fund and the Replaced Fund are affiliated with the Applicants. Delaware VIP Diversified Income Series does not have applicable performance time periods to compare to Delaware VIP Global Bond Series, except for calendar year 2004 in which Delaware VIP Diversified Income Series has performed lower than Delaware VIP Global Bond Series.

Fees and expenses	Replaced Fund Delaware VIP Global Bond Series (percent)	Substitute Fund Delaware VIP Diversified Income Series (percent)
	Standard Class	Standard Class
Management Fee	0.75	0.65
12b–1 Fee	.....	.....
Other Expenses	0.18	0.33
Total Expenses	0.93	0.98
Waivers	.....	0.18
Net Expenses	0.93	0.80

31. Scudder VIT Equity 500 Index Fund (Substitute Fund) has a lower expense ratio (.29%) and management fee (.20%) and is smaller than Janus Aspen Worldwide Growth Portfolio (Replaced Fund) which has an expense ratio of .63% and a management fee of .60%. The Scudder VIT Equity 500 Index Fund also has performed better for five time periods and lower for one time period compared to the Janus Aspen Worldwide Growth Portfolio.

Fees and expenses	Replaced Fund Janus Aspen Worldwide Growth Portfolio (percent)	Substitute Fund Scudder VIT Equity 500 Index Fund (percent)
	Institutional Class	Class A
Management Fee	0.60	0.20
12b–1 Fee	.....	.....
Other Expenses	0.03	0.09
Total Expenses	0.63	0.29
Waivers	.....	.....
Net Expenses	0.63	0.29

32. AllianceBernstein VP Growth and Income Portfolio (Substitute Fund) has a lower expense ratio (.85%) and a lower total management fee of .80% (the sum of .55% management fee plus .25% 12b–1 fee) and is larger than Neuberger Berman AMT Partners Portfolio (Replaced Fund) which has an expense ratio of .91% and a management fee of .83% (and no 12b–1 fee). The AllianceBernstein VP Growth and Income Portfolio also has performed better for three time periods and lower for two time periods (the 1999 calendar year time period is not comparable) compared to the Neuberger Berman AMT Partners Portfolio.

Fees and expenses	Replaced Fund Neuberger Berman AMT Partners Portfolio (percent)	Substitute Fund AllianceBernstein VP Growth and Income Portfolio (percent)
	I Class	Class B
Management Fee	0.83	0.55
12b–1 Fee	.....	0.25

Fees and expenses	Replaced Fund Neuberger Berman AMT Partners Portfolio (percent)	Substitute Fund AllianceBernstein VP Growth and Income Portfolio (percent)
	I Class	Class B
Other Expenses	0.08	0.05
Total Expenses	0.91	0.85
Waivers		
Net Expenses	0.91	0.85

33. American Funds Growth Fund (Substitute Fund) has a lower expense ratio (.61%) and a lower management fee (.35%) and is larger than Putnam VT Health Sciences Fund (Replaced Fund) which has an expense ratio of 1.10% and a management fee of .70%. Both funds have the same 12b–1 fee (.25%). The American Funds Growth Fund also has performed better for four time periods and lower for two time periods compared to the Putnam VIT Health Sciences Fund.

Fees and expenses	Replaced Fund Putnam VT Health Sciences Fund (percnet)	Substitute Fund American Funds Growth Fund (percent)
	Class IB	Class 2
Management Fee	0.70	0.35
12b–1 Fee	0.25	0.25
Other Expenses	0.15	0.01
Total Expenses	1.10	0.61
Waivers		
Net Expenses	1.10	0.61

34. By supplements to the most current prospectuses for the Contracts, all owners and prospective owners of the Contracts were notified of Lincoln Life's intention to take the necessary actions, including seeking the order requested by the application, to effect the substitutions described above. The supplements and prospectuses stated that on the date of the proposed substitutions (after the relief requested has been obtained and all necessary systems support changes have been made), the Substitute Funds will replace the Replaced Funds as the underlying investments for affected sub-accounts.

35. By means of an additional prospectus supplement or updated prospectus, Contract owners will be advised, at least thirty days in advance of the substitutions, of the actual date of the substitutions. In the pre-substitution notice, Applicants will advise Contract owners that from the date of the supplement until the date of the proposed substitutions, they are permitted to make one transfer of contract value (or annuity unit exchange) out of the Replaced Funds to any sub-account option within the Contract without the transfer (or exchange) being treated as one of a limited number of transfers (or exchanges) allowed under the Contracts. Further, such a transfer will not be subject to a transfer charge. The notice will also inform Contract owners that the Applicants will not exercise any rights reserved under Contracts to impose additional restrictions on transfers until at least thirty days after the substitutions, except that the Applicants may impose restrictions on transfers to limit ''market timing'' activities by Contract owners or their agents. The supplement will further advise Contract owners that for at least thirty days following the effective date of the proposed substitutions, Lincoln Life will permit Contract owners affected by the substitutions to make one transfer of contract value (or annuity unit exchange) out of the Substitute Fund sub-account to another sub-account without the transfer (or exchange) being treated as one of a limited number of permitted transfers (or exchanges) or a limited number of transfers (or exchanges) permitted without a transfer charge.

36. At least sixty days before the date of the proposed substitutions, affected Contract owners who have not already been provided with a prospectus for each Substitute Fund will receive a prospectus that includes complete and current information concerning the Substitute Funds.

37. Lincoln Life will redeem shares of each Replaced Fund in cash and purchase with the proceeds shares of the corresponding Substitute Fund. Redemption requests and purchase orders will be placed simultaneously so that the contract values will remain fully invested at all times.

38. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's contract value, cash value, or death benefit or in the dollar value of his or her investment in any of the Separate Accounts.

39. Contract owners will not incur any fees or charges as a result of the proposed substitutions nor will their rights or Lincoln Life's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting, brokerage and other fees and expenses, will be paid by Lincoln Life. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the contract fees and charges currently imposed by Lincoln Life and paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. No fees will be charged on the transfers made at the time of the proposed substitutions because the proposed substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the

number or remaining permissible transfers in a Contract year.

40. In addition to the supplements and prospectuses distributed to Contract owners as described above, within five business days after the proposed substitutions are completed, any Contract owners affected by the substitutions will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of Contract value or cash value under a Contract invested in any one of the sub-accounts on the date of the notice to another sub-account available under their Contract at no cost and without regard to the usual limit on the frequency of transfers among the variable account options and from the variable account options to the fixed account options. The notice will also reiterate that Lincoln Life will not exercise any rights reserved by it under the Contracts to impose additional restrictions on transfers or to impose any charges on transfers (other than with respect to ''market timing'' activities) until at least thirty days after the proposed substitutions. Lincoln Life will also send each Contract owner current prospectuses for the Substitute Funds involved to the extent that the Contract owner has not previously received a copy.

41. Lincoln Life has determined that all of the Substitute Funds that are the subject of this Application will be treated as affiliated funds. The Applicants agree that, to the extent that the annualized expenses of each Substitute Fund exceeds, for each fiscal period (such period being less than 90 days) during the twenty-four month period following the date of the substitutions, the 2004 net expense level of the corresponding Replaced Fund, Lincoln Life will, for each Contract outstanding on the date of the proposed substitutions, make a corresponding reduction in separate account (or sub-account) expenses on the last day of such fiscal period, such that the amount of the Substitute Fund's net expenses, together with those of the corresponding separate account (or sub-account) will, on an annualized basis, be no greater than the sum of the net expenses of the Replaced Fund and the expenses of the separate account (or sub-account) for the 2004 fiscal year.

42. The Applicants further agree that Lincoln Life will not increase total separate account charges (net of any reimbursements or waivers) for any existing Contract owner on the date of the substitutions for a period of twenty-four months from the date of the substitutions.

Applicants' Legal Analysis

1. Section 26(c) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, Section 26(c) states:

> It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

2. Applicants state that the proposed substitution of shares of the Substitute Funds for those of the Replaced Funds appears to involve substitutions of securities within the meaning of Section 26(c) of the Act. Applicants also submit that the proposed substitutions meet the standards that the Commission and its staff have applied to substitutions that have been approved in the past. Applicants therefore request an order from the Commission pursuant to Section 26(c) approving the proposed substitutions under the terms of this Application.

3. The Contracts give Lincoln Life the right, subject to Commission approval, to substitute shares of another investment company for shares of an investment company held by a sub-account of the Separate Accounts. Applicants believe that the prospectuses for the Contracts and the Separate Accounts contain appropriate disclosure of this right.

4. Applicants have concluded that, although there are differences in the objectives and policies of the Substitute and Replaced Funds, their objectives and policies are sufficiently consistent to assure that following the substitutions, the achievement of the core investment goals of the affected Contract owners in the Replaced Funds will not be frustrated.

5. With respect to each proposed substitution, Applicants represent that Contract owners with balances invested in a Substitute Fund will have an expense ratio that is equal to or lower than the Replaced Fund. Applicants anticipate that Contract owners will be better off with the array of sub-accounts offered after the proposed substitutions than they have been with the array of sub-accounts offered prior to the substitutions. The proposed substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer Contract values and cash values between and among approximately the same number of sub-accounts as they could before the proposed substitutions. Applicants note that Contract owners who do not wish to participate in a Substitute Fund will have an opportunity to reallocate their accumulated value among other available sub-accounts without the imposition of any charge or limitation (other than with respect to ''market timing'' activity.)

Conclusion

Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–24248 Filed 12–19–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To be announced].

STATUS: Closed meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, December 13, 2005.

CHANGE IN THE MEETING: Additional items.

The following items have been added to the closed meeting scheduled for Tuesday, December 20, 2005: Opinion and a Regulatory matter regarding a financial institution.

Commissioner Campos, as duty officer, voted to consider these items listed for the closed meeting in closed session and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: December 15, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–24294 Filed 12–16–05; 11:13 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52950; File No. SR–CBOE–2004–53]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change and Partial Amendment No. 1 Relating to Margin Requirements for Complex Options Spreads

December 14, 2005.

I. Introduction

On July 30, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change related to margin requirements for complex options spreads under Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4.[2] On August 23, 2005, the Exchange filed a partial amendment to its proposed rule change.[3] The proposed rule change, as amended, was published in the **Federal Register** on November 14, 2005.[4] The Commission received no comments on the proposal.

II. Description

The CBOE has proposed to incorporate the provisions of a Regulatory Circular (RG03–066—*Margin Requirements for Certain Complex Spreads,* dated August 13, 2003) (the ''Circular'') into the Exchange's margin rules (Chapter 12). The Circular presents an interpretation of current margin requirements that allows the Exchange to derive, and put into effect, margin requirements for certain complex option spreads. The Commission approved the Circular on a one-year pilot basis.[5] The Commission granted two extensions of the pilot period.[6]

The Exchange has proposed to add definitions of a ''long condor spread,'' ''short iron butterfly spread'' and ''short iron condor spread'' to Rule 12.3(a). These definitions cover six of the seven strategies identified in the Circular. Each definition covers two strategies identified in the Circular because each definition provides for a base strategy, in which all options expire at the same time, and a calendar spread strategy, in which a long option may expire after the other options expire concurrently.

The Exchange has proposed a revision to its current definition of a butterfly spread to provide for the remaining strategy, a calendar spread version of the long butterfly spread. These revisions consist of (1) splitting the current butterfly spread definition into two definitions, one for the long butterfly spread and one for the short butterfly spread, (2) fashioning the two definitions so that they are consistent with the style and format of the new definitions referred to in the prior paragraph, and (3) providing for a calendar spread version in the long butterfly spread definition.

In the Circular, call options were utilized to construct three of the seven strategy examples. Each of these three strategies has a parallel application with put options. For brevity, the put option versions were not specifically identified in the Circular, but the Circular was intended to apply to the put option counterpart of each of the strategies demonstrated with call options. Both the put and call option versions are provided for in the newly proposed rule definitions. The remaining four complex spread strategies originally identified in the Circular involved both call options and put options (that is, ''iron'' strategies). Each of these four strategies has a reciprocal configuration (that is, the call options can precede the put options in ascending sequence of exercise prices). However, there is no need to address the reciprocal variations because there is no benefit from a margin requirement standpoint of including them in the iron strategy definitions.

According to the Exchange, each of the complex spreads identified in the proposed rule can be derived by combining and netting two or more option spreads (that is, the butterfly spread, the box spread and the time spread) that already are identified in the margin rules and ascribed a margin requirement. Furthermore, the sum of the margin required on the basic option spreads that can be combined and netted to form a complex spread covers the maximum risk of the complex spread and, as in the Circular, is the margin requirement specified in the proposed rules. Each of the subject complex spread strategies has a known and limited risk when configured as specified in the proposed definitions. The Exchange has proposed to revise current Rule 12.3(c)(5)(C)(6) to provide a margin requirement for each of the long condor spread, short iron butterfly spread and short iron condor spread.

The Exchange noted that the proposed rule prohibits European style options in the case of the calendar version of a complex spread and requires that the interval between each option series be equal in the case of all complex spread strategies. Unlike the Circular, the proposed rules would not limit complex spreads to a margin account. The Exchange also has proposed a revision to Rule 12.3(e)—*Customer Cash Account—Spreads,* that adds the long condor spread, short iron butterfly spread and short iron condor spread as strategies permitted to be established and carried in a cash account, provided they are composed of cash-settled, European style options that all expire at the same time.

The Exchange noted that it has received no negative comments concerning the Circular since it was issued. Moreover, the Exchange is not aware of any negative consequences as a result of applying the margin requirements permitted by the Circular.

III. Discussion and Commission Findings

After careful review, 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.[7] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires that the rules of the exchange be designed, among other things, to remove impediments to and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. The Commission finds that amending the rules to permit complex option spread strategies that are the net result of combining two or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR240.19b–4.

[3] SR–CBOE–2004–53: Amendment No. 1. CBOE, in coordination with the New York Stock Exchange, Inc. (''NYSE''), filed the partial amendment to conform the complex spreads strategies to which its rule amendments apply to those of the NYSE.

[4] *See* Securities Exchange Act Release No. 52739 (Nov. 4, 2005); 70 FR 69173 (Nov. 14, 2005).

[5] *See* Securities Exchange Act Release No. 48306 (Aug. 8, 2003), 68 FR 48974 (Aug. 15, 2003) (approving SR–CBOE–2003–24).

[6] *See* Securities Exchange Act Release No. 50164 (Aug. 6, 2004), 69 FR 50405 (Aug. 16, 2004) and Securities Exchange Act Release No. 51407 (Mar. 22, 2005), 70 FR 15669 (Mar. 28, 2005).

[7] In approving this proposal rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

more spread strategies that are currently recognized in the Exchange's margin rules is consistent with the requirements of Section 6(b)(5) because the amendments will allow the Exchange to set levels of margin that more precisely represent the actual net risk of the option positions in the account and enable customers to implement these strategies more efficiently.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–CBOE–2004–53), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7522 Filed 12–19–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52949; File No. SR–CBOE–2005–104]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change to Amend its Rules Governing the Hours of Trading in Equity Options and Narrow-Based Index Options

December 13, 2005.

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 December 6, 2005, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules governing the hours of trading in equity options and narrow-based index options. The Exchange proposes that these changes become effective February 1, 2006. The text of the proposed rule change is available on the 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 Exchange 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 purpose of this rule change is to amend the CBOE's rules governing the hours of trading in equity options and narrow-based index options. Specifically, the CBOE proposes to amend its rules to change the close of the normal trading hours in equity options and in narrow-based index options from 3:02 p.m. (Chicago time) to 3 p.m. (Chicago time). After the change, the time of the close of trading in these CBOE options will correspond to the normal time set for the close of trading on the primary exchanges listing the stocks underlying the CBOE options. The primary exchanges generally close at 3 p.m. (Chicago time).

According to the Exchange, in 1997, the CBOE decided to change its closing time for equity options and narrow-based index options from 3:10 p.m. to 3:02 p.m. At the time, the CBOE determined that there were reasons to continue trading options for a limited period of time after the close of trading of the primary markets for the underlying securities. Specifically, the Exchange believed that the extended period allowed for options traders to respond to late reports of closing prices over the consolidated tape. If the price of a late reported trade on an underlying security was substantially different from the previous reported price, the extended trading session gave options traders the opportunity to bring options quotes in line with the closing price of the underlying security.

However, because of improvements in the processing and reporting of transactions, the CBOE believes that there are no longer significant delays in the reporting of closing prices; and therefore, a two minute session is no longer needed to trade options after the underlying securities close trading. Additionally, the Exchange believes that pricing aberrations can occur if an option is traded when the underlying stock is no longer trading, since there is a close relationship in the price of the underlying stock and the overlying option. As a result, the CBOE believes that it is difficult for the market to price options accurately when the underlying security is not trading.

As noted above, the Exchange also proposes to change the closing time for narrow-based indexes under CBOE Rule 24.6 because these indexes are subject to the same pricing problems as options on individual stocks. According to the CBOE, a significant news announcement on one component of a narrow-based index could have a significant effect on that index. However, the Exchange is not at this time proposing to change the closing time of 3:15 p.m. for broad-based index options because it does not believe that a significant news announcement by the issuer of one component stock of a broad-based index is likely to have a significant effect on the price of that broad-based index.

Accordingly, the CBOE proposes to amend its rules, including CBOE Rules 6.1, 6.2, 12.3, 24.6, and 24.16, in which references are made to a 3:02 p.m. closing time for equity options and narrow-based index options.

The Exchange notes that if it were to unilaterally modify its closing time, the existence of dissimilar closing times applicable to the different options exchanges would likely lead to confusion for options investors and broker–dealers. Accordingly, in September 2005, the Exchange requestedfrom the Commission's Division of Market Regulation express authorization to jointly discuss this operational issue with the other options exchanges who are participants in the Options Price Reporting Authority,[3] and received such authorization.[4] The CBOE believes that all of the options exchanges will make similar changes to

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[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Joanne Moffic-Silver, Executive Vice President, General Counsel & Corporate Secretary, CBOE, to Robert L.D. Colby, Deputy Director, Division of Market Regulation (''Division''), Commission, dated September 16, 2005.

[4] *See* letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Joanne Moffic-Silver, Executive Vice President, General Counsel and Secretary, CBOE, dated September 16, 2005.

their rules to revise the closing time in equity options and narrow-based index options from 3:02 p.m. (Chicago time) to 3 p.m. (Chicago time). According to the CBOE, the options exchanges collectively have determined that they would implement this new closing time on February 1, 2006.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(5) of the Act [6] in particular because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE 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

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 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, 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 at (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–104 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–104. 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 Section. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–104 and should be submitted on or before January 10, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7549 Filed 12–19–05; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52948; File No. SR–MSRB–2005–11]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Definition of Solicitation Under MSRB Rules G–37 and G–38

December 13, 2005.

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 June 10, 2005, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. On December 7, 2005, the MSRB filed 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 MSRB has filed with the Commission a proposal consisting of an interpretive notice relating to the definition of solicitation for purposes of Rules G–37 and G–38. The text of the proposed rule change, as amended, is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 clarifies that the central element in determining whether a communication is a solicitation is whether the communication occurs with the purpose of obtaining or retaining municipal securities business, and makes certain other changes.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 clarifies that the central element in determining whether a communication is a solicitation is whether the communication occurs with the purpose of obtaining or retaining municipal securities business, and makes certain other changes.

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 MSRB has recently amended Rule G–38, on solicitation of municipal securities business, to prohibit brokers, dealers and municipal securities dealers (''dealers'') from making direct or indirect payments to any persons who are not affiliated persons [4] of the dealers for solicitations of municipal securities business [5] on behalf of the dealers. The proposed rule change provides interpretive guidance on the definition of ''solicitation'' as used in Rule G–38 and in Rule G–37, on political contributions and prohibitions of municipal securities business. This definition is important for purposes of determining whether dealer payments to non-affiliated persons of the dealer would be prohibited under Rule G–38. In addition, the definition is central to determining whether communications by dealer personnel would result in such personnel being considered municipal finance professionals of the dealer for purposes of Rule G–37.

The proposed rule change makes clear that the central element in determining whether a communication is a solicitation is whether the communication occurs with the purpose of obtaining or retaining municipal securities business. As a general proposition, the proposed rule change provides that a communication made under circumstances reasonably calculated to obtain or retain municipal securities business could be considered a solicitation unless the circumstances indicate otherwise. The proposed rule change provides numerous examples of circumstances where a communication may or may not be considered a solicitation, including guidance on communications with issuer representatives, promotional communications, work-related communications, communications with conduit borrowers, and communications by non-affiliated professionals.

2. Statutory Basis

The MSRB believes that the proposed rule change, as amended, is consistent with section 15B(b)(2)(C) of the Act,[6] which provides that the MSRB's rules shall:

> 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, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change, as amended, is consistent with the Act because it will further investor protection and the public interest by ensuring that dealers understand their obligations under MSRB rules designed to maintain standards of fair practice and professionalism, thereby helping to maintain public trust and confidence in the integrity of the municipal securities market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The MSRB published notices for comment on draft amendments to Rule G–38 on April 5, 2004 (the ''April 2004 Notice'') [7] and September 29, 2004 (the ''September 2004 Notice'').[8] The April 2004 Notice sought comments on draft amendments limiting payments by a dealer for the solicitation of municipal securities business on its behalf solely to its associated persons, and also provided certain guidance on the definition of solicitation. The MSRB received comments from 28 commentators, eight of which provided comments on the definition of solicitation.[9] The September 2004 Notice sought comments on revised draft amendments to Rule G–38 prohibiting a dealer from making payments for the solicitation of municipal securities business on its behalf to any person who is not an associated person of the dealer. The September 2004 Notice also provided more detailed guidance on the definition of solicitation. The MSRB received comments from 19 commentators, five of which provided comments on the definition of solicitation.[10] The comments received on the April and September 2004 Notices relating to the definition of solicitation are discussed below.[11]

Communications With Conduit Borrowers

In the April 2004 Notice, the MSRB asked whether a communication with a conduit borrower to hire a dealer as an underwriter for a private activity bond issue where the issuer ultimately must approve the underwriter for the issue should be considered an indirect communication with the issuer. In the September 2004 Notice, the MSRB stated that, from a literal perspective, any communication by a dealer with a conduit borrower intended to cause the borrower to select the dealer to serve as underwriter for a conduit issue could be considered a solicitation of municipal securities business. This is because the

[4] Rule G–38(b)(ii) generally defines an affiliated person of a dealer as an employee or other personnel of the dealer or of an affiliated company of the dealer.

[5] Municipal securities business is defined in Rule G–37 as the purchase of a primary offering from the issuer on other than a competitive bid basis (*e.g.*, negotiated underwriting), the offer or sale of a primary offering on behalf of an issuer (*e.g.*, private placement or offering of municipal fund securities), and the provision of financial advisory, consultant or remarketing agent services to an issuer for a primary offering in which the dealer was chosen on other than a competitive bid basis.

[6] 15 U.S.C. 78o–4(b)(2)(C).

[7] *See* MSRB Notice 2004–11 (April 5, 2004).

[8] *See* MSRB Notice 2004–32 (September 29, 2004), as modified by MSRB Notice 2004–33 (October 12, 2004).

[9] Letters commenting on the definition of solicitation consisted of letters from Jerry L. Chapman (''Mr. Chapman''), to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated April 22, 2004; Maud Daudon, Managing Director, Investment Banking, and John Rose, President & CEO, Seattle-Northwest Securities Corporation (''Seattle-Northwest'') to Christopher A. Taylor, MSRB Executive Director, dated May 19, 2004; Gordon Reis III, Managing Principal, Seasongood & Mayer, LLC (''Seasongood'') to Mr. Taylor, dated May 20, 2004; Bruce Moland, Vice President & Assistant General Counsel, Wells Fargo & Company (''Wells Fargo''), to Mr. Lanza dated June 2, 2004; Sarah A. Miller, General Counsel, ABA Securities Association (''ABASA''), to Mr. Lanza dated June 4, 2004; Lynette Kelly Hotchkiss, Senior Vice President and Associate General Counsel, Bond Market Association (''BMA''), to Mr. Lanza dated June 4, 2004; Robyn A. Huffman, Vice President and Associate General Counsel, Goldman Sachs & Co. (''Goldman''), to Mr. Lanza dated June 4, 2004; and James S. Keller, Chief Regulatory Counsel, PNC Capital Markets, Inc. (''PNC''), to Mr. Lanza dated June 4, 2004.

[10] Letters commenting on the definition of solicitation consisted of letters from Ms. Daudon and Mr. Rose, Seattle-Northwest, to Mr. Lanza dated December 13, 2004; Mr. Moland, Wells Fargo, to Mr. Lanza dated December 15, 2004; Ms. Hotchkiss, BMA, to Mr. Lanza dated December 15, 2004; Ms. Huffman, Goldman, to Mr. Lanza dated December 15, 2004; and Ms. Miller, ABASA, to Mr. Lanza dated December 17, 2004.

[11] The remaining comments received on the April and September 2004 Notices were discussed in SR–MSRB–2005–04. *See* Exchange Act Release No. 51561, 70 FR 20782 (April 21, 2005).

conduit borrower eventually communicates its selection of the dealer to the conduit issuer for approval, with the result that this series of communications becomes an indirect communication by the dealer through the conduit borrower to the conduit issuer with the intent of obtaining municipal securities business. However, if the dealer can establish that no reasonable nexus could exist between the making of contributions to officials of the conduit issuer and the selection of the underwriter for such conduit financing, then a communication with the borrower would be deemed not to be a solicitation for purposes of Rule G–38. For example, if a conduit issuer historically defers to its conduit borrowers' selections of underwriters without influencing the selection, communications with the conduit borrower to obtain the underwriting assignment would not be treated as a solicitation, even if that communication is relayed by the conduit borrower to the conduit issuer.

Comments Received. Several commentators stated that communications with conduit borrowers should not be considered solicitations, or that the circumstances under which they are so considered should be narrowly drawn. ABASA, BMA, PNC and Wells Fargo stated that communications with conduit borrowers generally should not be considered solicitations, whereas Mr. Chapman stated that communications should be treated as solicitations. The ABA noted that, in conduit financings, typically a complete package (including the underwriter) is presented to the selected conduit issuer, with the issuer either accepting or rejecting the package. BMA stated that in a conduit deal, if an employee is only communicating with a private obligor and not with the issuer, then there is no possibility that a contribution made by that employee to an official of such issuer would influence the underwriter selection process. ABASA and Wells Fargo asked, in the alternative, that the MSRB provide more specific guidance on what would cause a communication to be a solicitation.

ABASA and BMA characterized the MSRB's guidance in the September 2004 Notice as creating a presumption that a communication with a conduit borrower is a solicitation which can be rebutted only under narrowly drawn circumstances. They also observed that many communications with conduit borrowers occur before the identity of the issuer has been determined. As a result, they suggested that a dealer often cannot know if a communication with a conduit borrower might later be considered a solicitation since the dealer does not know if the issuer ultimately used will meet the requirements for rebutting the presumption that a communication with the borrower is a solicitation.

MSRB Response. The MSRB believes that ABASA and BMA incorrectly implied that the only way for a dealer to rebut the presumption that a communication with a conduit borrower is a solicitation is by establishing that a conduit issuer historically defers to its conduit borrowers' selections of underwriters. The September 2004 Notice provided that a communication would not be considered a solicitation if there is no reasonable nexus between the making of contributions to officials of a conduit issuer and the selection of the underwriter for a conduit financing. The method mentioned by ABASA and BMA was simply one example of how a dealer could establish that there was no such reasonable nexus.

Nonetheless, the MSRB agrees that a dealer's communication with a conduit borrower generally should not be deemed an indirect solicitation of the issuer unless a reasonable nexus can be established between the making of contributions to officials of the conduit issuer within the meaning of Rule G–37 and the selection of the underwriter for such conduit financing. A determination of whether such a reasonable nexus could exist depends on the specific facts and circumstances. The proposed rule change reflects this position.

Inform and Refer

In the April 2004 Notice, the MSRB noted that, where an issuer representative asks an associated person of a dealer whether the dealer has municipal securities capabilities, a limited affirmative response by the associated person, together with the provision to the issuer representative of contact information for dealer personnel who handle municipal securities business, generally would not be presumed to be a solicitation by such associated person. In the September 2004 Notice, the MSRB provided further elaboration and additional examples, noting in particular that the associated person could have an MFP of the dealer contact the issuer representative directly in response to such an inquiry. In both notices, the MSRB stated that, if the associated person receives compensation such as a finder's or referral fee for such business, the associated person generally would be viewed as having solicited the business.

Comments Received. In response to the April 2004 Notice, ABASA stated that, in a bank holding company, bankers should be free to inform issuers that affiliated dealers have municipal securities capabilities and provide contact information without such communication being deemed a solicitation. PNC stated that the draft amendment would ''negatively impact the ability of affiliated companies to conduct banking business and make referrals. It would require dealers to disassemble the structures and controls that have been created to address requirements of the rule.''

ABASA appreciated the clarification of the ''inform and refer'' concept provided in the September 2004 Notice. However, ABASA continued to object that the MSRB viewed the receipt of a finder's fee or referral fee as causing a communication to be considered a solicitation. ABASA stated that this would significantly add to the regulatory burden of bank dealers and, at a minimum, the MSRB should exempt any referral fees permitted under the Gramm-Leach-Bliley Act. PNC stated that dealer personnel should be permitted to approach issuer representatives to inform them of the dealer's municipal securities capabilities without such communication being considered a solicitation, but Mr. Chapman disagreed.

MSRB Response. The MSRB believes that the guidance provided in the September 2004 Notice on this topic is appropriate and has not made any further changes.

Technical Experts

Comments Received. BMA, Goldman and Seattle-Northwest requested that the MSRB explicitly exempt communications by attorneys, accountants, engineers and legislative lobbyists with issuers from the definition of solicitation. They noted that such technical experts were exempted from former Rule G–38 relating to consultants [12] and argued that such exclusion should be continued in revised Rule G–38. BMA argued that

[12] Attorneys, accountants and engineers were excluded from the definition of consultant under former Rule G–38 only so long as their sole basis of compensation from the dealer was the actual provision of legal, accounting or engineering services on the municipal securities business that the dealer is seeking. As BMA noted, the rule did not exempt legislative lobbying; rather, the MSRB had noted in a Question and Answer guidance that the activity of lobbying legislators for legislation granting an issuer authority to issue certain types of municipal securities would not, by itself, result in the lobbyist being considered a consultant. *See* Rule G–38 Question & Answer #5, dated February 28, 1996, published in *MSRB Rule Book.*

''the MSRB's broad interpretation of the meaning of solicitation means that broker-dealers would be prohibited from hiring outside persons to perform necessary services given that they would have to, as a practical matter, attend * * * meetings with issuers and will ultimately make the broker-dealer more appealing to the issuer by doing a good job.'' PNC stated that including conversations through or with secondary participants of an issue would not serve to enhance the goal of the rule. Seasongood stated that all contact by or through third parties should be considered a solicitation.

MSRB Response. The proposed rule change makes clear that, so long as non-affiliated persons providing legal, accounting, engineering or other professional services [13] are not being paid directly or indirectly for their solicitation activities,[14] they would not become subject to Rule G–38. The MSRB believes that this language adequately addresses the concerns raised by the commentators.

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 self-regulatory organization 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, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2005–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–MSRB–2005–11. 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 MSRB's offices. 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–MSRB–2005–11 and should be submitted on or before January 10, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7523 Filed 12–19–05; 8:45 am]

BILLING CODE 8010–01–P

[13] The proposed rule change does not enumerate all professional services that may be provided in connection with municipal securities business but makes clear that such services are not strictly limited to legal, accounting and engineering services (*e.g.*, another dealer serving as a syndicate member).

[14] The proposed rule change reminds dealers that the term ''payment'' under MSRB rules is broadly defined and can include, depending on the facts and circumstances, *quid pro quo* arrangements whereby a non-affiliated person solicits municipal securities business for the dealer in exchange for being hired by the dealer to provide other unrelated services.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52947; File No. SR–NASD–2005–132]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Session Fee Increase for the Regulatory Element of the Continuing Education Requirements of NASD Rule 1120

December 13, 2005.

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 November 22, 2005, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. NASD has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the NASD under Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Section 4 of Schedule A to the NASD By-Laws to increase the session fee for the Regulatory Element of the continuing education requirements of NASD Rule 1120. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

SCHEDULE A TO NASD BY-LAWS

* * * * *

Section 4—Fees

(a) through (e) No change.

(f) There shall be a session fee of [$60.00] *$75.00* assessed as to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Rule 1120.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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 Regulatory Element, a computer-based education program administered by NASD to help ensure that registered persons are kept up-to-date on regulatory, compliance, and sales practice matters in the industry, is a component of the Securities Industry Continuing Education Program (''Program'') under NASD Rule 1120. The Securities Industry/Regulatory Council on Continuing Education (''Council'')[5] was organized in 1995 to facilitate cooperative industry/regulatory coordination of the administration and future development of the Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element component of the Program, and developing and updating information about the Program for industry-wide dissemination.

It is the Council's responsibility to maintain the Program on a revenue neutral basis while maintaining adequate reserves for unanticipated future expenditures.[6] In December 2003, the Council voted to reduce the Regulatory Element session fee from $65 to $60 effective January 1, 2004, in order to reduce the reserves to a level necessary to support current and expected programs and expenses. The Council decided to review the reserve level and evaluate the Regulatory Element session fee on an annual basis. The 2004 financial review and evaluation produced no change in the Regulatory Element session fee. In September 2005, the Council's annual financial review and evaluation revealed that unless the Regulatory Element session fee were adjusted, the Council's reserves were likely to be insufficient in 2006. The reasons for the declining surplus are: (1) Lower than projected session volume resulting in a significant decrease in actual revenue over projected revenue; (2) higher delivery-related expenses beginning in 2006; and (3) costs associated with the rebuilding of PROCTOR®.[7] At its September 2005 meeting, the Council voted unanimously to increase the Regulatory Element session fee from $60 to $75, effective January 1, 2006, in order to meet costs and maintain an adequate reserve in 2006.

The proposed implementation date is January 1, 2006.

1. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] in general, and furthers the objectives of Sections 15A(b)(5) and 15A(b)(6) of the Act in particular.[9] Section 15A(b)(5) of the Act requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. Further, Section 15A(b)(6) of the Act provides that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is designed to accomplish these ends by enabling the Program to be maintained on a revenue neutral basis while maintaining adequate reserves for unanticipated future expenditures.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD 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

NASD has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2) thereunder,[11] because it establishes or changes a due, fee, or other charge imposed by the NASD. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

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–NASD–2005–132 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–132. This file number should be included on the subject line if e-mail is used. To help the

[5] The Council currently consists of 20 individuals, 14 of whom are securities industry professionals associated with NASD member firms, and six of whom represent self-regulatory organizations (the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Municipal Securities Rulemaking Board, NASD, the New York Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.).

[6] The Regulatory Element session fee was initially set at $75 when NASD established the continuing education requirements in 1995. The fee was reduced in 1999 to $65 and again in 2004 to $60. The proposed fee increase returns the Regulatory Element session fee to its original level.

[7] PROCTOR® is a technology system that supports computer-based testing and training. The Regulatory Element program uses PROCTOR® to package content, deliver, score and report results, and maintain and generate statistical data related to the Program.

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(5) and (b)(6).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19.b–4(f)(2).

[12] 15 U.S.C. 78s(b)(3)(C).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the 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–2005–132 and should be submitted on or before January 10, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7521 Filed 12–19–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52954; File No. SR–NYSE–2005–87]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Pilot to Put Into Operation Phase 1 of the NYSE HYBRID MARKET SM

December 14, 2005.

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 December 9, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On December 13, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice and order to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing a pilot to put into operation Phase 1 of the NYSE HYBRID MARKET SM (''Hybrid Market'') initiative, as proposed in SR–NYSE–2004–05 and amendments thereto (''Hybrid Market filings'') with respect to a group of securities trading on the Exchange (''Pilot'').[4] In addition, the Pilot will implement certain system changes discussed in SR–NYSE–2005–57.[5] This filing sets forth amended rules (previously described in the Hybrid Market filings) which would be operational during the Phase 1 pilot as well as certain new proposals, discussed herein. The text of the proposed rule change is available on NYSE's Web site (*http://www.nyse.co*), at the principal office of the Exchange, 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 Exchange 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 III 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 a Pilot to put into operation Phase 1 of the Hybrid Market initiative with respect to a group of securities, known as Phase 1[6] Pilot securities (''Pilot securities''). The Pilot would commence following Commission approval of the Pilot, during the week of December 12, 2005 and would terminate the earlier of: (1) 90 calendar days from the date of Commission approval, if granted, or (2) Commission approval of the Exchange's Hybrid Market proposal, if granted.

Approximately 200 securities out of the 3,600 securities listed on the Exchange (approximately 5%) have been identified as Pilot securities and are listed on Exhibit 3 of the filing.[7] In addition, the list of Pilot securities will be posted on the Exchange's Web site.

The Pilot will allow the Exchange to conduct real-time system and user testing of certain features of the Hybrid Market filings in order to be in a position to comply with the implementation of Regulation NMS.[8]

The Exchange believes the Pilot will prove beneficial from both a technology and a training perspective. It will give the Exchange the opportunity to identify and address any system problems and to identify and incorporate beneficial system changes that become apparent as a result of usage in real time and under real market conditions. The ability to have such real time user interface will be invaluable, as it is impossible to accurately anticipate behavioral changes in a development or mock-trading

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Partial Amendment dated December 13, 2005 (''Amendment No. 1''). In Amendment No. 1, the Exchange submitted Exhibit 3 to the proposed rule change, which identified the securities that would be included in the Pilot, and corrected a typographical error.

[4] *See* Securities Exchange Act Release No. 50173 (August 10, 2004), 69 FR 50407 (August 16, 2004) (Amendment No. 1 to SR–NYSE–2004–05); Securities Exchange Act Release No. 50667 (November 15, 2004), 69 FR 67980 (November 22, 2004) (Amendment Nos. 2 and 3 to SR–NYSE–2004–05) (The Exchange withdrew Amendment No. 4 and replaced it with Amendment No. 5); Securities Exchange Act Release No. 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005) (Amendment No. 5 to SR–NYSE–2004–05). *See also* Amendment No. 6 to SR–NYSE–2004–05 (September 16, 2005) and Amendment No. 7 to SR–NYSE–2004–05 (October 10, 2005).

[5] *See* Securities Exchange Act Release No. 52362 (August 30, 2005), 70 FR 53701 (September 9, 2005) (SR–NYSE–2005–57). While submitted as effective upon filing, the Exchange intended to implement these changes upon approval of the Hybrid Market filings by the Commission, if such approval is granted.

[6] *See* Securities Exchange Act Release No. 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005) (Amendment No. 5 to SR–NYSE–2004–05).

[7] The NYSE selected the Pilot securities based on the following criteria: (1) Trading location so as to include in the Pilot securities from each room and post on the floor; (2) crowd participation so as to include securities that generally have crowd participation; (3) trading characteristics so as to include securities whose trading characteristics are typically less volatile to minimize the likelihood of disruptions during the systems testing; and (4) specialist firm so as to include each of the equity specialist firms on the floor. The Pilot securities represent approximately 10% of the average daily NYSE trading volume. Telephone call between Nancy Reich Jenkins, NYSE and Kelly Riley, SEC on December 14, 2005.

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

environment. In addition, the Pilot will allow users to gain essential practical experience with the new systems and processes in a well-modulated way.

The Exchange anticipates that the Pilot will operate with minimal problems given the amount and degree of testing and training that has occurred to date. In addition, the Exchange plans to phase-in the Pilot, if approved, to allow for a controlled and moderated roll out of the new systems and capabilities.[9]

There has been extensive testing of the approximately 15 Exchange systems impacted by the Pilot, individually and collectively, both in development and production environments. This testing occurred at all levels, including development testing, automation testing, SIAC testing, NYSE testing, integrated system testing and code reviews, production environment testing, fall-back and recovery testing, and regression and new functionality testing.

In addition, there has been comprehensive training for both Floor brokers and specialists, individually and together in a mock trading environment. Training was conducted by the Exchange and was supplemented in most cases by firm-specific training conducted by member organizations for their employees. In addition, the Exchange training environment was made available to proprietary system vendors for their training sessions.

Moreover, the Exchange intends to have available at all times during the Pilot two versions of the operating software—the new version that would be operational and the original, pre-Pilot version. If a problem develops during the Pilot, the Exchange will be able to revert to the pre-Pilot software within an average time of two minutes or less.

Accordingly, the Exchange believes that the extensiveness of the testing and training, the phase-in approach and the fall-back capabilities provide significant assurances that the Pilot will operate as expected. However, in the event systems or other problems arise with the Pilot that adversely impact investors or impede the Exchange's ability to maintain a fair and orderly market, the Exchange will immediately terminate the Pilot in whole or in part, as appropriate, and return trading to current operations under current NYSE rules.

Phase 1 Pilot

During the Pilot, the following rules and provisions of the Hybrid Market initiative as outlined in the Hybrid Market filings will be operational. To eliminate possible confusion as to what rule provisions apply to Pilot securities, the Exchange has identified those new or amended rules which will be operational during the Pilot with a ''P.'' Where part of a provision of a proposed Hybrid Market rule will be operational during the Pilot, but another part of the proposed rule will not, the Exchange has noted this in the attached rule text with the designation that the section is ''intentionally omitted.'' In addition, during the Pilot, all other Exchange rules apply to Pilot securities as they do today.

NYSE Direct+® (Exchange Rules 1000–1005)

During the Pilot, NYSE Direct+® (''Direct+'') will continue to operate as it does today under current Exchange Rules 1000–1005 and subject to the same availability, restrictions and conditions, as outlined in those rules.

NYSE Floor Broker Agency Interest Files® (Exchange Rule 70.20(a)–(l)(P))

During the Pilot, the Exchange is proposing to activate the Floor broker agency file to permit brokers to enter their interest at or outside the best bid and offer in Pilot securities (also referred to as ''e-Quoting''). The following sections of proposed Exchange Rule 70.20, described in the Hybrid Market filings, would apply during the Pilot:

- 70.20(a)(i)(ii)
- 70.20(b)
- 70.20(c)(i)–(iv): Floor brokers will be able to populate the reserve file but it will be *visible* to the specialist in this phase
- 70.20(e)
- 70.20(f)
- 70.20(i)–(l)
- 70.30

During the Pilot, the following sections of proposed Rule 70.20 would *not* apply:

- Rule 70.20(d)(i)–(ii): Sweep functionality
- Rule 70.20(g)–(h): Feature permitting brokers to exclude their interest from the aggregate information available to the specialist

The above sections that are not applicable during the Pilot are intentionally omitted from the proposed rule text.

In the event that a proprietary vendor system has not been activated or vender systems or Exchange systems that have been activated otherwise become unavailable, a Floor broker who is unable to enter his or her own Floor broker agency interest has the following options:

(i) Request a specialist to enter the agency interest on behalf of the Floor broker who is unable to enter it for himself or herself;

(ii) Send an order through SuperDot;® [10]

(iii) Send a CAP–DI order [11] to the specialist;

(iv) Trade manually in the Crowd, as is done today;

(v) Ask another Floor broker to represent the order through his or her agency interest file; or

(vi) Send an order for Direct+ execution.

Rule 70.20(f)(P)

The Hybrid Market filings described proposed rule 70.20(f) which requires cancellation of agency interest files when the broker leaves the Crowd. In connection with the Pilot, the Exchange proposes to amend this provision to clarify that a Floor broker may leave the Crowd without canceling his or her agency interest files in order to recharge his or her handheld device. *See* proposed Exchange Rule 70.20(f)(P).

NYSE Specialist Interest Files℠ (Exchange Rule 104(c)(P))

During the Pilot, specialists will be able to manually layer their interest at and outside the best bid and offer, which will give specialists' bids and offers persistent standing (also referred to as s-Quotes). *See* Exchange Rule 104(c)(P). This means that if the specialist bids/offers at a price that is not the best bid/offer, but layers its interest below/above such best bid/offer, the specialist's interest will remain in the specialist interest file and be available to be displayed as the best bid/offer should better bids/offers be exhausted. The Hybrid Market filings discuss the specialists' ability to do this systemically via algorithmically generated messages sent via the NYSE Specialist API℠ (''API''). During the Pilot, however, specialists will not be

[9] The NYSE intends to phase in the Pilot gradually, beginning with a single security on the first day of the Pilot and expanding gradually over the course of four weeks. The timing of the phase-in will be adjusted depending on the extent and significance of any technical or user interface problems that might arise. Telephone call between Nancy Reich Jenkins, NYSE and Kelly Riley, SEC on December 14, 2005.

[10] SuperDot® is an electronic order-routing system used by NYSE member firms to send market and limit orders to the NYSE.

[11] *See* Exchange Rule 123A.30. The CAP–DI order guides the specialist to represent the order to ensure that the elected or converted portion goes along with the market, by not initiating a significant price change or lagging behind the market. CAP–DI orders are subject to a number of restrictions intended to minimize the specialist's discretion in handling such orders. Elected and converted CAP–DI orders that are not executed revert to CAP–DI status.

able to use systems employing algorithms to generate messages to bid, offer, or trade via the API. Accordingly, for the purposes of the Pilot, the Exchange is proposing a new rule to provide specialists with the ability to manually layer interest at and outside the Exchange best bid and offer. *See* proposed Exchange Rule 104(c)(P).

During the Pilot, specialists will not be able to disseminate NYSE Specialist Files SM via NYSE OPENBOOK® or other Exchange data distribution channels.

During the Pilot, specialists will not be able to have systems using algorithms to send messages via the API to layer their interest or to otherwise trade or quote, nor will the specialist's reserve capability be operational. Therefore, proposed Exchange Rules 104(b)–(h) will not be in effect.

Priority, Parity, and Yielding: Exchange Rules 70.20(b)(P), 72(c)–(g)(P), 104.10(6)(i)(C)P, 108(a)(P)

During the Pilot, the systemic programming of priority, parity and yielding, as proposed by the Hybrid Market filings, other than the yielding requirements for additional specialist interest, will be operational. As a result, the following rules will apply during the Pilot: 70.20(b)(P), 72(c)–(g)(P), 104.10(6)(i)(C)(P), and 108(a)(P).

The most substantive change that will apply to trading in Pilot securities will be that Floor brokers will lose their current ability to object to the specialist trading on parity with their orders unless the specialist is manually trading with them in the Crowd. However, a Floor broker's use of an e-Quote implicitly suggests his or her agreement that the specialist can be on parity with his or her orders. A Floor broker who does not want to permit the specialist to trade on parity with his or her orders may send the order through SuperDot,® enter a Direct+ order, or hit a bid/take an offer.

A Floor broker who is manually bidding or offering (*i.e.*, not through his or her agency interest file) will not be able to participate in an execution involving e-Quotes and/or s-Quotes or, as today, in Direct+ executions.

Other Exchange Rules

During the Pilot, the following rules, as amended in the Hybrid Market filings would apply to Pilot securities: Exchange Rules 60(e)(P), 117P, 122P, 123(e)P, and 132B(a)(D)(P).

Pilot Trading Example

The Exchange quotation is 20.05 bid, offered at 20.07, 3,000 x 300. The bid consists of: 1,000 shares of book interest, which arrived first and has priority; 1,000 shares of broker agency interest comprised of two brokers' bids for 500 shares each at 20.07, and 1,000 shares of specialist interest. A market order to sell 3,000 shares arrives and trades with the 20.05 bid, as follows: 3,000 shares trade and this is reported by the specialist via the Smart Report Template and the system assigns the contra-parties as follows: 1,000 shares of book interest trade first (priority), and the remaining 2,000 shares are split equally (1,000 shares each) between the floor broker agency interest files and specialist interest file, as they are on parity.

Automatic Execution of CAP–DI Orders and Stop Orders

Currently, when a trade occurs, the Exchange's system notifies the specialist if any CAP–DI or stop orders have been elected by such trade. The specialist has to then determine if there is any liquidity against which the elected orders (or portions thereof) can trade. If so, the specialist manually executes and reports trades involving the elected volume.

The Commission recently published an Exchange filing that provides that elected stop and CAP–DI volume will be automatically executed [12] to the extent that contra-side interest is available to trade with the elected orders.[13] These executions will be automatically reported, including the relevant information regarding participants to the execution (*See* Exchange Rule 123A.30, discussed below). Elected CAP–DI volume unable to trade will automatically revert to CAP–DI status, and elected stop limit orders unable to trade will become a limit order on the Display Book. Elected stop orders will be executed in the same manner as any market order. The rules regarding the election and execution of CAP–DI and stop orders remain the same. The implementation of this process will commence with the Pilot.

In connection with the Pilot, the Exchange is proposing changes to Rule 76 to clarify that elected stop and stop limit orders are exempt from the requirement that a member expose the order for possible price improvement before crossing it.

In addition, the Exchange is proposing amendments to Rule 13 with respect to stop and stop limit orders. Certain of these changes were proposed in the Hybrid Market filings. With respect to the Pilot, the Exchange is proposing additional changes to Rule 13 to add language that provides for the possibility of manual representation of stop and stop limit orders in the Crowd.

Converted CAP–DI Orders and Direct+

In addition, commencing with the Pilot, converted CAP–DI orders will be systemically represented to enable them to participate in NYSE Direct+® executions under current Rules 1000–1005.[14]

Automation of Parity Between Specialist and Elected CAP–DI Orders

Exchange Rule 123A.30 provides that a Floor broker may permit a specialist to trade on parity with CAP–DI orders. The rule currently provides that if a specialist is on parity with one or more CAP–DI orders, at no time may the specialist participate for its own account in an amount in excess of that which each CAP–DI order would receive, except that the specialist may participate for its own account to an extent greater than any particular CAP–DI order where the size specified on such order has been satisfied. A specialist trading on parity with a CAP–DI order remains subject to the limitations in Exchange Rule 104.10 as to transactions for his or her own account effected on destabilizing ticks.

Commencing with the Pilot, the Exchange will systemically ensure that the specialist's participation when trading along with CAP–DI orders is in accordance with the parity requirements of Rule 123A.30. The system will assign the proper number of shares to the specialist and CAP–DI orders. The Exchange filed [15] this change for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(5) [17] thereunder.

Automatic Conversions of CAP–DI Orders

Current Exchange Rule 123A.30 also provides that specialists have the ability, subject to certain restrictions noted in the rule, to convert CAP–DI orders to participate in transactions or to bid or offer, without an electing trade.

Proposed Exchange Rule 123A.30(a)(P) [18] provides in part that the elected or converted portion of a ''percentage order that is convertible on a destabilizing tick and designated

[12] This automatic execution will not be done through NYSE Direct+, but rather a different system. Therefore, such execution is not subject to the volume limitations of the Direct+ rules.

[13] *See supra* note 5.

[14] *See id.*

[15] *See id.*

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(5).

[18] This rule is parallel to amendments made to Rule 123A.30. *See* Securities Exchange Act Release No. 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005) (Amendment No. 5 to SR–NYSE–2004–05).

immediate execution or cancel election'' (''CAP–DI order'') may be automatically executed. An elected or converted CAP–DI order on the same side of the market as an automatically executed electing order may participate in a transaction at the bid (offer) price if there is volume associated with the bid (offer) remaining after the electing order is filled in its entirety. An elected or converted CAP–DI order on the contra-side of the market as an automatically executed electing order may participate in a transaction at the bid (offer) price if there is volume remaining in the electing order.

In addition, the Exchange is proposing to add new section (iv)(P) to proposed Exchange Rule 123A.30(a)(P) to provide that when a specialist is bidding or offering and an automatic execution occurs with such bid/offer, marketable CAP–DI orders on the Display Book® on the same side as the specialist's interest will be automatically actively converted to participate in this execution, with the system assigning the proper number of shares to the specialist and CAP–DI orders, as discussed above. This will allow CAP–DI orders to better participate in executions.

However, in certain instances, an automatic conversion of marketable CAP–DI orders will not occur even though the specialist is trading for its own account. This will occur where the execution that included automatically converted CAP–DI orders elects a contra-side stop or stop limit order. In this situation, pursuant to current Exchange Rule 123A.40, the specialist, as party to the election of the stop order, owes such elected stop order an execution at the same price as the specialist traded. The execution of such stop orders, in which the specialist is the contra-party, may be manual [19] or automatic,[20] depending upon whether any specialist interest remains at the execution price. In either situation, marketable CAP–DI interest at that price will not be automatically converted to participate along with the specialist. However, the specialist will be alerted to the fact there are CAP–DI orders on the Display Book® capable of trading so that he or she can take appropriate action.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act [21] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, 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 Exchange believes that the proposed rule change, as amended, is also designed to support the principles of Section 11A(a)(1) of the Act [22] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer.

B. Self Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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

See the SEC's Web site (*http://www.sec.gov*) for the comment letters received on the Hybrid Market initiative and a copy of the Exchange's response to the letters.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2005–87 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–87. 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–2005–87 and should be submitted on or before January 10, 2006.

IV. Commission's Finding and Order Granting Accelerated Approval of the Proposed Rule Change

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.[23] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 6(b)(5) of the Act because the proposal is 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.

With this proposed rule change, the Exchange has requested temporary

[19] If there is no specialist interest remaining in the bid/offer, and the specialist must guarantee an execution to the stop order at the electing price pursuant to Rule 123A.40, the specialist must do a manual transaction to guarantee that the stop order receives the same price as the specialist.

[20] If there is specialist interest remaining in the bid/offer and the specialist must guarantee an execution to the stop order at the electing price pursuant to Rule 123A.40, the Display Book system will automatically execute the remaining specialist interest against the elected stop order at the same price the specialist traded.

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78k–1(a)(1).

[23] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

approval by the Commission of certain features of its Hybrid Market, so that it may begin live systems testing in a limited group of stocks. According to the Exchange, this Pilot is necessary so that the Exchange can maintain its planned implementation schedule for the Hybrid Market and meet the Regulation NMS compliance dates.[24] The Commission recognizes that certain of the processes that NYSE has proposed to begin testing have generated comment in the Hybrid Market filings. The Commission wishes to emphasize that it continues to review the larger Hybrid Market filings, including the processes included in this Pilot.[25] The Commission is considering all of the comments submitted in response to the Hybrid Market filings and has not reached a decision on whether they should be approved or disapproved. The Commission, however, believes that due to the limited nature of the Pilot and its short duration, that it is consistent with the Act to allow NYSE to begin testing its new systems with this Pilot.

The NYSE explained in its filing that it has tested these functions extensively but that it needs to test them in an actual trading environment to ensure that they operate as intended. Accordingly, NYSE represented that it does not anticipate any significant problems arising from the Pilot. However, NYSE will immediately terminate the Pilot, in whole or in part, as appropriate, should any systems or other problems arise that adversely impact the protection of investors or impede its ability to maintain a fair and orderly market, and return trading to its current operations under current NYSE rules.[26]

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[27] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice in the **Federal Register**. The Pilot, which as discussed above is limited in scope and duration, will allow the NYSE to conduct real-time system and user testing of certain features of the proposed Hybrid Market. According to NYSE, such testing should be beneficial from both a technology and a training perspective. Although preliminary steps have been taken—the NYSE has provided training for both Floor brokers and specialists, many member organizations also provided firm-specific training for their employees, and proprietary system vendors were able to utilize the NYSE trading environment for their training sessions—the Pilot should give the Exchange the opportunity, in advance of the compliance date of Regulation NMS, to identify and address any system problems with these particular rules under the proposed Hybrid Market. Further, the Pilot should allow users to gain essential practical experience with the new systems and processes. Therefore, the Commission finds that immediate implementation of the Pilot, which is limited in both scope and duration, should permit NYSE to remain on schedule to implement the Hybrid Market filings, if approved by the Commission so that it may meet the Regulation NMS compliance dates.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2005–87), as amended, is hereby approved on an accelerated basis until March 14, 2006 or the Commission otherwise acts on the Hybrid Market filings.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–24251 Filed 12–19–05; 8:45 am]

BILLING CODE 8010–01–P

[24] NYSE has represented that it has proposed the Hybrid Market with the intent that it will entitle NYSE quotations to protection under Rule 611 as well as to comply with its obligations under this rule. The compliance date for certain rules adopted under Regulation NMS is June 29, 2006. 17 CFR 242.611.

[25] The Commission notes that the scope of the Pilot is extremely limited. This Pilot is intended to enable NYSE to technologically test certain features of its Hybrid Market proposal. Other significant features of the Hybrid Market proposal, such as the expansion of Direct+ and the ability of specialists to electronically interact with the Display Book, are not included in this Pilot. The NYSE represented that it expects to be able to use the results of the systems testing in evaluating and addressing any technology issues related to its Hybrid Market proposal that become apparent.

[26] The Exchange stated that it would be able to revert back to pre-Pilot operations within an average of two minutes or less. The Exchange will notify the public via its Web site if the Pilot is terminated in whole or in part. In addition, the Exchange will notify floor members at the post if the Pilot is terminated in whole or in part.

[27] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52951; File No. SR–NYSE–2004–39]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving a Proposed Rule Change and Partial Amendment No. 1 To Amend Exchange Rule 431 (Margin Requirements)

December 14, 2005.

I. Introduction

On July 12, 2004, the New York Stock Exchange, Inc. (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission'') a proposed rule change to amend specified provision of Exchange Rule 431 (margin requirements) pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act'')[2] and Rule 19b–4 thereunder.[3] On September 29, 2005, the Exchange filed a partial amendment to its proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on November 10, 2005.[5] The Commission received no comments on the proposal.

II. Description

The Exchange has proposed amendments to Rule 431 (margin requirements) that will recognize specific additional complex option spread strategies and set margin requirements commensurate with the risk of such spread strategies. These complex spread strategies are a combination of two or more basic option spreads that are already covered under Exchange Rule 431. In addition, the Exchange has proposed the elimination of the two-dollar standard exercise price interval limitation for listed options and certain terminology with respect to ''permitted offsets,'' as defined in its Rule. The proposed amendments described below have been developed in conjunction with the Chicago Board Options Exchange (''CBOE'').

A. Complex Option Spreads

As noted, the Exchange has proposed amendments to Rule 431 to recognize

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a et seq.

[3] 17 CFR 240.19b–4.

[4] SR–NYSE–2004–39: Amendment No. 1. The NYSE, in coordination with the Chicago Board Options Exchange, Incorporated (''CBOE''), filed the partial amendment to conform the complex options spreads strategies to which its rule amendments apply to those of the CBOE.

[5] *See* Securities Exchange Act Release No. 52738 (Nov. 4, 2005); 70 FR 68501 (Nov. 10, 2005).

certain additional complex option spread strategies that are the net result of combining two or more spread strategies that are currently recognized in the Exchange's margin rules. The netting of contracts in option series common to each of the currently recognized spreads in an aggregation reduces it to the complex spread strategies outlined below.

The Exchange states that basic option spreads can be paired in such ways that they offset each other in terms of risk. The total risk of the combined spreads is less than the sum of the risk of both spread positions if viewed as stand-alone strategies. The specific complex spread strategies listed below are structured using the same principles as, and are essentially expansions of, the advanced spreads currently allowed in Rule 431.

Currently, Rule 431 recognizes and prescribes margin requirements for advanced spread strategies known as the ''butterfly spread'' and the ''box spread.'' However, the Exchange noted that these option spreads are limited in scope and that its proposal expands upon the types of pairings that would qualify for butterfly spread and box spread treatment.

Exchange Rule 431(f)(2)(G)(i) recognizes ''calendar spreads,'' also known as ''time spreads,'' but these spreads are not identified as such. The Exchange has proposed to define this term as ''the sale of one option and the simultaneous purchase of an option with a more distant expiration date, both specifying the same underlying component with the same exercise price where the long options do not expire before the short option with the longest term expiration'' in the definition section of the Rule (NYSE 431(f)(2)(C)) because some of the complex spreads recognized in this proposal will include this component of spread strategies.

The Exchange noted that to be eligible for the margin requirements in the proposal, a complex spread must be consistent with one of the seven patterns specified below. The expiration months and the sequence of the exercise prices must correspond to the same pattern, and the intervals between the exercise prices must be equal.

Under the proposal, members and member organizations will be required to obtain initial and maintenance margin for the subject complex spreads, whether established outright or through netting, of not less than the sum of the margin required on each basic spread in the equivalent aggregation.

The Exchange noted that the basic requirements for complex options spreads are as follows: (a) The complex spreads must be carried in a margin account; (b) European-style options are prohibited for complex spread combinations having a long option series that expires after the other option series. Only American-style options may be used in these combinations. Additionally, the intervals between exercise prices must be equal, and each complex spread must comprise four option series, with the exception of a Long Calendar Butterfly Spread, which must comprised of three option series.

According to the Exchange, the sum of the margin required on each currently recognized spread in each of the applicable aggregations renders a margin requirement for the subject complex spread strategies as stated below. The additional complex option strategies and maintenance margin requirements are as follows: (1) A Long Condor Spread comprised of two long Butterfly Spreads; (2) a Short Iron Butterfly Spread comprised of one long Butterfly Spread and one short Box Spread; (3) a Short Iron Condor Spread comprised of two long Butterfly Spreads and one short Box Spread; (4) a Long Calendar Butterfly Spread comprised of one long Calendar Spread and one long Butterfly Spread; (5) a Long Calendar Condor Spread comprised of one long Calendar Spread and two long Butterfly Spreads; (6) a Short Calendar Iron Butterfly Spread comprised of one long Calendar Spread plus one long Butterfly Spread and one short Box Spread; and (7) a Short Calendar Iron Condor Spread comprised of one Long Calendar Spread plus two long Butterfly Spreads and one short Box Spread.

The Exchange stated that the purpose and benefit of the proposal is to set levels of margin that more precisely represent the actual net risk of the option positions in the account and to enable customers to implement these strategies more efficiently.

B. Permitted Offsets

Currently, Exchange Rule 431(f)(2)(J) limits permitted offsets [6] for specialists and market makers in options to option series that are ''in-or-at-the-money.'' [7] Recently, various options exchanges have provided for the listing of options with one-dollar strike intervals in a number of classes. The Exchange stated that as a result, the use of securities to hedge option series that have one-dollar strike intervals has unintentionally become more restrictive.

The Exchange has proposed a rule change to eliminate the two-dollar standard exercise price interval limitation for listed options and the definition of ''in-or-at-the-money.'' As proposed, Rule 431(f)(2)(J) would require permitted offset transactions be effected for specialist or market-making purposes such as hedging, risk reduction, rebalancing of positions, liquidation, or accommodation of customer orders, or other similar specialist or market-making purposes, while prohibiting trading in an underlying security that is not related to specialist or market making option activities, or that does not constitute a reasonable hedge.

Because clearing firms have risk monitoring systems that alert them to unhedged positions and haircut requirements pursuant to Rule 15c3–1 [8] of the Exchange Act [9] perform a similar function as NYSE margin requirements relative to providing adequate risk coverage to broker-dealers, the Exchange believes that the elimination of the two-dollar standard exercise price limitation and definition of ''in-or-at-the-money'' will not diminish the ''safety and soundness'' protections that Rule 431 provides.

III. Discussion and Commission Findings

After careful review, 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.[10] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[11] which requires that the rules of the exchange be designed, among other things, to remove impediments to and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. The Commission finds that amending the rules to permit complex option spread strategies that are the net result of combining two or more spread strategies that are currently recognized in the Exchange's margin rules is consistent

[6] NYSE Rule 431(f)(2)(J) defines a permitted offset position as, in the case of an option in which a specialist makes a market, a position in the underlying asset or other related assets, and in the case of other securities in which a specialist makes a market, a position in options overlying the securities in which a specialist makes a market.

[7] NYSE Rule 431(f)(2)(J) defines the term ''in or at the money'' as the current market price of the underlying security is not more than two standard exercise intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option.

[8] 17 CFR 240.15c3–1.

[9] 15 U.S.C. 78a.

[10] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

with the requirements of Section 6(b)(5) because the amendments will allow the Exchange to set levels of margin that more precisely represent the actual net risk of the option positions in the account and enable customers to implement these strategies more efficiently.

The Commission further finds elimination of the two-dollar standard exercise price interval limitation for listed options and elimination of the definition of ''in-or-at-the-money'' are consistent with the requirements of Section 6(b)(5). The rules changes should allow specialists and market makers to hedge risk related to their options positions while prohibiting trading in an underlying security that is not related to specialist or market making option activities, or that does not constitute a reasonable hedge.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–NYSE–2004–39), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7525 Filed 12–19–05; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52935; File No. SR–PCX–2005–127]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Fees and Charges

December 9, 2005.

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 November 25, 2005, the Pacific Exchange, Inc. (''PCX'' 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 Exchange. PCX has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX proposes to amend its Schedule of Fees and Charges in order to include a provision that deals with royalty, or license fees, that are passed on to market participants on options trades that are part of an Option Strategy Execution.

The text of the proposed rule change is available on the Exchange's Internet Web site (*http://www.pacificex.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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

PCX is proposing this change to the PCX Schedule of Rates and Charges so that the Exchange may continue to pass on the full amount of any royalty or license fees to trade participants, even when total transaction fees are capped in association with a defined Options Strategy Execution. PCX has established a cap on the transaction fees it charges to market participants that engage in certain strategy executions, as defined in the PCX Schedule of Fees and Charges. PCX represents that the cap was established because the referenced Options Strategy Executions are generally large volume trades done by professionals whose profit margins are generally narrow. The Exchange caps the transaction fees associated with such executions at $1,000 per strategy execution, with a monthly cap of $50,000 per initiating firm.

Certain classes of options listed on PCX have as their underlying issue licensed products that carry a royalty fee on every contract traded. These fees are assessed by the issuing agency, and are not Exchange transaction fees. License fees, or royalty fees, that are charged to the Exchange are passed on to the actual participants executing the trade. Even though some of the fees are passed on, the fee cap would prevent PCX from recovering these fees in their entirety if they were to be included as transaction fees. If royalty fees are included as transaction fees, PCX would face the possibility of having to pay out substantial fees while the fee cap would limit the amount the Exchange would be able to pass on to trade participants. Because of the negative financial implications to the Exchange, PCX will not include license or royalty fees, which are passed on to trade participants in connection with trades that are done as part of an Options Strategy Execution, as part of the transaction fees counting towards both the $1,000 per trade transaction fee cap and the $50,000 per month fee cap.

2. Statutory Basis

The Exchange believes that proposal is consistent with Section 6(b) of the Act,[5] in general, and Section 6(b)(4)[6] in particular, in that it provides for the equitable allocation of dues, fees, and other charges among its members.

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

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

Rule 19b–4(f)(2)[8] thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–PCX–2005–127 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–PCX–2005–127. 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 the filing also will be available for inspection and copying at the principal office of PCX. 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–PCX–2005–127 and should be submitted on or before January 10, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7524 Filed 12–19–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Reporting Changes that Affect Your Social Security Payment—20 CFR 404.301–305, .310–311, .330–.333, .335–.341, .350–.352, .370–.371, .401–.402, .408(a), .421–.425, .428–.430, .434–.437, .439–.441, .446–.447, .450–.455, .468—0960–0073. SSA uses the information collected on Form SSA–1425 to determine continuing entitlement to Title II Social Security benefits and to determine the proper benefit amount. The respondents are Title II beneficiaries receiving SSA retirement, disability or survivor's auxiliary benefits who need to report an event that could affect payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 36,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 3,000 hours.

2. Workers' Compensation/Public Disability Questionnaire—20 CFR 404.408—0960–0247. Section 224 of the Social Security Act provides for the reduction of disability insurance benefits (DIB) when the combination of DIB and any workers' compensation (WC) and/or certain Federal, State or local public disability benefits (PDB) exceeds 80% of the worker's predisability earnings. Form SSA–546 is used to collect the data necessary to determine whether or not the worker's receipt of WC/PDB payments will cause a reduction of DIB. The respondents are applicants for the Title II DIB.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 25,000 hours.

3. Medicaid Use Report—20 CFR 416.268—0960–0267. The information required by this regulation is used by SSA to determine if an individual is entitled to special Title XVI Supplemental Security Income (SSI) payments and, consequently, to Medicaid benefits. The respondents are SSI recipients whose payments were stopped based on earnings.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 3,000 hours.

4. Supplemental Security Income Claim Information Notice—20 CFR 416.210—0960–0324. Form SSA–L8050–U3 is used by SSA to ensure that all sources of potential income that can be used to provide for an SSI beneficiary's own support and maintenance are utilized. SSI is intended to supplement other income an individual has available. Respondents are businesses and applicants/recipients of SSI who may be eligible for benefits from public or private programs.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 7,500.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 1,250 hours.

5. Application Statement for Child's Insurance Benefits—20 CFR 404.350–0368, 404.603, and 416.350—0960–0010. Title II of the Social Security Act provides for the payment of monthly benefits to the children of an insured retired, disabled, or deceased worker, if certain conditions are met. Form SSA–4–BK is used by SSA to collect information needed to determine whether the child or children are entitled to benefits. The respondents are children of the worker or individuals who complete this form on their behalf.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 1,740,000.

Frequency of Respondents: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 435,000 hours.

6. National Employment Activity and Disability Survey—0960–0666

Background

The Ticket to Work (TTW) program was established by the Ticket to Work and Work Incentives Improvement Act of 1999. The program will provide eligible Social Security Disability Insurance (SSDI) and SSI disability beneficiaries with a Ticket, which can be used to obtain vocational rehabilitation (VR) or employment services through participating providers, called Employment Networks (ENs). The goal of the TTW program is to assist participants in returning to work at a level above the Substantial Gainful Activity (SGA) level. The program is expected to increase beneficiary demand for employment-related services and activities. It is also expected to increase the number and diversity of providers in response to the less restrictive participation requirements and increased consumer demand for services.

The National Employment Activity and Disability Survey

The National Employment Activity and Disability Survey will collect data on the work-related activities of SSI and SSDI beneficiaries as the TTW program, and other initiatives designed to improve beneficiary employment outcomes, are implemented. The TTW Survey is specifically designed to be a significant resource for the formal evaluation of TTW, but SSA anticipates that the survey will provide useful information for a variety of evaluation and policy analysis purposes, especially related to current efforts that attempt to improve return to work. The survey questionnaire focuses on information about beneficiaries and their work-related activities that cannot be obtained from SSA's administrative records. The survey will provide information about: (1) Beneficiaries who assign their Tickets to ENs, and their experience in the program; (2) beneficiaries who do not assign their Tickets, and the reasons why they do not, including involuntary non-participants; (3) the employment outcomes of Ticket users and other beneficiaries; and (4) the use of employment services by Ticket users and other beneficiaries. The respondents will be selected from SSI and SSDI disabled beneficiaries who meet the Ticket to Work program eligibility requirements.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 5,538.

Frequency of Response: 1.

Average Burden Per Response: 47 minutes.

Estimated Annual Burden: 4,338 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. Private Printing and Modification of Prescribed Applications and Other Forms—20 CFR 422.527—0960–0663. This regulation mandates that non-government persons or organizations who wish to reproduce, duplicate, or privately print any application or other form owned by SSA must receive written authorization from the Agency to do so. The respondents are private persons or groups who wish to reproduce, duplicate, or privately print an SSA application or form.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 9.

Frequency of Response: 36.

Average Burden Per Response: 8 minutes.

Estimated Annual Burden: 43 hours.

2. Public Information Campaign—0960–0544. SSA sends public information materials (*e.g.:* public service announcements, news releases, educational tapes) to public broadcasting systems so these media sources can inform the general public about the Agency's various programs and activities. To track media usage of these materials, SSA conducts the Public Information Campaign, a bi-annual solicitation of feedback from the target public media sources via business reply cards. The respondents are public broadcasting systems who are sent information about various SSA programs to disseminate to the public. **Note:** Please note that this collection was accidentally allowed to expire by OMB.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 8,000.

Frequency of Response: 2.

Average Burden Per Response: 1 minute.

Estimated Annual Burden: 267 hours.

Dated: December 13, 2005.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E5–7514 Filed 12–19–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review, Request for Comments; Approval of a New Information Collection Activity, Pilot Training and Experience With Transport Category Rudder Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection. The FAA has undertaken an effort to improve aviation safety by

collecting data on pilots' training and experience with transport category rudder control systems. A **Federal Register** notice for public comment was published on April 12, 2005, vol 70, #69, page 19144.

DATES: Please submit comments by January 19, 2006.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Pilot Training and Experience with Transport Category Rudder Control Systems.

Type of Request: Approval of a new collection.

OMB Control Number: 2120–xxxx.

Form(s): None.

Affected Public: A total of 1,000 pilots.

Frequency: The information is conducted on a one-time basis.

Estimated Average Burden Per Response: 30 minutes.

Estimated Annual Burden Hours: An estimated 500 hours annually.

Abstract: The FAA has undertaken an effort to improve aviation safety by collecting data on pilots' training and experience with transport category rudder control systems.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on December 14, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 05–24273 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review, Request for Comments; Renewal of an Approved Information Collection Activity, Aircraft Certification Systems Evaluations Program (ACSEP) Evaluation Customer Feedback Report

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for the renewal of a currently approved information collection. The information will be collected from holders of FAA production approvals and selected suppliers to obtain their input on how well the agency is performing the administration and conduct of the Aircraft Certification Systems Evaluation Program (ACSEP). The Agency will use the information as a customer service standard to continually improve ACSEP. A notice was published in the **Federal Register** announcing our intention to request renewal of this collection on September 6, 2005, vol 70, #171, pages 53039–53040.

DATES: Please submit comments by January 19, 2006.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Aircraft Certification Systems Evaluations Program (ACSEP) Evaluation Customer Feedback Report.

Type of Request: Renewal of an approved collection.

OMB Control Number: 2120–0605.

Form(s): ACSEP Customer Service Feedback Form.

Affected Public: A total of 200 pilots.

Frequency: The information is conducted on an as-needed basis.

Estimated Average Burden Per Response: Approximately 30 minutes per response.

Estimated Annual Burden Hours: An estimated 100 hours annually.

Abstract: The information will be collected from holders of FAA production approvals and selected suppliers to obtain their input on how well the agency is performing the administration and conduct of the Aircraft Certification Systems Evaluation Program (ACSEP). The Agency will use the information as a customer service standard and to continually improve ACSEP.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on December 14, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 05–24274 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review, Request for Comments; Renewal of an Approved Information Collection Activity, Pilots Convicted of Alcohol or Drug-Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for the renewal of a currently approved information collection. 14 CFR Part 61 requires airmen to notify the FAA of any conviction or administrative action resulting from any alcohol or drug related motor vehicle offense within 60 days of the offense. A notice was published in the **Federal Register** announcing our intention to request renewal of this collection on September 6, 2005, vol 70, #171, pages 53039–53040.

DATES: Please submit comments by January 19, 2006.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Pilots Convicted of Alcohol or Drug-Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedures.

Type of Request: Renewal of an approved collection.

OMB Control Number: 2120–0543.

Form(s): None.

Affected Public: A total of 970 pilots.

Frequency: The information is conducted on an as-needed basis.

Estimated Average Burden Per Response: Approximately 10 minutes per response.

Estimated Annual Burden Hours: An estimated 162 hours annually.

Abstract: 14 CFR Part 61 requires airmen to notify the FAA of any conviction or administrative action resulting from any alcohol or drug related motor vehicle offense within 60 days of the offense.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on December 14, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 05–24275 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA 2005 22020]

Environmental Impacts: Policies and Procedures

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice; request for comment.

SUMMARY: The Federal Aviation Administration (FAA) proposes to revise its procedures for implementing the National Environmental Policy Act, Order 1050.1E, Environmental Impacts: Policies and Procedures, with proposed Order 1050.1E, Change 1. The revisions in proposed Order 1050.1E, Change 1, include: Changes for clarification; changes for consistency; a change for addition of information; corrections; editorial changes, and the addition of Categorical Exclusion 311f for prohibited areas. This notices provides the public opportunity to comment on the proposed changes. All comments on the proposed changes will be considered in preparing the final version of FAA Order 1050.1E, Change 1.

DATES: Comments must be received on or before January 19, 2005.

ADDRESSES: Comments should be mailed, in triplicate, to the Federal Aviation Administration (FAA) Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. FAA 2005 22020, 800 Independence Avenue, SW., Room 915G, Washington, DC 20591. Comments may be inspected in Room 915G between 8:30 a.m. and 5 p.m., weekdays except Federal Holidays.

Commenters who wish the FAA to acknowledge the receipt of their comments must submit with their comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA 2005 22020.'' The postcard will be dated-stamped by the FAA and returned to the commenter.

SUPPLEMENTARY INFORMATION: The National Environmental Policy Act (NEPA) and implementing regulations promulgated by the Council on Environmental Quality (CEQ) (40 CFR parts 1500–1508) establish a broad national policy to protect the quality of the human environment and provide policies and goals to ensure that environmental considerations and associated public concerns are given careful attention and appropriate weight in all decisions of the Federal Government. Section 102(2) of NEPA and 40 CFR 1505.1 require Federal agencies to develop and, as needed, revise implementing procedures consistent with the CEQ regulations. The FAA's current Order 1050.1E, Environmental Impacts: Policies and Procedures, provides FAA's policy and procedures for complying with the requirements of: (a) The CEQ regulations for implementing the procedural provisions of NEPA; (b) Department of Transportation (DOT) Order DOT 5610.1C, Procedures for Considering Environmental Impacts, and (c) other applicable environmental laws, regulations, and executive orders and policies. The FAA is proposing to amend Order 1050.1E with Order 1050.1E, Change 1.

Request for Comment

As part of revising its environmental order, the FAA is seeking public comment regarding the proposed changes as described in the following synopsis of changes.

Synopsis of Proposed Changes

The proposed FAA Order 1050.1E, Change 1, Environmental Impacts: Policies and Procedures, includes additions or changes to the current version of FAA Order 1050.1E which may be of interest to the public and other government agencies and organizations. The revised Order 1050.1E, Change 1, would institute changes in the following chapters and sections of Appendices A and C. Changes are shown by *italic* text.

Chapter 3. Advisory and Emergency Actions and Categorical Exclusions

(1) Ch. 3, Para 301c: Change for clarification. The category of ''warning areas'' has been added to the list of advisory actions. FAA regulations define ''warning area'' as airspace of defined dimensions, extending from 3 nautical miles outward from the coast of the United States, that contain activity that may be hazardous to nonparticipating aircraft. (see 14 CFR § 1.1). The purpose of a warning area is to warn nonparticipating pilots of the potential danger. Designation of a warning area is not necessary for the hazardous activity to occur. Therefore, the FAA is proposing to classify designation of warning areas, like designation of alert areas, as an advisory action.

301c. Designation of alerts areas *and warning areas* under FAA Order 7400.2, Procedures for Handling Airspace Matters.

(2) Ch. 3, Para. 304c: Change for clarification. The paragraph was revised to include coastal zones in the list of

examples of a natural, ecological, or scenic resource.

304c. An impact on natural, ecological (e.g., invasive species), or scenic resources of Federal, Tribal, State, or local significance (for example: Federally listed or proposed endangered, threatened, or candidate species or designated or proposed critical habitat under the Endangered Species Act); resources protected by the Fish and Wildlife Coordination Act; wetlands; floodplains; *coastal zones*; prime, unique, State or locally important farmlands; energy supply and natural resources; and wild and scenic rivers, including study or eligible river segments and solid waste management.

(3) Ch. 3, Para. 309c: Editorial Change. The word ''system'' was removed following the word ''ILS'' in line 11. The word was removed because it was duplicative. The sentence now reads ''* * * (establishment or relocation of an ILS is not included * * *''.

309c. Federal financial assistance for, or ALP approval of, or FAA installation or upgrade of facilities and equipment, other than radars, on designated airport or FAA property or launch facility. Facilities and equipment means FAA communications, navigation, surveillance and weather systems. Weather systems include hygrothermometers, Automated Weather Observing System (AWOS), Automatic Surface Observation System (ASOS), Stand Alone Weather Sensors (SAWS), Runway Visual Range (RVR), other essentially similar facilities and equipment that provides for modernization or enhancement of the service provided by these facilities. Navigational aids include Very High Frequency Omnidirectional Range (VOR), VOR Test facility (VOT), co-located VOR's and Tactical Aircraft Control and Navigation (TACAN) (VORTAC), Low Power TACAN, Instrument Landing System (ILS) equipment or components of ILS equipment (*establishment or relocation of an ILS* is not included; an EA is normally required; see paragraph 401i), Wide Area Augmentation System (WAAS), Local Area Augmentation System (LAAS), other essentially similar facilities and equipment, and equipment that provides for modernization or enhancement of the service provided by that facility, such as conversion of VOR to VORTAC or conversion to Doppler VOR (DVOR), or conversion of ILS to category II or III standards. FAA Order 6820.10 ''VOR, VOR/DME, and TACAN Siting Criteria'' governs the installation of VOR/VOT/VORTAC-type equipment. These facilities are typically located within a 150 ft. × 150 ft parcel, with a total structure height reaching approximately 50-ft in height. (ATO, APP, AST)

(4) Ch. 3, Para. 311f: Addition of Categorical Exclusion (CATEX) 311f., Establishment or modification of prohibited areas. In its initial notice concerning Order 1050.1E, the FAA proposed a CATEX for the ''[e]stablishment or modification of Special Use Airspace (SUA), (e.g., restricted areas, warning areas), and military training routes for subsonic operations that have a base altitude of 3,000 feet above ground level (AGL), or higher.'' In the preamble to the final Order 1050.1E, the FAA announced that it was removing this CATEX for further study. For the reasons given below, the FAA is now proposing a separate CATEX for prohibited areas, a type of SUA.

Prohibited areas are airspace designated under 14 CFR part 73 within which no person may operate an aircraft without permission of the using agency (see 14 CFR 1.1). The FAA establishes prohibited areas when necessary to prohibit flight over an area on the surface in the interest of national security or welfare. It is possible that the establishment or modification of a prohibited area could necessitate a revision of air traffic control procedures. However, such a revision generally would only affect aircraft operating under instrument flight rules over 3,000 feet AGL unless they are arriving or departing within an airport environment. Prohibited areas are not normally established within the airport environment. Revised air traffic control procedures at 3,000 feet or more AGL are already covered by the CATEX in paragraph 311i of Order 1050.1E, as are procedures below 3,000 feet AGL that do not cause air traffic to be routinely routed over noise sensitive areas. The proposed CATEX below incorporates relevant language from the existing CATEX in paragraph 311i.

311f. Establishment or modification of prohibited areas, unless the establishment or modification would affect instrument procedures conducted below 3,000 feet AGL that cause air traffic to be routinely routed over noise sensitive areas. *(ATO)*

(5) Ch. 4, Para 401p: Change for clarification. Text was added to the paragraph to clarify the types of SUA actions that are subject to environmental review.

401p. Special Use Airspace (unless otherwise explicitly *listed as an advisory action or* categorically excluded under Chapter 3 of this Order). This airspace shall not be designated, established, or modified until:

(6) Ch. 4, Para 401p.(5): Change for clarification. Text was added to the paragraph to differentiate between temporary and permanent changes to SUA and to be consistent with categorical exclusion 307e. Permanent changes to SUA normally require an EA. Temporary changes (e.g., temporary military operations area (MOA)) are established by issuing a Notice to Airman (NOTAM). NOTAMs are categorically excluded actions under Paragraph 307e.

(5) The provisions of p(1)–(4) of this paragraph are not applicable to special use airspace actions if minor adjustments are made such as raising the altitudes; if a change is made in the designation of the controlling or using agency; *or if the special use airspace action is temporary in nature and does not exceed 90 days (e.g., temporary military operations area (MOA)).*

(7) Ch. 4, Para 404e: Change for consistency. Two sentences would be revised to change ''should'' to ''shall'' and ''coordinated'' to ''reviewed'' to be consistent with Para. 406c. The sentences now read ''For projects that originate in or are approved at FAA headquarters, the EA and FONSI should be coordinated with AGC for legal sufficiency. For projects that originate in and are approved by the regions, the EA and FONSI should be reviewed by Regional Counsel''.

404e. Internal review of the EA is conducted by potentially affected FAA program offices having an interest in the proposed action to assure that all FAA concerns have been addressed technically, and with AGC or Regional Counsel to assure that the EA is legally sufficient. For projects that originate in or are approved at FAA headquarters, the EA and FONSI *shall be reviewed by* AGC for legal sufficiency. For projects that originate in and are approved by the regions, the EA and FONSI *shall* be reviewed by Regional Counsel. The responsible FAA official should contact the program offices to determine appropriate levels of coordination. The responsible FAA official should consult with AEE (AEE–200) for general advice on compliance with NEPA and other applicable environmental laws, regulations, and executive orders, especially for actions of national importance or which are highly controversial.

(8) Ch. 5, Para 506b: Change for consistency with CEQ regulations. As written, the text appears to require that the environmentally preferred alternative be identified in the EIS's Executive Summary. CEQ regulations encourage, but do not require identification of the environmentally

preferred alternative until the ROD is prepared. The words ''identifies any environmentally preferred'' have been removed from line 6 and the underlined text had been added.

506b. Executive Summary. An executive summary will be included to adequately and accurately summarize the EIS. The summary describes the proposed action, stresses the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). It also discusses major environmental considerations and how these have been addressed; summarizes the analysis of alternatives; and agency preferred and sponsor preferred alternatives. *If the agency has identified an environmentally preferred alternative, it may also be included*. It discusses mitigation measures, including planning and design to avoid or minimize impacts. It identifies interested agencies, lists permits, licenses, and other approvals that must be obtained, and reflects compliance with other applicable environmental laws, regulations and executive orders.

(9) Ch. 5, Para 506e: Change for consistency with CEQ regulations. Two sentences were removed and two sentences were modified to be consistent with CEQ regulation, 40 CFR 1505.2(b) regarding the timing of the identification of the environmentally preferred alternative. This paragraph now requires that the environmentally preferred alternative be identified in the EIS. However, federal agencies are not required under the CEQ regulations to discuss the environmentally preferred alternative until the record of decision. If an environmentally preferred alternative is known to the agency before the ROD, it can be disclosed at that time.

506e. This section is the heart of the EIS (see 40 CFR 1502.14; see also 40 CFR 1502.10(e) and 40 CFR 1505.2 for more information on alternatives). It presents a comparative analysis of the no action alternative, the proposed action and other reasonable alternatives to fulfill the purpose and need for the action. *Although CEQ encourages Federal agencies to identify the environmentally preferred alternatives in the EIS (see CEQs ''40 Most Asked Questions,'' number 6), CEQ regulations do not require that discussion until the ROD*. Reasonable alternatives not within the jurisdiction of the lead agency should be considered (see 40 CFR 1502.14(c)). The FAA may include alternatives proposed by the public or another agency. However, they must meet the basic criteria for any alternative: It must be reasonable, feasible, and achieve the project's purpose. The extent of active participation in the NEPA process by the proponent of the alternative also bears on the extent to which a proffered alternative deserves consideration. To provide a clear basis of choice amongst the alternatives, graphic or tabular presentation of the comparative impact is recommended. This section also presents a brief discussion of alternatives that were not considered reasonable *due to their inadequacy in meeting the purpose and need for the proposed action. The FEIS must specifically and individually identify the preferred alternative. Criteria other than those included in the affected environment and environmental consequences section of the EIS* may be applied to identify the preferred alternative.

(10) Ch. 5, Para 512: Change for consistency CEQ regulations. A phrase was inserted indicating that the ROD must identify all alternatives considered, including the environmentally preferred alternative.

5.12. Following the time periods described in 40 CFR 1506.10 (i.e., 90 days from DEIS Notice of Availability (NOA) issuance and 30 day waiting period for FEIS NOA issuance), the agency's decisionmaker may make a decision on the Federal action. *The ROD presents the agency's decision on the actions, identifies all alternatives considered by the agency, specifying which alternatives were considered to be environmentally preferable, identifies applicable mitigation and monitoring actions required, and as necessary, can be used to clarify and respond to issues raised on the FEIS*. The ROD may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. The ROD shall identify and discuss all factors including any essential consideration and national policies that were balanced by the agency in making its decision and state how those considerations entered into the decision. The ROD shall state whether all practicable means to avoid or minimize environmental harm from the alternatives selected have been adopted, and if not adopted, why they were not adopted. The draft ROD should accompany the proposed FEIS during the internal review prior to approval only when headquarters' concurrence is required. The decisionmaker must obtain concurrence before approving the ROD. After approving the ROD, the decisionmaker may begin implementing the selected action. Figure 5–4, Record of Decision Overview, presents an overview of the components of a ROD.

(11) Ch. 5, text box on page 5–16: Change for clarification. The phrase ''for the first time'' was inserted.

FAA encourages all interested parties to provide comments concerning the scope and content of the Draft EIS. Comments should be as specific as possible and address the analysis of potential environmental impacts and the adequacy of the proposed action or merits of alternatives and the mitigation being considered. Reviewers should organize their participation so that it is meaningful and makes the agency aware of the viewer's interests and concerns using quotations and other specific references to the text of the Draft EIS and related documents. Matters that could have been raised with specifically during the comment period on the Draft EIS may not be considered if they are raised *for the first time* later in the decision process. This commenting procedure is intended to ensure that substantive comments and concerns are made available to the FAA in a timely manner so that the FAA has an opportunity to address them.

(12) Ch. 5, Para. 509a.(1) and (4): Change for consistency with AEE policy. Both paragraphs indicate that an FEIS originating in Headquarters (1) and regions (4) should be forwarded to the Office of Environment and Energy (AEE) for review and concurrence. As a matter of policy, AEE does not review FEISs, most of which are sent to AEE for information only. AEE does not review and concur unless AEE is specifically requested to review and concur on a document for a specific purpose. Both paragraphs have been revised to reflect this policy.

509a. Internal review is coordinated as follows:

(1) FEIS's originating in headquarters. The office or service director shall send a copy of the FEIS to AGC to review for legal sufficiency and concurrence. *The responsible office or service director will send a copy of the FEIS to AEE for information unless review and concurrence are specifically requested.* After the office or service director approves the FEIS, the responsible FAA official will file it with EPA (see paragraphs 509a(6) and 512).

(4) FEIS's originating in regions or centers, but where authority to approve the FEIS is retained in headquarters. The applicable division manager or center shall send the proposed FEIS to the appropriate headquarters' office or service director. The office or service will provide the FEIS to AGC for review. *The office or service director will provide the FEIS to AEE for information*

unless review is specifically requested. Following approval, the FEIS will be filed with EPA. Presently, approval for these types of FEIS's is being delegated, if comments on the DEIS have been incorporated. (See paragraph 507.)

(13) Appendix A, Section 3. Coastal Resources: Change for correction. Paragraph 3.2b.(2) was revised to clarify what should be included concerning coastal zone consistency in an EA or EIS for a direct Federal action, e.g. an activity that the FAA itself is undertaking such as establishment of a navigational aid. Title 16 U.S.C. 1456(e)(2), states that the CZMA shall not be construed to supersede laws applicable to Federal agencies. Title 15 CFR 930.32(a) further provides that a Federal agency may determine that full consistency with the policies of a management program is prohibited by existing law applicable to the agency.

3.2b. *CZMA.* When a proposed action affects (changes the manner of use or quality of land, water or other coastal resources, or limits the range of their uses) the coastal zone in a State with an approved coastal zone management (CZM) program, the EA or EIS shall include the following:

(2) For activities that the FAA itself undertakes, the EA or EIS should include the same information listed above for federally assisted activities. If the State or local agency that administers the CZM program objects to the consistency determination, then the FAA may proceed with the federal activity only if the FAA determines that full consistency is prohibited by existing laws specifically applicable to the agency, such as aviation laws. In such a case, the EA or EIS should further state that the FAA provided the State or local agency with a written statement clearly describing the statutory provisions, legislative history, or other legal authority that limits the FAA's discretion to be fully consistent with the enforceable policies of the CZM program.

(14) Appendix A, Section 6. Department of Transportation Act, Section 4(f): Change for correction. Paragraph 6.1a. is being revised to correct a misstatement regarding the legislative history of 49 U.S.C. 303(c). Section 4(f) was not recodified and renumbered as part of the 1994 recodification of aviation statutes.

6.1a. The Federal statute that governs impacts in this category is commonly known as the Department of Transportation (DOT) Act, section 4(f) provisions. Section 4(f) of the DOT Act, *which is codified and numbered as section 303(c) of 49 U.S.C.,* provides that the Secretary of Transportation will not approve any program or project that requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance or land from a historic site of national, State, or local significance as determined by the officials having jurisdiction thereof, unless there is no feasible and prudent alternative to the use of such land and such program, and the project includes all possible planning to minimize harm resulting from the use. This order continues to refer to section 4(f) because it would create needless confusion to do otherwise; the policies section 4(f) engendered are widely referred to as ''section 4(f)'' matters.

(15) Appendix A, Section 9. Floodplains: Change for clarification. Currently paragraphs 9.2c and 9.2g contain the same extensive notification requirements for both encroachments and significant encroachments. DOT Order 5650.2 paragraph 7 makes a distinction between notification requirements for encroachments and significant encroachments. Paragraph 9.2c is being revised to clarify the distinction between the notification requirements for encroachments and significant encroachments.

9.2c. If the agency finds that the only practicable alternative requires siting in the base floodplain, a floodplain encroachment would occur and further environmental analysis is needed. The FAA shall, prior to taking the action, design or modify the proposed action to minimize potential harm to natural floodplain values or within the base floodplain. The action is to be consistent with regulations issued according to section 2(d) of E.O. 11988. The FAA shall also provide the public with an opportunity to review the encroachment through its public involvement process and any public *hearing presentations shall include identification of encroachments.*

(16) Appendix A, Section 10. Hazardous Material, Pollution Prevention, and Solid Waste: Change for correction and consistency. Paragraph 10.1d (2). The definition of hazardous waste under the Resource Conservation and Recovery Act (RCRA) is slightly different than that in EPA regulation 40 CFR 261.1. Paragraph 10.1d(2) referenced both definitions. FAA uses the EPA regulatory definition for purposes of NEPA compliance so we propose to delete the reference to the RCRA definition.

(2) Hazardous Waste—a waste is considered hazardous if it is listed in, or meets the characteristics described in 40 CFR part 261, including ignitability, corrosivity, reactivity, or toxicity.

(17) Appendix A, Section 11. Historical, Architectural, Archeological, and Cultural Resources: Change for clarification. Paragraph 11.2b. was revised to remove contradictory language. The beginning of the sentence indicated that identifying the area of potential effect (APE) was only required if the undertaking may have an adverse effect. The beginning of the sentence, ''If an undertaking may have an adverse effect,'' has been deleted.

11.2b. Determination of Undertaking. The responsible FAA official determines whether the proposed action is an ''undertaking,'' as defined in 36 CFR 800.16(y) (and not an undertaking that is merely subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency), and whether it is a type of activity that has the potential to cause adverse effects on historic properties eligible for or listed on the NRHP. If the agency determines, and the SHPO/THPO does not object, that an undertaking does not have the potential to have an effect on historic properties, a historical or cultural resource survey is not necessary and the FAA may issue a determination that the action has no effect. *The first step is to identify the area of potential effect (APE) and the historical or cultural resources within it (see Secretary's Standards and Guidelines for Identification).*

(18) Appendix C, Figure 3. Related Memoranda and Guidance: Change for correction. The date of the Memorandum of Understanding between the FAA and the Department of Defense was updated. The description of the Memorandum was also revised to more accurately describe the document.

Memoranda & guidance	Description
Memorandum of Understanding (MOU) between the FAA and the Department of Defense, October 4, 2005.	Addresses environmental review of special use airspace actions.

Issued in, Washington, DC December 12, 2005.

Carl E. Burleson,

Federal Aviation Administration, Director, Office of Environment and Energy.

[FR Doc. 05–24132 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Information Collection Activities

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice of OMB approvals.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.5(b), this notice announces that new information collections requirements (ICRs) listed below have been approved by the Office of Management and Budget (OMB). These new ICRs pertain to 49 CFR parts 222, 229, and 236. Additionally, FRA hereby announces that other ICRs listed below have been re-approved by the Office of Management and Budget (OMB). These ICRs pertain to Parts 214, 216, 229, 238, and 240. The OMB approval numbers, titles, and expiration dates are included herein under supplementary information.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Victor Angelo, Office of Support Systems, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6470). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to display OMB control numbers and inform respondents of their legal significance once OMB approval is obtained. The following new FRA information collections were approved in the past nine months: (1) OMB No. 2130–0553, Positive Train Control (49 CFR 236) (Final Rule). The expiration date for this collection of information is August 31, 2008. (2) OMB No. 2130–0560, Use of Locomotive Horns at Highway-Rail Grade Crossings (49 CFR 222 and 229) (Final Rule). The expiration date for this collection of information is July 31, 2008. (3) OMB No. 2130–0004, Locomotive Safety Standards and Event Recorders (49 CFR 229) (Final Rule). The expiration date for this collection of information is August 31, 2008. (4) OMB No. 2130–0568, Emergency Order No. 24. The expiration date for this collection of information is March 31, 2006.

The following information collections were re-approved: (1) OMB No. 2130–0533, Qualifications For Locomotive Engineers (49 CFR part 240). The new expiration date for this information collection is August 31, 2008. (2) OMB No. 2130–0552, Locomotive Cab Sanitation Standards (49 CFR part 229). The new expiration date for this information collection is August 31, 2008. (3) OMB No. 2130–0517, Supplemental Qualifications Statement For Railroad Safety Inspector Applicants (Form FRA F 120). The new expiration date for this information collection is August 31, 2008. (4) OMB No. 2130–0539, Roadway Worker Protection: Roadway Maintenance Machines (49 CFR part 214) (Form FRA F 6180.119). The new expiration date for this information collection is August 31, 2008. (5) OMB No. 2130–0544, Passenger Equipment Safety Standards (Current Rule) (49 CFR parts 216 and 238). The new expiration date for this information collection is November 30, 2008.

Persons affected by the above referenced information collections are not required to respond to any collection of information unless it displays a currently valid OMB control number. These approvals by the Office of Management and Budget (OMB) certify that FRA has complied with the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and with 5 CFR 1320.5(b) by informing the public about OMB's approval of the information collection requirements of the above cited forms and regulations.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on December 15, 2005.

D.J. Stadtler,

Director, Office of Budget, Federal Railroad Administration.

[FR Doc. E5–7568 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements (ICRs) for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than February 21, 2006.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Mr. Victor Angelo, Office of Support Systems, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0017 or on OMB control number 2130–0506.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or e-mail to Mr. Brogan at *robert.brogan@fra.dot.gov,* or to Mr. Angelo at *victor.angelo@fra.dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Victor Angelo, Office of Support Systems, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6470). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for

reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved ICRs that FRA will submit for clearance by OMB as required under the PRA:

Title: U.S. DOT Crossing Inventory Form.

OMB Control Number: 2130–0017.

Type of Request: Extension of a currently approved collection.

Abstract: Form FRA F 6180.71 is a voluntary form, and is used by States and railroads to periodically update certain site specific highway-rail crossing information which is then transmitted to FRA for input into the National Inventory File. This information has been collected on the U.S. DOT–AAR Crossing Inventory Form (previous designation of this form) since 1974 and maintained in the National Inventory File database since 1975. The primary purpose of the National Inventory File is to provide for the existence of a uniform database which can be merged with accidents data and used to analyze information for planning and implementation of crossing safety programs by public, private, and governmental agencies responsible for highway-rail crossing safety. Following the official establishment of the National Inventory in 1975, the Federal Railroad Administration (FRA) assumed the principal responsibility as custodian for the maintenance and continued development of the U.S. DOT/AAR National Highway-Rail Crossing Inventory Program. The major goal of the Program is to provide Federal, State, and local governments, as well as the railroad industry, information for the improvement of safety at highway-rail crossings. Good management practices necessitate maintaining the database with current information. The data will continue to be useful only if maintained and updated as inventory changes occur. FRA previously cleared the reporting and recordkeeping burden for this form under Office of Management and Budget (OMB) Clearance Number 2130–0017. OMB approved the burden for this form through July 31, 2006. FRA is requesting a new three year approval from OMB for this information collection.

Form Number(s): Form FRA F 6180.71.

Affected Public: Businesses.

Respondent Universe: 650 Railroads.

Frequency of Submission: On occasion; monthly.

Reporting Burden:

	Respondent universe (railroads)	Total annual responses	Average time per response (minutes)	Total annual burden hours	Total annual burden cost
Crossing Inventory—Forms	650	2,219 forms	15	555	$32,745
Crossing Inventory—Mass Update Printouts.	650	250 printouts (4,304 updated records).	30	125	7,375
Crossing Inventory—Disc/Tape (non-GX).	650	700 discs/tapes (103,040 records updated).	30	350	20,650
Crossing Inventory—GX Electronic Updates.	650	9,140 records updated	3	457	26,963

Total Responses: 118,703.

Estimated Total Annual Burden: 1,487 hours.

Status: Regular Review.

Title: Identification of Cars Moved in Accordance with Order 13528.

OMB Control Number: 2130–0506.

Type of Request: Extension of a currently approved collection.

Abstract: This collection of information identifies a freight car being moved within the scope of Order 13528 (Order). See CFR part 232, Appendix B. Otherwise, an exception will be taken, and the car will be set out of the train and not delivered. The information that must be recorded is specified at 49 CFR Part 232, Appendix B, requiring that a car be properly identified by a card attached to each side of the car and signed stating that such movement is being made under the authority of the order. The Order does not require retaining cards or tags. When a car bearing a tag for movement under the Order arrives at its destination, the tags are simply removed.

Form Number(s): None.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Total Responses: 800 tags.

Average Time Per Response: 5 minutes per tag.

Estimated Total Annual Burden: 67 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on December 15, 2005.

D.J. Stadtler,

Director, Office of Budget, Federal Railroad Administration.

[FR Doc. E5–7569 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR), Parts 211.9 and 211.41 notice is hereby given that the Federal Railroad Administration (FRA) has received a request to expand an existing waiver of compliance from certain requirements of Federal railroad safety regulations. The individual petition is described below, including the parties seeking the extension, the nature of the extension being requested and the petitioner's arguments in favor of relief.

Burlington Northern and Santa Fe Railway Company

[Docket Number FRA–2003–15432]

The Burlington Northern and Santa Fe Railway Company (BNSF) seeks permission to expand the current Electronic Train Management System (ETMS) waiver granted on June 23, 2004, into another area of their rail network. The extension of this pilot will allow BNSF to further demonstrate the objectives of ETMS on different track configurations and operational scenarios. This extension will also allow BNSF to demonstrate the ETMS technology with denser traffic patterns and give BNSF the potential to test interoperability with other railroads.

The ETMS pilot project on the Beardstown subdivision is currently in the third phase of the FRA waiver that was granted on June 23, 2004. To date, BNSF has operated nearly 1700 ETMS-activated trains over this pilot test area. BNSF has conducted over five hundred tests in cooperation with the FRA Office of Safety that have successfully demonstrated the objectives that are feasible in the first pilot test area. BNSF is prepared to continue the testing and demonstration of the ETMS technology in other areas of their rail network that will allow them to further demonstrate the safety and operational benefits that the rail industry can derive from this technology.

The ETMS expansion will be tested and demonstrated on the BNSF's Fort Worth subdivision between Fort Worth, Texas, milepost 346.67 and Gainesville, Texas, milepost 411.3. In addition, the system will be tested and demonstrated on the Red Rock subdivision between Gainesville, Texas, milepost 411.3X and Arkansas City, Kansas, milepost 264.11. The combined distance of the test territory is 329 miles. The present method of operation on the BNSF is Centralized Traffic Control. The total trains are approximately 25 per day, 21 BNSF trains, 2 Amtrak trains, and 2 Union Pacific Railroad trains.

BNSF is currently developing an installation, test, and implementation plan for this second pilot test area. BNSF's present implementation guidelines would follow the same methodologies as previously used in the Beardstown test area with regards to personnel training and the testing of the test area's unique components such as grade, track configuration, and track database. In addition, BNSF's plan for this area would include a phased methodology as was done in the Beardstown test area where Phase 1 included no enforcement with ETMS active, Phase 2 included enforcement with ETMS active, and Phase 3 is a continuance of Phase 2 with some relief from detail reporting. This approach has proven to be productive and comprehensive.

The expansion would begin with wayside and locomotive equipment installation in the beginning of 2006. Upon completion of the wayside installation, the track database verification and locomotive testing would commence. Finally, the phased revenue demonstration would begin upon the successful completion of the verification and validation testing.

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2003–15432) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC, 20590–0001. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.). At the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on December 15, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E5–7565 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2005–23226]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Applicant: Burlington Northern and Santa Fe Railway, Mr. Ralph E. Young, Director Signal Engineering, 4515 Kansas Avenue, Kansas City, Kansas 66106–1199.

The Burlington Northern and Santa Fe Railway (BNSF) seeks relief from the requirements of the Rules, Standard and Instructions, Title 49 CFR, Part 236, Section 236.312, on the Hannibal Bridge, milepost 0.95, in Kansas City, Missouri, on the Nebraska Division, St. Joseph Subdivision, as follows:

1. BNSF requests relief to the extent that they be allowed to use a modified easer bar inspection and test procedure to determine compliance with the rail surface and alignment requirements. The modified procedure uses 5/8 inch as the acceptable tolerance for the amount of easer bar/casting play.

2. BNSF requests relief from the requirement that bridge locking members must be detected within one inch of their proper positions, to the extent that they be permitted to continue using an alternate method of

detecting proper swing span seating than that described in the FRA's Technical Manual.

Applicant's justification for relief: BNSF fully expects the actual rail surface and alignment to be maintained within the 3/8 inch required by 236.312; however, BNSF's Bridge Engineers feel that additional easer bar clearance is needed to reliably operate this bridge because of its particular design. The Hannibal Bridge does not have wedges or rollers, and instead has end lifts on each corner of the swing span. BNSF has installed, at great expense, a rather elaborate mechanical proximity sensor device, near the deck level at each of the four corners of the bridge, to detect that the bridge is properly seated. While this approach to detecting locking is not the same as described in the FRA's Technical Manual, BNSF's Bridge Engineers believe it accurately detects when the swing span is properly seated, clearly the intent of the rule. These devices are designed to detect that all four corners are within 3/8 inch of the proper seated position vertically and, on two of the corners, within 3/8 inch of proper horizontal alignment. BNSF respectfully submits that while the method of detecting bridge locking and rail surface/alignment on their Hannibal Bridge might not be conventional or familiar, it is completely safe and complies with the intent of 49 CFR 236.312.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on December 15, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E5–7570 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

[Docket Number FRA–2005–23065]

Applicant: Canadian Pacific Railway, Mr. Robert R. Otis, Manager Signal and Communication, Metro 94 Business Center, 425 Etna Street—Suite 38, St. Paul, Minnesota 55106.

The Canadian Pacific Railway seeks approval of the proposed modification of the traffic control system, at milepost 3.22, just west of Lyndale Avenue, on the Paynesville Subdivision, near Minneapolis, Minnesota, consisting of the discontinuance and removal of the power-operated derail. The proposed change is associated with a plan to install a new stand-a-lone remote-controlled derail, just outside the actual yard tracks, at milepost 3.65.

The reason given for the proposed changes is due to safety concerns about the derail's location and operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on December 15, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E5–7566 Filed 12–19–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–04–18765]

Frontal New Car Assessment Program

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

ACTION: Response to comments, notice of decision.

SUMMARY: On October 14, 2004, NHTSA published a notice requesting comments on possible alternatives to revise the agency's test procedures for frontal impact New Car Assessment Program (NCAP) testing. This notice summarizes the comments received and provides the agency's decision on how we will proceed. The agency has decided to maintain the full-frontal barrier test procedure, the test speed of 35 mph (56 km/h), the current test dummies, and the current rating system until the further research and analysis are completed.

Privacy Act: Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the petition (or signing the petition, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For technical issues concerning the upgrade to frontal NCAP, contact Mr. Brian Park of the New Car Assessment Program. Telephone: (202) 366–6012. Facsimile: (202) 493–2739. Electronic Mail: *Brian.Park@nhtsa.dot.gov.* For legal issues, contact Stephen Wood of the Office of Chief Counsel. Telephone: (202) 366–2992. Facsimile: (202) 366–3820. Electronic Mail: *Stephen.Wood@nhtsa.dot.gov.* You may send mail to these officials at: National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Summary of Request for Comments
III. Summary of Comments
IV. Discussion and Agency Decision
V. Conclusion
Appendix A–NASS Analysis of Full-Frontal Crashes

I. Introduction

The National Highway Traffic Safety Administration (NHTSA) is responsible for reducing deaths, injuries, and economic losses resulting from motor vehicle crashes. One way in which NHTSA accomplishes this mission is by providing consumer information to the public. Currently, NHTSA conducts tests and provides frontal, side, and rollover stability vehicle safety ratings to consumers through the New Car Assessment Program (NCAP). With this information, consumers can make better-educated decisions about their purchases, thereby providing market forces that encourage automakers to further improve the safety of their vehicles.

Since 1978, the test procedure for NCAP's frontal crash test program has been similar to the frontal barrier test procedure used in Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant Crash Protection,'' except that the NCAP test has been conducted at a speed of 5 mph (8 km/h) above that specified in FMVSS No. 208. Recent amendments to FMVSS No. 208 will require vehicles to be tested at an increased speed of 35 mph (56 km/h) for the belted Hybrid III 50th percentile male dummy, the same test procedure as the current frontal NCAP.[1] Consequently, on October 14, 2004, NHTSA published a notice requesting comments on what revisions should occur, if any, to the test procedures and or rating system used in frontal NCAP.[2]

Seventeen comments were received in response to the notice. While most of the commenters did not object to keeping the current frontal NCAP, they did offer mixed responses on the different options for modifying the current test procedure. Additionally, most commenters supported the idea of changing the current rating system in some way, and generally recommended that any changes made to the program should reflect real world crash data. Though they did not submit comments directly to the notice, a Government Accountability Office (GAO) study suggested that the agency should include different injury measurements and additional occupant sizes in both the frontal and side crash test-rating systems.[3] This notice summarizes comments to the 2004 notice, and provides the agency's decision on how we will proceed.

II. Summary of Request for Comments

In our notice requesting comments on possible alternatives to current NCAP test procedures and/or rating system, the alternatives offered were as follows: (1) Maintaining the current program, (2) modifying the test procedure, and (3) changing the rating system.

The first option offered for consideration was to maintain the current program. Under this option, NCAP test results could be used for testing compliance with the FMVSS No. 208 and vice-versa, thereby maintaining or perhaps increasing the amount of consumer information provided by the agency.

The second option offered for consideration was to modify the current test procedure. Three modifications were described. The first was to increase the current test speed; that is, to test the vehicles as outlined in FMVSS No. 208, but at a faster speed. As the test speed of the FMVSS No. 208 test will be raised from 30 mph (48 km/h) to 35 mph (56 km/h), the NCAP test speed could also be increased by 5 mph (8km/h) from 35 mph (56 km/h) to 40 mph (64 km/h). This test could also serve as a compliance indicant. The second variation was to add a variety of dummies. The Hybrid III 5th percentile female dummy could be placed in the driver position with the Hybrid III 50th percentile male dummy in the passenger position, or vice-versa. Additionally, rear seat occupants could include one or more of the Hybrid III family of child dummies with their appropriate child restraints. The third modification was to add another test procedure, such as an offset frontal test, either as a replacement or in addition to the full-frontal barrier test.

The third option offered for consideration was to make changes to the rating system. Two changes were offered for consideration under this approach. One possible change was to modify the star rating bands so that the combined chance of a serious injury to the head or chest would be 5 percent or lower (as opposed to the current 10 percent limit) for a vehicle to receive five stars. The injury probability ranges required for the other star ratings would also be adjusted accordingly. A second modification was to add new injury metrics to the star rating like neck (Nij), chest deflection, femur loads and tibia index. These injury metrics are currently measured in the NCAP test, but are not used to compute the star rating.

III. Summary of Comments

This section provides a brief summarization of the seventeen comments submitted to the docket by vehicle manufacturers, safety advocates, and the general public.[4]

Maintaining the Current Program

General Motors Corporation (GM) and Daimler Chrysler Corporation (DaimlerChrysler) did not object to maintaining the current frontal NCAP

[1] This requirement is phased in during a period beginning on September 1, 2007, and ending on September 1, 2011.

[2] 70FR 23078, Docket No. NHTSA–2004–18765.

[3] GAO–05–370, Report to Congressional Committees, Vehicle Safety, ''Opportunities Exist to Enhance NHTSA's New Car Assessment Program,'' April 2005.

[4] These submissions are available at *http://dms.dot.gov* in docket number 2004–18765.

test for the immediate future. GM suggested maintaining the current program until the Advanced Air bag requirements of FMVSS No. 208 have been phased in completely. DaimlerChrysler also agreed with maintaining the current program, citing the need for an analysis of consumer perception of NCAP ratings and how the ratings are used in their purchasing and leasing decisions. Additionally, DaimlerChrysler suggested that changes to the program could lead to consumer confusion regarding comparisons between vehicles tested with the current procedure to those tested under a revised rating system.

The Advocates for Highway and Auto Safety (Advocates), the Insurance Institute for Highway Safety (IIHS), and Public Citizen expressed concerns with maintaining the current frontal program. The Advocates believe that the changes to FMVSS No. 208 will make the NCAP crash tests irrelevant. IIHS stated that, ''* * * the remaining performance differences among new vehicles are unlikely to translate into important differences in occupant protection in real-world crashes.'' Public Citizen reiterated the fact that most new vehicles receive four-or five-star ratings, stated that ''the frontal NCAP program should be made more comprehensive,'' and suggested achieving this by including structural integrity and more body regions to the rating.

Modifying the Test Procedure

Increase Test Speed

Both Advocates and Public Citizen favored an increase of the frontal test speed from 35 mph (56 km/h) to 40 mph (64 km/h). Public Citizen suggested that deadly frontal crashes occur disproportionately at speeds above the current NCAP speed, based on 2003 data on fatal head-on crashes from NHTSA's Fatality Analysis Reporting System (FARS). The Advocates acknowledged that the full-barrier crash test is primarily a test of restraint system effectiveness. They suggested a higher test speed could lead to further improvements for both air bags and seat belts, but that it might increase vehicle stiffness and air bag aggressiveness. They further suggested that this could be countered by implementing a new rating system that modified the score based on a compatibility ''modifier.''

GM, Nissan North America, Inc. (Nissan), Honda Motor Company Ltd. and American Honda Motor Company (Honda), Ford Motor Company (Ford), the Association of International Automobile Manufacturers, Inc. (AIAM), and IIHS were opposed to an increase of test speed. They all suggested that the higher test speed could lead to increased vehicle stiffness and more aggressive air bags, which in turn would diminish any increased benefits. Nissan and IIHS also specifically questioned the real-world benefits of a higher test speed.

Testing With Different Dummies

With regard to adopting the Hybrid III 5th percentile adult female test dummy into the frontal test procedure, GM, Public Citizen, and Bidez & Associates supported this option. However, they disagreed on how the dummy should be adopted. GM recommended replacing the Hybrid III 50th percentile dummy with the Hybrid III 5th percentile dummy and maintaining one single test. Public Citizen, on the other hand, supported running one test with the Hybrid III 50th and 5th dummies in the driver and passenger seats followed by a second test with the dummies in switched positions. Bidez & Associates felt that the 5th percentile dummy should be added to an offset frontal test rather than the current full-frontal barrier test.

Nissan, Ford, DaimlerChrysler, Magna Steyr, AIAM, and IIHS all objected to either replacing the Hybrid III 50th percentile dummy with the Hybrid III 5th percentile dummy or including the 5th percentile into frontal NCAP testing. Nissan suggested that the 50th percentile occupant represents the largest percentage of injured occupants and thus there is no reason to include the 5th percentile. Ford cited that the addition of the 5th percentile into NCAP testing could have adverse effects (though no specifics were given) and that the agency should do additional research. DaimlerChrysler referenced the agency's Notice of Proposed Rulemaking for adding the Hybrid III 5th percentile dummy to FMVSS No. 208 and stated that potential benefits for including this dummy were ''statistically minor, an overestimate, and can't be absolutely quantified.'' AIAM likewise suggested that the agency consider real world conditions before adding the Hybrid III 5th percentile dummy to the NCAP. IIHS suggested that assessing different sizes of dummies in FMVSS No. 208 is fine, but there is no evidence that it will provide any benefit in NCAP testing.

NHTSA had also offered for consideration testing with child dummies in the rear seats. GM, Nissan, and BMW objected to testing with child dummies that utilize child restraint systems (CRS). These commenters cited test burden due to the large number of different child restraint models available, and consumer confusion as reasons not to pursue this option. The commenters suggested that consumers could become confused when trying to interpret safety ratings using only one child restraint model out of the large number that are currently available. Additionally, Nissan stated that it was unclear whether the dummy's response would be attributable to the design of the CRS or to the vehicle itself. GM, however, did think adding child dummies to the rear seat has merit, but indicated that additional research was required to fully comprehend how to effectively evaluate vehicles for rear occupant protection.

Ford, Evenflo, Advocates, Public Citizen, and Bidez & Associates all supported the inclusion of restrained child dummies in frontal NCAP. Advocates and Public Citizen did not offer further comment. Ford suggested that if the agency decides to test with child dummies, only the three-year-old Hybrid III dummy in a uniform (or standard) production CRS with Lower Anchors and Top Tethers for Children (LATCH) should be used since that test mode has been most thoroughly evaluated by the agency. Evenflo also favored this approach, but they recommended using a CRS surrogate in lieu of a production CRS in order to ensure year-to-year consistency. Bidez & Associates added that they would like to see three child dummies in the rear seat of every vehicle: A Hybrid-III three-year-old, six-year-old, and ten-year-old. The three-year old would be restrained in a CRS recommended by the vehicle manufacturer and the six- and ten-year-old dummies would be restrained in the two outboard rear-seating positions by vehicle belts.

Offset Frontal Test

Subaru, Nissan, BMW, Porsche, IIHS, Magna Steyr, the Advocates, and Public Citizen encouraged the adoption of a frontal offset test procedure to replace the full-frontal barrier test. Most emphasized that a large percentage of frontal offset crashes occurs in the real world, and that these crashes may be more frequent than full-frontal crashes. Some also provided recommendations regarding the overlap percentage, deformable barrier, and other test procedure specifics. Honda favored the addition of a frontal offset test, and suggested that a full-width deformable barrier (FDB) test to enhance vehicle crash compatibility be simultaneously introduced.

GM, Ford, and AIAM did not support the adoption of an offset test. GM pointed out that IIHS conducts 40 percent frontal offset crash tests and that

if NHTSA adopted the same test, the additional test would be redundant. Ford stated concerns that a safety rating based on an offset test would cause a break in the safety ratings, such as a 3-star performer in the offset test receiving a 5-star rating in the full-frontal test, leading to consumer confusion. AIAM commented that an offset test would be premature without research of the benefits and disadvantages, particularly with regards to vehicle compatibility and aggressivity.

Changing the Rating System

Change Star Rating Limits

IIHS, GM, Ford, DaimlerChrysler, and Honda were opposed to changing the star rating limits. IIHS and GM questioned the real world benefits of changing the star rating bands. Ford, DaimlerChrysler, and Honda cautioned against the undesired consequences of changing the star bands, particularly in changing the five-star criteria. Daimler Chrysler expressed that in order to differentiate current vehicles, they would support half-star ratings. Daimler Chrysler said that ''creating a 5-star rating based on a 5 percent risk of serious injury would likely lead to more aggressive vehicle and restraint counter measures with possible adverse real-world occupant safety and crash compatibility consequences.'' Honda, on the other hand, said that a tougher five-star rating with the current head and chest injury curves could make vehicles and/or restraints softer, which could provide disbenefits for higher speed crashes and compromise protection for larger occupants.

AIAM also questioned the influence that new star bands would have on the repeatability (consistency from one test to the next) of star ratings. IIHS suggested that changing the star rating limits would only result in vehicle manufacturers making tweaks and small adjustments and would not have a meaningful impact on vehicle crashworthiness in the real world. The Advocates did not disagree with changing the star rating limits, but suggested that other proposed changes would yield much more meaningful results.

Public Citizen favored changing the star rating limits, suggesting that the new star ratings should increase stringency. Public Citizen recommended using 5 percent or less for head and chest injury to attain a five star rating. Nissan also considered this approach reasonable, provided that NHTSA could explain the relationship between the new and current calculation method, and that previously tested vehicles have their safety rating revised according to the new rating system.

Add New Injury Metrics to Star Rating

Most respondents either supported adding injury measures to the rating system or did not comment on the issue. The Advocates supported the addition of new injury metrics, but recommended separate ratings for the different injury criteria so that consumers can differentiate between life-threatening injuries and serious non-life-threatening injuries. Nissan did not object to additional injury metrics provided that the new inclusions would be supported by real world data, and that previously tested vehicles have their safety ratings revised.

Ford proposed that HIC calculated over a 15 millisecond duration (HIC 15) and chest deflection be used to replace the role of HIC36 and chest acceleration in the frontal NCAP tests. GM, Porsche, and DaimlerChrysler also recommended the use of chest deflection instead of chest acceleration, as it might be a better predictor of chest injury.

As neck load data is currently collected in NCAP tests, both Porsche and Subaru supported the use of Nij. DaimlerChrysler objected to the inclusion of Nij due to what they believe is inappropriate interaction between air bags and the neck of the Hybrid III 5th percentile dummy.

None of the responders objected to the inclusion of femur criteria into the rating, as most stated that femur criteria have already been established and are addressed in current vehicle designs. For lower leg (tibia) criteria, only Subaru and GM considered the use of the lower leg to be beneficial. GM stated this could reduce the number of debilitating injuries. However, Porsche and GM commented that lower leg injury mechanics are not simple and a better understanding of the relationship between full-frontal crashes and lower leg injuries is needed.

IV. Discussion and Agency Decision

In reviewing the comments to the 2004 Notice, it is apparent that there is no single prevailing opinion as to the future direction that should be pursued in revising the frontal NCAP. While Public Citizen and the Advocates favored an increase in the test speed, the auto companies and IIHS were all opposed. Incorporation of an offset frontal test was favored by a number of the commenters, including the IIHS, but several auto manufacturers raised various concerns. Likewise, most comments did not favor changing the star rating limits, although Public Citizen did recommend revisions to increase the stringency of the star ratings. There were also widely divergent views regarding incorporation of different dummies into the frontal NCAP test program. One area in which there seemed to be some agreement was in support of adding more injury measures to the rating system.

NHTSA has maintained several guiding principles when considering additions and/or revisions to NCAP. These include ensuring that NCAP complements FMVSS performance requirements and other agency programs in promoting automotive safety, providing meaningful information to the consumers, encouraging safety improvement through market forces, and assuring the integrity of the rating program for consumers. This requires that the NCAP information be provided in a timely manner that is readily understood by the consumers, that considers changing vehicle trends, and perhaps most importantly, is supported by sound data and research. Although the comments provided to the 2004 notice have been helpful in offering approaches that warrant consideration in revising the frontal NCAP, there was little substantive data or research provided that is necessary to establish a revised program with such far reaching public policy automotive safety implications.

The safety advances for frontal occupant protection envisioned a generation ago have now been incorporated into FMVSS No. 208. For emerging technologies, it is not apparent which will most effectively advance frontal occupant protection safety. NASS data (Appendix A) show that the current NCAP crash severity, with an impact velocity of 35 mph and delta-V of about 41–45 mph, represents all except about 0.2% of all frontal occupant injury crashes. As noted by Public Citizen, about 7% of the AIS 3+ injuries occur above this crash severity. However, the agency also notes that over 84% of the AIS 2+ and one-half of the AIS 3+ injuries occur at a delta-V of less than 25 mph. Included in these are many of the lower extremity injuries that are encompassed in the offset frontal efforts currently being considered and researched by NHTSA.[5] Further, safety implications for the older population is also a consideration that needs to be assessed in determining effective ways to revise the frontal NCAP to be most meaningful for

[5] 70 FR 49248, Docket No. NHTSA–2005–21698, Occupant Crash Protection; Anthoropomorphic Test Devices; Instrumented Lower Legs for 50th Percentile Male and 5th Percentile Female Hybrid III Dummies.

consumers and relevant to the real world crashes.

Based on the foregoing and considering the comments received to the 2004 notice, we have decided that the most prudent approach for the frontal NCAP is to maintain the current test and rating procedures until we have established the sound science necessary to provide a basis for revising the program in a manner that it would be most meaningful for the consumers while ensuring that safety is advanced without unintended consequences. We have initiated a comprehensive review of our entire NCAP program to assure that it continues to most effectively complement FMVSS performance requirements and other agency programs in promoting automotive safety, particularly with the rapid emergence of new technologies. The review will include a further examination of the various options presented for upgrade to frontal NCAP, including rating vehicles for child occupant protection; the research, testing, and analysis needed; and the real world implications. We expect to have a course of action determined in 2006.

V. Conclusion

The agency believes that there is insufficient scientific basis to propose any revisions to the frontal NCAP at this time. We are therefore maintaining the full-frontal barrier test procedure, the test speed of 35 mph (56 km/h), the current test dummies, and the current rating system. We have come to this conclusion based on our evaluation of the comments received, real world data, available test data, and recent congressional mandates. We believe that further research and analysis is needed to establish a new frontal NCAP that complements existing FMVSS and drives the market towards improved safety for frontal occupant protection without unintended consequences. Accordingly, we will conduct the additional analyses necessary for the development of a new frontal rating program that will continue to provide meaningful information to the consumers and thereby encourage safety improvement through market forces.

Authority: 49 U.S.C. 32302, 30111, 30115, 30117, 30166, and 30168, and Pub.L. 106–414, 114 Stat. 1800; delegation of authority at 49 CFR 1.50.

Appendix A—NASS Analysis of Full-Frontal Crashes

The National Automotive Sampling System (NASS) Crashworthiness Data System (CDS) and the Fatality Analysis Reporting System (FARS) are two of the data systems that NHTSA uses to gain insight into real world crash data. Generally, the NASS provides detailed specifics on sampled towaway crashes while FARS provides a broad overview of the fatal crash data.

TABLE A1.—AIS 1+ INJURED OCCUPANTS IN TOWED LIGHT VEHICLES (<=8,500 POUNDS GVWR) 13 YEARS AND OLDER IN THE FRONT-OUTBOARD SEATS, WITH BELTS AND AIR BAGS IN FULL-FRONTAL CRASHES WITHOUT MISSING INJURY OR DAMAGE DATA 1995–2003 ADJUSTED ANNUAL ESTIMATES

DV (mph)	Frequency	Percent	Cumulative frequency	Cumulative percent
00–05	1593.53	0.76	1593.53	0.76
06–10	67774.50	32.42	69368.03	33.18
11–15	78315.78	37.46	147683.80	70.64
16–20	39186.10	18.74	186869.90	89.39
21–25	13017.71	6.23	199887.60	95.62
26–30	5730.69	2.74	205618.30	98.36
31–35	1498.65	0.72	207117.00	99.07
36–40	1139.64	0.55	208256.60	99.62
41–45	355.58	0.17	208612.20	99.79
46–50	311.57	0.15	208923.80	99.94
51–55	84.16	0.04	209007.90	99.98
56–60	30.61	0.01	209038.50	99.99
61–65	12.67	0.01	209051.20	100.00

TABLE A2.—MODERATELY INJURED (AIS 2+) OCCUPANTS IN TOWED LIGHT VEHICLES (<=8,500 POUNDS GVWR) 13 YEARS AND OLDER IN THE FRONT-OUTBOARD SEATS, WITH BELTS AND AIR BAGS IN FULL-FRONTAL CRASHES WITHOUT MISSING INJURY OR DAMAGE DATA 1995–2003 ADJUSTED ANNUAL ESTIMATES

DV (mph)	Frequency	Percent	Cumulative frequency	Cumulative percent
06–10	6152.10	20.42	6152.10	20.42
11–15	8308.73	27.58	14460.83	48.00
16–20	8306.68	27.57	22767.51	75.57
21–25	2831.48	9.40	25598.99	84.97
26–30	2057.39	6.83	27656.39	91.80
31–35	994.54	3.30	28650.93	95.10
36–40	775.82	2.58	29426.75	97.67
41–45	269.86	0.90	29696.60	98.57
46–50	303.22	1.01	29999.82	99.58
51–55	84.16	0.28	30083.99	99.86
56–60	30.61	0.10	30114.59	99.96
61–65	12.67	0.04	30127.26	100.00

TABLE A3.—SERIOUSLY INJURED (AIS 3+) OCCUPANTS IN TOWED LIGHT VEHICLES (<=8,500 POUNDS GVWR) 13 YEARS AND OLDER IN THE FRONT-OUTBOARD SEATS, WITH BELTS AND AIR BAGS IN FULL-FRONTAL CRASHES WITHOUT MISSING INJURY OR DAMAGE DATA 1995–2003 ADJUSTED ANNUAL ESTIMATES

DV (mph)	Frequency	Percent	Cumulative frequency	Cumulative percent
06–10	355.40	6.71	355.40	6.71
11–15	380.33	7.18	735.73	13.90
16–20	1005.39	18.99	1741.12	32.89
21–25	1294.51	24.45	3035.63	57.35
26–30	741.61	14.01	3777.24	71.36
31–35	661.87	12.50	4439.11	83.86
36–40	276.35	5.22	4715.47	89.08
41–45	216.40	4.09	4931.86	93.17
46–50	234.22	4.42	5166.08	97.59
51–55	84.16	1.59	5250.24	99.18
56–60	30.61	0.58	5280.85	99.76
61–65	12.67	0.24	5293.52	100.00

Issued on: December 15, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–24268 Filed 12–15–05; 2:57 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 13, 2005.

The Department of 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 Department of the Treasury Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 19, 2006 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0051.

Type of Review: Extension.

Title Application for an Alcohol Fuel Producer under 26 U.S.C. 5181.

Form: TTB form F 5110.74.

Description: This form is used by persons who wish to produce and receive spirits for the production of alcohol fuels as a business or for their own use and for State and local registration where required. The form describes the person(s) applying for the permit, location of the proposed operation, type of material used for production and amount of spirits to be produced.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 394 hour.

OMB Number: 1513–0111.

Type of Review: Extension.

Title COLAs Online Access Request.

Form: TTB form F 5013.2.

Description: The information on this form will be used by TTB to authenticate end users on the system to electronically file Certificates of Label Approval (COLAs). The system will authenticate end users by comparing information submitted to records in multiple databases.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 344 hour.

Clearance Officer: Frank Foote (202) 927–9347, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005.

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. E5–7513 Filed 12–19–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0205]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposal revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to evaluate a candidate's credentials for employment with VA.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 21, 2006.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *ann.bickoff@va.gov.* Please refer to ''OMB Control No. 2900–0205'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility;

(2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Applications & Appraisals for Employment for Title 38 Positions and Trainees.

OMB Control Number: 2900–0205.

Type of Review: Revision of a currently approved collection.

Abstract: VA Forms 10–2850–2850a through c are applications used to elicit information from candidate's qualifications for employment with VA. VA uses the data collected to conduct background, training and education as well as previously held licenses/registrations to meet security and screening requirements. VA Forms 10–2850b and 10–285d are used to collect information on medical residents, health professions trainees and students training appointment. Program directors of affiliated programs complete VA Form Letter 10–341b to confirm that the information listed has been verified by the sponsoring entity for the trainee listed and that the trainee is enrolled in the designated training program. VA uses the information collected to evaluate qualification for employment and training as well as education and professional experience in determining suitability, grade level and clinical privileges.

Affected Public: Individuals or Households, Business or Other For-Profit, Not-For-Profit Institutions, Federal Government, and State, Local or Tribal Government.

Estimated Annual Burden: 123,894 hours.

a. Application for Physicians, Dentists, Podiatrists and Optometrists, Chiropractors, VA Form 10–2850—7,450 hours.

b. Application for Nurses and Nurse Anesthetists, VA Form 10–2850a—29,799 hours.

c. Application for Residents, VA Form 10–2850b—15,893 hours.

d. Application for Associated Health Occupations, VA Form 10–2850c—9,933 hours.

e. Application for Medical, Dental and Associated Health Students, Trainees and Intern VA Form 10–2850d—28,143 hours.

f. Appraisal of Applicant VA Form FL 10–341a—25,410 hours.

Estimated Average Burden Per Respondent: 30 minutes.

a. Application for Physicians, Dentists, Podiatrists and Optometrists, Chiropractors VA Form 10–2850—30 minutes.

b. Application for Nurses and Nurse Anesthetists VA Form 10–2850a—30 minutes.

c. Application for Residents VA Form 10–2850b—30 minutes.

d. Application for Associated Health Occupations VA Form 10–2850c—30 minutes.

e. Application for Medical, Dental and Associated Health Students, Trainees and Intern VA Form 10–2850d—30 minutes.

f. Appraisal of Applicant VA Form FL 10–341a—30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 320,466.

a. Application for Physicians, Dentists, Podiatrists and Optometrists, Chiropractors VA Form 10–2850–14,900.

b. Application for Nurses and Nurse Anesthetists VA Form 10–2850a—59,598.

c. Application for Residents VA Form 10–2850b—31,786.

d. Application for Associated Health Occupations VA Form 10–2850c—19–866.

e. Application for Medical, Dental and Associated Health Students, Trainees and Intern VA Form 10–2850d—56,286.

f. Appraisal of Applicant—VA Form FL 10–341a—50,820.

Dated: December 8, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–7571 Filed 12–19–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0198]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a veteran's who uses prosthetic or orthopedic device (including a wheelchair) or is prescribe medication due to a skin condition because of a service connected disability may be eligibility for clothing allowance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 21, 2006.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov.* Please refer to ''OMB Control No. 2900–0198'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Application for Annual Clothing Allowance (Under 38 U.S.C. 1162).

OMB Control Number: 2900–0198.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–8678 is used to gather the necessary information to determine if a veteran is eligible for clothing allowance benefits. Clothing allowance is payable if the veteran uses a prosthetic or orthopedic device

(including a wheelchair) that tends to wear out or tear clothing or is prescribe medication for skin condition that causes irreparable damage to outer garments.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 1,120 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 6,720.

Dated: December 12, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–7572 Filed 12–19–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VERS)]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Policy, Planning and Preparedness, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Policy, Planning and Preparedness (OPP&P), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 19, 2006.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374 or FAX (202) 565–6950. Please refer to ''OMB Control No. 2900–New (VERS)''. Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–New (VERS)'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veterans Employability Survey (VERS).

OMB Control Number: None assigned.

Type of Review: New collection.

Abstract: The purpose of the study is to obtain information on veterans who discontinued or interrupted their Vocational Rehabilitation and Employment (VR&E) Program. VA will use the data to determine the factors impacting the veteran's discontinuation of the program, effect on employability and types of interventions that might enable veterans to stay in the program and to compare this VR&E Program population with veterans who successfully complete the program and with the general veteran population.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 27, 2005, at page 56527.

Affected Public: Individuals or households.

Estimated Time Per Respondent and Annual Burden: 1,667 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 5,000.

Dated: December 12, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–7573 Filed 12–19–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (0711)]

Agency Information Collection: Emergency Submission for OMB Review; Comment Request

AGENCY: Human Resources Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the United States Department of Veterans Affairs (VA), has submitted to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). VA is requesting an emergency clearance for Request for One-VA Identification Card.

DATES: Comments must be submitted on or before January 3, 2006.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–New (0711). Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316 or FAX (202) 395–6974. Please refer to ''2900—New (0711).

SUPPLEMENTARY INFORMATION:

Title: Request for One-VA Identification Card, VA form 0711.

OMB Control Number: 2900–New (0711).

Type of Review: New Collection.

Abstract: VA Form 0711 will collect pertinent information from employees, VA applicants seeking employment with VA, contractors, affiliates (such as students, WOC employees and others) prior to issuing a Department identification credential. The data collected will be used to personalize, print, and issue a personal identify verification card.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 8,333 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 950.

Dated: December 12, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–7574 Filed 12–19–05; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 70, No. 243

Tuesday, December 20, 2005

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.

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE Formerly Known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2006 Mental Health Rate Updates

Correction

In notice document 05–23766 beginning on page 72994 in the issue of Thursday, December 8, 2005, make the following correction:

On page 72995, in the table ''Partial Hospitalization Rates for Full-Day and Half-Day Programs FY 2006'', in the third column, in the seventh entry, ''211'' should read ''221''.

[FR Doc. C5–23766 Filed 12–19–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Comprehensive Conservation Plan and Environmental Assessment for Shawangunk Grasslands National Wildlife Refuge

Correction

In notice document 05–23642 beginning on page 72463 in the issue of Monday, December 5, 2005 make the following correction:

On page 72463, in the third column,under the heading **ADDRESSES**, in the seventh line, ''*northeastplaning@amp;fws.gov,*'' should read ''*northeastplanning@amp;fws.gov.*''

[FR Doc. C5–23642 Filed 12–19–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
December 20, 2005

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Rule to Designate Critical Habitat for the Spikedace (*Meda fulgida*) and the Loach Minnow (*Tiaroga cobitis*); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU33

Endangered and Threatened Wildlife and Plants; Proposed Rule to Designate Critical Habitat for the Spikedace (*Meda fulgida*) and the Loach Minnow (*Tiaroga cobitis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate a total of approximately 633 river miles (mi) (1018.7 kilometers (km)) of critical habitat for spikedace and loach minnow. Proposed critical habitat is located in New Mexico and Arizona. We hereby solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal prior to final designation to incorporate or address new information received during public comment periods.

DATES: We will accept comments from all interested parties until February 21, 2006. We must receive requests for public hearings in writing at the address shown in the **ADDRESSES** section by February 3, 2006.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal, identified by RIN number 1018–AU33, by any one of several methods:

1. You may submit written comments and information to Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona, 85021.

2. You may hand-deliver written comments and information to our Arizona Ecological Services Office, or fax your comments to 602/242–2513.

3. You may send your comments by electronic mail (e-mail) to *SD_LMComments@fws.gov.* For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section.

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

All comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, Arizona Ecological Services Office (telephone 602/242–0210; facsimile 602/242–2513).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate and effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. On the basis of public comment, during the development of the final rule we may find that areas proposed do not contain features essential to the conservation of the species, are appropriate for exclusion under section 4(b)(2), or not appropriate for exclusion, and in all of these cases, this information would be incorporated into the final designation. We particularly seek comments concerning:

(1) The reasons why any areas should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh the benefits of excluding areas from the designation.

(2) Specific information on the distribution and abundance of spikedace and loach minnow and their habitats, and which habitat contains the primary constituent elements essential to the conservation of these species and why.

(3) Land-use designations and current or planned activities in or adjacent to the areas proposed and their possible impacts on proposed critical habitat.

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation, in particular, any impacts on small entities.

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(6) In addition, please consider the following: We specifically solicit the delivery of spikedace- and loach minnow-specific management plans including implementation schedules for areas included in this proposed designation, and comment on: (a) Whether these areas are occupied and contain the primary constituent elements that are essential to the conservation of the species; (b) whether these areas warrant exclusion; and (c) the basis for excluding these areas from critical habitat pursuant to section 4(b)(2) of the Act.

(7) We are not proposing the upper portion of the San Pedro River as critical habitat because of the presence of nonnative fish species and the absence of both spikedace and loach minnow. We seek comment on whether this area is essential to the conservation of the species and whether it should be included as critical habitat.

(8) Some of the lands we have identified as containing features essential to the conservation of the spikedace and loach minnow are being considered for exclusion from the final designation of critical habitat. We specifically solicit comment on the possible inclusion or exclusion of such areas;

(a) Whether these areas are occupied and contain the features essential to the conservation of the species and;

(b) Whether these, or other areas proposed but not specifically addressed in this proposal, warrant exclusion and;

(9) We are not proposing Fossil Creek as critical habitat because it is currently unoccupied. However, we seek comment on whether this area is essential to the conservation of the species and whether it should be included as critical habitat.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section above). Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: spikedace/loach minnow'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Arizona Ecological Services Office at 602/242–0210. Please note that the e-mail address, *SD_LMComments@fws.gov*, will be closed at the termination of the public comment period.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this

prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of conservation resources. The Service's present system for designating critical habitat is driven by litigation rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 470 species, or 38 percent, of the 1,253 listed species in the United States under the jurisdiction of the Service have designated critical habitat.

We address the habitat needs of all 1,253 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the states, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that the August 6, 2004 Ninth Circuit judicial opinion, (*Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*) found our definition of adverse modification was invalid. In response to the decision, the Director has provided guidance to the Service based on the statutory language. In this rule, our analysis of the consequences and relative costs and benefits of the critical habitat designation is based on application of the statute consistent with the 9th Circuit's ruling and the Director's guidance.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on the spikedace and loach minnow, refer to the final designation of critical habitat for the spikedace and loach minnow published in the **Federal Register** on April 25, 2000 (65 FR 24328).

Previous Federal Actions

On September 20, 1999, the United States District Court for the District of New Mexico, *Southwest Center for Biological Diversity* v. *Clark*, CIV 98–0769 M/JHG, ordered us to finalize a designation of critical habitat for the spikedace and loach minnow by February 17, 2000. On October 6, 1999, the court amended the order to require us to propose a critical habitat determination rather than requiring a final designation. We published our proposed rule to designate critical habitat in the **Federal Register** on December 10, 1999 (64 FR 69324). On December 22, 1999, the court extended the deadline to complete our determination until April 21, 2000. We published a final critical habitat designation on April 25, 2000 (65 FR 24329).

In *New Mexico Cattle Growers' Association and Coalition of Arizona/New Mexico Counties for Stable Economic Growth* v. *United States Fish and Wildlife Service*, CIV 02–0199 JB/LCS (D.N.M), the Plaintiffs challenged the April 25, 2000, critical habitat designation for the spikedace and loach minnow because the economic analysis had been prepared using the same methods which the Tenth Circuit had held to be invalid. The Center for Biological Diversity joined the lawsuit as a Defendant-Intervenor. The Service agreed to a voluntary vacatur of the critical habitat designation, except for the Tonto Creek Complex. On August 31, 2004, the United States District Court for the District of New Mexico set aside the April 25, 2000, critical habitat designation in its entirety and remanded it to the Service for preparation of a new proposed and final designation.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known, using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features therein may require special management or protection. When the best available scientific data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but that was not known to be occupied at the time of listing will likely be essential to the conservation of the species and, therefore, included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

In determining areas that contain features essential to the conservation of spikedace and the loach minnow, we used the best scientific data available. We have reviewed the overall approach to the conservation of these species compiled in their respective recovery plans (USFWS 1991a, 1991b) and undertaken by local, State, Federal, and Tribal agencies, and private and non-governmental organizations operating within the species' range since their listing in 1986.

We have also reviewed available information that pertains to the habitat requirements of these species. The material included data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles, agency reports, and databases; and regional Geographic Information System (GIS) coverages and habitat models.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available and to consider those physical and biological features (i.e., primary constituent elements (PCEs)) that are essential to the conservation of the species and that may require special management considerations or protection. These features include but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; and habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

Each of the areas designated in this rule have been determined to contain sufficient PCEs to provide for one or more of the life history functions of spikedace or loach minnow. In some cases, the PCEs exist as a result of ongoing Federal actions. As a result, ongoing Federal actions at the time of designation will be included in the baseline in any consultation conducted subsequent to this designation.

We determined the primary constituent elements for spikedace and loach minnow from studies on their habitat requirements and population biology including, but not limited to, Barber et al. 1970, Minckley 1973, Anderson 1978, Barber and Minckley 1983, Turner and Taffanelli 1983, Barrett et al. 1985, Propst et al. 1986, Service 1989, Hardy et al. 1990, Douglas et al. 1994, Stefferud and Rinne 1996, and Velasco 1997.

Lateral Extent

The areas proposed for designation as critical habitat are designed to provide sufficient riverine and associated floodplain area for breeding, non-breeding, and dispersing adult spikedace and loach minnow, as well as for the habitat needs of juvenile and larval stages of these fishes. In general, the constituent elements of critical habitat for spikedace and loach minnow include the riverine ecosystem formed by the wetted channel and the adjacent floodplains within 300 lateral feet on either side of bankfull stage. Spikedace and loach minnow use the riverine ecosystem for feeding, sheltering, and cover while breeding and migrating. This proposal takes into account the naturally dynamic nature of riverine systems and floodplains (including riparian and adjacent upland areas) that are an integral part of the stream ecosystem. For example, riparian areas are seasonally flooded habitats (i.e., wetlands) that are major contributors to a variety of vital functions within the associated stream channel (Federal Interagency Stream Restoration Working Group 1998, Brinson et al. 1981). They are responsible for energy and nutrient cycling, filtering runoff, absorbing and gradually releasing floodwaters, recharging groundwater, maintaining streamflows, protecting stream banks from erosion, and providing shade and cover for fish and other aquatic species. Healthy riparian and adjacent upland areas help ensure water courses maintain the habitat components essential to aquatic species (e.g., see FS 1979; Middle Rio Grande Biological Interagency Team 1993; Briggs 1996), including the spikedace and loach minnow. Habitat quality within the mainstem river channels in the historical range of the spikedace and loach minnow is intrinsically related to the character of the floodplain and the associated tributaries, side channels, and backwater habitats that contribute to the key habitat features (e.g., substrate, water quality, and water quantity) in these reaches. We believe a relatively intact riparian area, along with periodic flooding in a relatively natural pattern, is important in maintaining the stream conditions necessary for long-term conservation of the spikedace and loach minnow.

The lateral extent of streams was set at 300 ft (91.4 m) to either side of bankfull stage to accommodate stream meandering and high flows, and in order to ensure adequate protection of riparian zones adjacent to stream channels. Bankfull stage is defined as the discharge at which channel maintenance is the most effective, or the upper level of the range of channel-forming flows which transport the bulk of the available sediment over time. Bankfull stage is generally considered to be that level of stream discharge reached just before flows spill out onto the adjacent floodplain. The discharge that occurs at bankfull stage, in combination with the range of flows that occur over a length of time, govern the shape and size of the river channel (Rosgen 1996, Leopold 1997).

The use of bankfull stage and 300 ft (91.4 m) on either side recognizes the naturally dynamic nature of riverine systems and recognizes that floodplains are an integral part of the stream ecosystem. The use of bankfull stage and 300 ft (91.4 m) on either side of a tributary also is an area that contains the features essential to the conservation of the species. A relatively intact floodplain, along with the periodic flooding in a relatively natural pattern, is an important element in the long-term survival and recovery of spikedace and loach minnow. The riparian areas encompassed in the 300 lateral feet (91.4 m) to either side of bankfull stage play an important role in overall stream health, in that they function as the floodplain and dissipate stream energies associated with high flows (BLM 1990). This is further discussed below in the ''Proposed Critical Habitat'' section of the rule.

Spikedace

The specific primary constituent elements required of spikedace habitat are derived from the biological needs of the spikedace as described below.

Space for Individual and Population Growth and Normal Behavior

Streams in the Southwestern United States have a wide fluctuation in flows and resulting habitat conditions at different times of the year. Spikedace persist in these varying conditions and, as discussed below, several studies have documented habitat conditions at occupied sites.

Habitat Preferences

Spikedace have differing habitat requirements through their various life stages. Generally, adult spikedace prefer intermediate-sized streams with moderate to swift currents over sand, gravel, and cobble substrates (*i.e.* stream bottoms). Preferred water depths are less than 11.8 in (30 cm) (Barber and Minckley 1966, Minckley 1973, Anderson 1978, Rinne and Kroeger 1988, Hardy 1990, Sublette *et al.* 1990, Rinne 1991, Rinne 1999a). As discussed below, larval and juvenile spikedace occupy different habitats than adults.

Flow Velocities. Studies have been completed on the Gila River, Aravaipa Creek, and the Verde River. Measured flows in habitat occupied by adult spikedace ranged from 23.3 to 59.5 cm/second (9.2–23.4 in/second) (Barber and Minckley 1966, Hardy 1990, Propst *et al.* 1986, Rinne 1991, Rinne 1991a, Rinne and Kroeger 1988, Schreiber 1978). Studies on the Gila River indicated that juvenile spikedace occupy areas with velocities of approximately 16.8 cm/second (6.6 in/second) while larval spikedace were found in velocities of 8.4 cm/second (3.3 in/second) (Propst *et al.* 1986).

Flow velocities in occupied habitats vary by season as well. During the warm season (June–November), spikedace on the Gila River occupied areas with mean flow velocities of 19.3 in/second (49.1 cm/second) at one site, and 7.4 in/second (18.8 cm/second) at the second site. During the cold season (December–May), mean flow velocities at these same sites were 15.5 in/second (39.4 cm/second) and 8.4 in/second (21.4 cm/second). It is believed that spikedace seek areas in the stream that offer protection during periods of cooler temperatures to offset their decreased metabolic rates. Where water depth remains fairly constant throughout the year as at the first site, slower velocities provided habitats in portions of the stream with warmer temperatures. Where flow velocity remains fairly constant throughout the year, such as at the second site, shallower water provided habitats in portions of the stream with warmer temperatures (Propst *et al.* 1986).

Larval and juvenile spikedace occupy different habitats than adults, tending to occupy shallow, peripheral portions of streams in areas with slower currents (Anderson 1978, Propst *et al.* 1986). Once they emerge from the gravel of the spawning riffles, spikedace larvae disperse to stream margins where water velocity is very slow or still. Slightly larger larvae were most commonly associated with slow-velocity water near

stream margins in areas where water depth was less than 12.6 inches (32.0 cm) (Propst *et al.* 1986). Juvenile spikedace (those fish 1.0 to 1.4 in (25.4–35.6 mm) in length) occurred over a greater range of water velocities than larvae, but still in water depths of less than 12.6 in (32.0 cm). Juveniles and larvae are also occasionally found in quiet pools or backwaters lacking streamflow (Sublette *et al.* 1990).

Outside of the breeding season, adult spikedace primarily use riffle habitat (a shallow area in a streambed causing ripples) or quiet eddies (where the water moves in the opposite direction of water in the main channel or in circular patterns) downstream of those riffles. Eighty percent of the spikedace collected in a Verde River study used run and glide habitat. For this study, a glide was defined as a portion of the stream with a lower gradient (0.3 percent), versus a run which had a slightly steeper gradient (0.3–0.5 percent) (Rinne and Stefferud 1996). Spikedace on the Gila River were most commonly found in riffle areas of the stream with moderate to swift currents (Anderson 1978) and some run habitats (J.M. Montgomery 1985), as were spikedace in Aravaipa Creek (Barber and Minckley 1966).

Seasonal differences in habitats utilized have been noted in the upper Gila drainage, for both the winter and breeding seasons. For example, the spikedace was found to use shallower habitats at 6.6 in (<16.8 cm) in the winter, and deeper water at 6.6 to 12.6 in (16.8–32.0 cm) during warmer months (Propst *et al.* 1986, Sublette *et al.* 1990). During the breeding season, female and male spikedace become segregated, with females occupying deeper pools and eddies and males occupying riffles flowing over sand and gravel beds in water approximately 3.1 to 5.9 inches (7.9–15.0 cm) deep. Females then enter the riffles occupied by the males before ova are released into the water column (Barber *et al.* 1970).

As noted above, streams in the Southwestern United States have a wide fluctuation in flows and are periodically dewatered. While portions of stream segments included in this designation may experience dry periods, they are still considered essential because the spikedace is adapted to this environment and will use these areas as connective corridors between occupied or seasonally occupied habitat when they are wetted.

Substrates. Spikedace are known to occur in areas with low to moderate amounts of fine sediment and substrate embeddedness (filling in of spaces by fine sediments), which is essential for healthy development of eggs. Spawning has been observed in areas with sand and gravel beds and not in areas with fine sediment or substrate embeddedness, as described above. Additionally, low to moderate fine sediments ensure that eggs remain well-oxygenated and will not suffocate due to sediment deposition (Propst *et al.* 1986).

In the Verde River study, spikedace glide-run habitats were characterized by approximately 29 percent sand or fines (silty sand) (Rinne 2001). Spikedace numbers in the Verde River increased almost three times (from 18 to 52 individuals) when the fine component of the substrate decreased from about 27 percent down to 7 percent (Neary *et al.* 1996), indicating that spikedace prefer habitats with lower amounts of fines. Sand content in all glide-run spikedace habitats in the Verde and Gila Rivers in 2000 was 18 and 20 percent (Rinne 2001).

Larval spikedace substrate preferences are similar to those of adults. Sixty percent of spikedace larvae in the Gila River were found over sand-dominated substrates, while 18 percent were found over gravel and an additional 18 percent found over cobble-dominated substrates (Propst *et al.* 1986). While 45 percent of juvenile spikedace were found over sand substrates, an additional 45 percent of the juveniles were found over gravel substrates, with the remaining 9 percent associated with cobble-dominated substrates (Propst *et al.* 1986).

The degree of substrate embeddedness may also affect the prey base for spikedace. As discussed below, mayflies constitute a significant portion of the spikedace diet. Suitable habitat for the type of mayflies found in Aravaipa Creek includes pebbles or gravel for clinging. Excess sedimentation would cover or blanket smaller pebbles and gravel, resulting in a lack of suitable habitat for mayflies, and a subsequent decrease in available prey items for spikedace.

Flooding. Rainfall in the southwest is generally characterized as bimodal, with winter rains of longer duration and less intensity and summer rains of shorter duration and higher intensity. Periodic flooding appear to benefit spikedace in three ways: (1) Removing excess sediment from some portions of the stream; (2) removing nonnative fish species from a given area; and (3) increasing prey species diversity.

Flooding in Aravaipa Creek has resulted in the transport of heavier loads of sediments such as cobble, gravel, and sand that deposited where the stream widens, gradient flattens, and velocity and turbulence decrease. Dams formed by such deposition can temporarily cause water to back up and break into braids downstream of the dam. The braided areas provide excellent nurseries for larval and juvenile fishes (Velasco 1997).

On the Gila River in New Mexico, flows fluctuate seasonally with snowmelt causing spring pulses and occasional floods, and late-summer or monsoonal rains producing floods of varying intensity and duration. These high flows benefit essential spikedace spawning and foraging habitat (Propst *et al.* 1986) as described above. Peak floods can modify channel morphology and sort and rearrange stream bed materials (Stefferud and Rinne 1996).

Floods likely also benefit native fish by breaking up embedded bottom materials (Mueller 1984). A study of the Verde River analyzed the effects of flooding in 1993 and 1995, finding that these floods had notable effects on both native and nonnative fish species. Among other effects, the floods either stimulated spawning or enhanced recruitment of three of the native species, and may have eliminated one of the nonnative fish species (Rinne and Stefferud 1997).

Flooding, as part of a natural hydrograph, temporarily removes nonnative fish species, which are not adapted to flooding. Thus flooding consequently removes the competitive pressures of nonnative fish species on native fish species which persist following the flood. A study on the differential responses of native and nonnative fishes in seven unregulated and three regulated streams or stream reaches that were sampled before and after major flooding noted that fish faunas of canyon-bound reaches of unregulated streams invariably shifted from a mixture of native and nonnative fish species to predominantly, and in some cases exclusively, native forms after large floods. Samples from regulated systems indicated relatively few or no changes in species composition due to releases from upstream dams at low, controlled volumes. However, during emergency releases, effects to nonnative fish species were similar to those seen with flooding on unregulated systems (Minckley and Meffe 1987).

The onset of flooding also corresponds with an increased diversity of food items for spikedace. Reductions in the mainstream invertebrates, such as mayflies, cause the fish to expand its food base in an opportunistic manner. In addition, inflowing flood waters carry terrestrial invertebrates, such as ants, bees, and wasps (Hymenopterans), into

aquatic areas (Barber and Minckley 1983).

Stream Gradient. Spikedace occupy streams with low to moderate gradients (Propst *et al.* 1986, Stefferud and Rinne 1996, Sublette *et al.* 1999). Specific gradient data are generally lacking, but the gradient of occupied portions of Aravaipa Creek varied between approximately 0.3 to < 1.0 percent (Barber *et al.* 1970, Rinne and Kroeger 1988, Rinne and Stefferud 1996). Smaller, younger spikedace are generally found in quiet water along pool margins over soft, fine-grained bottoms (USFWS 1991a). Juveniles and larvae tend to occupy the margins of the stream adjacent to riffle habitats (Propst *et al.* 1986), and are also known to use backwater areas (Sublette *et al.* 1990).

Habitat Protected From Disturbance or Representative of the Historic Geographical and Ecological Distribution of a Species

Nonnative fish species. One of the primary reasons for the decline of native species is the presence of nonnative fishes introduced accidentally or for sport, forage, or bait. Fish evolution in the arid American west is linked to disruptive geologic and climatic events which acted in concert over evolutionary time to decrease the availability and reliability of aquatic ecosystems. The fragmentation and reduction of aquatic ecosystems resulted in a fish fauna that was both diminished and restricted to the arid west. Lacking exposure to a wider range of species, western species seem to lack the competitive abilities and predator defenses developed by fishes from regions where more species are present (Douglas *et al.* 1994).

The effects of nonnative fish competition on spikedace can be classified as either interference or exploitive. Interference competition occurs when individuals directly affect others, such as by fighting or preying upon them. Exploitive competition occurs when individuals affect others indirectly, such as through use of common resources (Douglas *et al.* 1994). Competition with regards to actual space is generally considered interference competition (Schoener 1983).

The effects of nonnative fish preying on natives such as spikedace would be classified as interference competition. There is circumstantial evidence of the negative impacts of nonnative predators on native fishes for several stream reaches. Channel catfish, flathead catfish, and smallmouth bass all prey on native fishes, as evidenced by prey remains of native fishes in the stomachs of these predatory species (Propst *et al.* 1986). Smallmouth bass, rainbow trout, brown trout, and channel catfish became common in the Gila River above Turkey Creek and the three forks of the Gila River. In 1949, 52 spikedace were collected at Red Rock while channel catfish composed only 1.65 percent of the 607 fish collected. However, in 1977, only six spikedace were located at the same site, and the percentage of channel catfish had risen to 14.5 percent of 169 fish collected. The decline of spikedace and the increase of channel catfish is likely related (Anderson 1978).

Similar interactions between native and nonnative fishes were observed for the upper reaches of the East Fork of the Gila River. In this system, native fish were limited, with spikedace being rare or absent, while nonnative channel catfish and smallmouth bass were moderately common prior to 1983 and 1984 floods. Post-1983 flooding, adult nonnative predators were generally absent and spikedace were collected in moderate numbers in 1985 (Propst *et al.* 1986).

Interference competition occurs with species such as red shiner. Red shiner appear to be particularly detrimental to spikedace because although spikedace and shiners are separated geographically (*i.e.*, allopatric), they occupy essentially the same habitat types. Where the two species are overlapping (*i.e.*, sympatric), there is evidence of displacement of spikedace to less suitable habitats (USFWS 1991a). This means that if red shiners are present, suitable habitat for spikedace is reduced. Range expansion and species recovery may then be curtailed.

One study focused on three stream reaches on the Gila River and Aravaipa Creek having only spikedace; one reach on the Verde River where spikedace and red shiner have co-occurred for three decades; and one reach on the Gila River where red shiner recently invaded areas and where spikedace had never been recorded. The study indicated that, for reaches where only spikedace were present, spikedace showed a preference for slower currents and smaller particles in the substrate than were generally available throughout the Gila River and Aravaipa Creek systems. For red shiner in the Verde River, the study showed that red shiner occupied waters that were generally slower and with smaller particle size in the substrate than were, on average, available in the system. The study concluded that, where the two species were caught together, habitats of spikedace were statistically indistinguishable from those occupied by red shiner. The study further concludes that spikedace, where co-occurring with red shiner, move into currents swifter than those selected when in isolation, while red shiner occupy the slower habitat, whether they are alone or with spikedace (Douglas *et al.* 1994).

Food

Food Items. Spikedace are active, highly mobile fish that visually inspect drifting materials both at the surface and within the water column. Gustatory inspection, or taking potential prey items into the mouth before either swallowing or rejecting it, is also common (Barber and Minckley 1983). Prey body size is small, typically ranging from 0.08 to 0.20 inches (2 to 5 mm) long (Anderson 1978).

Stomach content analysis of spikedace determined that mayflies, caddisflies, true flies, stoneflies, and dragonflies are all prey items for spikedace. In one Gila River study, the frequency of occurrence was 71 percent for mayflies, 34 percent for true flies, and 25 percent for caddisflies (Propst *et al.* 1986). A second Gila River study of five samples determined that the frequency of occurrence was 80 to 100 percent for mayflies, 23.1 and 56.8 percent for true flies, and 48 to 69.2 percent for caddisflies (Anderson 1978). At Aravaipa Creek, mayflies, caddisflies, true flies, stoneflies, and dragonflies were all prey items for spikedace, as were some winged insects and plant materials (Schreiber 1978).

At Aravaipa Creek, spikedace consumed a total of 36 different prey items (Barber and Minckley 1983). Mayflies constituted the majority of prey items, followed by true flies. Of the mayflies consumed, 36.5 percent were adults, while 33.3 percent were nymphs. Terrestrial invertebrates, including ants, wasps, and spiders, were also consumed, as were beetles, true bugs, caddisflies, and water fleas.

Spikedace diet varies seasonally (Barber and Minckley 1983). Mayflies dominated stomach contents in July, but declined in August and September, increasing in importance again between October and June. When mayflies were available in lower numbers, spikedace consumed a greater variety of foods, including true bugs, true flies, beetles, and spiders.

Spikedace diet varies with age class as well. Young spikedace, classified as < 0.9 in (22.9 mm) fed on a diversity of small-bodied invertebrates occurring in and on sediments along the margins of the creek. True flies were found most frequently, but water fleas and aerial adults of aquatic and terrestrial insects also provide significant parts of the diet. As juveniles grow and migrate into the

swifter currents of the channel, mayfly nymphs and adults increase in importance (Barber and Minckley 1983).

Spikedace are very dependent on aquatic insects for sustenance, and production of the aquatic insects consumed by spikedace occurs mainly in riffle habitats (Propst *et al.* 1986). As a result, habitat selection influences food items found in stomach content analyses. Spikedace in pools had eaten the least diverse foods while those from riffles contained a greater variety of taxa, indicating that the presence of riffles is essential to the survival of spikedace as riffles in good condition and abundance help to ensure that a sufficient number and variety of prey items will continue to be available (Barber and Minckley 1983).

Aquatic invertebrates that constitute the bulk of the spikedace diet have specific habitat parameters of their own. Mayflies, which constituted the largest percentage of prey items, spend their immature stages in fresh water. Mayfly nymphs occur in all types of fresh waters, wherever there is an abundance of oxygen, but they are most characteristic of shallow water. Mayflies found in spikedace stomach content analyses consisted of individuals from several genera, with individuals from the genus *Baetidae* constituting the highest percentage of prey from the mayfly order in the study by Schreiber (1978). *Baetidae* are free-ranging species of rapid waters that maintain themselves in currents by clinging to pebbles. Spikedace also consumed individuals from two other mayfly genera (*Heptageniidae* and *Ephemerellidae*), which are considered ''clinging species'' as they cling tightly to stones and other objects and may be found in greatest abundance in crevices and on the undersides of stones (Pennak 1978). The importance of gravel and cobble substrates is illustrated by the fact that these prey species, which make up the bulk of the spikedace diet, require these surfaces to persist.

Water Quality

Pollutants. Water with low levels of pollutants is essential for the maintenance of spikedace. Spikedace occur in areas where mining, agriculture, livestock operations, and road construction and use are prevalent. Various pollutants are associated with these types of activities. For spikedace, waters should have low levels of pollutants such as copper, arsenic, mercury and cadmium; human and animal waste products; pesticides; suspended sediments; and gasoline or diesel fuels (D. Baker, USFWS, pers. comm. 2005). In addition, dissolved oxygen should be greater than 3 parts per million (ppm). If levels of dissolved oxygen are below 3 ppm, some stress may occur.

Fish kills have been documented in the San Francisco River (Rathbun 1969) and the San Pedro River (Eberhardt 1981), both of which are within the species' historical range. In both instances, leaching ponds associated with copper mines released waters into the streams, resulting in elevated levels of toxic chemicals. For the San Pedro River, this included elevated levels of iron, copper, manganese, and zinc. Both incidents resulted in die-offs of species inhabiting the streams. Eberhardt (1981) notes that no bottom-dwelling aquatic insects, live fish, or aquatic vegetation of any kind were found for a 60 mi (97 km) stretch of river in the area affected by the spill. Rathbun (1969) reported similar results for the San Francisco River. The possibility for similar accidents, or pollution from other sources, exists throughout these species ranges due to their proximity to mines, communities, agricultural areas, and major transportation routes.

Temperature. Temperatures of occupied spikedace habitat vary with time of year. In May, temperatures at Aravaipa Creek were uniformly 66.2 °F (19 ° C) (Barber *et al.* 1970). Summer temperatures remained at no more than 80.6 °F (27 °C) at Aravaipa Creek (Barber *et al.* 1970), and at a mean of 66.7 °F (19.3 °C) between June and November on the Gila River in the Forks area (at the Middle, West, and East Forks) and were at 69.4 °F (20.8 °C) in the Cliff-Gila Valley (Propst *et al.* 1986). Winter temperatures ranged between 69.1 °F (20.6 °C) in November down to 48.0 °F (8.9 °C) in December at Aravaipa Creek (Barber and Minckley 1966). The overall range represented by these measures is between 35–85 °F (1.7–29.4 °C).

Reproduction and Rearing of Offspring

As discussed above under flow velocities, spikedace use a variety of habitat types within the channel during their reproductive cycle and at various life stages. Although not typically associated with pools (Anderson 1978), pools are used by female spikedace during the breeding season while males remained in riffle habitats. Females leave the pools, generally on the downstream end of the riffle, and swim upstream to males in riffle habitat (Barber *et al.* 1970). Unlike loach minnow that deposit their eggs in a hole or depression, spikedace spawn in shallow riffles and broadcast their gametes (reproductive cells) into the water column. Spikedace eggs are adhesive and develop among the gravel and cobble of the riffles following spawning. Spawning in riffle habitat ensures that the eggs are well oxygenated and are not normally subject to suffocation by sediment deposition due to the swifter flows found in riffle habitats. However, after the eggs have adhered to the gravel and cobble substrate, excessive sedimentation could cause suffocation of the eggs (Propst *et al.* 1986 and Marsh 1991).

Primary Constituent Elements for the Spikedace

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the primary constituent elements essential to the conservation of the spikedace are:

1. Permanent, flowing, water with low levels of pollutants, including:

a. Living areas for adult spikedace with slow to swift flow velocities between 20 and 60 cm/second (8–24 inches/second) in shallow water between approximately 10 cm (4 inches) to one meter (40 inches) with shear zones where rapid flow borders slower flow, areas of sheet flow (or smoother, less turbulent flow) at the upper ends of mid-channel sand/gravel bars, and eddies at downstream riffle edges;

b. Living areas for juvenile spikedace with slow to moderate water velocities of approximately 18 cm/second (8 inches/second) or higher in shallow water between approximately 3 cm (1.2 inches) to one meter (40 inches);

c. Living areas for larval spikedace with slow to moderate flow velocities of approximately 10 cm/second (4 inches/second) or higher in shallow water approximately 3 cm (1.2 inches) to one meter (40 inches).

d. Water with low levels of pollutants such as copper, arsenic, mercury and cadmium; human and animal waste products; pesticides; suspended sediments; and gasoline or diesel fuels and with dissolved oxygen levels greater than 3 parts per million (ppm).

2. Sand, gravel, and cobble substrates with low or moderate amounts of fine sediment and substrate embeddedness. Suitable levels of embeddedness are generally maintained by a natural, unregulated hydrograph that allows for periodic flooding or, if flows are modified or regulated, a hydrograph that allows for adequate river functions, such as flows capable of transporting sediments.

3. Streams that have:

a. Low gradients of less than approximately 1.0 percent;

b. Water temperatures in the approximate range of 35–85° Fahrenheit (F) (1.7–29.4 °C) (with natural diurnal and seasonal variation);

c. Pool, riffle, run, and backwater components, and;

d. An abundant aquatic insect food base consisting of mayflies, true flies, and caddisflies, stoneflies, and dragonflies.

4. Habitat devoid of nonnative fish species detrimental to spikedace, or habitat in which detrimental nonnative fish are at levels which allow persistence of spikedace.

5. Areas within perennial, interrupted stream courses which are periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted.

Each of the areas designated in this rule have been determined to contain sufficient PCEs to provide for one or more of the life history functions of the spikedace. In some cases, the PCEs exist as a result of ongoing Federal actions. As a result, ongoing Federal actions at the time of designation will be included in the baseline in any consultation conducted subsequent to this designation.

Loach Minnow

The specific primary constituent elements essential to the conservation of the loach minnow are derived from the biological requirements of the loach minnow, as described below.

Space for Individual and Population Growth and Normal Behavior

As noted for the spikedace above, streams in the Southwestern United States have a wide fluctuation in flows and resulting habitat conditions at different times of the year. Loach minnow persist in these varying conditions and, as discussed below, several studies have documented habitat conditions at occupied sites.

Habitat Preferences

Flow Velocities. Loach minnow live on the bottom of small to large rivers, preferring shallow, swift, and turbulent riffles, living and feeding among clean, loose, gravel-to-cobble substrates (Anderson and Turner 1977, Barber and Minckley 1966, Britt 1982, Lee *et al.* 1980, Marsh *et al.* 2003, Minckley 1981, USFWS 1991b, Velasco 1997). Loach minnow are sometimes associated with filamentous (threadlike) algae (Anderson and Turner 1977, Lee *et al.* 1980, Minckley 1981). Specific habitat usage varies with the life stage of the fish, as well as geographically. As noted below, researchers have documented a range of flows in occupied areas.

Flow rate studies have been completed on the Gila River, Tularosa River, San Francisco River, Aravaipa Creek, Deer Creek. Measured flows in habitat occupied by adult loach minnow ranged from 9.6 to 31.2 in/second (24.4 to 79.2 cm/second) (Barber and Minckley 1966, Propst *et al.* 1988, Propst and Bestgen 1991, Rinne 1989). There is geographic variation in flow velocities used by adult loach minnow. Adult loach minnow in the Gila River preferred velocities of 1.2 to 14.4 in/second (3.0 to 36.6 cm/second), while those in Aravaipa Creek preferred velocities of 15.6 to 20.4 in/second (39.6 to 51.8 cm/second). This may be due to the fact that there was considerably more water at slower velocities available to loach minnow in the Gila River, and that there was more and larger cobble substrate in the Gila River, which creates more habitat of slower velocities for loach minnow use (Turner and Tafanelli 1983).

Juvenile loach minnow generally occurred in areas where velocities were similar to those used by adults, but faster than those used by larvae. In the Gila, San Francisco, and Tularosa rivers, juveniles occupied areas with mean velocities ranging between 1.2–33.6 in/second (3.0 to 85.3 cm/second) (Propst *et al.* 1988, Propst and Bestgen 1991, Rinne 1989, Turner and Tafanelli 1983). Larval loach minnow move from spawning rocks to slower-velocity nursery areas after emergence, typically occupying areas with significantly slower velocities than juveniles and adults. Larval loach minnow in the Gila, San Francisco, and Tularosa rivers occupied areas that were shallower and significantly slower than areas where eggs were found (Propst *et al.* 1988, Propst and Bestgen 1991). In the Gila, San Francisco, and Tularosa rivers, and Aravaipa Creek, larval loach minnow occupied areas with flow velocities ranging from 3.6 to 19.2 in/second (9.1 to 48.8 cm/second).

Loach minnow prefer shallow, swift, and turbulent riffles. The use of riffle habitat has been documented in Aravaipa Creek (Barber and Minckley 1966, Rinne 1989, Velasco 1997, Vives and Minckley 1990), Eagle Creek (Marsh *et al.* 2003), Tularosa River (Propst *et al.* 1984), and the Gila and San Francisco rivers (Britt 1982, Propst and Bestgen 1991, Propst *et al.* 1984, Propst *et al.* 1988). Loach minnow also occur in stream segments that contain pool, riffle, and run habitats on the Blue, upper Gila, and San Francisco rivers (AGFD 1994, Bagley *et al.* 1995, Montgomery 1985).

The availability of pool and run habitats affects availability of prey species. While most of the food items of loach minnow are riffle species, two are not, including mayfly nymphs which, at times, made up 17% of the total food volume of loach minnow in a study at Aravaipa Creek (Schreiber 1978). The presence of a variety of habitat types is therefore important to the persistence of loach minnow in a stream, even while they are typically associated with riffles.

Substrates. Loach minnow in Aravaipa Creek occurred over a gravel-pebble substrate with materials between 3 to 16 mm (0.12 to 0.63 in) and, except in the summer, were associated with the larger sizes of available substrate. The use of larger substrates was disproportionately greater than expected based on overall availability of substrate size in the stream, indicating that loach minnow have a preference for the larger substrate and tend to use areas with that substrate over areas with smaller substrate (Rinne 1989). For portions of the upper Gila River occupied by loach minnow in 1999 and 2000, substrates were characterized by gravel-pebble and cobble substrates, with 70 percent of the sites having a gravel-pebble substrate, and 14 percent of the sites having cobble substrate (Rinne 2001).

Loach minnow in Aravaipa Creek and the Gila River appeared to prefer cobble and gravel, avoiding areas dominated by sand or finer gravel. This may be due to the fact that loach minnow maintain a relatively stationary position on the bottom of a stream in flowing water. An irregular bottom, such as that created by cobble or larger gravels, creates pockets of lower water velocities around larger rocks where loach minnow can remain stationary with less energy expenditure (Turner and Tafanelli 1983). In the Gila and San Francisco rivers, the majority of loach minnow captured occurred in the upstream portion of a riffle rather than in the central and lower depositional sections of the riffle. This is likely due to the availability of interstitial spaces in the cobble-rubble substrate, which became filled with sediment more quickly in the central and lower sections of a riffle section as suspended sediment begins to drop out (Propst *et al.* 1984).

Loach minnow use different substrates during different life stages. Embryos occurred primarily on large gravel to rubble, while larvae were found where substrate particles were smaller than that used by embryos. Juvenile fish occupy areas with substrates of larger particle size than larvae. Adults exhibited a narrower preference for substrates than did juveniles, and were most commonly

associated with gravel to cobble substrates (Propst and Bestgen 1991).

As noted above, streams in the Southwestern United States have a wide fluctuation in flows and are periodically dewatered. While portions of stream segments included in this designation may experience dry periods, they are still considered essential because the loach minnow is adapted to this changing environment and will use these areas as connective corridors between occupied or seasonally occupied habitat when they are wetted.

Flooding. Natural flows, including flooding, are part of an unregulated hydrograph and are important in maintaining loach minnow habitat. In areas where substantial diversions or impoundments have been constructed, loach minnow are less likely to occur. This is in part due to habitat changes caused by the construction, and in part due to the reduction of beneficial effects of flooding on loach minnow habitat. Flooding appears to positively affect loach minnow population dynamics by resulting in higher recruitment (reproduction and survival of young) and by decreasing the abundance of nonnative fishes.

The construction of water diversions, by increasing water depth, has reduced or eliminated riffle habitat in many stream reaches. In addition, loach minnow are generally absent in stream reaches affected by impoundments. While the specific factor responsible for this is not known, it is likely related to modification of thermal regimes, habitat, food base, or discharge patterns. Flooding also cleans, rearranges, and rehabilitates important riffle habitat (Propst et al. 1988).

Flooding allows for the scouring of sand and gravel in riffle areas, which reduces the degree of embeddedness of cobble and boulder substrates (Britt 1982). Prior to flooding, excessive sediment in the bedload is typically deposited at the downstream undersurfaces of cobble and boulder substrate components where flow velocities are lowest, and can result in a higher degree of embeddedness (Rinne 2001). Following flooding, cavities created under cobbles by scouring action of the flood waters provides enhanced spawning habitat for loach minnow.

Studies on the Gila, Tularosa, and San Francisco rivers, found that flooding is primarily a positive influence on native fish, and apparently had a positive influence on the relative abundance of loach minnow. Rather than following a typical pattern of winter mortality and population decline, high levels of recruitment occurred after the flood, and loach minnow relative abundance remained high through the next spring. Flooding has enhanced and enlarged loach minnow habitat, resulting in a greater survivorship of individuals through winter and spring (Propst et al. 1988). Similar results were observed on the Gila and San Francisco rivers following flooding in 1978 (Britt 1982).

Natural flooding may also reduce the negative impacts of nonnative fish species on loach minnow. During significant floods, nonnative species were either displaced or destroyed, while native species were able to maintain their position in or adjacent to channel habitats, persist in micro refuges or recolonize should they be displaced (Britt 1982, Minckley and Meffe 1987).

Stream Gradient. In addition to the availability of riffle habitat, gradient may influence the distribution and abundance of loach minnow. In studies of the San Francisco River, Gila River, Aravaipa Creek, and the Blue River found loach minnow occurred in stream reaches where the gradient was generally shallow, ranging from 0.3 to 2.2 percent (Bagley et al. 1995, Rinne 1989, Rinne 2001).

Habitat Protected From Disturbance or Representative of the Historic Geographical and Ecological Distribution of a Species

Nonnative fish species. As noted under the discussion of nonnative fish species in the spikedace primary constituent elements section above, nonnative fishes have been introduced for a variety of reasons, resulting in interference or exploitive competition. Interference competition, such as predation, may result from interactions between loach minnow and nonnative channel and flathead catfish. Omnivorous channel catfish of all sizes move into riffles to feed, preying on the same animals most important to loach minnows. Juvenile flathead catfish also feed in riffles in darkness. Flathead catfish are piscivorous, even when small. Loach minnow remains were found in the digestive tracts of channel catfish (Propst and Bestgen 1991, USFWS 1991b).

Interference competition, such as competition for actual resources (Schoener 1983), may occur between loach minnow and red shiner, as red shiner is the nonnative fish species most likely to occur along stream margins in places occupied by small loach minnow. Red shiners occur in all places known to be formerly occupied by loach minnow, and are absent or rare in places where loach minnow persists. Because of this, red shiner has often been implicated in the decline of loach minnow, as well as other native fishes. Loach minnow habitat is markedly different from that of the red shiner, so that interaction between the two species was unlikely to cause shifts in habitat use by loach minnow (Marsh et al. 1989). Studies indicate that, instead, red shiner move into voids left when native fishes such as loach minnow are extirpated due to habitat degradation in the area (Bestgen and Propst 1986).

Prior to 1960, the Glenwood-Pleasanton reach of the Gila River supported a native fish community of eight different species. Post-1960, four of these species became uncommon, and ultimately three of them were extirpated. In studies completed between 1961 and 1980, it was determined that loach minnow was less common than it had been, while diversity of the nonnative fish community had increased in comparison to the pre-1960 period. Following 1980, red shiner, fathead minnow, and channel catfish were all regularly collected. Drought and diversions for irrigation resulted in a decline in habitat quality, with canyon reaches retaining habitat components for native species. However, establishment of nonnative fishes in the canyon reaches then reduced the utility of these areas for native species (Propst et al. 1988).

Food

Food Items. Loach minnow are opportunistic, benthic insectivores that obtain their food from riffle-dwelling larval mayflies, black flies, and true flies, as well as from larvae of other aquatic insect groups such as caddisflies and stoneflies (USFWS 1991b). Loach minnow in the Gila, Tularosa, and San Francisco rivers consumed primarily true flies and mayflies, with mayfly nymphs being an important food item throughout the year. Mayfly naiads constituted the most important food item throughout the year for adults studied on the Gila and San Francisco Rivers, while true fly larvae were most common in the winter months (Propst et al. 1988, Propst and Bestgen 1991). In Aravaipa Creek, loach minnow consumed 11 different prey items, including mayflies, stoneflies, caddisflies, and true flies. Mayflies constituted the largest percentage of their diet during this study except in January, when true flies made up 54.3 percent of the total food volume (Schreiber 1978).

Loach minnow consume different prey items during their various life stages. Both larvae and juveniles primarily consumed true flies, which

constituted approximately 7 percent of their food items in one year, and 49 percent the following year. Mayfly nymphs were also an important dietary element at 14 percent and 31 percent in two different years. Few other aquatic macroinvertebrates (i.e. an invertebrate large enough to be seen) were consumed (Propst et al. 1988). In a second study, true fly larvae and mayfly naiads constituted the primary food of larval and juvenile loach minnow (Propst and Bestgen 1991).

Water Quality

Pollutants. Water with low levels of pollutants is essential for the maintenance of loach minnow. As with spikedace, loach minnow occur in areas where mining, agriculture, livestock operations, and road construction and use are prevalent. Various pollutants are associated with these types of activities. For loach minnow, waters should have low levels of pollutants such as copper, arsenic, mercury, and cadmium; human and animal waste products; pesticides; suspended sediments; and gasoline or diesel fuels (D. Baker, USFWS, pers. comm. 2005). In addition, dissolved oxygen should be greater than 3 ppm.

Fish kills associated with previous mining accidents are detailed under the spikedace PCEs above. These incidents occurred within the historical range of the loach minnow.

Temperatures. Loach minnow have a fairly narrow temperature tolerance, and their upstream distributional limits in some areas may be linked to low winter temperature (Propst *et al.* 1988). Suitable temperature regimes appear to be fairly consistent across geographic areas. Studies of Aravaipa Creek, East Fork White River, the San Francisco River and the Gila River determined that loach minnow were present in areas with water temperatures in the range of 48.2 to 71.6 °F (9 to 22 °C) (Britt 1982, Leon 1989, Propst *et al.* 1988, Propst and Bestgen 1991, Vives and Minckley 1990).

Reproduction and Rearing of Offspring

Habitat conditions needed for reproduction and rearing of offspring include appropriate flow velocities, substrates, sediment levels, and riffle availability. Loach minnow place eggs in areas with mean velocities ranging between 2.4 to 15.6 in/second (3.0 to 39.6 cm/second) in the Gila, San Francisco, and East Fork Gila rivers (Britt 1982, Propst *et al.* 1988, Propst and Bestgen 1991). Fungal infections developed on egg masses placed in slow-velocity waters of less than 2.4 in/second (6.2 cm/second) (Propst *et al.* 1988, Propst and Bestgen 1991). Once hatched, areas of slower flows appear important to larval loach minnow as they have been found in slower-velocity stream margins (Propst *et al.* 1988).

Substrate type is important to spawning as well. While loach minnow spawning occurs in the same riffle habitat that adults occupy, it is the substrate that determines its suitability for spawning. Eggs are deposited on the undersurface of rocks or cobbles. Rocks are generally flattened, have smooth surfaces, and are angular. Rocks which have eggs attached are generally embedded on their upstream side in the substrate. Eggs placed under rocks in the Gila River, San Francisco River, and Aravaipa Creek were placed on the underside of rocks in nest cavities formed by rocks of varying sizes (Britt 1982, Propst *et al.* 1988, Vives and Minckley 1990).

Loach minnow spawning is the life history stage most affected by sediment or fines (Vives and Minckley 1990). Because deposition of eggs occurs on the downstream undersurfaces of cobble and boulder substrate components, excessive fines in the bedload of a system can fill in the areas where eggs would otherwise be deposited, especially in areas of slower velocities.

Primary Constituent Elements for the Loach Minnow

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the primary constituent elements essential to the conservation of the loach minnow are:

1. Permanent, flowing, water with low levels of pollutants, including:

a. Living areas for adult loach minnow with moderate to swift flow velocities between 9.0 to 32.0 in/second (24 to 80 cm/second) in shallow water between approximately 1.0 to 30 in (3 cm to 75 cm) with gravel, cobble, and rubble substrates;

b. Living areas for juvenile loach minnow with moderate to swift flow velocities between 1.0 to 34 in/second (3.0 to 85.0 cm/second) in shallow water between approximately 1.0 to 30 in (3 cm to 75 cm) with sand, gravel, cobble, and rubble substrates;

c. Living areas for larval loach minnow with slow to moderate velocities between 3.0 and 20.0 in/second (9.0 to 50.0 cm/second) in shallow water with sand, gravel, and cobble substrates and;

d. Spawning areas with slow to swift flow velocities in shallow water where cobble and rubble and the spaces between them are not filled in by fine dirt or sand.

e. Water with low levels of pollutants such as copper, arsenic, mercury and cadmium; human and animal waste products; pesticides; suspended sediments; and gasoline or diesel fuels and with dissolved oxygen levels greater than 3 parts per million (ppm).

2. Sand, gravel, and cobble substrates with low or moderate amounts of fine sediment and substrate embeddedness. Suitable levels of embeddedness are generally maintained by a natural, unregulated hydrograph that allows for periodic flooding or, if flows are modified or regulated, a hydrograph that allows for adequate river functions, such as flows capable of transporting sediments.

3. Streams that have:

a. Low gradients of less than approximately 2.5 percent;

b. Water temperatures in the approximate range of 35–85° Fahrenheit (F) (1.7–29.4 °C) (with natural diurnal and seasonal variation);

c. Pool, riffle, run, and backwater components, and;

d. An abundant aquatic insect food base consisting of mayflies, true flies, black flies, caddisflies, stoneflies, and dragonflies.

4. Habitat devoid of nonnative fish species detrimental to loach minnow or habitat in which detrimental nonnative fish species are at levels which allow persistence of loach minnow.

5. Areas within perennial, interrupted stream courses which are periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted.

Each of the areas designated in this rule have been determined to contain sufficient PCEs to provide for one or more of the life history functions of the loach minnow. In some cases, the PCEs exist as a result of ongoing Federal actions. As a result, ongoing Federal actions at the time of designation will be included in the baseline in any consultation conducted subsequent to this designation.

Criteria for Defining Critical Habitat

In proposing critical habitat for the spikedace and loach minnow, we reviewed historical and current occurrence data, information pertaining to habitat features for these species, rangewide recovery considerations such as genetic diversity and representation of all major portions of the species' historical ranges, scientific information on the biology and ecology of the two species, general conservation biology

principles, and information cited in the Recovery Plans for these two species. Of particular importance, we reviewed databases, published literature, and field notes to determine the historical and current occurrence data for the two species. The SONFishes Database (Arizona State University 2002) details occurrence records from the 1800s through 1999. The Heritage Database Management System (HDMS) (AGFD 2004) contains information for Arizona with some overlap of SONFishes records, as well as records from 1999 through 2004. Agency and researcher field notes and published literature contain additional information on completed surveys and species detections.

We are designating critical habitat on lands that we have determined are within the geographical range occupied by either, or in some cases both, the spikedace and loach minnow. We consider an area to be occupied by the spikedace or loach minnow if we have records to support occupancy within the last 10 years, or where the stream segment is directly connected to a segment with occupancy records from within the last 10 years (this is described within each unit description below). We chose 10 years because this would encompass three to four generations for both of these species. We believe this is a reasonable number based on the fact that both species are difficult to detect in surveys and many of the areas where they occur are remote and as a result there is not a high level of survey effort. All areas proposed have the features that are essential to the conservation of spikedace or loach minnow and are within the area historically occupied by these species and require special management consideration and protection.

We divided the overall historical range into five river complexes, and each critical habitat stream segment was derived from within these larger complexes. In this way, populations in mainstem tributaries may access a wider geographic area by moving into smaller tributaries, while populations in tributaries are afforded the ability to disperse to other tributaries via the mainstem river within that complex. Overall, the complexes proposed herein provide coverage throughout the historical range of the species, with exceptions for areas that were excluded for specific reasons, as detailed below (see ''Proposed Exclusions under Section 4(b)(2) of the Act'' section below). The proposed critical habitat designation constitutes our best assessment of areas that contain the features (PCEs) essential to the conservation of spikedace and loach minnow and that require special management or protection.

Segments were designated based on sufficient PCEs being present to support spikedace or loach minnow life processes. Some segments contain all PCEs and support multiple life processes, while other segments contain only a portion of the PCEs necessary to support the particular use of that habitat by spikedace or loach minnow. Where a subset of the PCEs are present (e.g., water temperature during spawning), only those PCEs present at designation will be protected.

A brief discussion of each area designated as critical habitat is provided in the unit descriptions below. Additional detailed documentation concerning these areas is contained in our supporting record for this rulemaking.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing and occupied after listing, contain the primary constituent elements essential to the conservation of the species that may require special management considerations or protection. We believe each area included in this final designation requires special management and protections as described in our unit descriptions and Table 1.

Special management considerations for each area will depend on the threats to the spikedace and/or loach minnow in that critical habitat area. For example, special management that addresses the threat of nonnative fish species could include efforts to remove nonnative fish species from a creek, via chemical compounds that kill fish (e.g. rhotenone) but otherwise do not harm the environment, and construction of fish barriers that prevent the upstream movement of nonnative fishes into spikedace or loach minnow habitat. Special management that addresses the threat of fire could include using prescribed fire to reduce fuel loads and prevent catastrophic wildfires, protecting the area from retardant application during the fire, salvaging individuals from populations that are threatened by wildfire, and protecting the stream from excessive ash and sediment through re-seeding or other means following the fire. On-going livestock grazing is only a threat to spikedace and loach minnow if not properly managed. Proper management may include the use of fencing, appropriate grazing systems, appropriate seasons of use, and other improvements to allotments such as new water tanks. With regard to water use, maintaining high quality and adequate quantities of water for all life stages of spikedace and loach minnow may involve special management actions such as retaining an adequate buffer of riparian vegetation to help filter out sediment and contaminants, and maintaining streamflow via sustainable levels of ground and surface water use. The construction of water diversions, by increasing water depth, has reduced or eliminated riffle habitat in many stream reaches. In addition, loach minnow are generally absent in stream reaches affected by impoundments. While the specific factor responsible for this is not known, it is likely related to modification of thermal regimes, habitat, food base, or discharge patterns. We have included below in our description of each of the critical habitat areas for the spikedace and loach minnow a description of the threats occurring in that area requiring special management or protections.

Proposed Critical Habitat Designation

We are proposing five complexes as critical habitat for the spikedace and loach minnow. Historically, the range of the spikedace included most of the Gila River Basin. The spikedace now occupies approximately 10 percent of its historical range. Current populations of spikedace are found in Graham, Pinal, and Yavapai counties in Arizona, and Grant, Catron, and Hidalgo counties, in New Mexico. Critical habitat vital to the conservation of loach minnow includes small to large perennial streams with shallow, turbulent riffles, primarily cobble substrate, and swift currents (Minckley 1973, Propst and Bestgen 1991, Rinne 1989, Propst et al. 1988). As with spikedace, the historical range of loach minnow encompassed most of the Gila River Basin. The loach minnow now occupies approximately 15 percent of its historical range, and is found in Graham, Greenlee, and Pinal counties in Arizona and Catron, Grant, and Hidalgo counties in New Mexico.

For each stream reach, the upstream and downstream boundaries are described below. Additionally, critical habitat includes the stream channels within the identified stream reaches and areas within these reaches potentially inundated during high flow events. As described in the ''Primary Constituent Elements'' section above, critical habitat includes the area of bankfull width plus 300 feet on either side of the banks. This 300-foot width defines the lateral extent of each area of critical habitat that contains sufficient PCEs to provide for

one or more of the life history functions of the spikedace and loach minnow.

We determined the 300-foot lateral extent for several reasons. First, the implementing regulations of the Act require that critical habitat be defined by reference points and lines as found on standard topographic maps of the area (50 CFR 424.12). Although we considered using the 100-year floodplain, as defined by the Federal Emergency Management Agency (FEMA), we found that it was not included on standard topographic maps, and the information was not readily available from FEMA or from the Army Corps of Engineers for the areas we are proposing to designate. We suspect this is related to the remoteness of many of the stream reaches where these species occur. Therefore, we selected the 300-foot lateral extent, rather than some other delineation, for three biological reasons: (1) The biological integrity and natural dynamics of the river system are maintained within this area (i.e., the floodplain and its riparian vegetation provide space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain appropriate channel morphology and geometry, store water for slow release to maintain base flows, provide protected side channels and other protected areas, and allow the river to meander within its main channel in response to large flow events); (2) conservation of the adjacent riparian area also helps provide essential nutrient recharge and protection from sediment and pollutants; and (3) vegetated lateral zones are widely recognized as providing a variety of aquatic habitat functions and values (e.g., aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality (see U.S. Army Corps of Engineers' final notice concerning Issuance and Modification of Nationwide Permits, March 9, 2000, 65 FR 12818–12899).

Among other things, the floodplain provides space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain channel morphology and geometry. We believe a relatively intact riparian area, along with periodic flooding in a relatively natural pattern, are important in maintaining the stream conditions necessary for long-term survival and recovery of the spikedace and loach minnow.

Conservation of the river channel alone is not sufficient to ensure the survival and recovery of the spikedace and loach minnow. For the reasons discussed above, we believe the riparian corridors adjacent to the river channel provide an important function within the areas proposed for designation of critical habitat.

The proposed designation of critical habitat for both spikedace and loach minnow includes five complexes totaling approximately 803 miles (1024.7 km) of stream reaches (see Tables 1 and 2 below). The proposed critical habitat areas described below constitute our best assessment at this time of areas determined to be occupied at the time of listing, are considered to be within the geographical range occupied by either the spikedace or loach minnow, or have been determined to be occupied following the listing and are considered to contain features essential to the conservation of the spikedace or loach minnow. All areas proposed as critical habitat and areas proposed for exclusion contain sufficient PCEs to support one or more of the life history functions of the spikedace or loach minnow and are areas that may require special management and protection. Unless otherwise indicated, the following areas identified in Table 1 and in the unit descriptions below, are proposed for designation as critical habitat for both spikedace and loach minnow (see the ''Proposed Regulation Promulgation'' section of this rule below for exact descriptions and distances of boundaries). The proposal includes portions of 10 streams for spikedace and 23 streams for loach minnow; however, individual streams are not isolated, but are connected with others to form areas or ''complexes.''

TABLE 1.—LOCATIONS OF SPIKEDACE AND LOACH MINNOW STREAM SEGMENTS PROPOSED FOR CRITICAL HABITAT, THREATS TO THE SPECIES, STREAM SEGMENTS PROPOSED FOR EXCLUSION FROM CRITICAL HABITAT (I.E., EAGLE CREEK AND EAST FORK WHITE RIVER), LAST YEAR OF DOCUMENTED OCCUPANCY, AND SOURCE OF OCCUPANCY INFORMATION

Spikedace and/or loach minnow critical habitat areas	Threats	Last year occupancy confirmed	Critical habitat distance in miles (km)	Source
Complex 1—Verde River				
Verde River: Spikedace	Nonnative fish species, grazing, water diversions.	1999	106.5 mi (171.4 km)	HDMS, Rinne 2002, SONFishes.
Complex 2—Black River Complex				
Boneyard Creek: Loach minnow	Recreational pressures, nonnative fish species, recent fire and related retardant application, ash, and sediment.	1996	1.4 mi (2.3 km)	Service files, HDMS, SONFishes.
East Fork Black: Loach minnow	Recreational pressures, nonnative fish species, recent fire and related retardant application, ash, and sediment.	1996	5.5 mi (8.8 km)	Service files, HDMS, SONFishes.
North Fork East Fork Black:				

TABLE 1.—LOCATIONS OF SPIKEDACE AND LOACH MINNOW STREAM SEGMENTS PROPOSED FOR CRITICAL HABITAT, THREATS TO THE SPECIES, STREAM SEGMENTS PROPOSED FOR EXCLUSION FROM CRITICAL HABITAT (I.E., EAGLE CREEK AND EAST FORK WHITE RIVER), LAST YEAR OF DOCUMENTED OCCUPANCY, AND SOURCE OF OCCUPANCY INFORMATION—Continued

Spikedace and/or loach minnow critical habitat areas	Threats	Last year occupancy confirmed	Critical habitat distance in miles (km)	Source
Loach minnow	Recreational pressures, nonnative fish species, recent fire and related retardant application, ash, and sediment.	2004	11.2 mi (18.0 km)	Bagley et al. 1996, HDMS, SONFishes, M. Richardson, USFWS pers. comm. 2004.
East Fork White River:				
Loach minnow	Water diversions, recreation.	Currently occupied (proposed for exclusion).	12.5 mi (20.1 km)	HDMS, SONFishes.
Complex 3—Middle Gila/Lower San Pedro/Aravaipa Creek				
Aravaipa Creek:				
Spikedace	Fire, some recreational pressure, low nonnative pressures, water diversion.	2005	28.1 mi (45.3 km)	Rienthal 2005; HDMS, SONFishes, Service Files.
Loach minnow		2005		
Deer Creek:				
Loach minnow	Fire, some recreational pressure, low nonnative pressures.	2005	2.3 mi (3.6 km)	Rienthal 2005; HDMS, SONFishes, Service Files.
Turkey Creek:				
Loach minnow	Fire, some recreational pressure, low nonnative pressures.	2005	2.7 mi (4.3 km)	Rienthal 2005; HDMS, SONFishes, Service Files.
Gila River—Ashurst-Hayden Dam to San Pedro:				
Spikedace	Water diversions, grazing, nonnative fish species.	1991	39.0 mi (62.8 km)	HDMS, Jakle 1992, SONFishes.
San Pedro River: (lower):				
Spikedace	Water diversions, grazing, nonnative fish species, mining.	1996	13.4 mi (21.5 km)	Service files, HDMS, SONFishes.
Complex 4—San Francisco and Blue Rivers				
Eagle Creek:				
Spikedace	Grazing, nonnative fish species, water diversions, mining.	1989	45.3 mi (72.9 km)	Bagley and Marsh 1997, HDMS, Knowles 1994, Marsh et al. 2003, SONFishes, Service Files.
Loach minnow		1997 (a portion of Eagle Creek is proposed for exclusion)		
San Francisco River:				
Loach minnow	Grazing, water diversions, nonnative fish species, road construction.	2001	126.5 mi (203.5 km)	HDMS, SONFishes, Propst 2002.
Tularosas River:				
Loach minnow	Grazing, watershed disturbances.	2001	18.6 mi (30.0 km)	SONFishes, Propst 2002, USFWS 1983.
Frieborn Creek:				
Loach minnow	Unknown	1998	1.1 mi (1.8 km)	SONFishes.
Negrito Creek:				
Loach minnow	Grazing; watershed disturbances.	1998	4.2 miles (6.8 km)	D. Propst pers. com. 2005.
Whitewater Creek:				
Loach minnow	Grazing, watershed disturbances.	1984	1.1 mi (1.8 km)	Propst et al. 1988, SONFishes.
Blue River:				
Loach minnow	Water diversions; nonnative fish species, livestock grazing, road construction.	2004	51.1 miles (82.2 km)	Carter 2004, HDMS, SONFishes, Propst 2002, USFWS 1983.
Campbell Blue Creek:				
Loach minnow	Grazing, nonnative fish species.	2004	8.1 mi (13.1 km)	Carter 2004, HDMS, SONFishes.
Little Blue Creek:				
Loach minnow	Grazing, nonnative fish species.	1981	2.8 mi (4.5 km)	HDMS, SONFishes.

TABLE 1.—LOCATIONS OF SPIKEDACE AND LOACH MINNOW STREAM SEGMENTS PROPOSED FOR CRITICAL HABITAT, THREATS TO THE SPECIES, STREAM SEGMENTS PROPOSED FOR EXCLUSION FROM CRITICAL HABITAT (I.E., EAGLE CREEK AND EAST FORK WHITE RIVER), LAST YEAR OF DOCUMENTED OCCUPANCY, AND SOURCE OF OCCUPANCY INFORMATION—Continued

Spikedace and/or loach minnow critical habitat areas	Threats	Last year occupancy confirmed	Critical habitat distance in miles (km)	Source
Dry Blue Creek:				
Loach minnow	Grazing	1948	3.0 mi (4.8 km)	SONFishes.
Pace Creek:				
Loach minnow	Grazing, nonnative fish species.	1998	0.8 mi (1.2 km)	SONFishes.
Complex 5—Upper Gila River				
East Fork Gila River:				
Spikedace	Grazing, nonnative fish species.	2001	26.1 mi (42.0 km)	Propst 2002, Propst et al. 1998, SONFishes.
Loach minnow		2001		
Upper Gila River:				
Spikedace	Recreation, roads, grazing, nonnative fish species, water diversion.	2005	102.1 mi (164.3 km)	Propst 2002, Service 1983, SONFishes, Unpubl. data 2005.
Loach minnow		2005		
Middle Fork Gila River:				
Spikedace	Nonnative fish species, Grazing.	1995	7.7 mi (12.3 km)	Propst 2002, SONFishes.
Loach minnow		1998	11.9 mi (19.1 km)	
West Fork Gila River:				
Spikedace	Nonnative fish species, grazing, roads.	2005	7.7 miles (12.4 km)	Propst 2002, SONFishes, Unpubl. data 2005.
Loach minnow		2002		

Table 2 below provides approximate area (mi/km) determined to meet the definition of critical habitat for the spikedace and loach minnow and the areas proposed for exclusion from the final critical habitat designation by State.

TABLE 2.—APPROXIMATE PROPOSED CRITICAL HABITAT IN STREAM KILOMETERS (KM) AND MILES (MI) BY STATE AND LANDOWNER

Land owner	New Mexico mi (km)	Arizona mi (km)	Total mi (km)
Federal	198.50 (319.45)	167.71 (269.90)	366.21 (589.35)
Tribal	33.00 (53.11)	0 (0)	33.00 (53.11)
State	8.32 (13.39)	1.32 (2.12)	9.64 (15.51)
County	0.0 (0.0)	0.0 (0.0)	0.0 (0.0)
Private	134.44 (216.36)	89.73 (144.40)	224.17 (360.76)
Total	374.26 (602.32)	258.75 (416.42)	633.01 (1018.74)

TABLE 3.—AREAS DETERMINED TO MEET THE DEFINITION OF CRITICAL HABITAT FOR THE SPIKEDACE AND LOACH MINNOW AND THE AREAS PROPOSED FOR EXCLUSION FROM THE FINAL CRITICAL HABITAT DESIGNATION [AC (HA)/MI (KM)]

State or geographic area	Meeting the definition of critical habitat area (miles/kilometers)	Area proposed for exclusion from the final critical habitat designation (acres/hectares)
Arizona	374.26 (602.32)	29.67 (47.76)
New Mexico	258.75 (416.42)	0 (0)
Total	633.01 (1018.74)	29.67 (47.76)

The approximate area encompassed within each proposed critical habitat unit is shown in Table 4.

TABLE 4.—CRITICAL HABITAT UNITS PROPOSED FOR THE SPIKEDACE AND LOACH MINNOW

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Mi	Km
1. Verde River	106.53	171.44
2. Black River	30.58	49.21
3. Lower San Pedro/Gila River/Aravaipa Creek	85.46	137.53
4. Gila Box/San Francisco River	262.58	422.58
5. Upper Gila River	147.87	237.97
Total	633.01	1018.74

Complex 1—Verde River Complex—Yavapai County, Arizona

The Verde River Complex was occupied by spikedace at the time of listing, and is still considered to be occupied based on surveys documenting spikedace presence as recently as 1999. This complex was also historically occupied by loach minnow. At this time, the tributary streams of the Verde River are believed to be unoccupied by both species and are not being proposed as critical habitat. The Verde River Complex is unusual in that a relatively stable thermal and hydrologic regime is found in the upper river and in Fossil Creek, one of the tributaries to the Verde River. Also, spikedace in the Verde River are genetically (Tibbets 1993) and morphologically (Anderson and Hendrickson 1994) distinct from all other spikedace populations. The Verde River contains one or more of the primary constituent elements, including shear zones, sheet flow, and eddies, and an appropriate prey base. The continuing presence of spikedace and the existence of features that are essential to the conservation of the species create a high potential for restoration of loach minnow to the Verde River system. Threats to this critical habitat area requiring special management and protections include water diversions, grazing, and nonnative fish species (see Table 1 above).

The landownership of this complex consists of large blocks of USFS lands in the upper and lower reaches, with significant areas of private ownership in the Verde Valley. There are also lands belonging to Arizona State Parks, Yavapai Apache Tribe, and the AGFD. The Verde River divides the west and east halves of the Prescott National Forest, and passes by or through the towns of Camp Verde, Middle Verde, Bridgeport, Cottonwood, and Clarkdale.

Verde River Complex—Spikedace Only—106.5 miles (171.4 km) of river extending from the confluence with Fossil Creek upstream to Sullivan Dam at Township 17 North, Range 2 West, section 15, including lands belonging to the Yavapai Apache Tribe. Sullivan Dam is at the upstream limit of perennial flow in the mainstem of the Verde River. Perennial flow results from a series of river-channel springs and from Granite Creek. The Verde River contains features essential to the conservation of the spikedace between its headwaters and Fossil Creek. These portions of the Verde River provide a relatively stable thermal and hydrologic regime suitable for spikedace. Below Fossil Creek, the Verde River has a larger flow and is thought to offer little suitable habitat for spikedace or loach minnow. However, this is historical range for both species, and comments on previous critical habitat designations from the U.S. Forest Service (USFS) indicated this stretch of the river may offer substantial value for spikedace and loach minnow recovery. We will continue to seek further information regarding the Verde River and its role in conservation for these two species and may consider designation of the Verde River below Fossil Creek in future potential revisions of critical habitat. We are working with the Yavapai Apache Tribe on the development of a management plan for their lands. On the basis of our partnership with the Tribe, and in anticipation of completion of a native fishes management plan, the portion of the Verde River belonging to the Yavapai Apache Tribe may be excluded from final critical habitat pursuant to section 4(b)(2) of the Act (see ''Relationship of Critical Habitat to Tribal Lands'' section below for additional information).

Complex 2—Black River Complex—Apache and Greenlee Counties, Arizona

The Salt River Sub-basin represents a significant portion of loach minnow historical range; however, loach minnow have been extirpated from all but a small portion of the Black and White Rivers. As the only remaining population of loach minnow on public lands in the Salt River Sub-basin, the Black River Complex is considered vital to the species.

We propose streams within this complex as critical habitat for loach minnow only. At this time, spikedace are not known to historically occupy areas at this elevation; however, the data on maximum elevation for spikedace are not definitive and if information becomes available that differs from that currently available, the Black River complex may be reevaluated for spikedace critical habitat designation in a future revision. Portions of the sub-basin are unsuitable, either because of topography or because of the presence of reservoirs, stream channel alteration by humans, or overwhelming nonnative fish populations. However other areas within the sub-basin remain suitable. Threats in this complex requiring special management include grazing, nonnative fish, recreation, and sedimentation resulting from a recent fire that destroyed vegetation (see Table 1). The ownership of this complex is predominantly USFS, with a few small areas of private land. All streams within the complex are within the boundaries of the Apache-Sitgreaves National Forest and include lands of the White Mountain Apache Tribe.

(1) East Fork Black River—Loach Minnow Only—5.5 miles (8.8 km) of river extending from the confluence with the West Fork Black River upstream to the confluence with Deer Creek. This area is considered occupied based on records from 1996, it is connected to the North Fork East Fork Black River with documented loach minnow records from 2004, and contains one or more of the primary constituent elements including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles).

(2) North Fork East Fork Black River—Loach Minnow Only—11.2 miles (18.0 km) of river extending from the confluence with Deer Creek upstream to the confluence with an unnamed tributary. This area is occupied by loach minnow based on surveys documenting presence of loach minnow as recently as 2004. Above the unnamed tributary, the

river has finer substrate and lacks riffle habitat, making it unsuitable for loach minnow.

(3) Boneyard Creek—Loach Minnow Only—1.4 miles (2.3 km) of creek extending from the confluence with the East Fork Black River upstream to the confluence with an unnamed tributary. Boneyard Creek contains one or more of the primary constituent elements, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). This area is considered to be occupied based on records from 1996; it is also connected to the North Fork East Fork Black River which has documented loach minnow records from 2004. This area represents part of the only occupied complex in the Salt River basin.

(4) East Fork White River—Loach Minnow Only—12.5 miles (20.1 km) of the East Fork White River extending from the confluence with the North Fork White River and the East Fork White River at Township 5 North, Range 22 East, section 35 upstream to Township 5 North, Range 23 East, southeast quarter of section 13. This area was occupied by loach minnow at the time of listing and is still considered occupied. This segment of the East Fork White River contains sufficient features to support one or more of the life history functions of the loach minnow. Threats in this segment requiring special management include water diversions and recreation. The entirety of this reach is located on lands belonging to the White Mountain Apache Tribe. A management plan for loach minnow has been in place on these lands since 2000. On the basis of this plan and our partnership with the White Mountain Apache Tribe, we are proposing to exclude this area from final critical habitat pursuant to section 4(b)(2) of the Act (see ''Relationship of Critical Habitat to Tribal Lands'' section below for additional information).

Complex 3—Middle Gila/Lower San Pedro/Aravaipa Creek Complex—Pinal and Graham Counties, Arizona

The portions of this complex being proposed for critical habitat are within the geographical range occupied by both spikedace and loach minnow and contain the features essential to the conservation of these species. Aravaipa Creek supports the largest remaining spikedace and loach minnow populations in Arizona. Threats in this complex requiring special management include water diversions, grazing, nonnative fish, recreation, and mining (see Table 1). This area includes extensive BLM land as well as extensive private land, some State of Arizona lands, and a small area of allotted land, used by the San Carlos Apache Tribe. The lower portions of the Gila River are BOR lands.

(1) Gila River—Spikedace Only—39.0 miles (62.8 km) of river extending from the Ashurst-Hayden Dam upstream to the confluence with the San Pedro River. Spikedace were located in the Gila River in 1991 (Jakle 1992), and the Gila River is connected with Araviapa Creek, which supports the largest remaining spikedace population. Those portions of the Gila River proposed for designation contain one or more of the primary constituent elements, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). Above the confluence with the San Pedro River, flow in the Gila River is highly regulated by the San Carlos Dam and does not contain the features essential to the conservation of either species. Below the confluence, the input of the San Pedro provides a sufficiently unregulated hydrograph, which is a feature essential to the conservation of the spikedace. Threats in this area requiring special management include water diversions, grazing, and nonnative fish species. This river is part of the complex that contains the largest remaining population of spikedace and loach minnow and contains the features essential to the conservation of the species.

(2) Lower San Pedro River—Spikedace Only—13.4 miles (21.5 km) of river extending from the confluence with the Gila River upstream to the confluence with Aravaipa Creek. This area was occupied at the time of listing and is connected with Araviapa Creek, which supports the largest remaining spikedace population. This portion of the San Pedro River contains one or more of the primary constituent elements, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). Existing flow in the river comes from surface and subsurface contributions from Aravaipa Creek. Threats in this area requiring special management include water diversions, nonnative fish, grazing, and mining. This river is part of the complex that contains the largest remaining population of spikedace and loach minnow and contains the features essential to the conservation of the species.

(3) Aravaipa Creek—28.1 miles (45.3 km) of creek extending from the confluence with the San Pedro River upstream to the confluence with Stowe Gulch, which is where the upstream limit of sufficient perennial flow ends for either species. Aravaipa Creek was occupied by both spikedace and loach minnow at the time of listing, and continues to support a substantial population of both species (Service files 2005). Aravaipa Creek contains one or more of the primary constituent elements, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). Threats in this area requiring special management include water diversions, nonnative fish, and recreational pressures (see Table 1).

(4) Turkey Creek—Loach Minnow Only—2.7 miles (4.3 km) of creek extending from the confluence with Aravaipa Creek upstream to the confluence with Oak Grove Canyon. This creek was occupied at the time of listing and is currently occupied by loach minnow (Rienthal, University of Arizona, pers. comm. 2004). Turkey Creek contains one or more of the primary constituent elements, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). Threats to this area requiring special management are generally the same for Aravaipa Creek, and include water diversions, nonnative fish, and recreational pressure (see Table 1). This creek is part of the complex that contains the largest remaining population of spikedace and loach minnow and contains the features essential to the conservation of the species.

(5) Deer Creek—Loach Minnow Only—2.3 miles (3.6 km) of creek extending from the confluence with Aravaipa Creek upstream to the boundary of the Aravaipa Wilderness. This stream was occupied at the time of listing and is currently occupied by loach minnow (Rienthal, University of Arizona, pers. comm. 2004). Deer Creek contains one or more of the primary constituent elements important to loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). The threats to loach minnow in this area are similar to those for Aravaipa Creek, including water diversions, nonnative fish, and recreation. This creek is part of the complex that contains the largest remaining population of spikedace and loach minnow and contains the features essential to the conservation of the species.

Complex 4—San Francisco and Blue Rivers Complex—Graham and Greenlee Counties, Arizona and Catron County, New Mexico

The streams in this complex are within the geographical range occupied by the loach minnow and/or the spikedace. The Blue River system and adjacent portions of the San Francisco River constitute the longest stretch of occupied loach minnow habitat unbroken by large areas of unsuitable habitat. Threats in this complex are described in the individual stream reaches below. This complex contains extensive USFS land, some BLM land, and scattered private, State of Arizona, and New Mexico Department of Game and Fish (NMDGF) lands.

(1) Eagle Creek—45.3 miles (72.9 km) of creek extending from the Phelps-Dodge Diversion Dam upstream to the confluence of Dry Prong and East Eagle Creeks, including lands of the San Carlos Apache Reservation. Eagle Creek was occupied by spikedace and loach minnow at the time of listing. The most current records of occupancy in Eagle Creek are 1987 for spikedace and 1997 for loach minnow. Eagle Creek contains one or more of the primary constituent elements important to spikedace and loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). Threats within this area that require special management include water diversions, grazing, nonnative fish, and mining (see Table 1).

A section of Eagle Creek approximately 17.2 miles (27.7 km) long occurs on the San Carlos Apache Reservation. We have received a management plan from the San Carlos Apache Tribe addressing native fishes. On the basis of this plan and our partnership with the San Carlos Apache Tribe, we are proposing to exclude this area from final critical habitat pursuant to section 4(b)(2) of the Act (see ''Relationship of Critical Habitat to Tribal Lands'' section below for additional information).

(2) San Francisco River—Loach Minnow Only—126.5 miles (203.5 km) of river extending from the confluence with the Gila River upstream to the mouth of The Box, a canyon above the town of Reserve. Loach minnow occupied the San Francisco River at the time of listing and still occupy it presently (Propst 2002). The San Francisco River contains one or more of the primary constituent elements important to loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). Threats to this area requiring special management include water diversions, grazing, and nonnative fish species (see Table 1).

(3) Tularosa River—Loach Minnow Only—18.6 miles (30.0 km) of river extending from the confluence with the San Francisco River upstream to the town of Cruzville. Above Cruzville, the river does not contain the features essential to the conservation of the species because of the small size of the stream and a predominance of fine substrates. This area includes one or more of the primary constituent elements important to loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). The Tularosa River was occupied at the time of listing and is known to be currently occupied based on records as recent as 2001. Threats to the species and its habitat in this area that require special management include grazing and nonnative fish (see Table 1).

(4) Negrito Creek—Loach Minnow Only—4.2 miles (6.8 km) of creek extending from the confluence with the San Francisco River upstream to the confluence with Cerco Canyon. Above this area, the creek does not contain the features essential to the conservation of the species because of gradient and channel morphology. Negrito Creek has been occupied since listing, with the most recent record from 1998 (Service Files 2005). This area contains one or more of the primary constituent elements important to loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). Threats to this area requiring special management include grazing and nonnative fish (see Table 1). This stream contains the features essential to the conservation of the species and one of the few remaining populations of the species. The area is currently occupied, and it is directly connected to the Tularosa River, which is also occupied with records dating from 2001.

(5) Whitewater Creek—Loach Minnow Only—1.1 miles (1.8 km) of creek extending from the confluence with the San Francisco River upstream to the confluence with the Little Whitewater Creek. Upstream of this area the river does not contain the features essential to the conservation of the species because of gradient and channel changes that make the portion above Little Whitewater Creek unsuitable for loach minnow. Whitewater Creek was occupied at the time of listing, and is currently occupied as it is within an area connected with the San Francisco River where loach minnow records exist from 2001. This area does support one or more primary constituent elements for loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). Threats to this area include grazing and nonnative fish (see Table 1).

(6) Blue River—Loach Minnow Only—51.1 miles (82.2 km) of river extending from the confluence with the San Francisco River upstream to the confluence of Campbell Blue and Dry Blue Creeks. The Blue River was occupied at the time of listing and continues to be occupied by loach minnow (Carter 2004). The Blue River contains one or more of the primary constituent elements required by loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). Planning is underway among several State and Federal agencies for reintroduction of native fishes, including spikedace, in the Blue River, and thus the Blue River may be considered for spikedace critical habitat in future revisions of the designation. Threats in this area include water diversions, grazing, nonnative fish, and roads (see Table 1).

(7) Campbell Blue Creek—Loach Minnow Only—8.1 miles (13.1 km) of creek extending from the confluence of Dry Blue and Campbell Blue Creeks upstream to the confluence with Coleman Canyon. Areas above Coleman Canyon do not contain the features essential to the conservation of the species because the creek changes and becomes steeper and rockier, making it unsuitable for spikedace or loach minnow. Campbell Blue Creek is currently occupied (Carter 2004) and supports one or more of the velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). Threats to this area include grazing and nonnative fish species (see Table 1).

(8) Dry Blue Creek—Loach Minnow Only—3.0 miles (4.8 km) of creek extending from the confluence with Campbell Blue Creek upstream to the confluence with Pace Creek. Dry Blue Creek has been occupied by loach minnow since listing and is connected with Campbell Blue Creek, which has documented loach minnow records as recent as 2004. This area also contains one or more of the primary constituent elements required by loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). Threats to this area requiring

special management include grazing and nonnative fish species (see Table 1).

(9) Pace Creek—Loach Minnow Only—0.8 miles (1.2 km) of creek extending from the confluence with Dry Blue Creek upstream to a barrier falls. Pace Creek has been occupied by loach minnow since listing with the most recent record from 1998. This area also contains one or more of the primary constituent elements required by loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). Threats to this area requiring special management include grazing and nonnative fish species (see Table 1).

(10) Frieborn Creek—Loach Minnow Only—1.1 miles (1.8 km) of creek extending from the confluence with Dry Blue Creek upstream to an unnamed tributary. Frieborn Creek has been occupied by loach minnow since listing with the most recent record from 1998. This area also contains one or more of the primary constituent elements required by loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). Threats to this area requiring special management include grazing and nonnative fish species (see Table 1).

(11) Little Blue Creek—Loach Minnow Only—2.8 miles (4.5 km) of creek extending from the confluence with the Blue River upstream to the mouth of a canyon. Little Blue Creek was occupied at the time of listing and is connected with the Blue River, which has documented loach minnow records as recent as 2004. This area also contains one or more of the primary constituent elements required by loach minnow and is connected to the Blue River. Threats requiring special management in this area include grazing and nonnative fish (see Table 1).

Complex 5—Upper Gila River Complex—Grant, Catron, and Hidalgo counties, New Mexico

This complex is occupied by spikedace and loach minnow and contains the largest remaining populations of both species in New Mexico. It is considered to represent the ''core'' of what remains of these species. Threats requiring special management in this area are addressed in each of the individual stream segment descriptions below. The largest areas are on USFS land, with small private inholdings. There are large areas of private lands in the Cliff-Gila Valley, and the BLM administers significant stretches upstream of the Arizona/New Mexico border. There are also small areas of NMDGF, National Park Service, and State of New Mexico lands.

(1) Upper Gila River—102.1 miles (164.3 km) of river extending from the confluence with Moore Canyon (near the Arizona/New Mexico border) upstream to the confluence of the East and West Forks of the Gila River. The Gila River was occupied by spikedace and loach minnow at the time of listing and continues to be occupied by both species (Propst 2002, Propst et al. 1988, Rinne 1999b). The Gila River from its confluence with the West Fork Gila and East Fork Gila contains one or more primary constituent elements for spikedace and loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). Threats to this area requiring special management include water diversions, grazing, recreation, road construction, and nonnative fish species (see Table 1).

(2) East Fork Gila River—26.1 miles (42.0 km) of river extending from the confluence with the West Fork Gila River upstream to the confluence of Beaver and Taylor creeks. This area was occupied by both species at the time of listing and both species have been found there as recently as 2001 (Propst 2002). In addition, this area is connected to habitat currently occupied by spikedace and loach minnow on the West Fork of the Gila River. Portions of the East Fork Gila River contain one or more of the primary constituent elements required by spikedace and loach minnow including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). Threats to this area requiring special management include grazing and nonnative fish species (See Table 1).

(3) Middle Fork Gila River—Spikedace Only—7.7 miles (12.3 km) of river extending from the confluence with the West Fork Gila River upstream to the confluence with Big Bear Canyon. This area is currently occupied, and is connected to currently occupied habitat on the West Fork of the Gila River (Propst 2002). The Middle Fork Gila River contains one or more of the primary constituent elements required by spikedace, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). Threats to this area requiring special management include grazing and nonnative fish species (See Table 1).

(4) Middle Fork Gila River—Loach Minnow Only—11.9 miles (19.1 km) of river extending from the confluence with the West Fork Gila River upstream to the confluence with Brothers West Canyon. This area is currently occupied and is connected to currently occupied habitat on the West Fork of the Gila River. Portions of the Middle Fork Gila River contain one or more primary constituent elements required by loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). Threats to this area requiring special management include grazing and nonnative fish species (See Table 1).

(5) West Fork Gila River—7.7 miles (12.4 km) of river extending from the confluence with the East Fork Gila River upstream to the confluence with EE Canyon. This lower portion of the West Fork was occupied by both spikedace and loach minnow at the time of listing and continues to be occupied by both species. This area contains one or more primary constituent elements required by spikedace and loach minnow, including sufficient flow velocities and appropriate gradients, substrates, depths, and habitat types (i.e., pools, riffles). Above EE Canyon, the river does not contain the features essential to the conservation of the species due to gradient and channel morphology. Threats to this area requiring special management include grazing and nonnative fish species (See Table 1).

Proposed Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

In our critical habitat designations, we use the provision outlined in section 4(b)(2) of the Act to evaluate those specific areas that contain the features essential to the conservation of the species to determine which areas to propose and subsequently finalize (i.e., designate) as critical habitat. On the basis of our preliminary evaluation, discussed in detail below, we are proposing to exclude certain lands from the designation of critical habitat for the spikedace and loach minnow. In the development of our final designation, we will incorporate or address any new

information received during the public comment periods, or from our evaluation of the potential economic and environmental impacts of this proposal. As such, we may revise this proposal to address new information and/or to exclude additional areas that may warrant exclusion pursuant to section 4(b)(2).

Areas excluded pursuant to section 4(b)(2) may include, but are not limited to, those covered by: (1) Legally operative Habitat Conservation Plans (HCPs) that cover the species and provide assurances that the conservation measures for the species will be implemented and effective; (2) draft HCPs that cover the species, have undergone public review and comment, and provide assurances that the conservation measures for the species will be implemented and effective (i.e., pending HCPs); (3) Tribal conservation plans that cover the species and provide assurances that the conservation measures for the species will be implemented and effective; (4) State conservation plans that provide assurances that the conservation measures for the species will be implemented and effective; and (5) National Wildlife Refuge System Comprehensive Conservation Plans (CCPs) that provide assurances that the conservation measures for the species will be implemented and effective.

Within the areas containing the features essential to the conservation of the species for spikedace and loach minnow in Arizona and New Mexico, there are Tribal lands; however, there are no lands owned by the Department of Defense, National Wildlife Refuges, or private lands with legally operative HCPs or draft HCPs. We have determined that the following tribes have lands containing features essential to the conservation of the spikedace and loach minnow: Yavapai Apache, San Carlos Apache, and White Mountain Apache. In making our final decision with regard to tribal lands, we will be considering several factors including our relationship with the Tribe or Nation and whether a management plan has been developed for the conservation of the spikedace and loach minnow on their lands. The White Mountain Apache completed a final management plan in 2000 that we have in our records and we have also received a final management plan from the San Carlos Apache Tribe. We are proposing to exclude lands of the San Carlos Apache Tribe and lands of the White Mountain Apache Tribe, as discussed in further detail below. We will continue to work with the Yavapai-Apache Nation during the comment period on the development of a management plan for their lands. We note that lands of the Yavapai-Apache Nation may be considered for exclusion in the final rule and that any exclusions made in the final rule will be the result of a reanalysis of any new information received.

General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Mandatory reasonable and prudent alternatives to the proposed Federal action would only be issued when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot*, the Service equated the jeopardy standard with the standard for destruction or adverse modification of critical habitat. The Court ruled that the Service could no longer equate the two standards and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved through implementing management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any management plan which considers enhancement or recovery as the management standard will always provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat in that it provides the framework for the consultation process.

Educational Benefits of Critical Habitat

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the spikedace and loach minnow. In general the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, habitat conservation plans have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is

closely related to a second, more indirect benefit: that designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

However, we believe that there would be little additional informational benefit gained from the designation of critical habitat for the proposed exclusions discussed in this rule because these areas are included in this proposed rule as having essential spikedace and/or loach minnow features. Consequently, we believe that the informational benefits are already provided even though these areas are not designated as critical habitat.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat.

Relationship of Critical Habitat to American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act—Proposed Exclusions Under Section 4(b)(2) of the Act

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in many cases, designation of tribal lands as critical habitat provides very little additional benefit to threatened and endangered species. Conversely, such designation is often viewed by tribes as an unwanted intrusion into tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

San Carlos Apache Tribe

The San Carlos Apache Tribe has one stream within its tribal lands, Eagle Creek, that is known to be currently occupied by the spikedace and loach minnow and its tribal lands contain features that are essential to the conservation of the spikedace and loach minnow. The Tribe has completed and is implementing a Fisheries Management Plan (FMP) that includes specific management actions for the spikedace and loach minnow. In this proposed exclusion, we considered several factors, including our relationship with San Carlos Apache Tribe, and the degree to which the Tribe's FMP provides specific management for the spikedace and loach minnow. Tribal governments protect and manage their resources in the manner that is most beneficial to them. The San Carlos Apache Tribe exercises legislative, administrative, and judicial control over activities within the boundaries of its lands. Additionally, the Tribe has natural resource programs and staff and has enacted the FMP. In addition, as trustee for land held in trust by the United States for Indian Tribes, the Bureau of Indian Affairs (BIA) provides technical assistance to the San Carlos Apache Tribe on management planning and oversees a variety of programs on their lands. Spikedace and loach minnow conservation activities have been ongoing on San Carlos Apache tribal lands, and, prior to the completion of their FMP, their natural resource management was consistent with management of habitat for this species. The development and implementation of the efforts formalized in the San Carlos Apache Tribes FMP will continue with or without critical habitat designation.

The San Carlos Apache Tribe highly values its wildlife and natural resources, and is charged to preserve and protect these resources under the Tribal Constitution. Consequently, the Tribe has long worked to manage the habitat of wildlife on its tribal lands, including the habitat of endangered and threatened species. We understand that it is the Tribe's position that a designation of critical habitat on its lands improperly infringes upon its tribal sovereignty and the right to self-government.

The San Carlos Apache Tribes FMP provides assurances and a conservation benefit to the spikedace and loach minnow. Implementation of the FMP will result in protecting all known spikedace and loach minnow habitat on San Carlos Tribal Land and assures no net habitat loss or permanent modification will occur in the future. The purpose of the FMP includes the long-term conservation of native fishes, including the spikedace and loach minnow, on tribal lands. The FMP outlines actions to conserve, enhance, and restore spikedace and loach minnow habitat, including efforts to eliminate nonnative fishes from spikedace and loach minnow habitat. All habitat restoration activities (whether it is to rehabilitate or restore native plants) will be conducted under reasonable coordination with the Service. All reasonable measures will be taken to ensure that recreational activities do not result in a net habitat loss or permanent modification of the habitat. All reasonable measures will be taken to conduct livestock grazing activities in a manner that will ensure the conservation of spikedace and loach minnow habitat. Within funding limitations and under confidentiality guidelines established by the Tribe, the Tribe will cooperate with the Service to monitor and survey spikedace and loach minnow habitat, conduct research, perform habitat restoration, remove nonnative fish species, or conduct other beneficial spikedace and loach minnow management activities.

White Mountain Apache Tribe

The White Mountain Apache Tribe has one stream within its tribal lands, East Fork White River, that is known to be currently occupied by loach minnow and its tribal lands contain features that are essential to the conservation of the loach minnow. The White Mountain Apache Tribe currently has a management plan in place for loach minnow. The plan was completed in 2000 and provides for, among other conservation measures, inventory and monitoring, water quality protection ordinance, captive propagation, and relocation to minimize loss from catastrophic events such as fire and drought. Prior to and since the plan was developed, the Tribe has actively managed for loach minnow. In this proposed exclusion, we considered several factors, including our relationship with the White Mountain Apache Tribe, and the degree to which the Tribe's management plan provides specific management for the loach minnow. Tribal governments protect and manage their resources in the manner that is most beneficial to them. The White Mountain Apache Tribe exercises legislative, administrative, and judicial control over activities within the boundaries of its lands. Additionally, the Tribe has natural resource programs and staff and has been managing for the conservation of the loach minnow. In addition, as trustee for land held in trust by the United States for Indian Tribes, the Bureau of Indian Affairs (BIA) provides technical assistance to the White Mountain Apache Tribe on management

planning and oversees a variety of programs on their lands. The development and implementation of the efforts formalized in the management plan will continue with or without critical habitat designation.

The White Mountain Apache Tribe highly values its wildlife and natural resources, and is charged to preserve and protect these resources under the Tribal Constitution. Consequently, the Tribe has long worked to manage the habitat of wildlife on its tribal lands, including the habitat of endangered and threatened species. We understand that it is the Tribe's position that a designation of critical habitat on its lands improperly infringes upon its tribal sovereignty and the right to self-government.

Below we provide our combined preliminary benefits analysis for the proposed exclusion of the tribal lands of the San Carlos Apache Nation and the White Mountain Apache Nation.

(1) Benefits of Inclusion

Including lands of the San Carlos Apache Tribe and the White Mountain Apache Tribe in critical habitat would provide some additional benefit from section 7 consultation, because we could consult via the BIA on actions that could adversely affect critical habitat. Activities covered in previous consultations included livestock grazing, recreation, fish stocking, fire management, bank stabilization projects, and conservation measures that benefited spikedace and/or loach minnow. These included monitoring, fence repair (to exclude cattle from overusing and thereby damaging habitat), and education programs to inform the public of the need to avoid actions that damage habitat. However, we note that because the spikedace and loach minnow are listed species and are found on these Tribal lands, section 7 consultation under the jeopardy standard will still be required if Tribal or BIA activities would affect spikedace or loach minnow, regardless of whether these lands are included in the final critical habitat designation. As a result, we expect that inclusion of San Carlos Apache and White Mountain Apache tribal lands in the critical habitat designation would provide only that additional habitat protection accorded by critical habitat as discussed by the Ninth Circuit Court of Appeals in the Gifford Pinchot ruling discussed above.

Nevertheless, few additional benefits would be derived from including these Tribal Lands in a spikedace and loach minnow critical habitat designation beyond what will be achieved through the implementation of their management plans. As noted above, the primary regulatory benefit of any designated critical habitat is that federally funded or authorized activities in such habitat require consultation pursuant to section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid destruction or adverse modification of critical habitat. The Tribes of the San Carlos Apache and the White Mountain have already agreed under the terms of their management plans to protect spikedace and loach minnow habitat (PCEs), to ensure no net loss, to coordinate with the Service in order to prevent any habitat destruction, and to conduct activities consistent with the conservation of the spikedace and loach minnow and their PCEs.

As discussed above, we expect that little additional educational benefit would be derived from designating lands of the Tribes of the San Carlos Apache and the White Mountain Apache as critical habitat. The additional educational benefits that might arise from critical habitat designation are largely accomplished through the multiple notice and comments which accompany the development of this proposed critical habitat designation, as evidenced by the Tribes working with the Service to address habitat and conservation needs for the loach minnow. Additionally, we anticipate that the Tribes will continue to actively participate in working groups, and provide for the timely exchange of management information. The educational benefits important for the long-term survival and conservation of the spikedace and loach minnow are being realized without designating this area as critical habitat. Educational benefits will continue on these lands whether or not critical habitat is designated because the Tribes already recognizes the importance of those habitat areas to the spikedace and loach minnow.

Another possible benefit is the additional funding that may be generated for habitat restoration or improvement by having an area designated as critical habitat. In some instances, having an area designated as critical habitat may improve the ranking a project receives during evaluation for funding. The Tribes often require additional sources of funding in order to conduct wildlife-related activities. Therefore, having an area designated as critical habitat could improve the chances of the Tribes receiving funding for spikedace or loach minnow related projects. Additionally, occupancy by spikedace or loach minnow also provides benefits to be considered in evaluating funding proposals. Because there are areas of occupied habitat on these Tribal lands this may also help secure funding for management of these areas.

For these reasons, then, we believe that designation of critical habitat would provide some additional benefits.

(2) Benefits of the Proposed Exclusion

The benefits of excluding San Carlos Apache and White Mountain Apache Tribal lands from critical habitat include: (1) The advancement of our Federal Indian Trust obligations and our deference to Tribes to develop and implement tribal conservation and natural resource management plans for their lands and resources, which includes the spikedace and loach minnow and other Federal trust species; (2) the maintenance of effective working relationships to promote the conservation of the spikedace and loach minnow and their habitats; (3) the allowance for continued meaningful collaboration and cooperation on spikedace and loach minnow management and other resources of interest to the Federal government; and (4) the provision of conservation benefits to riparian ecosystems and a host of species, including the spikedace and loach minnow and their habitat, that might not otherwise occur.

During the development of the spikedace and loach minnow critical habitat proposal (and coordination for other critical habitat proposals), and other efforts such as conservation of native fish species in general, we have met and communicated with each of these Tribes to discuss how they might be affected by the regulations associated with spikedace and loach minnow conservation and the designation of critical habitat. As such, we established relationships with the San Carlos Apache and White Mountain Apache Tribes specific to spikedace and loach minnow conservation. As part of our relationship, we provided technical assistance to the Tribes to develop measures to conserve the spikedace and loach minnow and their habitat on their lands. These measures are contained within their management plans that we have in our supporting record. This proactive action was conducted in accordance with Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental

Manual of the Department of the Interior (512 DM 2). We believe that the San Carlos Apache and White Mountain Apache Tribes should be the governmental entity to manage and promote the conservation of the spikedace and loach minnow on their lands. During our communication with the Tribes, we recognized and endorsed their fundamental right to provide for tribal resource management activities, including those relating to riparian ecosystems.

The designation of critical habitat on these Tribal lands would be expected to adversely impact our working relationship with them. In fact, during our discussions with the Tribes, we were informed that critical habitat would be viewed as an intrusion on their sovereign abilities to manage natural resources in accordance with their own policies, customs, and laws. To this end, we found that the Tribes would prefer to work with us on a government-to-government basis. We view this as a substantial benefit.

In addition to management/conservation actions described for the conservation of the spikedace and loach minnow, we anticipate future management/conservation plans to include conservation efforts for other listed species and their habitat. We believe that many Tribes and Pueblos are willing to work cooperatively with us to benefit other listed species, but only if they view the relationship as mutually beneficial. Consequently, the development of future voluntary management actions for other listed species will likely be contingent upon whether the San Carlos Apache and White Mountain Apache Tribal lands are designated as critical habitat for the spikedace and loach minnow. Thus, the benefit of excluding these lands would be future conservation efforts that would benefit other listed species.

Another benefit of excluding these Tribal lands from the critical habitat designation includes relieving additional regulatory burden and costs associated with the preparation of portions of section 7 documents related to critical habitat. While the cost of adding these additional sections to assessments and consultations is relatively minor, there could be delays which can generate real costs to some project proponents. However, because in this case critical habitat is being proposed for exclusion in occupied areas already subject to section 7 consultation and a jeopardy analysis, it is anticipated this reduction would be minimal.

(3) Benefits of the Proposed Exclusion Outweigh the Benefits of Inclusion

We anticipate that our final decision will make the following determination, unless information submitted in response to the proposal causes us to reach a different conclusion.

We find that the benefits of designating critical habitat for the spikedace and loach minnow on these Tribals lands are small in comparison to the benefits of the proposed exclusion. Exclusion would enhance the partnership efforts focused on recovery of the spikedace and loach minnow within these river reaches. Excluding these areas also would reduce some of the administrative costs during consultation pursuant to section 7 of the Act.

(4) The Proposed Exclusion Will Not Result in Extinction of the Species

We anticipate that our final decision will make the following determination, unless information submitted in response to the proposal causes us to reach a different conclusion.

Because these river reaches on the tribal lands are occupied by the spikedace and loach minnow, which is protected from take under section 9 of the Act, any actions that might kill spikedace or loach minnow, including habitat modification that would cause death of either species, must either undergo a consultation with the Service under the requirements of section 7 of the Act or receive a permit from us under section 10 of the Act. Additionally, we believe that the proposed exclusion of these lands from critical habitat would not result in the extinction of the spikedace or loach minnow because their management plans specifically addresses conservation of these species. The tribal management plans outline actions to conserve, enhance, and restore spikedace and loach minnow habitat, including efforts to eliminate nonnative fishes from their habitat. Such efforts provide greater conservation benefit than would result from a designation of critical habitat. This is because section 7 consultations for critical habitat only consider listed species in the project area evaluated and Federal agencies are only committed to prevent adverse modification to critical habitat caused by the particular project and are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Such efforts provide greater conservation benefit than would result for designation as critical habitat. As a result, there is no reason to believe that this proposed exclusion would result in extinction of the species.

Effect of Critical Habitat Designation

Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Our regulations define ''jeopardize the continued existence of'' as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). ''Destruction or adverse modification of designated critical habitat'' for this species would include habitat alterations that appreciably diminish the value of critical habitat by significantly affecting any of those physical or biological features that were the basis for determining the habitat to be critical.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist Federal agencies in eliminating conflicts that may be caused by their proposed actions. The conservation measures in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat

designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide ''reasonable and prudent alternatives'' to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Service's Regional Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiating of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

Federal activities that may affect spikedace or loach minnow or their critical habitat will require consultation under section 7. Activities on private, State, or county lands, or lands under local jurisdictions requiring a permit from a Federal agency, such as Federal Highway Administration or Federal Emergency Management Act funding, or a permit from the Corps under section 404 of the Clean Water Act, will continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of spikedace or loach minnow is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Each of the specific areas designated in this rule as critical habitat for spikedace and loach minnow have been determined to contain sufficient PCEs to provide for one or more of the life history functions of spikedace and/or loach minnow. In some cases, the PCEs exist as a result of ongoing Federal actions. As a result, ongoing Federal actions at the time of designation will be included in the baseline in any consultation pursuant to section 7 of the Act conducted subsequent to this designation. Activities that, when carried out, funded, or authorized by a Federal agency and appreciably reduce the value of critical habitat for the survival and recovery of the spikedace or loach minnow may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to: (1) Channelization, impoundment, road and bridge construction, deprivation of substrate source, destruction and alteration of riparian vegetation, reduction of available floodplain, removal of gravel or floodplain terrace materials, and excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances; (2) any Federal activity that would significantly and detrimentally alter the water chemistry in any of the stream segments listed above could destroy or adversely modify the critical habitat of either or both species. Such activities include, but are not limited to, release of chemical or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point source); (3) any Federal activity that would introduce, spread, or augment nonnative fish species could destroy or adversely modify the critical habitat of either or both species. Such activities include, but are not limited to, stocking for sport, aesthetics, biological control, or other purposes; construction and operation of canals; and interbasin water transfers.

The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of spikedace and loach minnow. Federal activities outside of critical habitat are still subject to review under section 7 if they may affect spikedace or loach minnow. Prohibitions of Section 9 also continue to apply both inside and outside of designated critical habitat.

All lands proposed as critical habitat are within the geographical area occupied by the species and are necessary for the conservation of spikedace and loach minnow. Federal agencies already consult with us on actions that may affect spikedace or loach minnow to ensure that their actions do not jeopardize the continued existence of the species. Thus, we do not anticipate substantial additional regulatory protection will result from critical habitat designation.

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat, contact the Supervisor of the appropriate Fish and Wildlife Service Ecological Services Office, as follows. For activities in Arizona, please contact the Arizona Ecological Services Office (see **ADDRESSES** section above). For activities in New Mexico, please contact the New Mexico Ecological Services Field Office at 2105 Osuna Road, NE, Albuquerque, New Mexico 87113 (telephone (505) 346–2525). Requests for copies of the regulations on listed wildlife and plants and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87103–1306 (telephone (505) 248–6920; facsimile (505) 248–6922).

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for spikedace and loach minnow is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available online at *http://www.fws.gov/arizonaes/* or by contacting the Arizona Ecological Services Fish and Wildlife Office directly (see **ADDRESSES** section above).

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule as we prepare our final rulemaking. Accordingly, the final designation may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (see **ADDRESSES** section above). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or adversely affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action. We will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. This economic analysis will also be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

This draft economic analysis will be made available for public review and comment before we finalize this designation. At that time, copies of the analysis will be available for downloading from the Arizona Ecological Services Office's Internet website at *http://arizonaes.fws.gov* or by contacting the Arizona Ecological Services Office directly (see **ADDRESSES** section).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 60 days. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (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 proposed rule to designate critical habitat for the spikedace and loach minnow is considered a significant regulatory action under Executive Order 12866 as it may raise novel legal and policy issues. However, this designation is not expected to significantly affect energy supplies, distribution, or use because there are no pipelines,

distribution facilities, power grid stations, etc. within the boundaries of proposed critical habitat. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required. We will, however, further evaluate this issue as we conduct our economic analysis and, as appropriate, review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, or permits or who otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; additionally, critical habitat would not shift the costs of the large entitlement programs listed above on to State governments. We will further evaluate this issue as we conduct our economic analysis and, as appropriate, review and revise this assessment as warranted.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule is not anticipated to have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Due to current public knowledge of these species protections and the prohibition against take of these species both within and outside of the proposed areas, we do not anticipate that property values will be affected by the critical habitat designation. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policies, we requested information from and coordinated development of this proposed critical habitat designation with appropriate State resource agencies in all affected states.

The proposed designation of critical habitat in areas currently occupied by spikedace or loach minnow imposes no additional significant restrictions beyond those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The proposed designation of critical habitat may have some benefit to the State and local resource agencies in that the areas containing features essential to the conservation of this species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of this species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of spikedace and loach minnow.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act. Information collections associated with certain Act permits are covered by an existing OMB approval and are assigned clearance No. 1018–0094, Forms 3–200–55 and 3–200–56, with an expiration date of July 31, 2004. Detailed information for Act documentation appears at 50 CFR 17. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the Federal Register on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of the spikedace and loach minnow, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for this proposal when it is finished.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are Tribal lands containing features essential for the conservation of spikedace and loach minnow and have sought government-to-government consultation with these Tribes. We will continue to seek consultation during the proposal portion of developing the final critical habitat designation.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Arizona Ecological Services Office (see **ADDRESSES** section above).

Author

The primary authors of this notice are the Arizona Ecological Services Office staff (see **ADDRESSES** section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend section § 17.95(e) by revising critical habitat for the loach minnow and the spikedace to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Loach Minnow *(Tiaroga cobitis)*

(1) Critical habitat units are depicted for Apache, Graham, Greenlee, and Pinal Counties, Arizona; and Catron, Grant, and Hidalgo Counties, New Mexico, on the maps and as described below.

(2) Within these areas, the primary constituent elements of critical habitat for loach minnow are the following:

(i) Permanent, flowing, water with low levels of pollutants, including:

(A) Living areas for adult loach minnow with moderate to swift flow velocities between 9.0 to 32.0 in/second (24 to 80 cm/second) in shallow water between approximately 1.0 to 30 in (3 cm to 75 cm) with gravel, cobble, and rubble substrates;

(B) Living areas for juvenile loach minnow with moderate to swift flow velocities between 1.0 to 34 in/second (3.0 to 85.0 cm/second) in shallow water between approximately 1.0 to 30 in (3 cm to 75 cm) with sand, gravel, cobble, and rubble substrates;

(C) Living areas for larval loach minnow with slow to moderate velocities between 3.0 and 20.0 in/second (9.0 to 50.0 cm/second) in shallow water with sand, gravel, and cobble substrates;

(D) Spawning areas with slow to swift flow velocities in shallow water where cobble and rubble and the spaces between them are not filled in by fine dirt or sand; and

(E) Water with low levels of pollutants such as copper, arsenic, mercury, and cadmium; human and animal waste products; pesticides; suspended sediments; and gasoline or diesel fuels and with dissolved oxygen levels greater than 3 parts per million (ppm).

(ii) Sand, gravel, and cobble substrates with low or moderate amounts of fine sediment and substrate embeddedness. Suitable levels of embeddedness are generally maintained by a natural, unregulated hydrograph that allows for periodic flooding or, if flows are modified or regulated, a hydrograph that allows for adequate river functions, such as flows capable of transporting sediments.

(iii) Streams that have:

(A) Low gradients of approximately 2.5 percent or less;

(B) Water temperatures in the approximate range of 35–85 °Fahrenheit (F) (1.7–29.4 °C) (with natural diurnal and seasonal variation);

(C) Pool, riffle, run, and backwater components; and

(D) An abundant aquatic insect food base consisting of mayflies, true flies, black flies, caddisflies, stoneflies, and dragonflies.

(iv) Habitat devoid of nonnative fish species detrimental to loach minnow or habitat in which detrimental nonnative fish species are at levels that allow persistence of loach minnow.

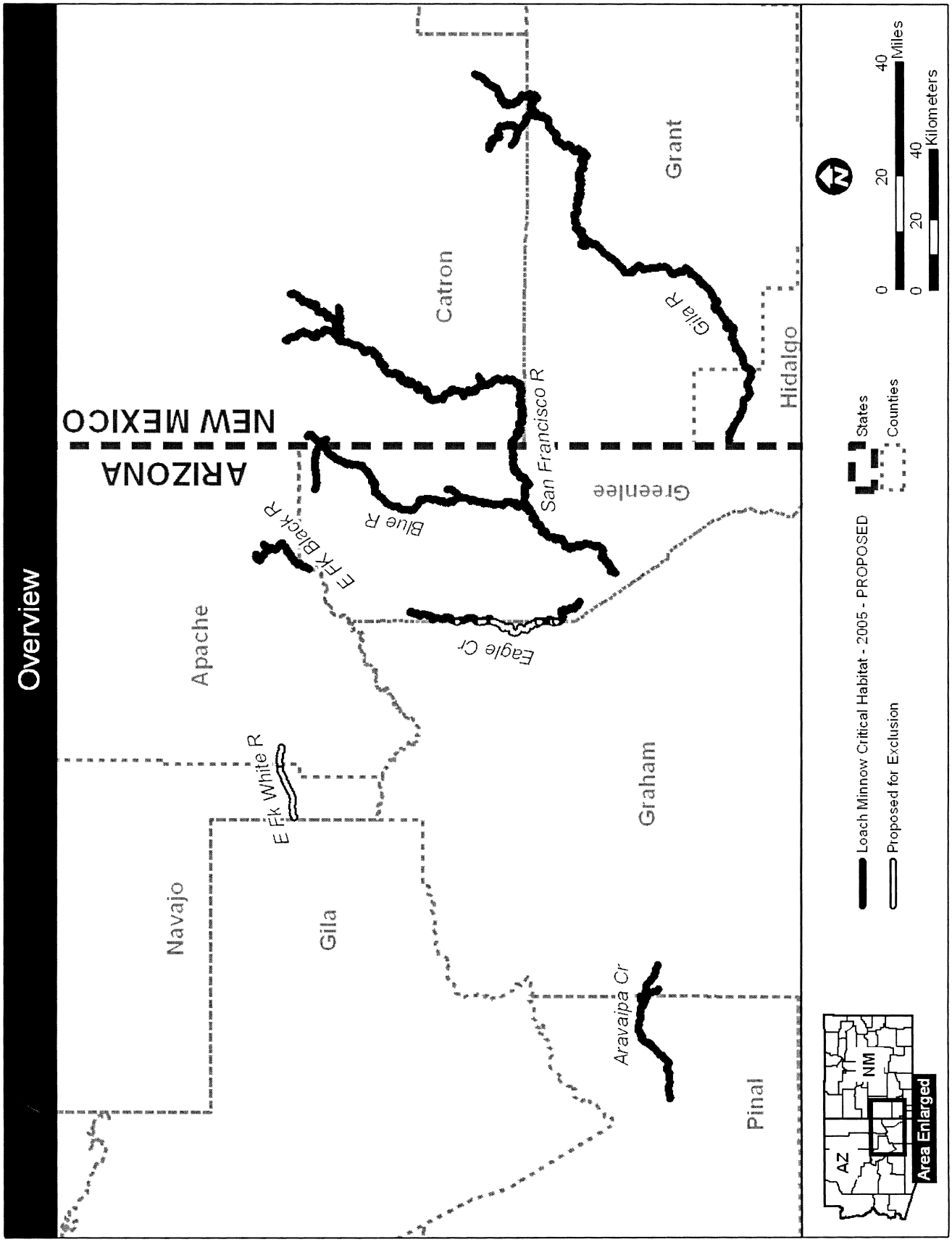
(v) Areas within perennial, interrupted stream courses that are periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted.

(3) Each stream segment includes a lateral component that consists of 300 feet on either side of the stream channel measured from the stream edge at bank full discharge. This lateral component of critical habitat is intended as a surrogate for the 100-year floodplain.

(4) Critical Habitat Map Areas. Data layers defining map areas, and mapping of critical habitat areas, was done using Arc GIS and verifying with USGS 7.5′ quadrangles. Legal descriptions for New Mexico and Arizona are based on the Public Lands Survey System (PLSS). Within this system, all coordinates reported for New Mexico are in the New Mexico Principal Meridian (NMPM), while those in Arizona are in the Gila and Salt River Meridian (GSRM). Township has been abbreviated as ''T'', Range as ''R'', and section as ''sec.'' Where possible, the ending or starting points have been described to the nearest quarter-section, abbreviated as ''1/4''. Cardinal directions are also abbreviated (N = North, S = South, W = West, and E = East). All mileage calculations were performed using GIS.

(5) **Note:** Index map of critical habitat units for loach minnow (Map 1) follows:

BILLING CODE 4310–55–P



(6) Complex 2—Black River, Apache and Greenlee Counties, Arizona.

(i) East Fork Black River—5.5 miles (8.8 km) of river extending from the confluence with the West Fork Black River at Township 4 North, Range 28

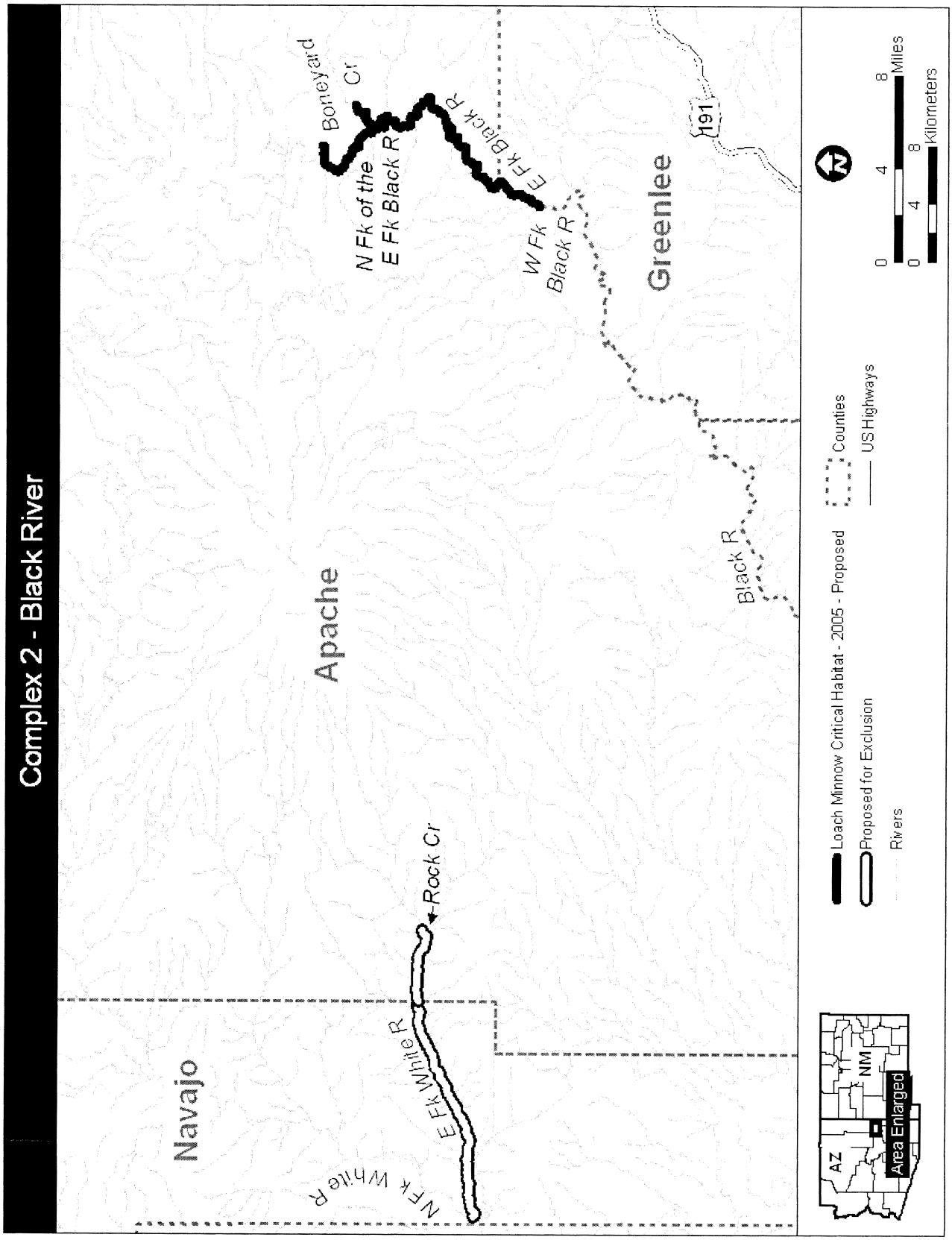
East, section 11 upstream to the confluence with Deer Creek at Township 5 North, Range 29 East, section 30. Land ownership: U.S. Forest Service (Apache-Sitgreaves National Forest).

(ii) North Fork East Fork Black River—11.2 miles (18.0 km) of river extending from the confluence with Deer Creek at Township 5 North, Range 29 East, section 30 upstream to the confluence with an unnamed tributary at Township 6 North, Range 29 East, section 30. Land ownership: U.S. Forest Service (Apache-Sitgreaves National Forest).

(iii) Boneyard Creek—1.4 miles (2.3 km) of creek extending from the confluence with the East Fork Black River at Township 5 North, Range 29 East, section 5 upstream to the confluence with an unnamed tributary at Township 6 North, Range 29 East, section 32. Land ownership: U.S. Forest Service (Apache-Sitgreaves National Forest).

(iv) **Note:** Map of Complex 2 of loach minnow critical habitat, Black River, (Map 2) follows:

BILLING CODE 4310–53–P



BILLING CODE 4310–53–C

(7) Complex 3—Middle Gila/Lower San Pedro/Aravaipa Creek, Pinal and Graham counties, Arizona.

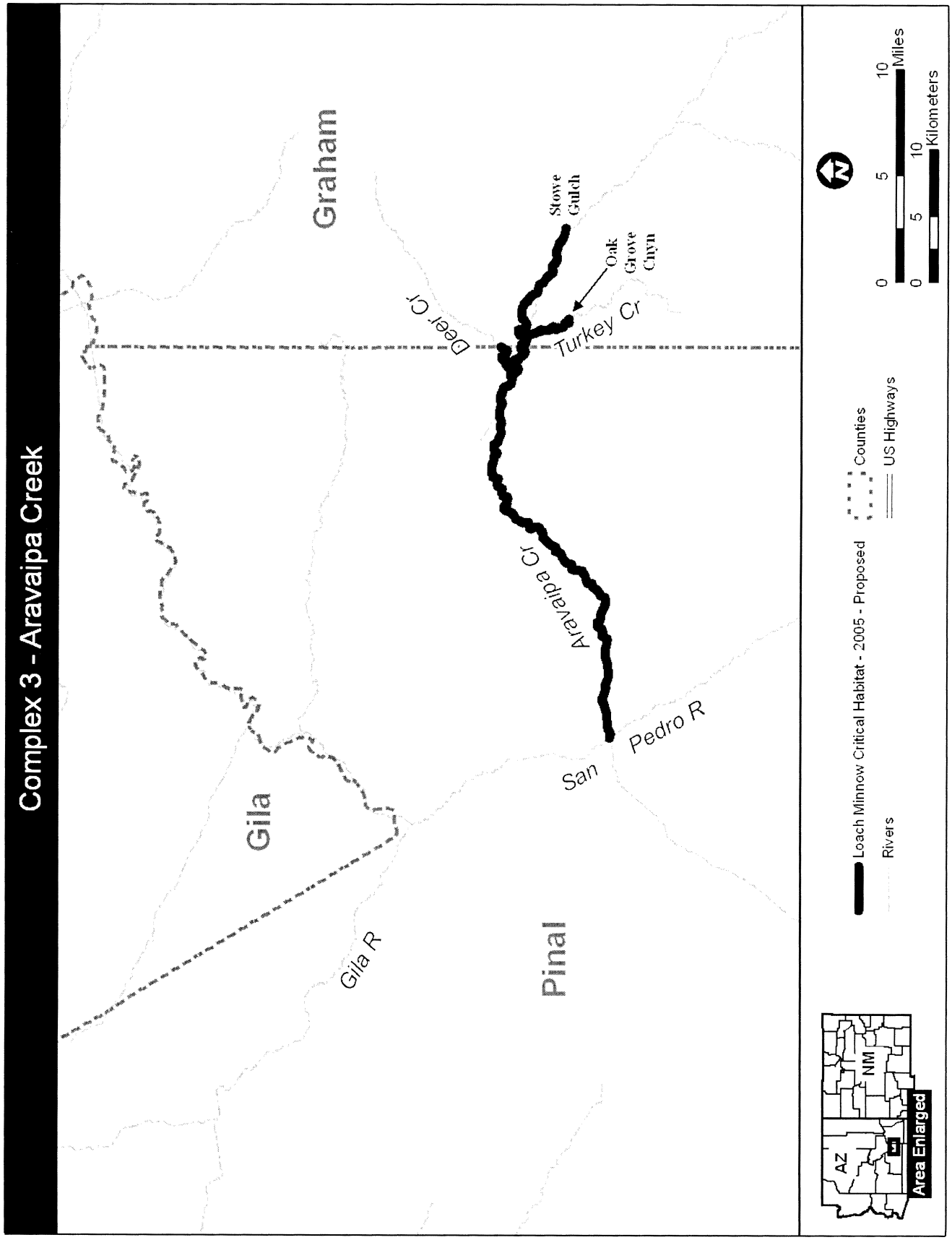
(i) Aravaipa Creek—28.1 miles (45.3 km) of creek extending from the confluence with the San Pedro River at Township 7 South, Range 16 East, section 9 upstream to the confluence with Stowe Gulch at Township 6 South, Range 19 East, section 35. Land ownership: Bureau of Land Management, Tribal, and State lands.

(ii) Turkey Creek—2.7 miles (4.3 km) of creek extending from the confluence with Aravaipa Creek at Township 6 North, Range 19 East, section 19 upstream to the confluence with Oak Grove Canyon at Township 6 South, Range 19 East, section 32. Land ownership: Bureau of Land Management.

(iii) Deer Creek—2.3 miles (3.6 km) of creek extending from the confluence with Aravaipa Creek at Township 6 South, Range 18 East, section 14 upstream to the boundary of the Aravaipa Wilderness at Township 6 South, Range 19 East, section 18. Land ownership: Bureau of Land Management.

(iv) **Note:** Map of Complex 3 for loach minnow critical habitat, Aravaipa Creek, (Map 3) follows:

BILLING CODE 4310–53–P



BILLING CODE 4310–53–C

(8) Complex 4—San Francisco and Blue Rivers, Pinal and Graham counties, Arizona and Catron County, New Mexico.

(i) Eagle Creek—45.3 miles (72.9 km) of creek extending from the Phelps-Dodge Diversion Dam at Township 4 South, Range 28 East, section 23 upstream to the confluence of Dry Prong and East Eagle Creeks at Township 1 North, Range 28 East, section 31. Land ownership: U.S. Forest Service (Apache-Sitgreaves National Forest), Tribal (San Carlos) lands, and private.

(ii) San Francisco River—126.5 miles (203.5 km) of river extending from the confluence with the Gila River at Township 5 South, Range 29 East, section 28 upstream to the mouth of The Box, a canyon above the town of Reserve, at Township 6 South, Range 19 West, section 2. Land ownership: Bureau of Land Management, U.S. Forest Service (Apache-Sitgreaves National Forest), State, and private in Arizona, and U.S. Forest Service (Gila National Forest) and private in New Mexico.

(iii) Tularosa River—18.6 miles (30.0 km) of river extending from the confluence with the San Francisco River at Township 7 South, Range 19 West, section 23 upstream to the town of Cruzville at Township 6 South, Range 18 West, section 12. Land ownership: U.S. Forest Service (Gila National Forest) and private.

(iv) Negrito Creek—4.2 miles (6.8 km) of creek extending from the confluence with the San Francisco River at Township 7 South, Range 18 West, section 19 upstream to the confluence with Cerco Canyon at Township 7 South, Range 18 West, section 21. Land ownership: U.S. Forest Service (Gila National Forest), and private lands.

(v) Whitewater Creek—1.1 miles (1.8 km) of creek extending from the confluence with the San Francisco River at Township 11 South, Range 20 West, section 27 upstream to the confluence with the Little Whitewater Creek at Township 11 South, Range 20 West, section 23. Land ownership: private lands.

(vi) Blue River—51.1 miles (82.2 km) of river extending from the confluence with the San Francisco River at Township 2 South, Range 31 East, section 31upstream to the confluence of Campbell Blue and Dry Blue Creeks at Township 6 South, range 20 West, section 6. Land ownership: U.S. Forest Service (Apache-Sitgreaves National Forest) and private lands in Arizona; U.S. Forest Service (Gila National Forest) in New Mexico.

(vii) Campbell Blue Creek—8.1 miles (13.1 km) of creek extending from the confluence of Dry Blue and Campbell Blue Creeks at Township 6 South, Range 20 West, section 6 in New Mexico upstream to the confluence with Coleman Canyon at Township 4 North, Range 31 East, section 32 in Arizona. Land ownership: U.S. Forest Service (Apache-Sitgreaves National Forest) and private lands in Arizona; U.S. Forest Service (Gila National Forest) in New Mexico.

(viii) Dry Blue Creek—3.0 mile (4.8 km) of creek extending from the confluence with Campbell Blue Creek at Township 6 South, Range 20 West, section 6 upstream to the confluence with Pace Creek at Township 6 South, Range 21 West, section 28. Land ownership: U.S. Forest Service (Gila National Forest).

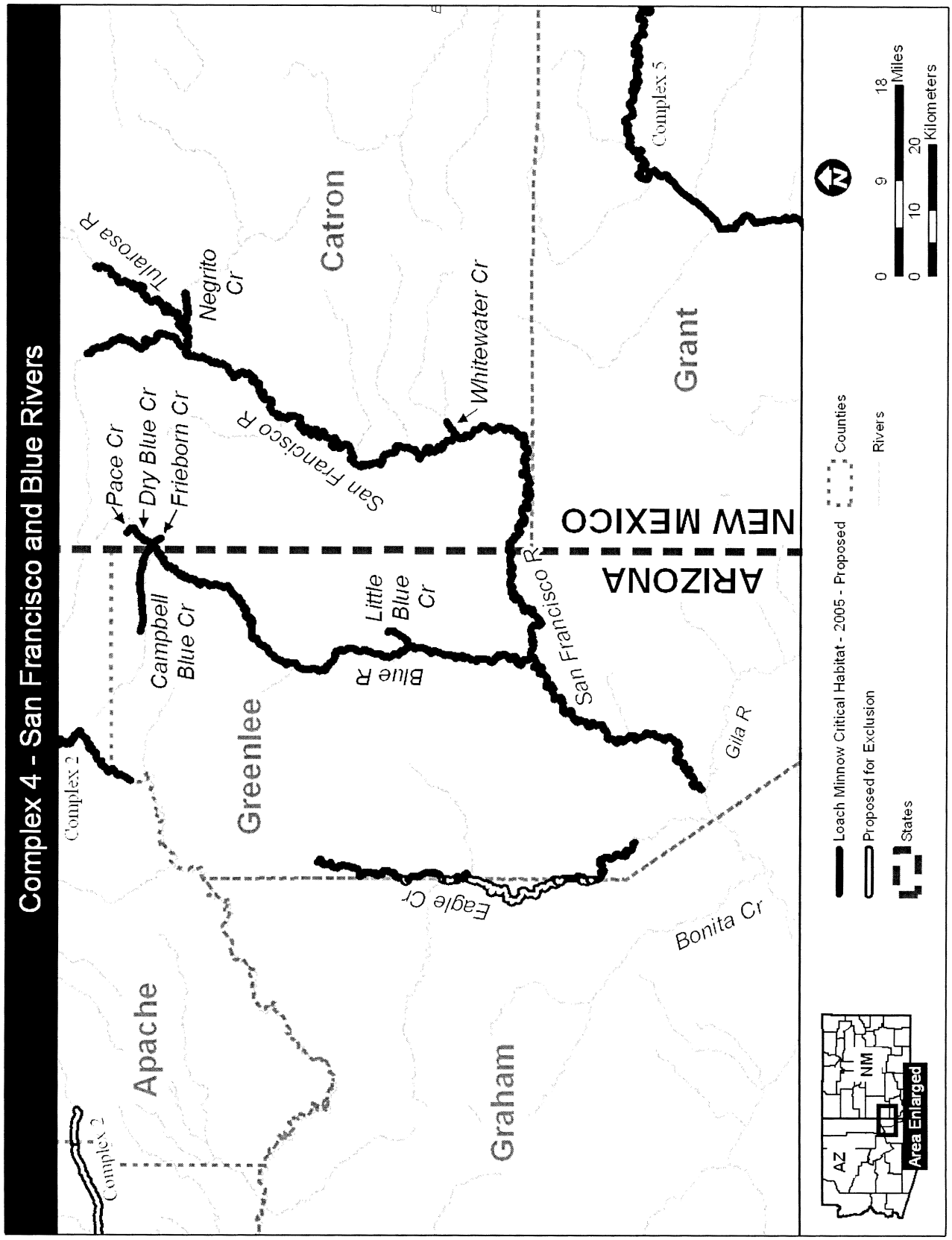
(ix) Pace Creek—0.8 mile (1.2 km) of creek extending from the confluence with Dry Blue Creek at Township 6 South, Range 21 West, section 28 upstream to a barrier falls at Township 6 South, Range 21 West, section 29. Land ownership: U.S. Forest Service (Gila National Forest).

(x) Frieborn Creek—1.1 miles (1.8 km) of creek extending from the confluence with Dry Blue Creek at Township 6 South, Range 20 West, section 6 upstream to an unnamed tributary at Township 6 South, range 20 West, section 8. Land ownership: U.S. Forest Service (Gila National Forest).

(xi) Little Blue Creek—2.8 miles (4.5 km) of creek extending from the confluence with the Blue River at Township 1 South, range 31 East, section 5 upstream to the mouth of a canyon at Township 1 North, Range 31 East, section 29. Land ownership: U.S. Forest Service (Apache-Sitgreaves National Forest).

(xii) **Note:** Map of Complex 4 for loach minnow critical habitat, San Francisco and Blue Rivers, (Map 4) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(9) Complex 5—Upper Gila River Complex, Catron, Grant, and Hidalgo counties, New Mexico

(i) Upper Gila River—102.1 miles (164.3 km) of river extending from the confluence with Moore Canyon (near the Arizona/New Mexico border) at Township 18 South, Range 21 West, section 32 upstream to the confluence of the East and West Forks of the Gila River at Township 13 South, Range 13 West, section 8. Land ownership: Bureau of Land Management, U.S. Forest Service (Gila National Forest), State, and private lands.

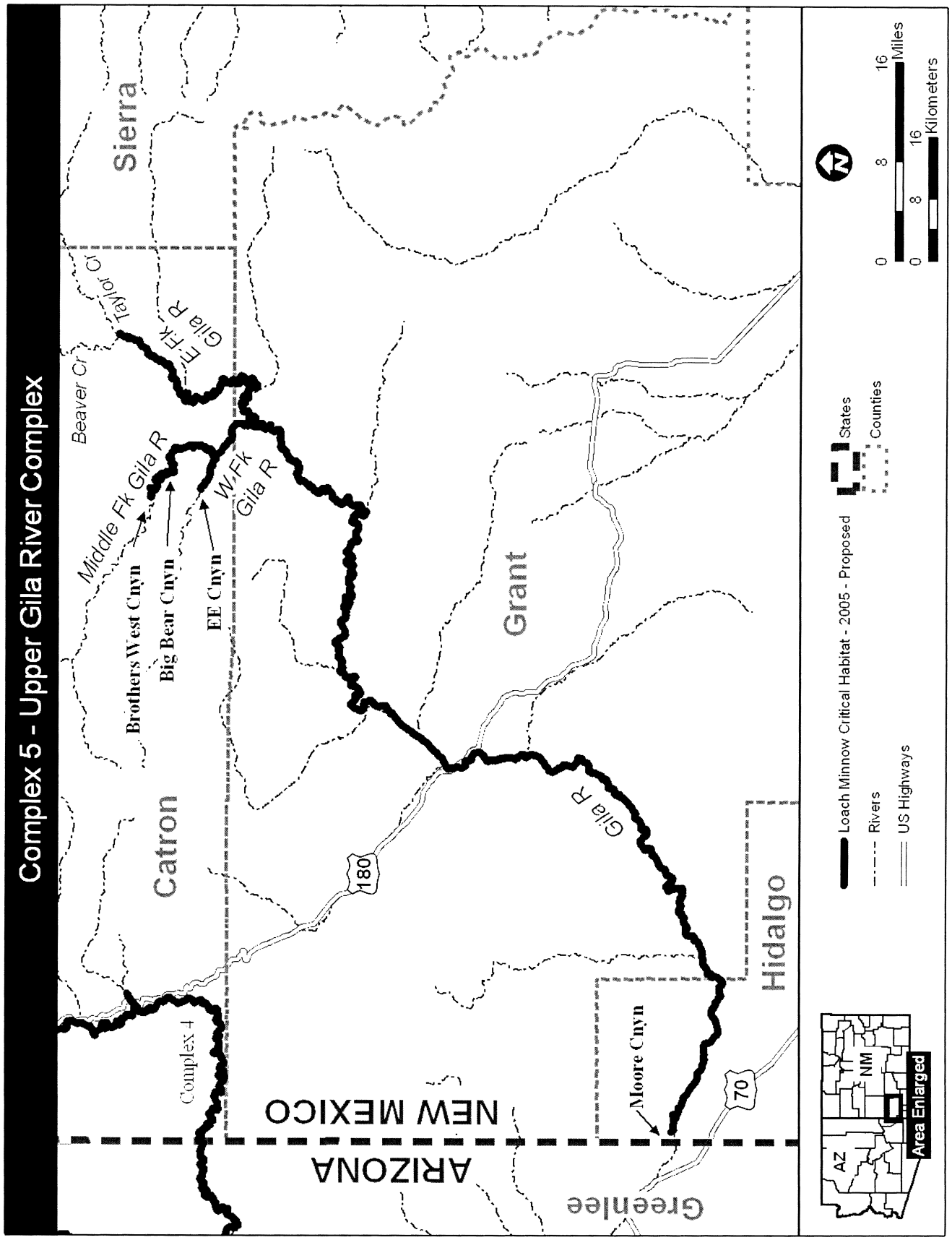
(ii) East Fork Gila River—26.1 miles (42.0 km) of river extending from the confluence with the West Fork Gila River at Township 11 South, Range 12 West, section 17 upstream to the confluence of Beaver and Taylor creeks at Township 13 South, Range 13 West, section 8. Land ownership: U.S. Forest Service (Gila National Forest) and private lands.

(iii) Middle Fork Gila River—11.9 miles (19.1 km) of river extending from the confluence with the West Fork Gila River at Township 12 South, Range 14 West, section 25 upstream to the confluence with Brothers West Canyon at Township 11 South, Range 14 West, section 33. Land ownership: U.S. Forest Service (Gila National Forest) and private lands.

(iv) West Fork Gila River—7.7 miles (12.4 km) of river extending from the confluence with the East Fork Gila River at Township 13 South, Range 13 West, section 8 upstream to the confluence with EE Canyon at Township 12 South, Range 14 West, section 22. Land ownership: U.S. Forest Service (Gila National Forest), National Park Service, and private lands.

(v) **Note:** Map of Complex 5 of loach minnow critical habitat, Upper Gila River Complex, (Map 5) follows:

BILLING CODE 4310–55–P



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* * * * *

Spikedace (*Meda fulgida*)

(1) Critical habitat units are depicted for Graham, Greenlee, Pinal, and Yavapai Counties, Arizona; and Catron, Grant, and Hidalgo Counties, New Mexico, on the maps and as described below.

(2) Within these areas, the primary constituent elements of critical habitat for spikedace are the following:

(i) Permanent, flowing, water with low levels of pollutants, including:

(A) Living areas for adult spikedace with slow to swift flow velocities between 20 and 60 cm/second (8–24 inches/second) in shallow water between approximately 10 cm (4 inches) to 1 meter (40 inches) with shear zones where rapid flow borders slower flow, areas of sheet flow (or smoother, less turbulent flow) at the upper ends of mid-channel sand/gravel bars, and eddies at downstream riffle edges;

(B) Living areas for juvenile spikedace with slow to moderate water velocities of approximately 18 cm/second (8 inches/second) or higher in shallow water between approximately 3 cm (1.2 inches) to 1 meter (40 inches);

(C) Living areas for larval spikedace with slow to moderate flow velocities of approximately 10 cm/second (4 inches/second) or higher in shallow water approximately 3 cm (1.2 inches) to 1 meter (40 inches) and;

(D) Water with low levels of pollutants such as copper, arsenic, mercury and cadmium; human and animal waste products; pesticides; suspended sediments; and gasoline or diesel fuels and with dissolved oxygen levels greater than 3 parts per million (ppm).

(ii) Sand, gravel, and cobble substrates with low or moderate amounts of fine sediment and substrate embeddedness. Suitable levels of embeddedness are generally maintained by a natural, unregulated hydrograph that allows for periodic flooding or, if flows are modified or regulated, a hydrograph that allows for adequate river functions, such as flows capable of transporting sediments.

(iii) Streams that have:

(A) Low gradients of approximately 1.0 percent or less;

(B) Water temperatures in the approximate range of 35–85 °Fahrenheit (F) (1.7–29.4 °C) (with natural diurnal and seasonal variation);

(C) Pool, riffle, run, and backwater components; and

(D) An abundant aquatic insect food base consisting of mayflies, true flies, caddisflies, stoneflies, and dragonflies.

(iv) Habitat devoid of nonnative fish species detrimental to spikedace, or habitat in which detrimental nonnative fish species are at levels that allow persistence of spikedace.

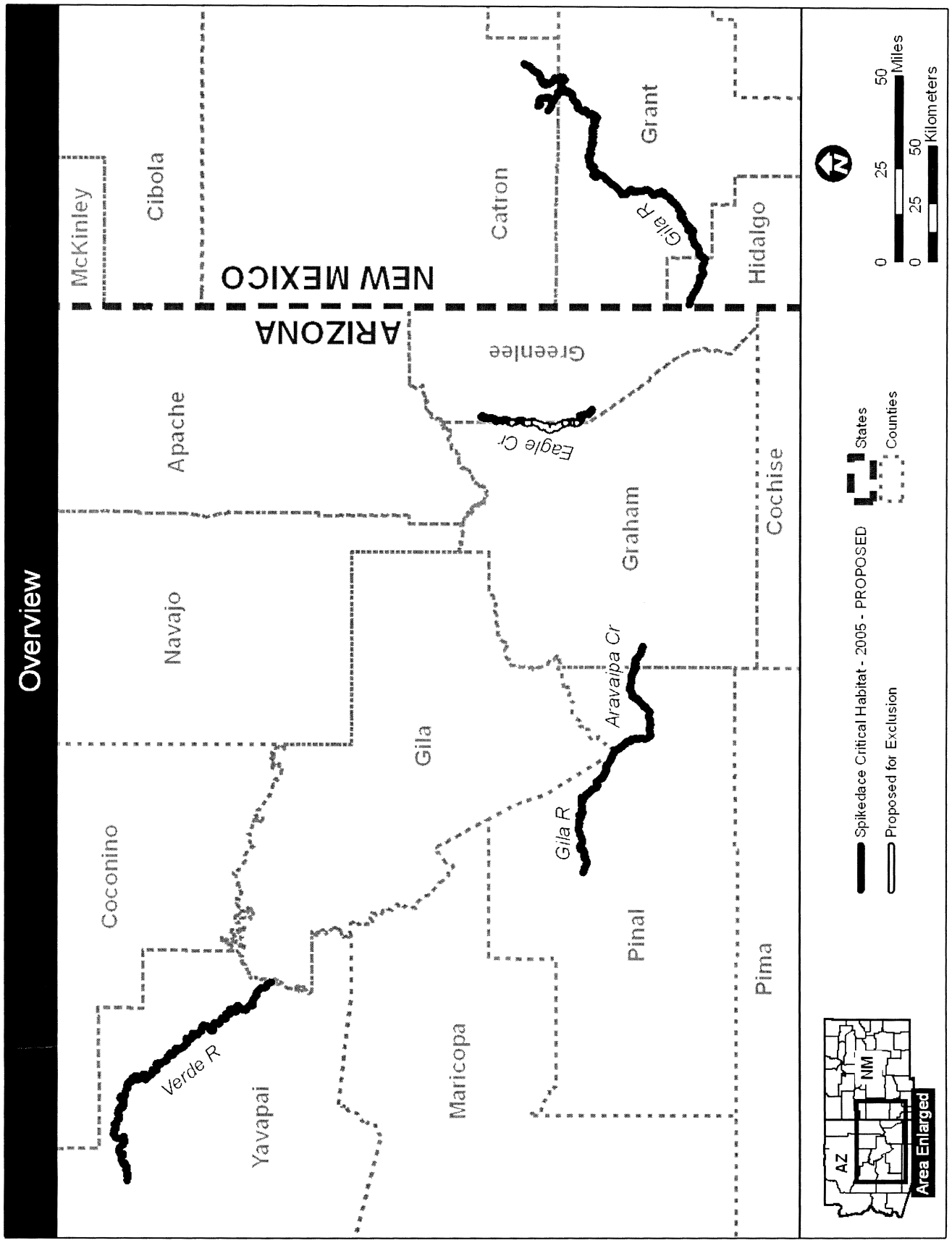
(v) Areas within perennial, interrupted stream courses that are periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted.

(3) Each stream segment includes a lateral component that consists of 300 feet on either side of the stream channel measured from the stream edge at bank full discharge. This lateral component of critical habitat is intended as a surrogate for the 100-year floodplain.

(4) Critical Habitat Map Areas. Data layers defining map areas, and mapping of critical habitat areas, was done using Arc GIS and verifying with USGS 7.5′ quadrangles. Legal descriptions for New Mexico and Arizona are based on the Public Lands Survey System (PLSS). Within this system, all coordinates reported for New Mexico are in the New Mexico Principal Meridian (NMPM), while those in Arizona are in the Gila and Salt River Meridian (GSRM). Township has been abbreviated as ''T'', Range as ''R'', and section as ''sec.'' Where possible, the ending or starting points have been described to the nearest quarter-section, abbreviated as ''¼''. Cardinal directions are also abbreviated (N = North, S = South, W = West, and E = East). All mileage calculations were performed using GIS.

(5) **Note:** Index map of critical habitat units for spikedace (Map 1) follows:

BILLING CODE 4310–55–P



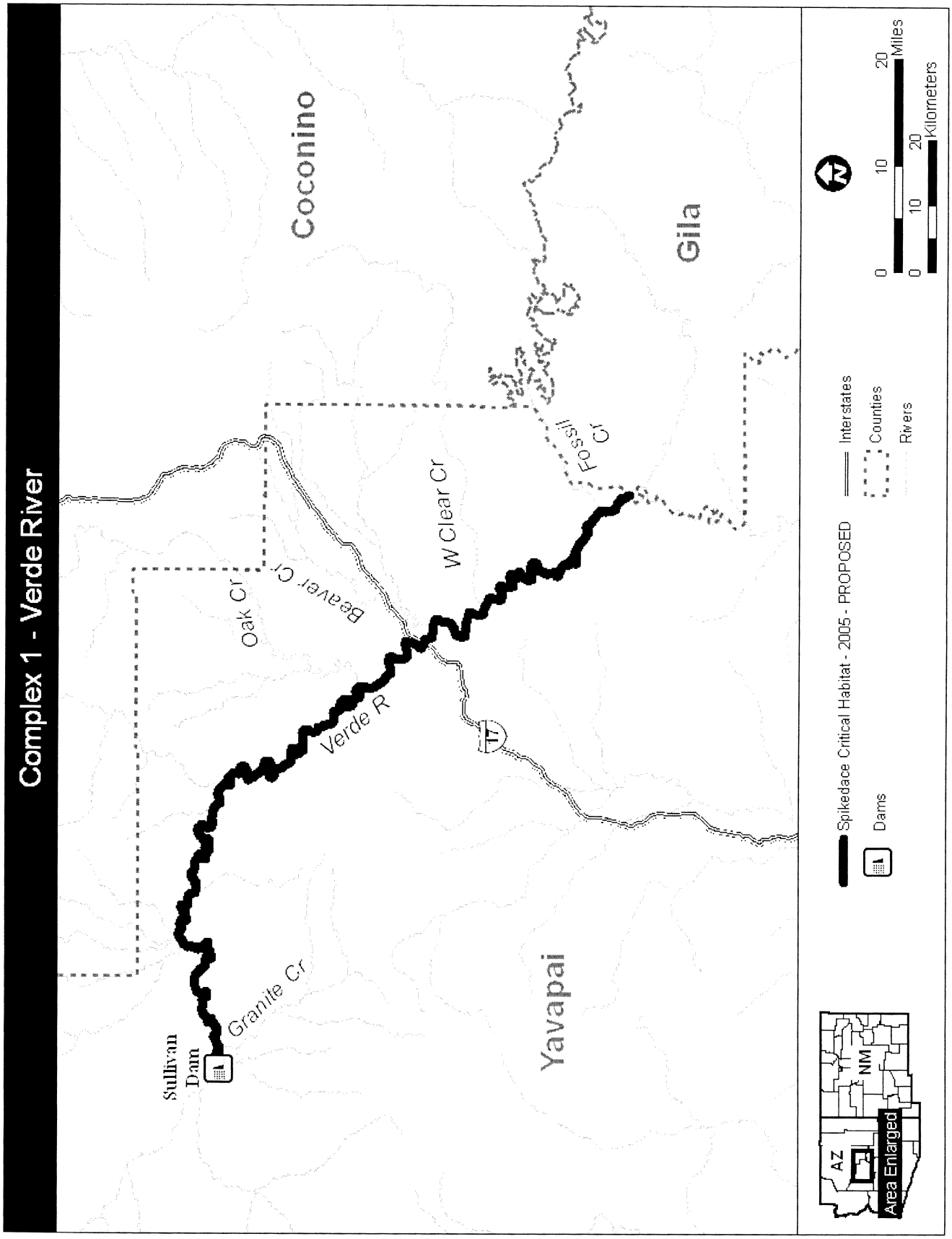
BILLING CODE 4310–55–C

(6) Complex 1—Verde River, Yavapai County, Arizona.

(i) Verde River—106.5 miles (171.4 km) of river extending from the confluence with Fossil Creek at Township 11 North, Range 6 East, section 25 upstream 106.9 miles to Sullivan Dam at Township 17 North, Range 2 West, section 15. Land ownership: U.S. Forest Service (Prescott National Forest), Yavapai Apache Nation, State, and private.

(ii) **Note:** Map of Complex 1 of spikedace critical habitat, Verde River, (Map 2) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(7) Complex 3—Middle Gila/Lower San Pedro/Aravaipa Creek, Pinal and Graham counties, Arizona.

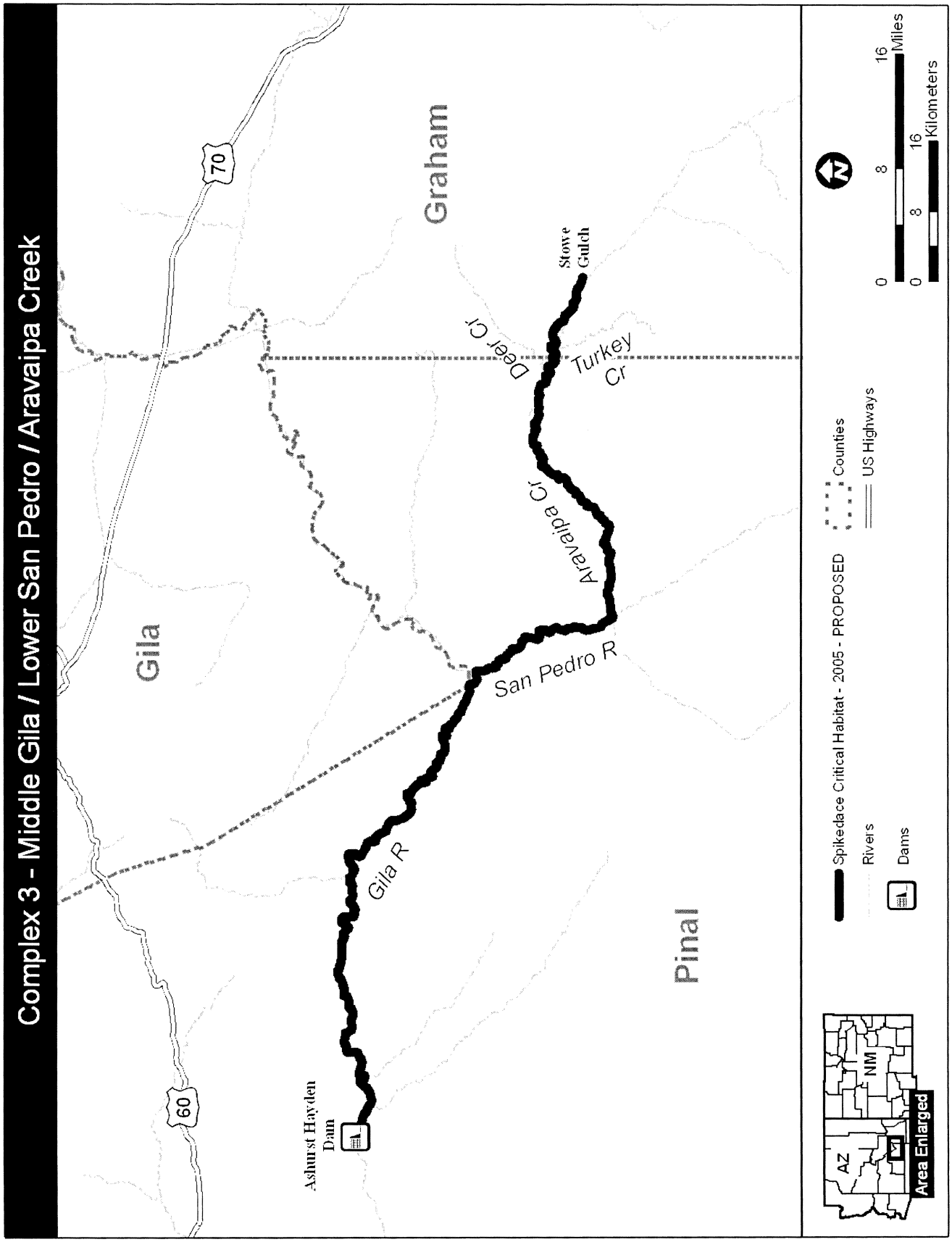
(i) Gila River—39.0 miles (62.8 km) of river extending from the Ashurst-Hayden Dam at Township 4 South, Range 11 East, section 8 upstream to the confluence with the San Pedro River at Township 5 South, Range 15 East, section 23. Land ownership: Bureau of Reclamation, Bureau of Land Management, State, and private.

(ii) Lower San Pedro River—13.4 miles (21.5 km) of river extending from the confluence with the Gila River at Township 5 South, Range 15 East, section 23 upstream to the confluence with Aravaipa Creek at Township 7 South, Range 16 East, section 9. Land ownership: Bureau of Land Management, Tribal, State, and private.

(iii) Aravaipa Creek—28.1 miles (45.3 km) of creek extending from the confluence with the San Pedro River at Township 7 South, Range 16 East, section 9 upstream to the confluence with Stowe Gulch at Township 6 South, Range 19 East, section 35. Land ownership: Bureau of Land Management, Tribal, and State lands.

(iv) **Note:** Map of Complex 3 of spikedace critical habitat, Middle Gila/Lower San Pedro/Aravaipa Creek, (Map 3) follows:

BILLING CODE 4310–55–P



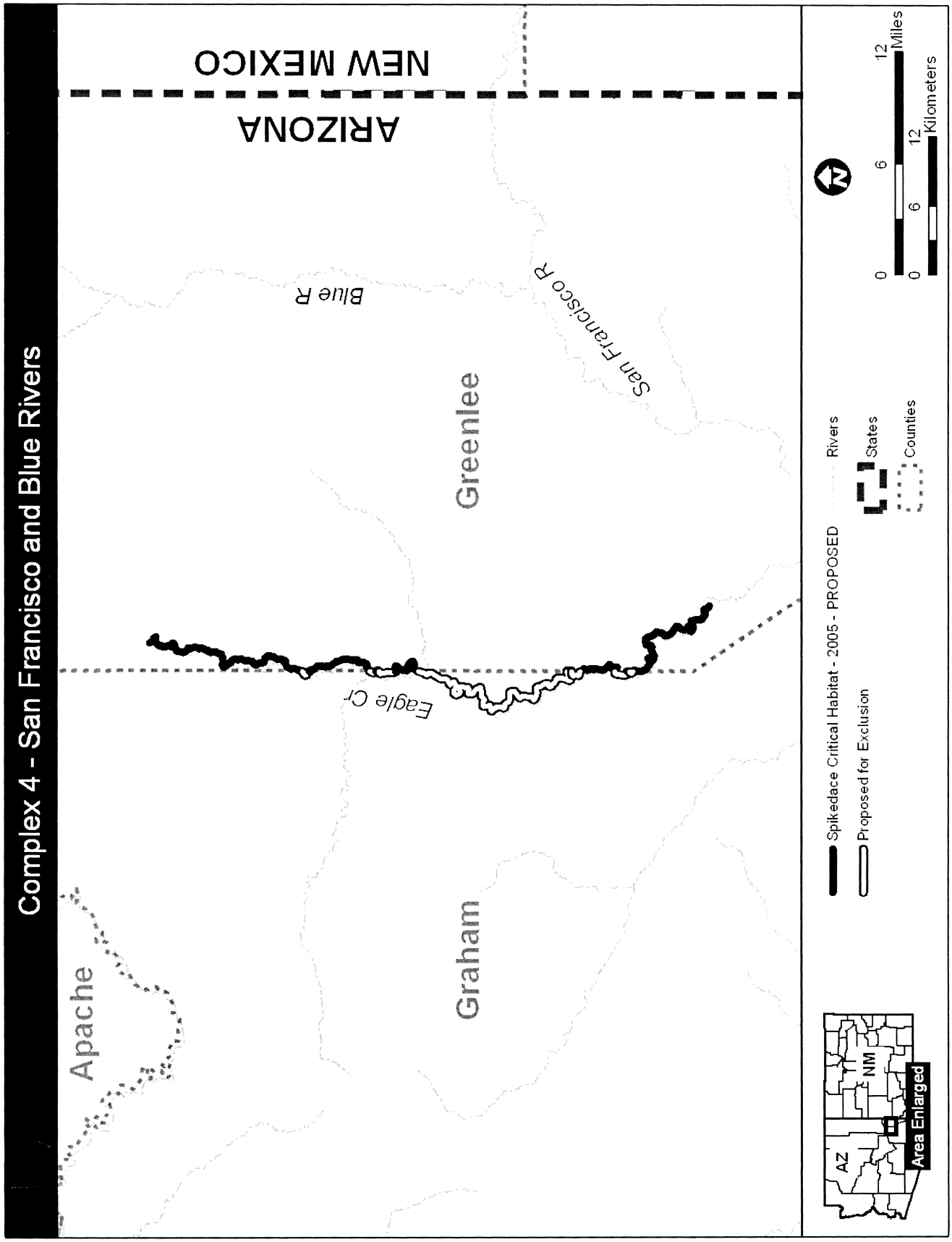
BILLING CODE 4310–55–C

(8) Complex 4—San Francisco and Blue Rivers, Pinal and Graham counties, Arizona.

(i) Eagle Creek—45.3 miles (72.9 km) of creek extending from the Phelps-Dodge Diversion Dam at Township 4 South, Range 28 East, section 23 upstream to the confluence of Dry Prong and East Eagle Creeks at Township 1 North, Range 28 East, section 31. Land ownership: U.S. Forest Service (Apache-Sitgreaves National Forest), Tribal (San Carlos) lands, and private.

(ii) **Note:** Map of Complex 4 of spikedace critical habitat, San Francisco and Blue Rivers, (Map 4) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(9) Complex 5—Upper Gila River Complex, Catron, Grant, and Hidalgo counties, New Mexico.

(i) Upper Gila River—102.1 miles (164.3 km) of river extending from the confluence with Moore Canyon (near the Arizona/New Mexico border) at Township 18 South, Range 21 West, section 32 upstream to the confluence of the East and West Forks of the Gila River at Township 13 South, Range 13 West, section 8. Land ownership: Bureau of Land Management, U.S. Forest Service (Gila National Forest), State, and private lands.

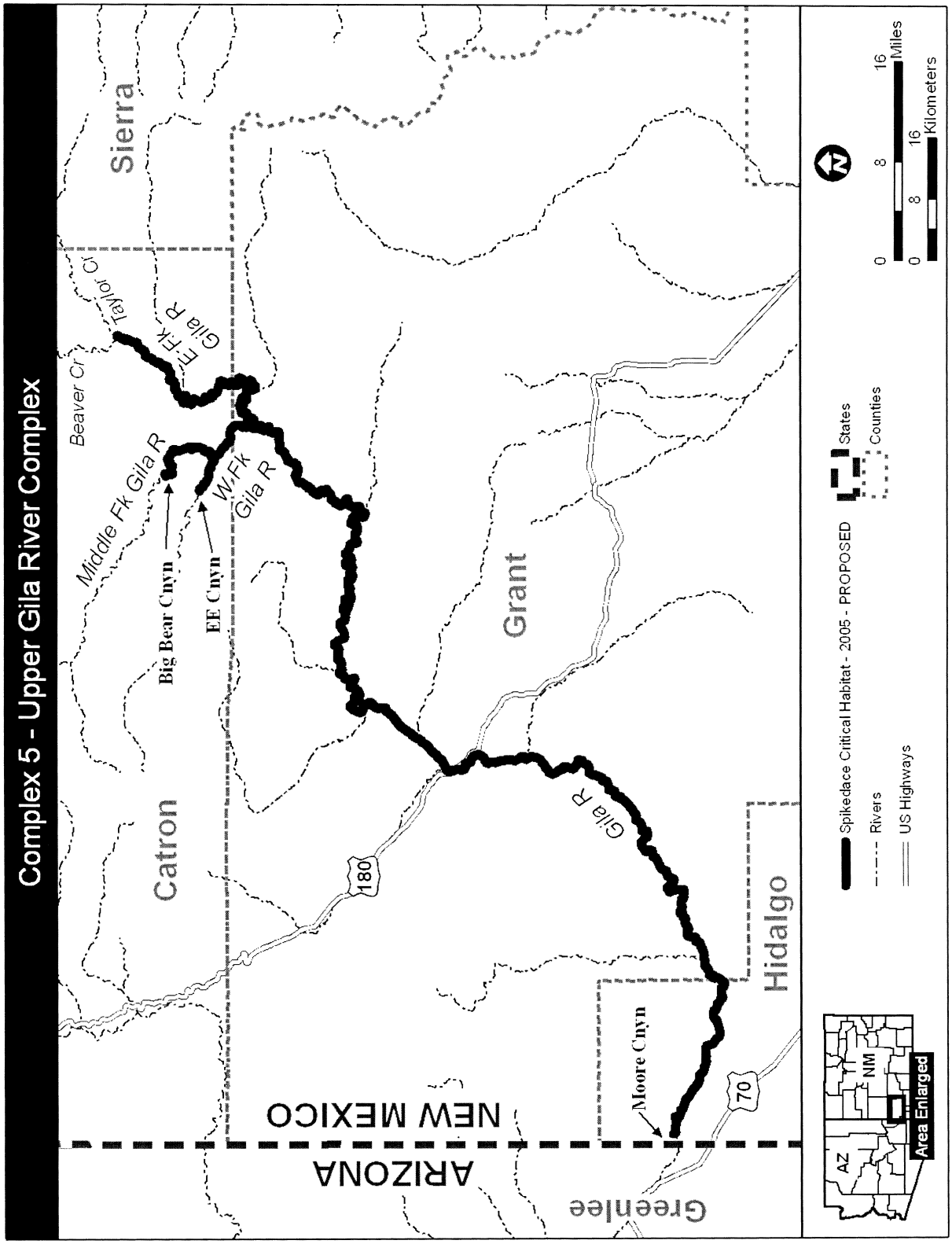
(ii) East Fork Gila River—26.1 miles (42.0 km) of river extending from the confluence with the West Fork Gila River at Township 11 South, Range 12 West, section 17 upstream to the confluence of Beaver and Taylor creeks at Township 13 South, Range 13 West, section 8. Land ownership: U.S. Forest Service (Gila National Forest) and private lands.

(iii) Middle Fork Gila River—7.7 miles (12.3 km) of river extending from the confluence with the West Fork Gila River at Township 11 South, Range 14 West, section 33 upstream to the confluence with Big Bear Canyon at Township 12 South, Range 14 West, section 25. Land ownership: U.S. Forest Service (Gila National Forest) and private lands.

(iv) West Fork Gila River—7.7 miles (12.4 km) of river extending from the confluence with the East Fork Gila River at Township 13 South, Range 13 West, section 8 upstream to the confluence with EE Canyon at Township 12 South, Range 14 West, section 22. Land ownership: U.S. Forest Service (Gila National Forest), National Park Service, and private lands.

(v) **Note:** Map of Complex 5 of spikedace critical habitat, Upper Gila River Complex, (Map 5) follows:

BILLING CODE 4310–55–P



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Dated: December 6, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–23999 Filed 12–19–05; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
December 20, 2005

Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 365 and 366

Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 365 and 366

[Docket No. RM05–32–000, Order No. 667]

Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005

Issued December 8, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: In this final rule, the Federal Energy Regulatory Commission (Commission) is amending its regulations to implement the repeal of the Public Utility Holding Company Act of 1935 and the enactment of the Public Utility Holding Company Act of 2005, by adding a new subchapter and part to its regulations and removing its exempt wholesale generator rules as they are no longer necessary.

DATES: This final rule will become effective on February 8, 2006.

FOR FURTHER INFORMATION CONTACT:

Brandon Johnson (Legal Information), Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6143.

Lawrence Greenfield (Legal Information), Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6415.

James Guest (Technical Information), Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6614.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

Introduction

1. On August 8, 2005, the Energy Policy Act of 2005 (EPAct 2005) [1] was signed into law. In relevant part, it repeals the Public Utility Holding Company Act of 1935 (PUHCA 1935) [2] and enacts the Public Utility Holding Company Act of 2005 (PUHCA 2005),[3] which, with one exception not relevant here, will become effective six months from the date of enactment (February 8, 2006).[4] Sections 1266, 1272, and 1275 of EPAct 2005 direct the Commission to issue certain rules and to provide detailed recommendations to Congress on technical and conforming amendments to federal law within four months after the date of enactment, *i.e.*, by December 8, 2005.[5] In addition, EPAct 2005 directs the Commission to issue a final rule exempting certain entities from the federal access to books and records provisions of EPAct 2005 within 90 days of the effective date of Title XII, Subtitle F of EPAct 2005. This rulemaking addresses all mandatory rulemaking requirements contained in PUHCA 2005.

2. On September 16, 2005, the Commission issued a notice of proposed rulemaking (NOPR) [6] in which it proposed to add a new Subchapter U and Part 366 to Title 18 of the Code of Federal Regulations to implement Title XII, Subtitle F of EPAct 2005 and to remove Subchapter T and Part 365 of Title 18 of the Code of Federal Regulations.

3. Section 1264 of PUHCA 2005 concerns Commission access to the books and records of holding companies and other companies in holding company systems, and section 1275 of PUHCA 2005 addresses the Commission's review and authorization of the allocation of costs for non-power goods or administrative or management services when requested by a holding company system or state commission. As we stated in the NOPR, the federal books and records access provision, section 1264, and the non-power goods and services provision, section 1275, of PUHCA 2005 supplement the Commission's existing authorities under the Federal Power Act (FPA) [7] and the Natural Gas Act (NGA) [8] to protect customers against improper cross-subsidization or encumbrances of assets, including the Commission's broad authority under FPA section 301 and NGA section 8 to obtain the books and records of regulated companies and any person that controls or is controlled by such companies if relevant to jurisdictional activities.[9]

4. In responding to the comments on the NOPR and in deciding whether to adopt the proposals in the NOPR, our decisionmaking has been guided by the clear intent of Congress to repeal the regulatory regime established by PUHCA 1935 and to rely on state regulatory authorities and the Commission to protect energy customers, by supplementing the Commission's books and records authority under PUHCA 2005 and by enhancing our already significant authority over public utility mergers, acquisitions and dispositions of jurisdictional facilities.[10] As we recognized in the NOPR, PUHCA 2005 is primarily a ''books and records access'' statute and does not give the Commission any new substantive authorities. In fact, the only substantive requirement contained in the new law is that we address requests involving certain allocations of costs of non-power goods and services. Accordingly, as discussed in greater detail below, we are rejecting requests that we re-impose particular requirements in PUHCA 1935 that Congress chose not to include in PUHCA 2005.

5. Our primary means of protecting customers served by jurisdictional companies that are members of holding company systems continues to be the FPA and NGA. In particular, the Commission's rate authorities and information access authorities under the FPA and NGA enable the Commission to detect and disallow from jurisdictional rates any imprudently-incurred, unjust or unreasonable, or unduly discriminatory or preferential costs resulting from affiliate transactions between companies in the same holding company system.[11] This includes both power transactions and non-power goods or services transactions between Commission-regulated companies that have captive customers and their ''unregulated'' affiliates. The Commission routinely places code of conduct restrictions on power sales at market-based rates between regulated and non-regulated affiliates. In the context of registered holding companies, we also have placed conditions on non-power goods and services transactions involving public utilities. Further, as discussed in greater detail *infra,* in the context of individual rate cases involving public utilities that seek to flow through in jurisdictional rates the costs of affiliate purchases of non-power goods or services, the Commission has the ability to protect customers by reviewing the prudence and the justness

[1] Energy Policy Act of 2005, Public Law No. 109–58, 119 Stat. 594 (2005).

[2] 15 U.S.C. 79a *et seq.* (2000).

[3] EPAct 2005 at § 1261 *et seq.*

[4] *Id.* at § 1274(a).

[5] *Id.* at §§ 1266, 1272, 1275.

[6] *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005,* Notice of Proposed Rulemaking, 70 Fed. Reg. 55,805 (2005), FERC Stats. & Regs. ¶ 32,588 (2005).

[7] 16 U.S.C. 824d–e (2000).

[8] 15 U.S.C. 717c–d (2000).

[9] 16 U.S.C. 825 (2000); 15 U.S.C. 717g (2000).

[10] EPAct 2005 at § 1289.

[11] Since the vast majority of registered holding companies have been electric public utility holding companies, our description here focuses primarily on the FPA. However, except for merger and corporate authority under the FPA, our authorities and processes under the NGA are similar.

and reasonableness of such costs. The Commission also has adopted rules and policies regarding cash management practices or arrangements that involve Commission-jurisdictional companies. Importantly, repeal of PUHCA 1935 also does not repeal non-PUHCA securities laws and accounting requirements for companies.

6. It is against this backdrop that we have determined not to require in this final rule all of the filing requirements that we originally proposed to adopt. In addition, in response to the numerous comments filed, we have determined that it is appropriate to permit certain exemptions from those requirements that are being adopted, based upon an expedited notification process. An overview of the final rule's requirements and exemptions is provided below. We emphasize, however, that this final rule (including its exemptions) does not affect the Commission's independent ability to obtain access to books and records under the FPA and NGA. Further, to the extent additional rulemakings or orders may be needed to protect customers, the Commission will take appropriate actions in the future. The Commission will hold a technical conference no later than one year from the effective date of PUHCA 2005 to assess whether additional actions are needed.

Overview of Final Rule

7. In the NOPR, the Commission proposed to incorporate in part 366 of its regulations, largely without modification, the provisions of PUHCA 2005, and we have adopted a number of those proposals in the final rule. However, based on the very constructive comments received, the final rule modifies or departs from the approach in the NOPR in several respects, and we summarize the final rule below.

8. In the NOPR, we proposed adopting several of the Securities and Exchange Commission's (SEC) accounting and record-retention requirements into our own regulations and stated that we did not intend to broaden their applicability beyond the types of companies to which they now apply. Specifically, the NOPR proposed to adopt the following portions of the SEC's accounting and record-keeping requirements: 17 CFR 250.26 (financial statement and recordkeeping requirements for registered holding companies and subsidiaries); 17 CFR 250.27 (classification of accounts prescribed for utility companies not already subject thereto); 17 CFR 250.80 (definitions of terms used in rules under section 13 of PUHCA 1935); 17 CFR 250.93 (accounts and records of mutual and subsidiary service companies); 17 CFR 250.94 (annual reports by mutual and subsidiary service companies); 17 CFR part 256 (uniform system of accounts for mutual and subsidiary service companies) (SEC Uniform System of Accounts); and 17 CFR part 257 (preservation and destruction of records for registered holding companies and of mutual and subsidiary service companies) (SEC record-retention rules).

9. Additionally, the NOPR proposed to require companies to file certain SEC forms with the Commission, including: SEC Form U–13–60 (annual report for mutual and subsidiary service companies); SEC Form U–5S (annual report for registered holding companies); and a version of SEC Form U–5A (notification of registration status).

10. As discussed further below, the Commission has concluded that there is no statutory basis for continuing to apply the statutory exemptions contained in PUHCA 1935, which Congress has repealed.[12] Although, as also discussed below, we will provide certain exemptions from PUHCA 2005, we will not re-create the PUHCA 1935 distinction between ''exempt'' and ''registered'' holding companies. Accordingly, we will apply the books and records requirements of PUHCA 2005 equally to all holding companies. However, the Commission will give holding companies until January 1, 2007, to comply with the Commission's record-retention requirements; holding companies, in contrast to traditional, centralized service companies (as distinguished from service companies that are special-purpose companies such as a fuel supply company or a construction company), will not be required to comply with the Commission's Uniform System of Accounts.

11. The final rule adopts modified, streamlined versions of 17 CFR 250.1, 250.26, 250.80, 250.93, 250.94, and 259.313 in Part 366 of its regulations. Section 366.4(a) of our regulations will be a modified and simplified version of 17 CFR 250.1(a), which originally required registered holding companies to file SEC Form U–5A, notification of registration. Section 366.4 requires holding companies to file a FERC–65 (Notification of Holding Company Status), and, if they wish to claim an exemption from PUHCA 2005 or a waiver of the Commission's regulations thereunder, FERC–65A (Exemption Notification) or FERC–65B (Waiver Notification). The final rule does not adopt the 17 CFR 250.1(b) (registration statement) and 250.1(c) (annual report for holding companies, to be filed on SEC Form U–5S). Section 366.21 of our regulations instead contains a modified version of 17 CFR 250.26 (financial statement and recordkeeping requirements for holding companies and subsidiaries), including subparagraph (a)(2) (requirement to maintain books and records for auditing purposes), paragraphs (d) and (f) (compliance with Commission and other agencies' record-retention rules), and paragraph (e) (savings clause for previous accounting orders). It does not adopt paragraphs (a)(1) (mandating compliance with SEC Regulation S–X), (b) (information to be supplied with form SEC Form U–5S), (c) (mandating use of the equity method of accounting), or (g) (cross reference to section 250.26). In section 366.1, we adopt the definitions contained in 17 CFR 250.80 (definitions of terms), *i.e.*, ''services,'' ''goods,'' and ''construction'', and we add a definition for service company. We also adopt streamlined versions of 17 CFR 250.93 (accounts and records of service companies), 250.94 (annual reports for service companies), and 259.313 (SEC Form U–13–60, for annual reports pursuant to 250.94), in sections 366.21, 366.22 and 366.23, which prescribe the Uniform System of Accounts and annual reporting requirement for service companies. The final rule does not adopt 17 CFR 259.5s, and it does not require the submission of SEC Form U–5S. The Commission has determined that the information in these eliminated provisions is not relevant to the costs incurred by jurisdictional entities or is not necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

12. Specifically, the final rule also adopts the following requirements:

(1) Holding companies will file FERC–65 (Notification of Holding Company Status), which will be treated as an informational filing.

(2) Holding companies seeking to claim an exemption from PUHCA 2005 or waiver of the Commission's regulations thereunder may file FERC–65A (Exemption Notification) or FERC–65B (Waiver Notification).

[12] Section 5(a) of PUHCA 1935 provides five statutory exemptions for:

(1) Predominantly intrastate holding companies;

(2) Public-utility holding companies whose operations as such do not extend beyond the State in which they are organized and states contiguous thereto;

(3) Holding companies that are only incidentally a holding company;

(4) Holding companies that are temporarily holding companies; or

(5) Primarily foreign utility holding companies. 15 U.S.C. 79c(a)(1)–(5) (2000).

(3) Traditional, centralized service companies will be required to file a newly-created FERC Form No. 60 (Annual Report for Service Companies), which is based on a streamlined version of SEC Form U–13–60. The FERC Form No. 60 eliminates the following supporting schedules originally contained in SEC Form U–13–60: Outside Services Employed—Account 923; Employee Pensions and Benefits—Account 926; General Advertising Expenses—Account 930.1; Rents—Account 931; Taxes Other Than Income Taxes—Account 408; Donations—Account 426.1; and Other Deductions—Account 426.5. The schedules were eliminated to remove information that is either duplicative or that the Commission has determined is not necessary to carry out its statutory responsibilities under PUHCA 2005.

(4) Unless otherwise exempted by Commission rule or order, all holding companies and service companies must maintain and make available to the Commission their books and records. In addition, all holding companies and all service companies that do not currently follow the Commission's record-retention requirements in Parts 125 and 225 of the Commission's regulations, as applicable, will be required to transition to the Commission's requirements by January 1, 2007. Holding companies registered under PUHCA 1935 that currently follow the SEC's record-retention rules in 17 CFR Part 257, and their service companies, have the option to follow either the Commission's or the SEC's record-retention rules, as they exist on the day before the effective date of PUHCA 2005, for calendar year 2006, but these entities must transition to the Commission's record-retention rules by January 1, 2007. And, as noted above, holding companies, unlike traditional, centralized service companies, will not be required to comply with the Commission's Uniform System of Accounts.

13. The NOPR did not propose any specific exemptions from the books and records requirements of PUHCA 2005, except as required by section 1266 (*i.e.*, persons that are holding companies solely with respect to one or more exempt wholesale generators (EWGs), foreign utility companies (FUCOs), or qualifying facilities (QFs)), but sought comments on whether passive investors and mutual funds should be exempted. Rather, we proposed to rely on case-by-case petitions for declaratory order to determine what additional waivers are appropriate. Based on the extensive comments received, in the final rule we have modified our original proposal to rely on declaratory order requests for exemptions and we have determined that it is appropriate to use an expedited notification process to either exempt from the books and records requirements of PUHCA 2005 or waive the Commission's accounting, record-retention and reporting regulations thereunder for the following persons and classes of transactions:

(1) Passive investors, including mutual funds and other financial institutions;

(2) Commission-jurisdictional utilities that have no captive customers;

(3) Certain holding company and affiliate transactions that will not affect jurisdictional rates;

(4) Electric power cooperatives;

(5) Local distribution companies;

(6) Single-state holding companies;

(7) Holding companies that own 100 MW or less of generation used fundamentally for their own load or for sales to affiliated end-users;[13] and

(8) Investors in independent transmission companies.

Other exemptions and waivers will be considered through the declaratory order process on a case-by-base basis.

14. With respect to Commission review of service company cost allocations in section 1275(b) and the exemption for single-state holding companies in section 1275(d), the Commission sought comments as to whether the Commission should require the formal filing of service company cost-allocation agreements under the FPA and NGA, and whether the Commission should apply its traditional ''market'' standard for the pricing of non-power goods and services provided by system service companies or instead adopt the SEC ''at-cost'' standard. We conclude below that we will not require the formal filing of cost allocation agreements and that we will not require any entities that are currently using the SEC's ''at-cost'' standard for traditional centralized service companies to switch to our ''market'' standard. With respect to traditional, centralized service companies that use the ''at cost'' standard, we will apply a presumption that ''at cost'' pricing of the non-power goods and services they provide to public utilities within their holding company system is reasonable, but persons may file complaints if they believe that use of at cost pricing results in costs that are above market price. We will also retain the Commission's existing ''market'' standard for non-power goods or services transactions between special-purpose subsidiaries and public utilities.

15. With respect to EWGs, we proposed to cease making case-by-case determinations of exempt wholesale generator status in the future and we proposed to delete our EWG regulations. In light of the comments received, we have determined that it is reasonable to interpret PUHCA 2005 to permit new wholesale sellers to obtain EWG status. We will thus establish procedures in section 366.7 of our regulations for both self-certification of EWG and FUCO status, and Commission determinations of EWG and FUCO status, similar to the options available for entities seeking QF status.

16. Additionally, for those definitions and other aspects of PUHCA 1935 that have been re-enacted as part of PUHCA 2005, we will, where appropriate, follow the past practice and precedent of the SEC in interpreting these provisions of PUHCA 2005 to the extent that they are consistent with the statutory language adopted by Congress in PUHCA 2005.

17. Finally, we do not view this final rule as the only opportunity to address the books and records requirements and related reporting requirements under PUHCA 2005, exemptions from and waivers of these requirements, and any other issues that may arise as a result of the repeal of PUHCA 1935 and the implementation of PUHCA 2005. We intend to hold a technical conference no later than one year after PUHCA 2005 becomes effective to evaluate whether additional exemptions, different reporting requirements, or other regulatory actions (under PUHCA 2005 or the FPA or NGA) need to be considered. The technical conference will also address any needed changes or additions to accounting, cost allocation, recordkeeping, cross-subsidization, encumbrances of utility assets, and related rules, including any changes necessary to address difficulties with compliance encountered by companies within previously-exempt holding company systems during this transition period. In addition, while we do not adopt the SEC Uniform System of Accounts and record-retention rules in 17 CFR parts 256 and 257 into the Commission's regulations at this time, we will initiate a separate rulemaking proceeding to address how the Commission's Uniform System of Accounts and record-retention rules in Parts 101, 125, 201, and 225 of its regulations can be modified to adopt or otherwise integrate the relevant parts of the SEC's Uniform System of Accounts and record-retention rules. The

[13] Holding companies that own more than 100 MW of generation used fundamentally for their own load or for sales to affiliated end users may seek waivers, and the Commission will consider them, on a case-by-case basis.

Commission intends to issue a final rule on any appropriate accounting or record-retention rule modifications well in advance of January 1, 2007, so that service companies will be able to transition to the Commission's Uniform System of Accounts and record-retention rules and holding companies can transition to the Commission's record-retention rules by the January 1, 2007 deadline.

1. Definitions

18. The Commission proposed in the NOPR to largely incorporate in section 366.1 of its regulations the text of section 1262 of EPAct 2005, which contains the definitions of relevant terms used in PUHCA 2005 and in our proposed regulations. Commenters suggested a number of changes to these definitions. As these definitions are taken from section 1262 of EPAct 2005, any modification would likely create undesirable discrepancies between our regulations and the statutory language. Accordingly, we will address these comments below under the heading ''Additional Technical and Conforming Amendments,'' below. However, to the extent that a given comment requesting clarifications of the definitions proposed in section 366.1 of the Commission's regulations can be addressed consistent with the statutory text, they are addressed below.

Comments

19. American Public Power Association and National Rural Electric Cooperative Association (APPA/NRECA) note that section 1268 of EPACT 2005 expressly exempts States and any political subdivision of a state from the provisions of PUHCA 2005, while the definition of ''electric utility company'' in the proposed section 366.1 includes ''any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale,'' which appears to come directly from section 1262(5) of EPACT 2005. According to APPA/NRECA, this section, read standing alone, could be construed to state that the regulations apply to all electric utilities. APPA/NRECA thus urge the Commission to make explicit the exclusion of states and their political subdivisions from the regulations by cross-referencing in its regulations the exclusion in section 1268 of the statute.[14]

20. Coral Power, L.L.C. and Shell WindEnergy, Inc. (Coral Power and Shell WindEnergy) request that the Commission deem EWGs, FUCOs, and QFs not to be ''electric utility companies'' under PUHCA 2005, so that their upstream owners will not be ''holding companies'' under PUHCA 2005.[15]

21. With respect to the definition of ''public-utility companies,'' the Edison Electric Institute (EEI) urges the Commission to clarify that energy marketers are not ''public-utility companies'' under the PUHCA 2005 definition. EEI notes that, under PUHCA 2005, a ''public-utility company'' is either an ''electric utility company,'' which is an entity that owns or operates facilities used for the generation, transmission or distribution of electric energy for sale, or a ''gas utility company,'' which is basically an entity that owns or operates facilities used for distribution at retail of natural or manufactured gas. EEI further asserts that the SEC has found that the ownership of only contracts and related books and records are not facilities used for the generation of electric energy, but that only physical facilities are used for the generation of electric energy. According to EEI, if power marketers are not electric utility companies, their parent companies would not be considered utility holding companies under PUHCA 2005 by reason of their ownership of such marketers. The same logic would apply to gas marketers, and they too, therefore, should not be considered gas utility companies, provided they own no physical gas distribution assets and their gas retail sales are made through contracts.[16]

22. Goldman Sachs Group (Goldman Sachs) and Morgan Stanley Capital Group (Morgan Stanley) urge the Commission to adopt a rule similar to the SEC's 7(d) that excludes owner-lessor and owner participants in lease financing transactions involving utility assets from the definition of ''public-utility company'' and their parent companies from the definition of ''holding company.'' [17]

23. NiSource Inc. (NiSource) requests that the Commission clarify that gas utility companies authorized to make sales for resale of natural gas pursuant to a blanket certificate are not subject to new part 366 of the Commission's regulations.[18]

24. Finally, a number of commenters urge the Commission to amend certain definitions to exclude rural electric cooperatives from the scope of PUHCA 2005. APPA/NRECA argue that the Commission should recognize that, under longstanding SEC precedent, electric cooperatives were not regulated as public utility holding companies under PUHCA 1935 because member interests in cooperatives do not constitute a ''voting security'' interest.[19] Cooperatives state that the Commission could, alternatively, declare definitively that member interests in cooperatives do not constitute a ''voting security'' interest for purposes of PUHCA 2005.[20] If the Commission does not adopt this interpretation of ''voting securities,'' APPA/NRECA urge the Commission to, at the very least, make clear that those cooperatives that have received no-action letters or other assurances in the past from the SEC can continue to rely on those assurances without any need to seek additional confirmation or a no-action assurance or waiver from the Commission.[21] Arizona Electric Power Cooperative, Inc., Southwest Transmission Cooperative, Inc., and Sierra Southwest Cooperative Services, Inc. (Cooperatives) argue that, while the Commission could grant the Cooperatives an individual waiver, the better course would be for the Commission to create a class exemption from PUHCA 2005 for cooperatives. According to Cooperatives, with the recent amendment of FPA § 201(f), cooperatives are unlikely to qualify as public utilities, and cooperatives do not operate any NGA jurisdictional pipelines.[22]

Commission Determination

25. We will grant the request of APPA/NRECA and others to clarify that section 1268 exempts from PUHCA 2005 states and any political subdivision of a state. Accordingly, we clarify in section 366.2(a) that, for the purposes of this subchapter, no provision of PUHCA 2005 shall apply to or be deemed to include: (1) The United States; (2) a state or political subdivision of a state; (3) any foreign governmental authority not operating in the United States; (4) any agency, authority, or instrumentality of any entity referred to in subparagraphs (1), (2) or (3); or (5) any officer, agent, or employee of any entity referred to in subparagraphs (1), (2), (3), or (4) as such in the course of his or her official duty.

[14] APPA/NRECA Comments at 42. *See also* City of Santa Clara (Santa Clara) Comments at 23, Transmission Agency of Northern California (TANC) Comments at 23.

[15] Coral Power/Shell WindEnergy Comments at 9–10.

[16] EEI Comments at 19–20.

[17] Goldman Sachs Comments at 7, Morgan Stanley Comments at 5.

[18] NiSource Comments at 15.

[19] APPA/NRECA Comments at 42. *See also* Santa Clara Comments at 23, TANC Comments at 23.

[20] Cooperatives Comments at 8.

[21] APPA/NRECA Comments at 42–44. *See also* Tri-State Comments at 3–7.

[22] Cooperatives Comments at 7. *See also* APPA/NRECA Comments at 44.

26. In response to the request of Coral Power and ShellWindEnergy that we consider EWGs, FUCOs, and QFs not to be ''electric utility companies'' so that their upstream owners would not be holding companies under PUHCA 2005, we note that Congress has exempted from section 1264 of EPAct 2005 entities that are holding companies solely with respect to EWGs, FUCOs, and QFs and that exemption is reflected in the regulations we adopt herein. However, we clarify that EWGs themselves are not considered ''electric utility companies'' under PUHCA 2005. The purpose of creating ''exempt'' wholesale generators in the amendments to section 32 of PUHCA 1935 made by the Energy Policy Act of 1992 (EPAct 1992) [23] was to exempt from PUHCA 1935 persons that meet the definition of EWG. This was reflected in section 32(e) of PUHCA 1935, which specifically provided that EWGs would not be considered electric utility companies under PUHCA 1935 and would be exempt. Here, we have determined to continue to allow generators to obtain EWG status, so they will not be considered electric utility companies subject to PUHCA 2005.

27. With respect to FUCOs and QFs, we clarify as follows. Section 1262(6) of PUHCA 2005 contains the term ''foreign utility company,'' and cross-references section 33 of PUHCA 1935. Section 33 of PUHCA 1935, as amended by EPAct 1992,[24] provided that a FUCO would be exempt from PUHCA 1935 and not deemed an electric utility company, but the exemption would not apply or be effective unless the relevant state commission(s) certified that they had the authority and resources to protect ratepayers of public utility companies that are associated or affiliated with the FUCO. As with EWGs, we will continue to allow persons to obtain FUCO status. FUCOs will not be considered electric utility companies subject to PUHCA 2005 and will be exempt from PUHCA 1935 if they can demonstrate that the relevant state commission(s) have made the determination described in section 33 of PUHCA 1935. However, even if FUCOs do not demonstrate that they should be totally exempted from PUHCA 2005, we will waive the accounting, record-retention, and reporting requirements thereunder.[25] As for QFs, QFs previously received an exemption from PUHCA pursuant to the Commission's regulations under the Public Utility Regulatory Policies Act of 1978. Nothing in PUHCA 2005 changes that.

28. With respect to EEI's request that we clarify that power marketers are not ''public-utility companies,'' we note that EEI's reference to the ''Commission'' appears to be to the SEC rather than to this Commission. While the SEC has not treated power marketers as electric utility companies under PUHCA 1935, the Commission has determined that electric marketers own facilities used for wholesale sales, *i.e.*, ''paper facilities,'' and therefore are public utilities under the FPA. Similarly, we have treated natural gas marketers making jurisdictional sales as natural gas companies under the NGA. In light of long-standing SEC precedent in interpreting PUHCA 1935, we will follow the same interpretation under PUHCA 2005 and will exempt power and natural gas marketers from the definition of ''public-utility company,'' as that term is used in PUHCA 2005. However, our interpretation here does not change our long-standing precedent with respect to these entities' jurisdictional status under the FPA and the NGA.

29. We will grant the request for clarification from Goldman Sachs and Morgan Stanley that we not treat owner-lessors and owner participants in lease financing transactions involving utility assets as ''public-utility companies'' and their parents as ''holding companies'' under PUHCA 2005, so long as the ownership arrangements are passive.

30. We find that, as discussed below, electric power cooperatives should not be regulated as holding companies under PUHCA 2005.

2. Books and Records Requirements

31. Sections 1264(a) and (b) of EPAct 2005 generally provide that each holding company and each associate company of a holding company, as well as each affiliate of a holding company or any subsidiary company of a holding company, shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records (books and records) as the Commission determines are relevant to the costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of public utility or natural gas company customers with respect to jurisdictional rates. Moreover, section 1264(c) empowers the Commission to examine the books and records of any company in a holding company system, or any affiliate thereof, that the Commission determines are relevant to the costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of public utility or natural gas company customers with respect to jurisdictional rates. Finally, section 1264(d) forbids any member, officer, or employee of the Commission from divulging any fact or information that has come to his or her knowledge during the course of the examination of such books and records, except as may be directed by the Commission or a court of competent jurisdiction.[26] In the NOPR, the Commission proposed to incorporate largely without modification the text of section 1264 by adding section 366.2 to the Commission's regulations.

32. In the NOPR, the Commission also proposed to adopt certain accounting, cost-allocation, recordkeeping, and related rules promulgated by the SEC for holding companies and their service companies, as they existed on the date of enactment of EPAct 2005, specifically 17 CFR 250.1, 250.26, 250.27, 250.80, 250.93, 250.94, 259.5S, and 259.313 and 17 CFR parts 256 and 257. The Commission invited comments on which SEC reporting requirements the Commission should retain, which ones it should not retain, and whether the Commission should adopt any additional accounting, cost-allocation, recordkeeping and related rules to carry out its statutory duties under PUHCA 2005. Finally, the Commission stated that it does not intend to broaden the applicability of any adopted reporting requirements beyond the types of companies to which they now apply and invited comments as to whether the proposed scope of applicability is appropriate.

33. The comments below focused primarily on the Commission's proposal to adopt certain SEC regulations and are organized as follows: (a) Scope of applicability, *i.e.*, whether the books and records requirements will apply to all holding companies equally or only to holding companies registered under PUHCA 1935; (b) general comments on the Commission's proposal to adopt certain SEC regulations, including whether PUHCA 2005 grants the Commission the legal authority to adopt them; (c) comments on particular provisions of the SEC regulations; (d) other issues related to the adoption of

[23] 79 U.S.C. 79z–5a (2000).

[24] 79 U.S.C. § 79z–5b (2000).

[25] As discussed *infra*, we will waive our accounting, record-retention, and reporting requirements for FUCOs, but we will not exempt them from the general provision in section 1264 of PUHCA 2005 and repeated in section 366.2 of our regulations, which authorizes access to their books and records as necessary, with respect to jurisdictional rates.

[26] There are comparable confidentiality provisions in the FPA and the NGA for public utility books and records and natural gas company books and records. 16 U.S.C. 825 (2000); 15 U.S.C. 717g (2000).

SEC regulations; and (e) other comments related to the books and records requirements of section 1264.

a. Scope of Applicability

Comments

34. The majority of commenters urged the Commission to apply any SEC regulations adopted equally to all holding companies, without regard to whether an entity was registered or exempt under PUHCA 1935, primarily because PUHCA 2005 does not state that PUHCA 1935 exemptions should continue in force.[27] APPA/NRECA state that the Commission should apply any rules to the full universe of companies because, post-PUHCA 1935, there is no longer a statutory basis for distinguishing between the former registered and exempt holding companies. APPA/NRECA contend that the Commission cannot treat some holding companies differently from others without a reasonable basis and that their legal designations under a now-repealed statute are not a reasonable basis. According to APPA/NRECA, the Commission should make distinctions based on the complexity of each holding company's corporate structure, the quantity and type of business risks in the corporate family, the magnitude of potential for cross subsidization (*e.g.*, due to the presence of common costs between the public utility and non-utility businesses), and the geographic reach of the holding company (which could make state regulation more difficult). They argue that, to avoid charges of undue discrimination, the Commission can apply the rules to all holding companies initially, announce these factors as among those it will consider in granting exemptions, and then invite requests for exemption from some or all of the reporting companies.[28] Similarly, American Electric Power Service Corporation (AEP) and National Fuel Gas argue that the statute mandates equal treatment of all holding companies.[29]

35. However, a number of commenters argue that the Commission should continue to exempt under PUHCA 2005 those holding companies exempted under PUHCA 1935 and SEC precedent. MidAmerican Energy Company (MidAmerican) states that the Commission should not impose a new set of accounting and reporting requirements on entities that have been exempt from the requirements developed by the SEC to enforce PUHCA 1935. According to MidAmerican, the information required under the SEC rules would require these entities to prepare and file reports that are duplicative of information contained in reports already filed with the Commission (*e.g.*, FERC Forms 1 and 2 and the quarterly financial reports) and reports filed with the SEC (*e.g.*, Form 10–K and Form 10–Q) and imposes an unnecessary burden and expense on such entities and provides no significant additional information to the Commission. Accordingly, MidAmerican states that the Commission should make it perfectly clear that its proposal to adopt the accounting, cost-allocation, recordkeeping and related rules promulgated by the SEC applicable to registered holding companies and their service companies does not extend to public utility holding companies that were not registered under PUHCA 1935 and that, in addition, such rules should not apply to any entities that may become public utility holding companies after February 8, 2006, the effective date of repeal of PUHCA 1935.[30]

36. FirstEnergy suggests that, if the Commission adopts this proposal, it should clarify the regulatory text of proposed section 366.2(e) to delineate between those holding company systems to which the rules apply and those that are exempt from such provisions, and should explain the reasons justifying such distinction.[31] Alcoa states that, even if the Commission decides not to exempt from the reach of proposed section 366.2 all companies that are currently exempt holding companies under PUHCA 1935, consideration at least should be given to blanket exemptions for holding companies having a section 3(a)(3) exemption which are, by definition and determination by SEC, engaged in a business other than being a public utility holding company.[32]

Commission Determination

37. With respect to the general applicability of the federal access to books and records requirements in section 1264 of EPAct 2005, there is no basis in PUHCA 2005 for distinguishing between holding companies based on their registered or exempt status under PUHCA 1935. Accordingly, the Commission will subject all holding company systems, whether previously exempt or registered, to the books and records requirements that PUHCA 2005 imposes on holding companies and affiliates, associate companies, and subsidiaries thereof, unless they qualify for one of the statutory exemptions provided for under section 1266 of PUHCA 2005.[33] We have also determined that, while we cannot exempt certain persons from the statutory requirements of PUHCA 2005, we can and should grant waivers of the accounting, record-retention, and reporting requirements adopted herein for certain persons and classes of transactions. Additionally, for entities that do have to comply with our filing requirements, we will limit the filings that have to be made and will delay until January 1, 2007, the compliance deadline for companies not currently subject to the SEC rules. Finally, throughout the following discussion, we will distinguish between obligations that apply to all service companies and those that apply to traditional, centralized service companies.[34] Traditional, centralized service companies are a subset of service companies that holding companies have formed. They provide certain specialized services[35] to other

[27] *See, e.g.,* Allegheny Energy, Inc. (Allegheny) Comments at 2, American National Power, Inc. (American National Power) Comments at 3, American Public Gas Association Comments at 3; Arkansas Public Service Commission (Arkansas PSC) Comments at 19, E.ON AG and LG&E Energy LLC (E.ON/LG&E Energy) Comments at 8, Missouri Public Service Commission (Missouri PSC) Comments at 25, National Fuel Gas Company (National Fuel Gas) Comments at 6, National Association of Regulatory Utility Commissioners (NARUC) Comments at 7, Southern Company Services Comments at 2–3. *But see* Detroit Edison Company (Detroit Edison) Reply Comments at 1, PPL Companies (PPL) Reply Comments at 3–4 (urging Commission to reject comments proposing to apply SEC regulations to holding companies exempted from PUHCA 1935).

[28] APPA/NRECA Comments at 30–31.

[29] AEP Comments at 2–3, National Fuel Gas Reply Comments at 3–4.

[30] MidAmerican Comments at 5–7. *See also* CEOB Comments (3) (supports case-by-case exemptions), Chairman Barton Reply Comments at 5, Detroit Edison Comments at 3–5, Questar Reply Comments at 2.

[31] FirstEnergy Comments at 9.

[32] Alcoa Comments at 5.

[33] Section 1266, discussed *infra,* requires the Commission to exempt any person that is a holding company solely with respect to EWGs, FUCOs, and QFs. It also requires the Commission to exempt a person or transaction if it finds that the books and records of a person are not relevant to jurisdictional rates or a class of transactions is not relevant to jurisdictional rates.

[34] ''Service companies'' are defined in section 366.1 as ''any associate company within a holding company system organized specifically for the purpose of providing non-power goods or services or the sale of goods or construction work to any public utility in the same holding company system.''

[35] These ''services,'' as defined in section 366.1, include ''any managerial, financial, legal, engineering, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, or any other service (including supervision or negotiation of construction or of sales), information or data, which is sold or furnished for a charge.''

companies in the holding company system. They are to be distinguished from other service companies that are special-purpose companies such as a fuel supply company or a construction company.

38. Specifically, the Commission will require the following for entities that are not otherwise exempted from PUHCA 2005 requirements or granted a waiver of the Commission's regulations thereunder:

(1) Unless otherwise exempted by Commission rule or order or granted a waiver, all holding companies and all service companies that do not currently follow the Commission's record-retention requirements in Parts 125 and 225 of the Commission's regulations must, effective January 1, 2007, comply with the Commission's record-retention requirements. Formerly-registered holding companies and service companies in such holding company systems that currently follow the SEC's record-retention rules in 17 CFR part 257 have the option, until December 31, 2006, to follow either the Commission's or the SEC's record-retention requirements. But these service companies must transition to the Commission's rules by January 1, 2007. Formerly-exempt holding companies and service companies within such holding company systems, which currently do not follow either the SEC's or the Commission's record-retention requirements will not be required to comply with the Commission's record-retention requirements until January 1, 2007.

(2) Unless otherwise exempted by Commission rule or order or granted a waiver, traditional, centralized service companies (*i.e.*, those that are not special-purpose companies such as a fuel supply company or a construction company) that do not currently follow the Commission's Uniform System of Accounts in parts 101 and 201 of the Commission's regulations, will be given until January 1, 2007, to transition to the Commission's Uniform System of Accounts. Traditional, centralized service companies in formerly-registered holding company systems that currently follow the SEC's Uniform System of Accounts have the option to follow either the Commission's or the SEC's Uniform System of Accounts for calendar year 2006. But these service companies must transition to the Commission's rules by January 1, 2007. Traditional, centralized service companies within formerly-exempt holding company systems, which currently do not follow either the SEC's or the Commission's Uniform System of Accounts, will not be required to comply with the Commission's Uniform System of Accounts until January 1, 2007. And, as noted above, holding companies, while they will be required to comply with the Commission's record-retention requirements, will not be required to comply with the Commission's Uniform System of Accounts.

(3) All entities that are currently or become holding companies under PUHCA 2005, whether previously exempt or registered under PUHCA 1935, must file FERC–65 (Notification of Holding Company Status), which will be treated as an informational filing, and holding companies seeking to claim an exemption from PUHCA 2005 or waiver of the Commission's regulations there under may file FERC–65A (Exemption Notification) or FERC–65B (Waiver Notification). All persons that are holding companies on the effective date of PUHCA 2005 must file FERC–65 within 30 days of the effective date of PUHCA 2005, and any person that becomes a holding company thereafter must file FERC–65 within 30 days after becoming a holding company; and

(4) All traditional, centralized service companies will be required to submit an annual report on FERC Form No. 60. Such service companies in formerly-registered holding company systems must submit their first annual report, for calendar year 2005, by May 1, 2006. Such service companies in formerly-exempt holding company systems will be required to submit their first FERC Form No. 60, for calendar year 2007, by May 1, 2008.

39. The Commission will *not* require the filing of SEC Forms U–5A (notification of registration status), U–5S (annual reports for registered holding companies), U3A–2 (statement by holding company claiming exemption), or U–5B (registration statement), as previously proposed or suggested by some commenters. Information in these forms is in many cases available elsewhere and/or was for the purpose of monitoring activities or transactions that, with the repeal of PUHCA 1935, are no longer prohibited or no longer require prior approval. Additionally, this information is either not relevant to the costs incurred by jurisdictional entities or is not necessary or appropriate for the protection of utility customers with respect to jurisdictional rates. Further, information needed to protect against inappropriate cross-subsidization will be contained in the accounting and record-keeping requirements that we are adopting herein.

b. General Comments Concerning Adoption of SEC Regulations

Comments

40. APPA/NRECA suggest that, rather than incorporate the SEC rules by reference, the Commission should import the actual wording (with appropriate revisions as discussed below) into its own regulations. Merely cross-referencing existing SEC regulations (as proposed section 366.2(e) would do) would fail in its purpose if the SEC subsequently revises its own regulations to eliminate its PUHCA 1935-related regulations. Moreover, rather than adopt the SEC rules word-by-word, APPA/NRECA urge the Commission to make certain wording adjustments and offer rationales based on the current and likely future industry structure.[36]

41. EEI urges the Commission to integrate whatever it adopts from SEC practice into current Commission procedures and forms. According to EEI, repeal of PUHCA 1935 was intended to reduce the level of holding company regulation, but if current exempt holding companies suddenly are required to contend with unfamiliar SEC practice, it would have precisely the opposite effect. These formerly-exempt companies in effect would become subject to a new level of complex regulation. To avoid this unintended consequence of repealing PUHCA 1935, EEI believes that the Commission should seek to integrate whatever it adopts from SEC practice into current Commission procedures and forms, which would involve simply including existing public filings, in particular a holding company's SEC Form 10–K, as exhibits to the Commission's Form 1.[37]

42. For the same reasons, EEI requests that the Commission provide a reasonable period between the effective date of its new rules and the date on which the initial filings will be due. EEI proposes that the initial filings should be due in April 2007, giving companies time to adopt any new recordkeeping and reporting requirements and to file information starting with the next round of Form 1 for which the new information would be available. The Commission also should specify the format that will be required for filings under its new rules, and the Commission should make clear when adopting the final rule, the date(s) on which companies will first be required

[36] APPA/NRECA Comments at 23–24. *See also* FirstEnergy Service Company (FirstEnergy) Comments at 9.

[37] EEI Comments at 3–4.

to make any newly required filings under such rules.[38]

43. Georgia Public Service Commission (Georgia PSC) urges the Commission to ensure that the rules to implement PUHCA 2005 provide that the Commission will have access to all of the information and documents previously provided to the SEC under PUHCA 1935. Georgia PSC emphasizes that state commissions have relied upon the filings made by holding companies with the SEC and on audits of holding companies performed by the SEC as a crucial source of information necessary in setting rates for the holding companies' subsidiaries that are regulated by state commissions. Accordingly, the Commission should adopt all provisions of the SEC rules and retain all SEC reporting requirements.[39] Similarly, the California Electricity Oversight Board (CEOB) and Utility Workers Union of American (Utility Workers) supports the Commission's adoption of the SEC accounting, cost-allocation, recordkeeping, and related rules identified in the PUHCA NOPR.[40]

44. Entergy Services, Inc. states that it agrees with the Commission's proposal to adopt the SEC regulations, but that the Commission should limit the applicability of these rules to those items that are ''relevant to costs incurred by a public utility or natural gas company'' and ''necessary or appropriate for the protection of utility customers with respect to jurisdictional rates'' as required by EPAct 2005 section 1264(a).[41] Similarly, FirstEnergy argues that the Commission should provide a clear explanation of why each category of information that is to be maintained is within the statutory limits above. To reflect these limits, FirstEnergy argues that, at a minimum, the Commission should modify proposed section 366.2(e), consistent with the other subsections of section 366.2, to add the following qualification at the end of the paragraph: ''insofar as the Commission determines that such accounting, cost-allocation and related rules are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.''[42]

45. Several commenters argued that the Commission lacks the authority to adopt SEC regulations under PUHCA 2005[43] or that PUHCA 2005 does not specifically authorize the imposition of reporting requirements.[44] AGL Resources, Inc. (AGL Resources) questions the appropriateness of any requirement to file any reports at all, emphasizing that the requirement in section 1264 to maintain records does not amount to a requirement to file reports. AGL Resources emphasizes that section 14 of PUHCA 1935, which permits the SEC to require certain reports from companies subject to its jurisdiction, has been repealed by EPAct 2005, and the EPAct did not grant the Commission similar authority.[45]

46. Electric Power Supply Association (EPSA) argues that the adoption of the SEC rules as a means of implementing PUHCA 2005 is neither wise nor necessary or appropriate for the protection of utility customers with respect to jurisdictional rates. According to EPSA, the two statutory regimes are completely different and the PUHCA 1935 regulations are incompatible with the considerably more narrow scope of PUHCA 2005, which the Commission itself notes is primarily a books and records access statute and a statute that does not give the Commission authority to pre-approve holding company activities.[46] EPSA further contends that the adoption of such rules would be contrary to Congress' intent and exceed the authority granted to it under PUHCA 2005, improperly and unnecessarily imposing PUHCA 1935-type regulation on all PUHCA 2005 holding companies and their relevant affiliates, including a large number of holding companies exempted from PUHCA 1935.[47] Moreover, EPSA emphasizes that, while the Commission has the authority to disallow a utility's recovery in its jurisdictional rates of improper affiliate charges, the Commission does not have the authority to regulate transactions among non-utility affiliates by requiring ''at cost'' pricing, and, therefore, has no authority to impose financial and complex accounting and reporting requirements to implement ''at cost'' pricing.[48]

Commission Determination

47. We agree with the comments of APPA/NRECA and EEI that any SEC regulations that the Commission adopts should be imported into and integrated with the Commission's regulations, rather than, for example, being incorporated by reference. However, the Commission does not find it appropriate to incorporate all of the relevant SEC rules at this time. Accordingly, the Commission will adopt in Part 366 of its regulations certain provisions of 17 CFR parts 250 and 259, which are discussed further below. We will not adopt the SEC Uniform System of Accounts and record-retention rules in 17 CFR parts 256 and 257 into the Commission's regulations at this time. Instead, the Commission will initiate a separate rulemaking proceeding, which we intend to complete well in advance of the January 1, 2007 deadline, to address how the Commission's Uniform System of Accounts and record-retention rules in parts 101, 125, 201, and 225 of its regulations can be modified to adopt or otherwise integrate the relevant parts of the SEC's Uniform System of Accounts and record-retention rules into the Commission's regulations. As discussed above, unless otherwise exempted or granted a waiver, both holding companies and service companies will be required to comply with the Commission's record-retention requirements effective January 1, 2007, but only traditional, centralized service companies will be required to comply with the Commission's Uniform System of Accounts. We will give holding companies registered under PUHCA 1935 and service companies within formerly-registered holding company systems that currently follow the SEC's record-retention rules in 17 CFR part 257 the option to follow either the Commission's or the SEC's record-retention rules, as they exist on the day before the effective date of PUHCA 2005, for calendar year 2006. Similarly, traditional, centralized service companies in formerly-registered holding company systems that currently follow the SEC's Uniform System of Accounts in 17 CFR part 256 may follow either the SEC's or the Commission's Uniform System of Accounts for calendar year 2006. But, as discussed above, these entities must transition to the Commission's rules, by January 1, 2007.

48. We also agree with the comments of EEI that it is appropriate to provide a reasonable transition period between the effective date of this Final Rule and the date on which the initial filings will be due. As discussed above, we will give traditional, centralized service companies until January 1, 2007 to conform their accounts and records to the requirements of the Commission's Uniform System of Accounts and record-retention rules. Similarly, we

[38] Dominion Comments at 3, EEI Comments at 6.

[39] Georgia PSC Comments at 1.

[40] CEOB Comments at 2–3, Utility Workers Comments at 3.

[41] Entergy Comments at 3.

[42] FirstEnergy Comments at 6.

[43] *See, e.g.,* Energy East Comments at 4–7, National Fuel Gas Comments at 2.

[44] *See, e.g.,* E.ON/LG&E Energy Comments at 12.

[45] AGL Resources Comments at 5.

[46] EPSA Comments at 6–7.

[47] *Id.* at 7.

[48] *Id.* at 10.

will give holding companies and service companies until January 1, 2007 to conform to the requirements of the Commission's record-retention rules.

49. However, as discussed below, this transition period will not apply to the filing of FERC–65 (Notification of Holding Company status). Accordingly, all persons that are holding companies within the meaning of PUHCA 2005 on the effective date of PUHCA 2005 will be required to file FERC–65 within 30 days of the effective date of PUHCA 2005 to inform the Commission of their holding company status (and by the same date, holding companies seeking exemption or waiver must file a separate FERC–65A (Exemption Notification) or FERC–65B (Waiver Notification) to assert their claims that they qualify for the statutory exemptions contained in section 1266(a) of EPAct 2005 or the other exemptions and waivers adopted in this Final Rule). Any entities that become holding companies after the effective date of PUHCA 2005 will be required to file FERC–65 no later than 30 days after becoming a holding company. FERC–65 is in lieu of the NOPR proposal to adopt SEC Form U–5A, but will contain a subset of the information that the Commission originally proposed to be filed. FERC–65 will be an information-only filing. We find that it is appropriate to impose this notification requirement on all holding companies equally because it will permit the Commission to identify the companies that may have books and records relevant to jurisdictional responsibilities under the FPA and the NGA. This notification requirement, moreover, will impose only a *de minimis* burden.

50. We reject the recommendation of Georgia PSC that the Commission retain all SEC regulations and ensure collection of the same information as under PUHCA 1935. As we emphasized above, Congress repealed PUHCA 1935 and nowhere in PUHCA 2005 did it give us the same substantive regulatory authority that the SEC had under PUHCA 1935. Accordingly, we will adopt only those SEC regulations that would be consistent with Congress' intent in enacting PUHCA 2005, namely, those that provide the Commission with access to books and records relevant to the costs incurred by a public utility or natural gas company and necessary or appropriate for the protection of public utility or natural gas company customers with respect to jurisdictional rates.

51. With respect to FirstEnergy's request that we amend section 366.2(e), we note that we are not adopting this paragraph in the Final Rule. Instead, to avoid ambiguity, we have imported the text of these SEC regulations that the Commission is adopting, with appropriate modifications, into part 366 of the Commission's regulations. Furthermore, as explained above, we will not adopt into the Commission's regulations the SEC's Uniform System of Accounts and record-retention rules at this time. Instead, we will initiate a separate rulemaking proceeding to address how the Commission's Uniform System of Accounts and record-retention rules in parts 101, 125, 201, and 225 of its regulations can be modified to adopt or otherwise integrate the relevant parts of the SEC's Uniform System of Accounts and record-retention rules.

52. We reject the contention submitted by EPSA and others that the Commission lacks the authority under PUHCA 2005 to adopt SEC regulations (or versions thereof) and that doing so is contrary to Congress' intent in repealing PUHCA 1935. The accounting, record-retention and filing requirements adopted herein impose no substantive restrictions and prior approval requirements such as those contained in PUHCA 1935. Moreover, sections 1264(a) and 1264(b) of EPAct 2005 expressly require each holding company and each associate company, affiliate or subsidiary thereof to ''maintain'' and ''make available'' books and records as the Commission determines are relevant to costs incurred by a public utility or natural gas company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates. In turn, section 1272(1) of EPAct 2005 directs the Commission to issue such regulations as may be necessary or appropriate to implement PUHCA 2005, including section 1264. In addition, section 1270 of EPAct 2005 states that that the Commission shall have the same powers as set forth in sections 306 through 317 of the FPA to enforce the provisions of PUHCA 2005. In this regard, we note that section 309 of the FPA grants the Commission the power to perform any and all acts and to prescribe by order, rule or regulation, as it may find necessary or appropriate to carry out the provisions of the FPA, ''the form of all statements, declarations, applications, and reports to be filed with the Commission.'' [49] PUHCA 2005 did not specify the manner in which books and records are to be made available to the Commission, and, in the face of statutory silence on this specific issue and the clear statements in sections 1272 and 1270 of EPAct 2005, we find that Congress has granted the Commission the discretion to prescribe the manner in which these entities are to ''make available'' their books and records to the Commission and ''the form or forms of all statements, declarations, applications, and reports to be filed with the Commission.''

53. For the same reasons, we similarly reject the argument submitted by AGL Resources, who notes that the SEC was empowered to require the filing of reports by section 14 of PUHCA 1935, which has been repealed, and concludes from the fact that Congress has not enacted an identically-worded provision in PUHCA 2005 that the Commission lacks the authority to require entities to file any reports under PUHCA 2005. AGL Resources' interpretation appears to rest on the erroneous assumption that, by using the terms ''maintain'' and ''make available,'' Congress necessarily meant that entities were only required to make these books and records available to the Commission on the entities' premises, rather than in the form of a report filed with the Commission. Had Congress meant to restrict the Commission's access to books and records in this manner, it clearly could have done so, as it did with respect to state commissions under section 1265; section 1265 provides that entities are to ''produce for inspection'' ''upon * * * written request'' of a state commission a much more limited range of documents. Here, in section 1264 (and sections 1272 and 1270), Congress chose not to adopt such a restriction.

54. Finally, we note that, where appropriate, we have removed from the SEC regulations adopted herein all references to PUHCA 1935 and related SEC regulations and, where appropriate, replaced them with references to PUHCA 2005 or to the relevant Commission regulations. Therefore, we will not further address in this Final Rule the various comments received suggesting that we remove such references.

c. Comments on Particular SEC Regulations

17 CFR 250.1 and 259.5A (Form U–5A)

Comments

55. SEC Form U–5A requires each non-exempt holding company to submit a complete list of corporate affiliates and brief description of the kind of business each affiliate transacts. APPA/NRECA support the adoption of 17 CFR 250.1, which will require each public utility holding company to inform the Commission of its status. As to exemptions, APPA/NRECA argue that the Commission should distinguish

[49] 16 U.S.C. 825h (2000); *accord* 15 U.S.C. 717o (2000).

between the exemption available under section 1266(a) (for QFs, EWGs and FUCOs) and 1266(b) (for persons and classes of transactions ''not relevant to the jurisdictional rates of a public utility or natural gas company''), so that the notification the Commission requests would be limited to section 1266(a). According to APPA/NRECA, the ''relevance'' exemption of section 1266(b) requires more Commission attention, in the form of general standards to be applied case by case.[50]

56. Energy East Corporation (Energy East) opposes the adoption of this section because it contends that the notification requirement is inconsistent with the statement in the NOPR indicating that the Commission does not intend to reimpose the registration requirement. Energy East states that the Commission could simply instead rely on disclosure in FERC Forms 1 and 2 which require a public utility or natural gas company to state the name of any controlling corporation, the manner in which control is held and the extent of control.[51] Similarly, Dominion Resources, Inc. (Dominion) and EEI state that the Commission's intention to not reimpose the registration requirement is inconsistent with the adoption of the three filing requirements set forth in section 250.1 (*i.e.*, SEC Forms U–5A, U–5B, and U–5S).[52]

57. Dominion agrees with retention of the Form U–5A filing requirement because this form is considerably less burdensome than either Form U–5B or U–5S. Dominion also suggests that this form be revised to provide for a claim of exemption under section 1266 of EPAct 2005.[53] Scottish Power PLC (Scottish Power) also supports the retention of Form U–5A and suggests that the Commission consider adding a component to the Form U–5A to allow a holding company to make a claim for an exemption from the books and records requirements of section 1264.[54]

Commission Determination

58. The Commission will adopt in section 366.4(a) of its regulations a provision analogous to that contained in paragraph (a) of 17 CFR 250.1. However, the Commission will not require holding companies to submit a Commission-adopted version of SEC Form U–5A and will instead require persons that are holding companies on the effective date of PUHCA 2005 to submit FERC–65 (Notification of Holding Company status) and, for companies seeking exemption or waiver, FERC–65A (Exemption Notification) or FERC–65B (Waiver Notification) within 30 days of the effective date of PUHCA 2005, February 8, 2006. Furthermore, any entity that becomes a holding company after the effective date of PUHCA 2005 must submit FERC–65 (and, if appropriate, FERC–65A or FERC–65B) within 30 days of the date on which such entity becomes a holding company. This filing will be for informational purposes and will not be noticed in the **Federal Register**, but will be available on the Commission's website.

59. As discussed above, entities seeking exemption or waiver may do so by filing FERC–65A or FERC–65B, along with their FERC–65. All notifications of exemption or waiver submitted on FERC–65A and FERC–65B will be noticed in the **Federal Register**.

60. However, we will limit the use of FERC–65A and FERC–65B to those persons who claim that they qualify for one of the mandatory statutory exemptions in section 1266(a) (i.e., that they are a holding company solely with respect to one or more EWGs, FUCOs, or QFs) or for one of the class exemptions or waivers that the Commission adopts in this Final Rule, which are listed in section 366.3(b) and (c) of the Commission's regulations, or in subsequent rules or orders. Persons will be considered to have a temporary exemption or waiver upon a good faith filing of FERC–65A or FERC–65B and the exemption or waiver will be deemed granted after 60 days from the date of the filing, absent Commission action to the contrary before that date. The Office of the Secretary will periodically issue a notice listing the persons whose notifications of exemption or waiver have gone into effect by operation of the Commission's regulations, i.e., in the absence of Commission action to the contrary within 60 days after the date of filing.

61. Persons seeking any other type of exemption or waiver must file a petition for declaratory order pursuant to section 385.207(a) of the Commission's regulations, as required by section 366.3(d) of the regulations adopted herein. These petitions for declaratory order will be noticed in the **Federal Register** and no temporary exemption or waiver will attach. Such requests for exemptions or waivers will be considered case-by-case and deemed granted only upon order of the Commission.

62. We reject the assertion of Energy East and others that the adoption of a Commission analogue to 17 CFR 250.1(a) (i.e., the SEC's registration requirement) is tantamount to re-imposing the registration requirement under PUHCA 1935. First and foremost, the Commission in the NOPR proposed to use a version of the SEC Form U–5A as a notification requirement, *not* as a registration requirement. Moreover, in this Final Rule, we are not adopting the proposal in the NOPR to require submission of SEC Form U–5A and instead using what is called FERC–65 (Notification of Holding Company Status). This notification requirement simply requires persons that are holding companies to inform the Commission of their status as such and thus that they are subject to the Commission's access to books and records under PUHCA 2005. As commenters have noted, the registration system established by PUHCA 1935 was part of a pervasive regulatory regime addressing virtually all aspects of a registered holding company's and its subsidiaries' financial and corporate activities, while PUHCA 2005 is a narrower statute intended to give the Commission access to books and records relevant to costs incurred by a public utility or natural gas company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates. For the Commission to carry out its jurisdictional rate responsibilities, it must be able to identify the entities that are holding companies of jurisdictional public utilities or natural gas companies. The requirement to notify the Commission facilitates our ability to do so and is thus consistent with Congress' intent in enacting PUHCA 2005, and, in any event, is hardly burdensome.

17 CFR 250.26

Comments

63. 17 CFR 250.26 directs registered holding companies and their subsidiaries to comply with a number of SEC accounting and record-keeping rules, including Regulation S–X, the equity accounting method, and the record-retention rules in 17 CFR Part 257. E.ON and LG&E Energy assert that section 250.26(c), which requires holding companies to use the equity method of accounting for investments in subsidiaries, is outside the jurisdiction of the Commission under section 1264 of EPAct 2005 and should not be adopted by the Commission.[55] Dominion and EEI argue that section 250.26(b), which deals with information to be supplied with Form U–5S, should

[50] APPA/NRECA Comments at 24.

[51] Energy East Comments at 4.

[52] Dominion Comments at 11–12, EEI Comments at 16.

[53] Dominion Comments at 12.

[54] Scottish Power Comments at 4.

[55] E.ON/LG&E Energy Comments at 16.

be deleted and that sections 250.26(c) and (g) should not be adopted by the Commission. Moreover, EEI and Dominion argue that, rather than adopting section 250.26(d), which mandates the use of SEC record-retention policy, holding companies should have the option of following either SEC or Commission document retention requirements.[56] EPSA states that 17 CFR 250.26 pertains to financial recordkeeping requirements that would conflict with accounting and reporting requirements that many non-registered holding company systems are not currently required to follow, *i.e.*, Regulation S–X. Moreover, EPSA notes that Rule 250.26 prohibits any company in a registered holding company system to declare or pay dividends or reacquire its securities absent SEC approval under section 12 of PUHCA 1935.[57] Finally, Energy East opposes the adoption of this rule because all top-tier registered holding companies are public issuers and most large holding companies subject to PUHCA 2005 are likely to be public issuers and are thus already required to prepare financial statements in accordance with Regulation S–X, unless exempted by other SEC rules or form instructions.[58]

Commission Determination

64. With respect to the concerns expressed by E.ON and LG&E Energy on the use of the equity method of accounting for investments in subsidiaries and Energy East and EPSA regarding SEC Regulation S–X, the Commission is not adopting paragraph (a)(1) of 17 CFR 250.26 (a)(1), which mandates compliance with this SEC Regulation S–X, or paragraph (c), which mandates use of the equity method of accounting. In addition, the Commission is not adopting paragraph (b), which requires certain information to be supplied with the Form U–5S, or paragraph (g), which is a cross reference to 17 CFR 250.26. Also, as recommended by Dominion and EEI, the Commission will not adopt paragraph (d) regarding the SEC rules on record retention in 17 CFR Part 257. Instead, as discussed above, we will permit holding companies registered under PUHCA 1935 and service companies within such holding company systems that currently follow the SEC's record-retention rules in 17 CFR Part 257 to follow either the Commission's or the SEC's record-retention rules, as they exist on the day before the effective date of PUHCA 2005, for calendar year 2006. These entities must transition to the Commission's rules by January 1, 2007.

17 CFR 250.27

Comments

65. 17 CFR 250.27 requires registered holding companies and public-utility company subsidiaries thereof that are not subject to the Commission's or a state commission's system of accounts to conform to a classification of accounts prescribed by the Commission. If the public-utility company subsidiary is a gas utility company, it must conform to the system of accounts recommended by NARUC. According to Dominion and EEI, it is questionable whether this rule currently applies to any companies and whether there are any public utility companies under PUHCA 1935 that would not be subject to the Commission's Uniform System of Accounts or the requirements of a state utility commission. In addition, Dominion and EEI assert that section 250.27 is potentially inconsistent with the waiver of Part 101 of the Commission's regulations commonly received in connection with an authorization to sell power at market-based rates because this section would subject to Part 101 any public utility under the FPA that is not required to comply with it.[59]

66. APPA/NRECA oppose the adoption of this section because it does not seem to add anything presently required by the Commission's Uniform System of Accounts.[60] Finally, Energy East opposes the adoption of this section as unnecessary because there is no evidence that utilities subject to the Commission's ratemaking jurisdiction lack a uniform system of accounting standards.[61]

Commission Determination

67. We agree with commenters that this provision should not be adopted as part of the Commission's regulations because it does not add anything to the Commission's Uniform System of Accounts. All public utilities and natural gas companies, except those that have been granted waiver of the Commission's accounting, record-retention, and reporting requirements (*e.g.*, power marketers), already maintain their books and records in accordance with the Commission's Uniform System of Accounts in Parts 101 and 201 of its regulations.

17 CFR 250.80

Comments

68. Section 250.80 defines the terms ''construction,'' ''goods,'' and ''services,'' as used in the SEC regulations under PUHCA 1935. APPA/NRECA support the adoption of section 250.80, but suggest that the Commission should import the definitions of ''service,'' ''goods,'' and ''construction'' in this section into its own rules.[62] EEI and Dominion also support the adoption of this section.[63] E.ON and LG&E Energy also endorse the Commission's proposal to adopt section 250.80.[64]

Commission Determination

69. We agree with APPA/NRECA and other commenters, and as these terms and their definitions are relevant under PUHCA 2005, we will adopt the definitions contained in 17 CFR 250.80 in section 366.1 of the Commission's regulations and thereby import the SEC's definitions of these terms for the purposes of PUHCA 2005. In addition, we will remove references to PUHCA 1935, where appropriate, as we have done with the other regulations adopted in this final rule.

17 CFR 250.93 and 17 CFR Parts 256 and 257

Comments

70. Section 250.93 requires service companies to adopt the SEC's Uniform System of Accounts in 17 CFR Part 256 and its record-retention rules in 17 CFR Part 257. Some commenters opposed the adoption of these SEC regulations, while others supported their adoption or suggested various ways in which their application could be limited, in particular, by allowing holding companies and service companies to adopt the Commission's Uniform System of Accounts in Part 101 of its regulations and its record-retention rules under Part 125 of its regulations.[65]

71. Dominion and EEI agree with the Commission's proposal to adopt the SEC's Uniform System of Accounts. However, they state this system of accounts closely tracks the requirements of SEC Form U–13–60 and therefore includes a number of components that no longer will be relevant following repeal of PUHCA 1935. They thus recommend that the Commission adopt only those portions of 17 CFR Part 256 that correspond to the information it

[56] Dominion Comments at 12, EEI Comments at 17. *See also* Southern Company Services, Inc. (Southern Company Services) Comments at 5.

[57] EPSA Comments at 11.

[58] Energy East Comments at 7.

[59] Dominion Comments at 12–13, EEI Comments at 18.

[60] APPA/NRECA Comments at 25.

[61] Energy East Comments at 9.

[62] APPA/NRECA Comments at 25–26.

[63] Dominion Comments at 13, EEI Comments at 18.

[64] E.ON/LG&E Energy Comments at 14.

[65] *But see* APPA/NRECA Comments at 25–26.

recommends be included with SEC Form U–13–60.[66]

72. Dominion and EEI also argue that holding company service companies should have the option of adopting the Commission's Uniform System of Accounts and record-retention rules instead of the SEC's. They further contend that there is no reason that any company that currently follows the Commission's record-retention regulations should be required to adopt those found in 17 CFR part 257 and that the Commission could reconcile the differences between the two sets of requirements in a subsequent rulemaking.[67]

73. Entergy encourages the Commission to consider limiting the applicability of these requirements to service companies and, in the case of the record-retention requirements imposed under 17 CFR part 257, limiting the scope of these requirements to information that bears a direct relationship to costs incurred by service companies or other associate companies whose costs are reflected in the jurisdictional rates or charges of public utilities.[68]

74. Energy East also opposes the adoption of 17 CFR part 257 because, it contends, some of the SEC's records retention requirements are outdated, particularly as to the storage media specified, given information storage and retrieval technologies that are now available and in common use. The Commission's rules are more flexible because a public utility or licensee may select its own storage media subject to conditions related to life expectancy and internal control procedures to assure data reliability. Energy East thus urges the Commission to expand its Part 125 rules, making them applicable to public utilities, service companies, and holding companies.[69]

75. Finally, APPA/NRECA suggest that the Commission adjust the requirements of the SEC's Uniform System of Accounts to make them consistent with the Commission's Uniform System of Accounts under the FPA applicable to public utilities.[70]

Commission Determination

76. As discussed above, the requirements of section 1264 of EPAct 2005 to maintain and make available books and records apply equally to all holding companies and affiliates, associate companies, and subsidiaries thereof, regardless of their registered or exempt status under PUHCA 1935, absent a prospective exemption or waiver. Nevertheless, the Commission recognizes the long-standing differences in the treatment of these classes of entities under PUHCA 1935 and SEC regulations, namely, that companies in formerly-registered holding companies systems were subject to PUHCA 1935 and the SEC's accounting and other regulations thereunder, while companies in formerly-exempt holding company systems were not. We will therefore provide all holding companies and service companies with a reasonable period of time to transition to the Commission's regulations under PUHCA 2005. Specifically, all traditional, centralized service companies that do not currently follow the Commission's Uniform System of Accounts (Parts 101 and 201) will have until January 1, 2007 to comply with the Commission's Uniform System of Accounts, and all holding companies and service companies that do not currently follow the Commission's record-retention requirements (Parts 125 and 225) will have until January 1, 2007 to comply with the Commission's record-retention requirements. Furthermore, traditional, centralized service companies within registered holding company systems that currently follow the SEC's Uniform System of Accounts in 17 CFR part 256 have the option to follow either the Commission's or the SEC's Uniform System of Accounts, as they exist on the day before the effective date of PUHCA 2005, for calendar year 2006. Similarly, all holding companies and service companies within registered holding company systems that currently follow the SEC's record-retention rules in 17 CFR part 257 have the option to follow either the Commission's or the SEC's record-retention requirements, as they exist on the day before the effective date of PUHCA 2005, for calendar year 2006. But, as discussed above, these entities must transition to the Commission's rules by January 1, 2007.

77. However, traditional, centralized service companies following the Commission's Uniform System of Accounts must also comply with the General Instructions and other requirements contained in the SEC's Uniform System of Accounts. These instructions and requirements pertain specifically to service company accounts and are not, at present, adequately addressed in the Commission's Uniform System of Accounts.

17 CFR 250.94 and 259.313 (Form U–13–60)

Comments

78. Service companies are required by 17 CFR 250.94 and 259.313 to file SEC Form U–13–60, which is the annual report for service companies in registered holding company systems. It requires the submission of the service company's financial statements for each calendar year prepared using the SEC's Uniform System of Accounts. It also contains certain supporting schedules providing a more detailed analysis of amounts recorded in individual accounts, an analysis of billings to associated and non-associated companies, expense distribution by service company department, and an accompanying statement of methods of cost allocation.

79. Several commenters support the adoption of 17 CFR 250.94 and 259.313. APPA/NRECA support the retention of 17 CFR 250.94 and Form U–13–60.[71] Energy East states that it is beneficial to have one form of service company report that could be filed with the Commission and state commissions that require affiliate transactions reporting and thus supports the proposed SEC Form U–13–60 filing requirement, with which the states are already familiar. Energy East further recommends that the Commission focus the requirements of Form U–13–60, as recommended by EEI, on the information that is most relevant to allocations of costs.[72]

80. Dominion and EEI also note that the current Form U–13–60 requires companies to file a substantial amount of information that is not relevant to the Commission's duties under PUHCA 2005. EEI therefore proposes that the balance sheet and income statement portions of the Form U–13–60 be retained, but that a number of accounts and schedules not relevant to cost-allocation issues be eliminated, as these accounts and schedules in question are extremely time consuming to prepare and in some cases require invoice level detail to complete, and EEI offers suggestions as to accounts and schedules that should be modified.[73] Finally, EEI requests that the Commission clarify that the form applies to system service companies and provide a definition of ''service company'' in section 366.1 that tracks the language in section 1275(b) of

[66] Dominion Comments at 16, EEI Comments at 20.

[67] Dominion Comments at 16–17, EEI Comments at 20–21. According to Dominion and EEI, to the extent the coverage of the SEC requirements is broader than the Commission's, the additional requirements relate largely to securities matters that are no longer relevant under PUHCA 2005.

[68] Entergy Comments at 6.

[69] Energy East Comments at 9.

[70] APPA/NRECA Comments at 25.

[71] APPA/NRECA Comments at 25–26.

[72] Energy East Comments at 10.

[73] *Id.*

PUHCA 2005, *i.e.,* ''a company organized specifically for the purpose of providing non-power goods and services to any public utility in the same holding company system.'' [74]

81. E.ON and LG&E Energy contend that the implementation of section 250.94 and Form U–13–60 is beyond the scope of the jurisdiction granted to the Commission in section 1275 of EPAct 2005, which is much more limited than that granted to the SEC to authorize the organization and conduct of service companies under section 13 of PUHCA 1935. They suggest that, if it is nonetheless appropriate for the Commission in its administration of PUHCA 2005 to impose reporting requirements under the FPA, the nature and extent of such reports should be limited to those matters over which the Commission is granted jurisdiction. They further contend that Form U–13–60 largely contains information which is not relevant to the jurisdiction of the Commission and propose that the Commission should instead require that FERC Form 1 be supplemented to include the following information: (i) Annual filing of cost-allocation methodology used by the service company to allocate costs; (ii) annual filing of statement of receivables from and payables to associated companies, identified by associate company name; and (iii) annual filing of all charges received by associate companies from a services company, identified by associate company and by FERC account.[75]

Commission Determination

82. Based on the comments received, the Commission has decided not to adopt SEC Form U–13–60, and the Commission will instead require traditional, centralized service companies to file their annual reports on FERC Form No. 60, attached as Appendix 2, which is based on a streamlined version of SEC Form U–13–60. FERC Form No. 60 substantially reduces the amount of information required by SEC Form U–13–60 by deleting certain schedules not necessary to fulfill our jurisdictional responsibilities. Section 366.23 of the Commission's regulations, which are based on 17 CFR 250.94 and 259.313, will thus require all traditional, centralized service companies to file with the Commission FERC Form No. 60 by May 1 of the year following the calendar year that is the subject of the report. Traditional, centralized service companies in formerly-registered holding company systems must submit their first FERC Form No. 60, for calendar year 2005, by May 1, 2006, while traditional, centralized service companies in formerly-exempt holding company systems will have until May 1, 2008, to submit their first annual report, for calendar year 2007, on FERC Form No. 60.

83. SEC Form U–13–60 contains a set of financial statements for service companies, detailed supporting schedules, organizational charts, a list of cost-allocation methods they use, and other information. Prior to the repeal of PUHCA 1935, the companies to which these reporting requirements applied were entities formed specifically for the purpose of providing non-power goods and services to a public-utility company, as defined in section 366.1 of the Commission's regulations, of a holding company system. In 17 CFR 250.80, the SEC defined the type of specialized services that these traditional, centralized service companies provided to public-utility companies within their holding company systems, and we have taken over this definition in section 366.1 of our regulations.[76] With the repeal of PUHCA 1935 and its associated rules on cross-subsidization, diversification, and requirements to obtain SEC approval for affiliate transactions and the formation of service companies, these traditional, centralized service companies may increasingly provide centralized services not only for public utility affiliates, but also for non-utility affiliates of financial institutions or other industrial conglomerates, increasing the opportunity for cross-subsidization.

84. The annual financial reporting requirement for service companies in FERC Form No. 60, which is based on a truncated version of SEC Form U–13–60, will provide transparency and will enable the Commission and others to better monitor for cross-subsidization. Such information will aid the Commission in carrying out its statutory duties in a number of contexts, including in its assessment of whether a given disposition of jurisdictional facilities under section 203 of the FPA will result in cross-subsidization, in its ratemaking under sections 205 and 206 of the FPA and sections 4 and 5 of the NGA, and in its review and approval of cost-allocations under section 1275 of EPAct 2005. The accounting, record-retention, and reporting rules for service companies that we are adopting in this Final Rule are a measured response to the need for information about service company costs and functions necessary for the Commission to carry out its statutory responsibilities. Finally, in response to EEI's request that the Commission provide a definition of service company that tracks the language in section 1275(b), we note that we have added a definition of service company in section 366.1 of the Commission's regulations.

85. While we believe an annual reporting requirement for service companies is an important tool to aid the Commission in carrying out its responsibilities under the FPA and NGA, and its review of cost allocations requested under section 1275 of PUHCA 2005, as noted above, we have considered the comments received regarding the current content of SEC Form U–13–60 and concluded that some, but not all, recommendations for modifications and deletions of certain schedules should be adopted. Specifically, there are a number of schedules currently contained in the SEC Form U–13–60 that provide a greater level of detail for some items than the Commission will require in FERC Form No. 60 to carry out its statutory responsibilities. Therefore, we will not carry over from SEC Form U–13–60 to FERC Form No. 60 the requirement to submit supporting schedules for Outside Services Employed, Employee Pensions and Benefits, General Advertising Expenses, Rents, Taxes Other than Income Taxes, Donations, and Other Deductions.

86. We will not, however, adopt EEI's request to delete Schedule XIII—Current and Accrued Liabilities. This schedule contains information about the outstanding balances of accounts and notes payable to associated companies. We consider this information to be integral to understanding inter-company transactions and cost allocations within the holding company system.

87. We also will not adopt requests to modify or delete the Schedule of Expense by Department or Service Function or the Departmental Analysis of Salaries. This information is relevant to affiliate costs recovered in jurisdictional rates. Section 1275(b) of EPAct 2005 specifically requires the Commission in certain circumstances to review and authorize the allocation of costs for non-power goods or services provided by service companies to public utilities within the same holding

[74] Dominion Comments at 14, EEI Comments at 19.

[75] E.ON/LG&E Energy Comments at 15–16. *See also* Entery Comments at 6.

[76] Section 366.1 defines these ''services'' as ''any managerial, financial, legal, engineering, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, or any other service (including supervision or negotiation of construction or of sales), information or data, which is sold or furnished for a charge.''

company system. The determination of proper cost allocation requires knowledge of the total costs and how they are distributed within the holding company system, particularly to the jurisdictional entity(ies). The submission of the information in this schedule will facilitate the Commission's understanding of cost allocations within the holding company system.[77] The Departmental Analysis of Salaries shows how salary expenses are allocated to each parent company, associate company, and non-associate company based on the department or service function allocation methods. This schedule is a tool to determine whether cost allocations are being made in accordance with the authorized methods of cost allocation and whether inappropriate cross-subsidization has occurred. The Schedule of Expense by Department or Service Function similarly promotes this end.

88. Finally, the Commission will not adopt EEI's recommendation to delete the supporting schedule for Account 930.2, Miscellaneous General Expenses. Account 930.2 is a catch-all account for recording expenses not provided for elsewhere. A single-sum total for this account simply does not provide sufficient information about the nature of the items included in the account or the associated amounts for each item. The additional disclosure that this schedule provides therefore remains important for understanding service company costs and functions. Additionally, we note that a similar schedule is required for the FERC Form No. 1 submitted by public utilities.

17 CFR 259.5S (Form U–5S)

Comments

89. SEC Form U–5S is the annual report registered holding companies must submit, which includes information about the company's corporate structure, board of directors, acquisitions or sales of utility assets, securities transactions, investments in companies outside the holding company family, political contributions, contracts between the service company and utility affiliates; relations between the holding company and any EWG or FUCO, and a copy of the company's yearly financial reports.

90. APPA/NRECA support the retention of Form U–5S.[78] Georgia PSC also supports the adoption of this reporting requirement, and suggests that the Commission should add cash flow statements to the Financial Statement and Exhibits section of Form U–5S.[79]

91. The majority of commenters, however, oppose the adoption of Form U–5S. EEI argues that the Form U–5S filing requirement should not be adopted because it imposes burdensome and duplicative information collection requirements. EEI states that, although the Office of Management and Budget estimates that companies need approximately 13 hours to complete Form U–5S, in the experience of EEI's registered holding company members this form requires hundreds of hours to complete and as a result imposes millions of dollars in costs on ratepayers and shareholders. Much of the information required by Form U–5S is contained in other public filings, including the Commission's Form 1 and 3Q and the quarterly and annual reports that companies file with the SEC on Forms 10–Q and 10–K. Other information included in the Form U–5S relates to matters that repeal of PUHCA 1935 has made irrelevant and that holding companies no longer should be required to file.[80]

92. Similarly, AGL Resources and Emera Incorporated (Emera) argue that the information solicited by this SEC form is generally irrelevant to the Commission's ratemaking jurisdiction. They further contend that the Commission already obtains the information that it needs to regulate public utilities and natural gas companies on FERC Forms 1 and 2 and that the Commission's need for holding company-level information can be satisfied by reviewing regular SEC reports on Forms 10–K, 10–Q and 8–K, and by soliciting targeted information on a case-by-case basis should particular issues arise. Finally, they argue that the Commission should delay the imposition of additional reporting requirements until it has had sufficient time to evaluate the extent of its information needs.[81]

93. FirstEnergy suggests that, to the extent that the Commission desires to utilize information contained in those forms, it should modify those forms so that the only information required to be maintained is information that is deemed to be necessary or appropriate for the protection of utility customers with respect to jurisdictional rates. The Commission should also provide a clear explanation of why each category of information that is to be maintained is within the statutory limits.[82] Finally, FirstEnergy notes that Item 10 of Form U–5S contemplates that the annual report for each holding company system include consolidating financial statements for the parent holding company and each of its subsidiaries for the year of the report, and will be accompanied by the opinion of the independent accountants as to the consolidated financial statements. This requirement for an accountant's opinion imposes additional costs of obtaining an opinion of the independent accountants with respect to the consolidated financial statements. Because the financial statements of the individual subsidiaries would have been audited and opinions prepared in anticipation of development of consolidated financial statements, this need for an additional opinion with respect to the consolidated financial statements is not necessary and should be eliminated.[83]

94. Entergy submits that the proposed implementation of the comprehensive reporting requirements of the Form U–5S is unduly burdensome and unnecessary for the Commission to prevent cross-subsidization or otherwise to achieve purposes within the scope of its jurisdiction. Entergy asserts that, at a minimum, the Commission should at least review the individual items in the rules and SEC Forms and determine what, if any, additional information is really necessary for it to discharge its statutory obligations under PUHCA 2005 or the FPA.[84]

Commission Determination

95. We will not require entities that are holding companies under PUHCA 2005 to continue to file SEC Form U–5S. We agree with commenters that the information in this form is available in other Commission or SEC filings and/or is not relevant to costs incurred by jurisdictional entities and is not necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

d. Other Issues Concerning Adoption of SEC Regulations

Comments

96. NARUC submits that the Commission should retain the reporting requirement set forth in 17 CFR

[77] As discussed elsewhere in this Final Rule, although we have the authority to require the filing of cost allocation agreements pursuant to our ratemaking authority under sections 4 and 5 of the NGA and sections 205 and 206 of the FPA, we will not do so because the Commission believes that the submission of relevant cost-allocation information on FERC Form No. 60 provides a less burdensome method for collecting this information, for both services companies and the Commission.

[78] APPA/NRECA Comments at 25–26.

[79] Georgia PSC Comments at 2.

[80] EEI Comments at 5. *See also* E.ON/LG&E Energy Comments at 14, PacifiCorp Comments at 5, Progress Energy Comments at 5.

[81] AGL Resources Comments at 4, Emera Comments at 10.

[82] FirstEnergy Comments at 5–6.

[83] *Id.* at 7. *See also* Emera Comments at 10.

[84] Entergy Comments at 6.

250.58(c), Quarterly Report on Form U–9C–3 because this form contains information that is not reflected in the Annual Report on Form U–13–60.[85] FPL Group, Inc. (FPL Group) suggests that the Commission adopt a simplified annual filing requirement based solely on Part 3 of Form U–3A–2, which requires the submission of certain quantifiable factors upon which the exemption is based. Other provisions in Form U–3A–2 should not be adopted, as they are redundant to other required filings under the books and records provisions (to which exempt holding companies previously were not subject), or would not assist the Commission in making the PUHCA 2005 exemption determination.[86] PacifiCorp and Scottish Power argue that the Commission should not adopt any rules similar to that of 17 CFR 250.24 which require holding companies and their subsidiaries to file certificates of notifications regarding terms and conditions to declarations and order issued by the SEC prior to the enactment of PUHCA 2005.[87]

97. Detroit Edison requests that the Commission narrow the scope of the rule by clarifying that the Commission will not require any holding company (or its associate companies) to maintain books, records or memoranda that are not used in preparing quarterly and annual filings for the Commission.[88]

Commission Determination

98. The FERC–65 (Notification of Holding Company Status) and FERC Form No. 60 (Service Company Report) adopted above will provide us with information to carry out our statutory rate responsibilities under PUHCA 2005. It is neither necessary nor appropriate to require the submission of additional forms at this time, though, in light of the first year's submissions, the comments received at the technical conference within the next year, and our day-to-day experience in implementing PUHCA 2005, we do not foreclose the possibility that additional filing requirements will later be found necessary.

99. With respect to PacifiCorp and Scottish Power's concerns, we will not adopt 17 CFR 250.24. However, as discussed below with respect to previously authorized activities, we have concluded that filings directed by prior SEC financing authorizations should continue to be made, but should now be made with the Commission.

100. We will not grant Detroit Edison's requested clarification that the Commission will not require any holding company (or its associate companies) to maintain books and records that are not used in preparing quarterly and annual filings for the Commission. The clarification Detroit Edison requests could produce loopholes in holding company obligations to maintain and make available to the Commission their books and records in sufficient detail to permit examination, audit, and verification of the financial statements, schedules, and reports they are required to file with the Commission or that are issued to shareholders, as required by sections 366.21 and 366.22. For example, we will not carry over from SEC Form U–13–60 to FERC Form No. 60 the requirement to submit a schedule that provides a more detailed breakdown of outside services, but the removal of this schedule does not relieve the traditional, centralized service company of its obligation to provide this information upon request by the Commission. If we were to adopt Detroit Edison's suggested clarifying language, the traditional, centralized service company (which is an associate company within the holding company system) could argue that it does not have to provide the requested information because it was not kept as it was not necessary to complete FERC Form No. 60.

e. Other Comments on the NOPR

Definition of ''Relevance''

Comments

101. Several commenters urge the Commission to clarify its standard for relevance under section 1264.[89] For example, APPA/NRECA propose that the Commission should consider the books and records relating to a corporate relationship or transaction, and the parties thereto, are ''relevant'' if there is a reasonable possibility that the arrangement will affect a public utility affiliate in any material way, including increasing its costs; adversely impacting it financial rating or access to capital; diminishing its sales opportunities; or adversely affecting operations, planning or maintaining activities.[90]

102. Detroit Edison submits that section 366.2 as currently worded is far too open-ended, and leaves holding companies in an untenable state of uncertainty with respect to the relevance of any ''books, accounts, memoranda'' or ''other records.''[91] PacifiCorp concurs and urges that, at a minimum, the Commission clarify that it will provide a notice-and-comment proceeding before expanding its current information collection under this provision.[92]

Commission Determination

103. In PUHCA 2005, Congress left it to the Commission's discretion to determine what books and records are relevant to the costs incurred by a public utility or natural gas company and necessary or appropriate for the protection of public utility or natural gas company customers with respect to jurisdictional rates. We do not find it appropriate here to follow APPA/NRECA's suggestion that we provide a general definition of relevance. We have instead adopted the requirements in Part 366 of the Commission's regulations. In particular, sections 366.21 and 366.22 require that holding companies and service companies maintain books and records of their transactions in sufficient detail to permit examination, audit, and verification of the financial statements, schedules, and reports they are required to file with the Commission or that are issued to shareholders. We will provide further guidance as to what books and records are relevant at the technical conference that we will convene within one year of the effective date of PUHCA 2005 and in the separate rulemaking proceeding we will institute to address changes in the Commission's Uniform System of Accounts and record-retention requirements. We believe that these provisions provide adequate certainty as to which books and records that holding companies and service companies need to maintain and make available to the Commission.

[85] NARUC Comments at 2.

[86] FPL Group Comments at 4.

[87] PacifiCorp Comments at 6, Scottish Power Comments at 6.

[88] Detroit Edison Comments at 6.

[89] Arkansas PSC Comments at 8–11, Black Hills Comments at 2–3, National Association of State Consumer Advocates (NASUCA) Comments at 7, Missouri PSC Comments at 16–18.

[90] APPA/NRECA Comments at 19. According to APPA/NRECA, the following new corporate relationships and transactions are of relevance to the Commission: (i) ownership by a holding company of public utilities having no operational integration with each other; (ii) ownership by multi-state holding companies (or their public utility affiliates) of non-utility businesses having no functional relationship to the public utility businesses; (iii) ownership of multiple public utility companies by non-utility ventures; (iv) financings by multi-state public utility companies that fall outside standard debt-equity ratios, or that would fail the six criteria of Section 7(d)(1) of PUHCA 1935; (v) public utility loans to, or guarantees of indebtedness of, the holding company or any other affiliate. *Id.* at 17–18.

[91] Detroit Edison Comments at 5–6. *See also* Cinergy Comments at 21, EEI Comments at 5.

[92] PacifiCorp Comments at 5.

Preemption of State Laws

Comments

104. Several commenters request that the Commission confirm that its own access under section 1264 does not preempt rights to access information by state commissions under section 1265. In order to prevent future arguments that the federal access provisions of section 1264 preempt state commission access under section 1265, Santa Clara urges the Commission to grant this clarification in the final rule.[93] NARUC emphasizes that Congress expressly provided that states would have access under section 1265; that this means of state access was non-exclusive; and that Congress did not contemplate federal occupation of this field.[94] Moreover, according to NARUC, there is no inherent conflict between state access under either section 1265 or state law and federal access under section 1264.[95] Finally, Indiana Utility Regulatory Commission (IURC) requests that the final regulations include language paralleling the language of sections 1265(d), 1267(b), 1269, and 1275(c) of EPAct 2005 that confirms that the new law (and regulations promulgated under it) does not disturb historical state authority in the identified areas.[96]

Commission Determination

105. We agree with NARUC that there is no inherent conflict between state access under either section 1265 or state law and federal access under section 1264. We find that our own access under section 1264 does not preempt rights to access information by state commissions under section 1265. With respect to IURC's argument, we do not find it necessary to adopt regulatory text on this point, in light of the clear statutory language.

Scope of Commission Authority and Access to Data

Comments

106. APPA/NRECA urge the Commission to explicitly state in the final rule that the data access granted under section 1264(a) of EPAct 2005 supplements, rather than supplants, the Commission's pre-EPAct 2005 access to books and records and that this pre-existing access stems from the Commission's ratemaking authority and from the general provisions of section 301 of the FPA and section 8 of the NGA.[97]

Commission Determination

107. The Commission grants APPA/NRECA's proposed clarification. The Commission's pre-EPAct 2005 access to books and records pursuant to section 301 of the FPA and section 8 of the NGA remains unchanged. As provided in section 1271 of EPAct 2005, nothing in PUHCA 2005 limits the Commission's authority under the FPA or the NGA.

State Access to Books and Records Obtained by the Commission

Comments

108. Oklahoma Corporation Commission recommends that the Commission consider language that would allow state commissions to continue to receive notices of any investigations of regulated public utility companies.[98] Public Citizen notes that Congress has not given state commissions in PUHCA 2005 the right to require holding companies or their associate companies to maintain, keep or preserve any records affecting retail rates, so that the state commission can only require the maintenance of holding company/associate company books and records that affect only retail rates if the Commission uses its existing authorities under FPA section 301 to do so. Public Citizen thus urges the Commission to explicitly state in the final rule that the Commission has the authority under FPA section 301 to require holding companies and their associates to maintain books and records that state commissions determine affect their retail rates and provide a process through which the states can request the maintenance and preservation of such books and records.[99]

Commission Determination

109. In response to the request of Oklahoma Corporation Commission that state commissions be apprised of any investigations of regulated public utility companies, we believe our current practices regarding the disclosure of investigations are appropriate and should not be broadened at this time. We are open to further consideration on this point at the technical conference. However, Congress set forth the rights of state commissions to obtain access to the books and records of companies within a holding company system in section 1265 of EPAct 2005, and they may seek to obtain access to the books and records of holding companies in accordance with that provision. With respect to Public Citizen's request that the Commission use section 301 of the FPA to give states the opportunity to request the maintenance and preservation of books and records that state commissions determine affect their retail rates, we do not interpret section 301 to give the Commission the authority to provide a process for states to request maintenance of books and records for retail purposes. Congress has addressed in section 1265 the issue of state access to books and records of holding company systems and their members.

3. Exemption Authority

110. Section 1266(a) of EPAct 2005 directs the Commission to issue a final rule within 90 days after the effective date of Subtitle F exempting from the requirements of section 1264 of EPAct 2005 any person that is a holding company, solely with respect to one or more:

(1) Qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 *et seq.* (2000));

(2) Exempt wholesale generators; or

(3) Foreign utility companies.

111. Section 1266(b) further directs the Commission to exempt a person or transaction from the requirements of section 1264 if, upon application or *sua sponte:*

(1) The Commission finds that the books and records of a person are not relevant to the jurisdictional rates of a public utility or natural gas company; or

(2) The Commission finds that a class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company.

112. PUHCA 2005 requires the Commission to exempt any person that falls within the classes designated by section 1266(a) from the requirements of section 1264, and therefore, the Commission proposed to adopt such an exemption. In the NOPR, however, the Commission did not propose to categorically exempt classes of entities or transactions described in section 1266(b) from the requirements of section 1264. Rather, we proposed to rely on case-by-case applications for these exemptions until we have gained further experience subsequent to the repeal of PUHCA 1935. However, we sought comment on whether the Commission should exempt classes of transactions involving mutual fund passive investors or other groups of passive investors from the new federal books and records access requirements.

113. Finally, we noted that, although a person that is a holding company

[93] Santa Clara Comments at 23–24. *See also* Arkansas PSC Comments at 21, Missouri PSC Comments at 26–27, TANC Comments at 23–24.

[94] NARUC Reply Comments at 3.

[95] *Id.* at 3–4.

[96] IURC Comments at 6.

[97] APPA/NRECA Comments at 21.

[98] Oklahoma Corporation Commission Comments at 4.

[99] Public Citizen Comments at 4.

solely with respect to EWGs or QFs will be exempted from the federal access to books and records provisions in section 1264, many EWGs and QFs may nevertheless be public utilities under section 201 of the FPA [100] and remain subject to the Commission's authority with regard to their books and records under section 301 of the FPA, unless otherwise exempted.[101] Below, the Commission addresses comments requesting that the Commission adopt the following exemptions or waivers: (a) Passive investors; (b) nontraditional utilities with no captive customers or non-utilities, including power marketers; (c) certain holding company and affiliate transactions; (d) electric power cooperatives; (e) local distribution companies; (f) single-state holding companies; (g) holding companies owning small generators; and (h) investors in independent transmission companies.

114. As discussed further below, the Commission is adopting certain specific exemptions and waivers proposed by commenters. We are also providing in section 366.4(b) and (c) of our regulations the procedures for filing for exemption or waiver, which are available for specified persons or classes of transactions. A holding company that falls into one of the identified categories may file for exemption or waiver by submitting FERC–65A (Exemption Notification) or FERC–65B (Waiver Notification) and shall be deemed to have a temporary exemption or waiver upon a good faith filing. Notices of all such notifications of exemption or waiver will be published in the **Federal Register**. If the Commission has taken no action within 60 days after the date of the filing, the exemption or waiver shall be deemed to have been granted. The Commission may toll the 60-day period to request additional information or for further consideration of the request; in such case, the claim for exemption or waiver will remain temporary until such time as the Commission has informed the holding company of its decision to grant or deny the application by letter or order. In addition, the Office of the Secretary will periodically issue notices listing the holding companies whose notifications of exemption or waiver are deemed to have been granted in the absence of Commission action to the contrary within 60 days after the date of filing.

115. Holding companies that seek exemptions or waivers other than those specifically identified in section 366.3(b) or (c) of the Commission's regulations may not do so by means of FERC–65A or FERC–65B. Such holding companies must instead seek an individual exemption or waiver by filing a petition for declaratory order pursuant to sections 366.3(e), 366.4(b)(2) and 366.4(c)(2). Such petitions will be noticed in the **Federal Register**. No temporary exemption or waiver will attach, and the requested exemption or waiver will be effective only if approved by the Commission.

116. Finally, if a holding company that has been granted an exemption or waiver under section 366.4(b) or (c) fails to conform with any material facts or representations presented in its submittals to the Commission in FERC–65A or FERC–65B, the exemption or waiver may no longer be relied on. Also, the Commission may, on its own motion or on the motion of any person, revoke the exemption or waiver granted under section 366. 4(b), if the holding company fails to conform to any of the Commission's criteria under this part for obtaining the exemption or waiver.

a. Exemption of Passive Investors

Comments

117. Commenters expressed near-unanimous support for an exemption for mutual fund and other passive investors from the requirements of section 1264.[102] Commenters note that the SEC exempted passive investors under PUHCA 1935 and contend that such passive investors are similarly exempt from PUHCA 2005.[103] EEI urges the Commission to follow current SEC no-action letter practice for exempting passive investors from holding company status under section 2(a)(7) of PUHCA 1935 and Commission practice in disclaiming jurisdiction under section 201(e) of the FPA.[104] Barclays requests the Commission establish an additional, regulatory exclusion from the books and records requirements for passive investments in utilities that are made by collective investment vehicles whose assets are managed by banks, savings and loan associations and their operating subsidiaries, or brokers and dealers.[105] National Grid suggests that the Commission should define a passive investor as an entity that holds 50 percent or less of outstanding voting securities of public utility or holding company and does not otherwise exercise controlling influence.[106] Alternatively, National Grid suggests that, if Commission does not adopt this proposal, it should define ''holding company'' to exclude passive investors who own, control, or hold 20 percent or less of the outstanding voting securities.[107] Finally, Morgan Stanley recommends that the Commission modify section 366.2 of the proposed rules to make clear that holding securities in the ordinary course of business as a broker/dealer, underwriter or as a fiduciary, and not exercising operations control over the utility, does not make one a ''holding company.'' [108]

118. Some commenters expressed general support for the proposed exemption, but argued that passive investors should not be exempted when certain circumstances were present. NARUC submits that the Commission should not exempt passive investors where either of the following conditions occurs or is present: (1) The transaction involves and will result in an ownership interest of ten percent or more of the debt or equity capital of any entity within the holding company system; or (2) the transaction will result in the mutual fund or other passive investor groups holding two or more seats or ten percent or more of the voting representation seats on the board of directors of any entity within the holding company system.[109] Wisconsin PSC and CEOB assert that passive investors can exert control where their stock ownership or debt interest grants them control or influence over the selection of the board of directors. They urge the Commission to scrutinize carefully an application for an exemption filed by a passive investor who holds the power to influence the outcome of any jurisdictional issue that comes before the holding company's board of directors, and to deny the application for exemption in those circumstances.[110] MBIA Insurance, on the other hand, argues that the Commission should not at this time

[100] 16 U.S.C. 824(e) (2000).

[101] *Id.* at section 825.

[102] *See, e.g.*, APPA/NRECA Comments at 20, Arkansas PSC Comments at 12, Capital Research and Management Company Comments at 3–4, Emera Comments at 8, E.ON/LG&E Energy Comments at 9–11, International Transmission Company Comments at 10, Investment Adviser Association Comments at 2, Investment Company Institute Comments at 2–3, Missouri PSC Comments at 19, PacifiCorp Comments at 5, Southern Company Services Comments at 9, Tri-State Generation Comments at 8.

[103] Chairman Barton Reply Comments at 5, EPSA Comments at 21–22 (stating that there is a long line of SEC no-action letter precedent addressing passive investor equity interests in holding companies and public utility companies under PUHCA 1935 in which it was determined that passive investors did not own voting securities), Scottish Power Comments at 6–7.

[104] EEI Comments at 21.

[105] Barclay Comments at 5.

[106] National Grid Comments at 12.

[107] *Id.* at 14.

[108] Morgan Stanley Comments at 9.

[109] NARUC Comments at 7–8.

[110] CEOB Comments at 3, Wisconsin PSC Comments at 5.

grant an across-the-board exemption for entities that may claim passive investor status.[111]

Commission Determination

119. We agree with the majority of commenters that the Commission should exempt passive investors from section 1264. Passive investors do not exercise control over jurisdictional companies, and thus the Commission does not need access to their books and records for purposes of ensuring just and reasonable rates. In response to the comments of Barclay's and Morgan Stanley, we will also clarify here that the exemption for passive investors applies to the following entities: Mutual funds; passive investments in collective investment vehicles whose assets are managed by banks, savings and loan associations and their operating subsidiaries, or brokers/dealers; and persons that directly, or indirectly through their subsidiaries or affiliates, buy and sell the securities of public utilities in the ordinary course of business as a broker/dealer, underwriter or fiduciary, and not exercising operational control over the public utility.

120. We will not adopt a specific definition of ''passive investor'' at this time. Our precedent under the FPA on whether certain asset owners are ''passive'' and thus not public utilities provides guidance for purposes of claiming exemption under PUHCA 2005; further guidance may be provided in the Commission's rulemaking to implement EPAct 2005 amendments to section 203 of the FPA. In addition, claimants should describe the relevant facts in their FERC–65 (Notification of Holding Company Status), FERC–65A (Exemption Notification), or petition for declaratory order.

b. Nontraditional Utilities With No Captive Customers or Non-Utilities

Comments

121. EPSA proposes that the following classes of entities be exempted from section 1264's requirements: (i) Utilities that do not serve captive customers and are not affiliated with a utility that serves captive customers (nontraditional utilities); and (ii) a holding company that owns only nontraditional utilities and/or EWGs, FUCOs, or QFs.[112] According to EPSA, the PUHCA 2005 rate protections simply are not needed for such entities.[113] EPSA notes that the Commission has reasoned that when nontraditional utilities serve no captive customers, the potential for ''transactions undertaken by any of the non-traditional affiliates [affiliates without captive customers] at the expense of other non-traditional affiliates simply results in an allocation of revenues among the 'non-regulated' affiliates; the profits ultimately go to the shareholders regardless of the entity that makes the sale.'' [114]

122. EPSA proposes that the Commission should not consider energy marketers (*i.e.*, energy sellers owning no ''hard'' assets for power sales but only contracts for wholesale or retail electric energy sales or retail gas sales) to be ''public-utility companies'' under the PUHCA 2005 definition. According to EPSA, if power marketers are not electric utility companies, their parent companies would not be considered utility holding companies under PUHCA 2005 by reason of their ownership of such marketers. The same logic would apply to gas marketers, and they too, therefore, should not be considered gas utility companies, provided that they own no physical gas distribution assets and their gas retail sales are made through contracts.[115]

Commission Determination

123. The Commission will exempt power marketers and other utilities that do not serve captive customers and are not affiliated with a utility that serves captive customers (*i.e.*, non-traditional utilities) from section 1264 because we find that the books and records of these entities are not necessary to protect customers. Although we regulate most power marketers' rates under the FPA pursuant to their authorizations to sell at market-based rates, in situations where they have no captive customers and are not affiliated with anyone that does have such customers, their records are not necessary to fulfilling our jurisdictional responsibilities to ensure just and reasonable rates. With respect to EPSA's request for exemption of holding companies that own only nontraditional utilities and/or EWGs, FUCOs, or QFs, PUHCA 2005 already exempts persons that are holding companies solely with respect to one or more EWGs, FUCOs, or QFs, and we have determined it appropriate to exempt power marketers and other utilities that do not have captive customers. With respect to power marketers, as previously noted, the SEC did not treat power marketers as public-utility companies under PUHCA 1935, in contrast to the Commission's long-standing determination that power marketers are public utilities under the FPA. As discussed above, we will follow SEC precedent for purposes of interpreting PUHCA 2005 and will not treat power marketers as ''electric utility companies'' under PUHCA 2005. However, this interpretation will not affect our long-standing interpretation that power marketers selling at wholesale in interstate commerce are public utilities under the FPA.

c. Certain Holding Company and Affiliate Transactions

Comments

124. MidAmerican proposes that the Commission exempt from proposed section 366.2(e) the following classes of transactions: (i) Where the holding company affirmatively certifies on behalf of itself and its subsidiaries, as applicable, that it will not charge, bill or allocate to the public utility or natural gas company any costs or expenses in connection with goods and service transactions, and will not engage in financing transactions with any public utility except as authorized by a state commission or the Commission; (ii) transactions between or among affiliates that are independent of and do not include a public utility or natural gas company; and (iii) transactions between a public utility company or a natural gas company and an affiliate if such transactions are conducted in the ordinary course of business, occur at prevailing market prices or on terms not different from those made available to unaffiliated entities and do not exceed individually or in the aggregate in cost to the public utility company or natural gas company one-half of one percent of its operating revenue during its most recent fiscal year, or are conducted in accordance with and pursuant to an approved rate or service tariff.[116]

125. MidAmerican states that, by granting an exemption where a holding company certifies that it will not charge, bill or allocate to the public utility or natural gas company any costs in connection with goods and service transactions, the Commission will be encouraging additional investments from outside the utility industry in the country's energy infrastructure.[117] Further, the Commission could periodically confirm the exemption through a review of the books and records of the public utility or natural gas company or annual certification by the holding company.[118]

[111] MBIA Insurance Comments at 14.

[112] EPSA Comments at 18.

[113] *Id.*

[114] *Id.* (*citing U.S. Gen Power Services, L.P.,* 73 FERC ¶ 61,037 at 61,846 (1995)).

[115] EPSA Comments at 19–20.

[116] MidAmerican Comments at 8–11.

[117] *Id.* at 8.

[118] *Id.*

126. MidAmerican proposes exemptions for transactions in the ordinary course of business between and among a public utility holding company's non-utility subsidiaries and affiliates and *de minimis* ordinary course transactions involving the public utility company. In arguing for these exemptions, MidAmerican states that without these exemptions these transactions will be too numerous to track and requiring an individual exemption for each of them from Rule 366.2(e) could overwhelm the Commission while increasing the cost of doing business for the regulated entities.[119]

Commission Determination

127. We will grant MidAmerican's first and second requests for exemptions: (i) In cases where the holding company affirmatively certifies on behalf of itself and its subsidiaries, as applicable, that it will not charge, bill or allocate to the public utility or natural gas company any costs or expenses in connection with goods and service transactions, and will not engage in financing transactions with any public utility except as authorized by a state commission or the Commission; and (ii) transactions between or among affiliates that are independent of and do not include a public utility or natural gas company. These classes of transactions are not relevant to jurisdictional rates and will therefore be exempted from the books and records requirements of section 1264.

128. The Commission will deny MidAmerican's request for an exemption of transactions between a public utility or a natural gas company and an affiliate if such transactions are conducted in the ordinary course of business, occur at prevailing market prices or on terms not different from those made available to unaffiliated entities and do not exceed individually or in the aggregate in cost to the public utility or natural gas company one-half of one percent of its operating revenue during its most recent fiscal year, or are conducted in accordance with and pursuant to an approved rate or service tariff. These transactions involve regulated companies, and we do not believe they should be exempted because of the potential for cross-subsidization between regulated and non-regulated companies in the same holding company system, which could adversely affect jurisdictional rates.

[119] *Id.* at 11.

d. Rural Electric Cooperatives

Comments

129. Several commenters urge the Commission to exempt rural electric cooperatives from section 1264. APPA/NRECA argue that the Commission should recognize that under longstanding SEC precedent, electric cooperatives were not regulated as public utility holding companies under PUHCA 1935 and that, read together with the plain language of PUHCA 2005, that precedent shows that rural cooperatives fall outside PUHCA 2005. In addition, APPA/NRECA contend that, at an absolute minimum, the Commission should make clear that those cooperatives that have received no-action letters or other assurances in the past from the SEC can continue to rely on those assurances without any need to seek additional confirmation or a no-action assurance or waiver from the Commission and adopt a class exemption from PUHCA 2005 for cooperatives that are organized and operate in reliance on such well-settled precedent.[120] Similarly, Santa Clara and TANC note that the SEC has consistently excluded rural cooperatives from PUHCA 1935 requirements for several reasons, including the fact that the ownership relationship in a cooperative is not a voting security under PUHCA 1935 and urge the Commission to follow this precedent in implementing PUHCA 2005.[121]

Commission Determination

130. The Commission finds the arguments of APPA/NRECA and other commenters in this regard persuasive. We find that all electric power cooperatives, including those that are regulated by the Commission under the FPA, *i.e.*, those that are not financed under the Rural Electrification Act of 1936 or that sell four million or more megawatt-hours of electricity per year, should be exempted. We are therefore granting the request to define ''voting security'' to not include member interests in electric power cooperatives; this definition in and of itself should result in most cooperatives being excluded from the definition of a holding company, and thus most cooperatives will automatically fall outside the scope of PUHCA 2005. For those cooperatives that might still fall within the definition of holding company and thus within the scope of PUHCA 2005, they may be exempted from PUHCA 2005 by filing for exemption pursuant to the procedures in section 366.4(b).[122]

[120] APPA/NRECA Comments at 42–44.

[121] Santa Clara Comments at 23, TANC Comments at 23. *See also* Redding Comments at 3.

e. Local Distribution Companies

Comments

131. American Gas Association requests that the Commission clarify that local distribution companies that are not regulated by the Commission are not embraced within the phrase ''natural-gas company.'' [123] American Gas Association also notes that the Commission does not regulate local distribution companies.[124] Washington Gas & Light argues that the Commission should clarify that the proposed rules do not apply to local distribution companies and section 7(f) companies that have previously been exempt from regulation by the Commission.[125] Washington Gas & Light notes that no regulatory gap exists here, and new Commission regulation would be duplicative.[126]

Commission Determination

132. The Commission finds that the books and records of local distribution companies that are not regulated by the Commission are not relevant to jurisdictional rates. Therefore, we will amend the proposed rules to reflect that local distribution companies are exempt from the regulations.

f. Single-State Holding Companies

Comments

133. Consolidated Edison (ConEd) contends that customers of single-state holding companies are adequately protected by the Commission's existing regulatory authority under the FPA and NGA, so that the imposition of additional books-and-records requirements would be superfluous. Accordingly, ConEd requests that the proposed regulations be revised to expressly exempt from the provisions of section 366.2 all single-state holding companies that were exempt under PUHCA 1935 as of the date of enactment of PUHCA 2005 and all companies that subsequently demonstrate to the Commission their status as a single-state holding company. Those companies should remain exempt pending a change

[122] To the extent electric cooperatives are public utilities subject to our jurisdiction under the FPA, as noted above, we have broad authority under FPA section 301 to obtain the books and records of regulated companies and any person that controls or is controlled by such companies if relevant to jurisdictional activities. 16 U.S.C. 825 (2000); *accord* 15 U.S.C. 717g (2000).

[123] American Gas Association Comments at 2. *See also* Keyspan Corporation (Keyspan) Comments at 6–7.

[124] American Gas Association Comments at 3.

[125] Washington Gas & Light Comments at 3.

[126] *Id.* at 4.

in circumstances that alters a company's single-state status.[127]

134. In its reply comments, Public Citizen argues that the single state exemption, for example, requires that both a utility and its holding company primarily operate in a single state, so that the state is capable of regulating the holding company, as well as the utility, under state law. Such companies at a minimum should be required to file an annual statement, as they do now, to show that they continue to meet the standards for such an exemption.[128]

Commission Determination

135. We cannot approve a categorical exemption for single-state holding companies. Congress has chosen not to re-enact this exemption from PUHCA 1935, and ConEd has not demonstrated that single-state holding companies satisfy the criterion for exemption pursuant to section 1266(b) of PUHCA 2005 (*i.e.*, that their books and records are not relevant to the jurisdictional rates of a public utility or natural gas company). Nevertheless, single-state holding companies do not present the scope of potential cross-subsidy and cost allocation issues that multi-state holding companies do; state commissions generally have significant regulatory authority over single-state holding companies and their transactions, and we have sufficient authority pursuant to sections 205 and 206 of the FPA and sections 4 and 5 of the NGA to address any issues that could affect jurisdictional rates for public utilities in single-state holding companies. Therefore, the Commission will grant a waiver of our requirements in sections 366.21, 366.22, and 366.23 of our regulations [129] for single-state holding companies.

g. Holding Companies Owning Industrial Small Generators

Comments

136. Barrick Goldstrike Mines argue that the Commission should exempt the holding companies of small industrial generators and their transactions from regulatory oversight because the exemptions that have existed until now, have encouraged the development of additional electrical generation.[130] Alternatively, Mittal Steel requests that the Commission issue an exemption to any company who would not otherwise qualify as a ''holding company,'' but for its ownership of an entity that has been granted authority to sell electric power for resale at market-based rates. If the Commission is unwilling to adopt a general exemption as proposed by Barrick and Mittal Steel at this time, the Commission should grant a limited waiver of its PUHCA 2005 regulations to persons that file good faith applications for exemptions under section 366.3 within sixty (60) days of the Commission's final order in this proceeding, with such waiver effective until such time as the Commission denies the exemption application.[131]

Commission Determination

137. The Commission is not persuaded by the arguments of Barrick and Mittal Steel to provide a blanket exemption for holding companies owning industrial small generators, since they have not demonstrated that the statutory criterion is satisfied, *i.e.*, that books and records of such holding companies are not relevant to jurisdictional rates. However, to eliminate what might otherwise be a barrier to the development of additional electric generation, we will allow a waiver of our requirements in sections 366.21, 366.22, and 366.23 of our regulations to persons that own a small amount of generation (100 MW or less) used fundamentally for their own load or for sales to affiliated end-users. Similar entities, but owning more than 100 MW of generation, may individually seek waiver by filing a petition for declaratory order, and we will consider such petitions in light of all relevant information.

138. With respect to Mittal Steel's request regarding good faith applications, we note that in section 366.4(b) of our regulations, we have provided that the filing of FERC–65B provides temporary waiver upon a good faith filing and that after 60 days a waiver is deemed to be granted, absent timely Commission action to the contrary.

h. Investors in Independent Transmission Companies

Comments

139. International Transmission Company submits that investors in independent transmission companies that are subject to Commission jurisdiction should be exempted and that, without this exemption, this requirement creates a new barrier to investment.[132]

Commission Determination

140. The Commission will grant waiver of the our regulations under PUHCA 2005 for investors in independent transmission companies. The rate issues that may arise in connection with entities that serve retail customers or that generate or sell electricity at wholesale are not present with respect to an independent transmission company. Further, the Commission has sufficient authority under sections 205 and 206 of the FPA, as well as informational authority under section 301 of the FPA and section 1264 of EPAct 2005, to obtain the relevant books and records of a jurisdictional independent transmission company, and any company that controls or is controlled by such jurisdictional company. Therefore, the Commission will grant a waiver of our requirements in sections 366.21, 366.22, and 366.23 of our regulations for investors in independent transmission-only companies.

4. Allocation of Costs of Non-Power Goods or Services

141. Section 1275(b) of EPAct 2005 provides that, in the case of non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system, at the election of certain holding company systems or a state commission having jurisdiction over the public utility, the Commission, after the effective date of PUHCA 2005, shall review and authorize an allocation of costs for such goods and services to the extent relevant to that associate company. In the NOPR, we proposed to reflect this statutory provision in new section 366.5(b) of our regulations.

a. Mandatory Filing of Cost-Allocation Agreements

142. In the NOPR, we noted that, irrespective of the new section 1275(b) of PUHCA 2005, with the repeal of PUHCA 1935 and the elimination of SEC review of the allocation of costs for non-power goods and services, we have authority under sections 205 and 206 of the FPA and sections 4 and 5 of the NGA to review the rate recovery in jurisdictional rates of such associate and affiliated company non-power goods

[127] ConEd Comments at 3.

[128] Public Citizen Reply Comments at 13.

[129] The Commission is permitted to exempt entities from the requirements of section 1264 only if their books and records are not relevant to jurisdictional rates. In this case, the books and records are relevant to jurisdictional rates, so we cannot exempt single-state holding companies from the statute. However, the Commission always possesses discretion to waive a regulatory requirement.

[130] Barrick Goldstrike Mines Comments at 9. *See also* Morgan Stanley Reply Comments at 6.

[131] Mittal Steel Reply Comments at 1–2.

[132] International Transmission Company Comments at 8.

and services costs, either upon application under section 205 of the FPA or section 4 of the NGA or upon complaint or our own motion under section 206 of the FPA and section 5 of the NGA, and that we also have the authority to review and/or require the filing of cost-allocation agreements with the Commission since they are contracts affecting jurisdictional rates.[133] We invited comments as to whether, in light of the repeal of PUHCA 1935, holding companies that prior to the repeal of PUHCA 1935 were registered holding companies should be required to file such cost-allocation agreements with the Commission under section 205 of the FPA and section 4 of the NGA.

Comments

143. A number of commenters supported the Commission's proposal to require holding companies that were registered under PUHCA 1935 to file cost-allocation agreements under section 205 of the FPA and section 4 of the NGA.[134] These commenters emphasize the importance of information on cost allocations for effective federal and state regulation.[135] In addition, Santa Clara argues that Commission oversight of cost allocations is necessary due to the lack of uniformity of state review.[136] Santa Clara further emphasizes that, under current rules promulgated pursuant to section 13 of PUHCA 1935, the SEC generally requires that such companies seek prior approval from the SEC to engage in such transactions. Thus, the requirement to file cost-allocation agreements with the Commission would simply maintain the current obligation, albeit with a different agency.[137]

144. Some commenters suggest expansion of the Commission's proposed filing requirement. APPA/NRECA noted that the risk of misallocation of costs and cross-subsidization does not depend on whether the public utility holding company was registered or statutorily exempted under PUHCA 1935 and urge the Commission to require the filing of all cost-allocation practices between public utility and non-utility activities, including both formerly registered and exempted utility holding companies.[138] NARUC recommends that the Commission institute procedures for periodic audits of cost allocations, to be conducted in coordination with state regulators.[139]

145. Several commenters opposed the Commission's proposed filing requirement as contrary to Congress' intent and inconsistent with the statutory scheme established by PUHCA 2005 and the FPA. FirstEnergy contends that there is nothing in PUHCA 2005 to suggest that the Congress intended to grant the Commission the authority to regulate the agreements for procurement of non-power goods and services by public utility companies from associated service companies in the same way that it regulates the sale of electricity for resale and that, if the Commission found that such agreements are ''* * * contracts affecting jurisdictional rates'' within the meaning of section 205(c) of the FPA it would be asserting jurisdiction over virtually every agreement for procurement of non-power goods and services by all regulated electric utilities.[140] Entergy argues that the Commission's proposal is inconsistent with the voluntary review procedures established under section 1275(b) of EPAct 2005. According to Entergy, to mandate the filing of such service company agreements would read out of PUHCA 2005 the ability of the holding company or applicable retail regulators to elect or, more importantly, to not elect Commission review and authorization of cost allocations.[141]

146. EPSA opposes the mandatory filing requirement because it contends that the Commission lacks jurisdiction to impose this requirement under the FPA. EPSA asserts that section 205 of the FPA requires only public utilities as defined in section 201(e) of the FPA to file with the Commission the schedules, tariffs and agreements under which they provide FPA jurisdictional services. Registered holding companies, by contrast, (and non-registered holding companies) may have public utility subsidiaries, but they are not public utilities under section 201(e) of the FPA. In addition, EPSA claims that being required to make filings under section 205 of the FPA could force a holding company to become a fully regulated public utility. Under existing Commission precedent, upon the acceptance of a filing under section 205 of the FPA, the Commission has deemed that the filing entity owns FPA jurisdictional facilities within the meaning of section 201(e) of the FPA. Hence, they argue, if registered holding companies are required to file cost-allocation agreements under section 205, this could have the unintended effect of forcing such companies to become public utilities.[142]

147. A number of commenters state that the Commission already has authority under sections 205, 206, and 301 of the FPA and PUHCA 2005 to require the public utility to file any relevant cost-allocation agreements with affiliates to the extent they affect jurisdictional rates. Thus, they argue, there is no need to impose an additional filing requirement.[143] Dominion and EEI argue that there should be no mandatory filing unless these agreements are relevant to Commission review of cost-allocation at the election of a holding company or a state commission pursuant to section 1275(b) of PUHCA 2005, or where they are relevant to a Commission rate proceeding. According to Dominion and EEI, there are no grounds for reopening all cost-allocation arrangements at this time by requiring that allocation agreements to be filed for

[133] 16 U.S.C. 824d–e (2000); *accord* 15 U.S.C. 717c–d (2000); *see generally* EPAct 2005 at § 1275(c) (stating that nothing in section 1275 affects the authority of the Commission under other applicable law). While the scope of our jurisdiction over wholesale sales of natural gas is more limited than our jurisdiction over wholesale sales of electric energy, and our rate review may differ in certain respects, such reviews could be undertaken under sections 4 or 5 of the NGA.

[134] *See, e.g.*, Georgia PSC Comments at 2, Santa Clara Comments at 6–7, TANC Comments at 6–7.

[135] Georgia PSC at 2, IURC Comments at 7, NARUC Comments at 9, Ohio PSC Reply Comments at 2.

[136] Santa Clara Comments at 8.

[137] *Id.* at 6. *See also* American Public Gas Association Comments at 4.

[138] APPA/NRECA Comments at 7. *See also* American Public Gas Association Comments at 4, MBIA Insurance Comments at 20, Missouri PSC Comments at 8–9, NASUCA Comments at 9, Ohio PUC Comments at 3, Utility Workers Comments at 3–4, Wisconsin PSC Comments at 7.

[139] NARUC Comments at 9 (arguing that multi-state holding companies should be subject to filing requirement), Ohio PUC Reply Comments at 2, AGPA Comments at 4, NASUCA Comments at 9. *But see* National Grid Reply Comments at 9–10. National Grid responds to NARUC, arguing that there is no general distinction under PUHCA 2005 between formerly registered multi-state holding companies and typically exempt single-state holding companies except in section 1275's single-state exemption and that there is no reason to impose a separate requirement to file cost allocation agreements on any holding company.

[140] FirstEnergy Comments at 11.

[141] Entergy Comments at 7–8. *See also* Chairman Barton Reply Comments at 9, Southern Company Services Comments at 3.

[142] EPSA Comment at 23–25. EPSA's argument that the filing of a contract affecting jurisdictional rates forces every party to the contract to become a jurisdictional public utility is erroneous and a misunderstanding of the law. *See also* NiSource Comments at 13. NiSource further states that it is opposed to the mandatory filing requirement, but if filing is made mandatory, such agreements should be filed for informational purposes only in the same manner as cash management agreements.

[143] Ameren Services (Ameren) Comments at 15–16, Entergy Comments at 14, E.ON/LG&E Energy Comments at 19, EPSA Comments at 24–25, Scottish Power Comments at 9, Santa Clara Comments at 6–7. *See also* Energy East Comments at 14 (arguing that cost-allocation methods are disclosed in the report on Form U–13–60, so there is no reason to require their filing in another context).

review under section 205 of the FPA and section 4 of the NGA.[144]

148. Finally, Coral Power and Shell WindEnergy argue that holding companies that own only EWGs, FUCOs, and QFs and are not affiliated with traditional utilities with captive ratepayers should be exempted from the filing requirement. They argue that such entities typically sell energy at negotiated or market-based rates, not at cost-based rates, so there can be no issue of cost allocation when rates are not based on the generator's costs, so that they cannot pass through excessive costs associated with affiliate transactions without pricing themselves out of the market.[145]

Commission Determination

149. We reject arguments that the Commission does not have the authority under the FPA to require public utilities that are members of a holding company system to file agreements involving the allocation of costs of non-power goods and services to public utilities and other members of the holding company. Clearly, if one or more of the public utility members of the holding company seeks to recover their share of the allocated costs in jurisdictional rates, the agreement is a contract affecting rates and may be reviewed by the Commission insofar as it pertains to jurisdictional rates.

150. We also disagree with Entergy's argument that, if the Commission were to require cost-allocation agreements affecting jurisdictional rates to be filed, this would be inconsistent with section 1275(b) of PUHCA 2005, which allows holding company systems or state commissions to obtain a Commission determination of appropriate cost allocations under such agreements. While the Commission has *discretion* under section 205(c) of the FPA to require contracts affecting jurisdictional rates to be filed (*i.e.*, contracts affecting rates are to be filed within such time and in such form as the Commission may prescribe),[146] and may on its own change cost allocations to jurisdictional companies that seek recovery of the costs in jurisdictional rates, we interpret section 1275(b) to *require* the Commission to make a cost-allocation determination if one is sought by the holding company system or the state commission.

151. The Commission will not mandate the blanket filing of cost-allocation agreements governing the costs of non-power goods and services purchased by jurisdictional public utilities from affiliated service companies under section 1275(b) of EPAct 2005. As discussed above, although we have the authority to require the filing of cost-allocation agreements pursuant to our ratemaking authority under sections 4 and 5 of the NGA and sections 205 and 206 of the FPA, we do not find it necessary to do so in light of the requirement that traditional, centralized service companies (i.e., service companies that are not special-purpose companies such as a fuel supply company or a construction company) file relevant cost-allocation information on FERC Form No. 60. FERC Form No. 60 is a less burdensome method for collecting this information from service companies. Furthermore, where appropriate, we will rely on our ratemaking authority to examine these agreements or require them to be filed on an as-needed basis to determine whether the regulated utility's purchases of non-power goods and services were prudently incurred and just and reasonable.

152. We agree with the numerous commenters who express a desire to protect captive customers from inflated affiliate transactions. However, imposing a blanket requirement to file each cost-allocation agreement for non-power goods and services is not necessary to fulfill our jurisdictional responsibilities. Instead, we believe that the review of cost-allocation information contained in FERC Form No. 60 submissions by traditional, centralized service companies, review of service agreements and other information in the context of rate proceedings, and/or review of cost information through the audit function provide sufficient protection for customers.

b. Inclusion of Natural Gas Companies Under Section 1275(b)

153. In the NOPR, we also noted that section 1275(b) provides that holding companies and state commissions may under certain circumstances require Commission review and authorization of cost allocations for non-power goods or services provided by service companies to public utilities, but it does not provide for such determinations where such non-power goods and services are provided to gas utility companies and natural gas companies. We invited comments as to whether the Commission should recommend an amendment clarifying that holding company systems and state commissions having jurisdiction over gas utility companies and natural gas companies in the holding company systems are included within the scope of section 1275(b).

Comments

154. Commenters were generally supportive of the Commission's proposal in this regard. Dominion and EEI state that such a clarification would be appropriate with respect to holding companies with combined electric utility company and gas utility company systems because cost allocations in those systems will affect both types of companies and the inclusion of both in section 1275(b) would help ensure that a consistent approach is applied throughout the system.[147] NARUC also supports the proposal, arguing that, since gas utility companies and natural gas companies are included in most of the other provisions of PUHCA 2005, their omission from section 1275(b) impacts the Commission's ability to prevent the cross-subsidization of affiliates of public utilities and natural gas companies, as well as effectively eliminating the prior review of the allocation of service company costs upon the request of state commissions and holding company systems to public utilities.[148] In addition, NARUC recommends that gas-related agreements be filed with the Commission and that the Commission institute procedures for periodic audits, as discussed above in reference to the electric context.[149]

155. Duke opposes the inclusion of natural gas companies under section 1275(b) because, unlike public utilities, natural gas companies are not subject to the ratemaking authority of state regulatory commissions, and therefore are not in danger of incurring trapped or otherwise unrecoverable costs as a result of conflicting state commission decisions.[150]

Commission Determination

156. In the report to Congress mandated by section 1272(2) of EPAct 2005, we intend to request that Congress clarify whether it intended section 1275(b) to include natural gas companies and, if so, to adopt a conforming amendment. As EEI and

[144] Dominion Comments at 18–19, EEI Comments at 25–26. *See also* Alliant Comments at 6, Ameren Comments at 15, Scottish Power Comments at 9.

[145] Coral Power/Shell WindEnergy Comments at 12.

[146] 16 U.S.C. 824d(c) (2000). *See also* 15 U.S.C. 717c(c) (2000).

[147] Dominion Comments at 19–20, EEI Comments at 26. *See also* Ameren Comments at 16, Cinergy Comments at 24–25, Energy East Comments at 12, Keyspan Comments at 5, NASUCA Comments at 3, Northeast Utilities Comments at 6, Oklahoma Corporation Commission Comments at 5.

[148] NARUC Comments at 9–10. *See also* IURC Comments at 9–10, Ohio PUC Comments at 3–4.

[149] *Id.* at 10.

[150] Duke Comments at 5. *See also* NiSource Comments at 9.

Dominion note, many holding company systems include both electric and natural gas companies, utilities, affiliates, and subsidiaries. Maintaining a consistent standard would add to transparency and reduce confusion.

c. Adoption of the SEC ''At Cost'' Standard

157. The SEC and state commissions previously have been primarily responsible for determining allocations of costs for non-power goods and services among the various associate companies in registered holding company systems, and these allocations have been made on an ''at cost'' basis. By contrast, the Commission's long-standing policy is that registered holding company special-purpose subsidiaries must provide non-power goods and services to a public utility regulated by the Commission at a price no higher than market. For at least a decade, we have imposed this standard as a condition for approval of mergers that result in the creation of a new registered holding company.[151] We invited comments as to whether the Commission should apply the market standard for the allocation of costs for non-power goods and services, or if we should instead adopt the SEC at cost standard.

Comments

158. The comments as to whether the Commission should adopt the SEC's ''at cost'' standard were mixed, with a number of entities expressing general support for a lower of cost or market standard.[152] APPA/NRECA argue that, first, with respect to purchases of goods and services by the public utility from a non-utility affiliate, a public utility should not pay to a non-utility affiliate a price exceeding what the public utility would have incurred had the public utility self-provided the service or purchased it prudently from an unaffiliated third party; similarly, if the affiliate can produce the good or service at a below-market price, presumably so can the public utility. APPA/NRECA assert that the pricing rule that supports these principles is the Commission's market standard.[153] Second, with respect to the sale of goods and services by the public utility to the non-utility affiliate, APPA/NRECA contend that the price to the non-utility affiliate should be at no less than cost. According to APPA/NRECA, this rule follows from the public utility's obligation to minimize its revenue requirement, and a standard of no less than cost removes any incentive for a public utility to ''over acquire'' resources and provide them at a price below cost to a non-utility affiliate.[154] Finally, with respect to public utility provision of financial support to affiliated non-utility ventures, APPA/NRECA note that section 12(c) of PUHCA 1935 prohibited a registered holding company from receiving any such benefit from a public utility subsidiary or any other subsidiary and urges the Commission to continue this prohibition.[155]

159. APPA/NRECA note that the argument made for service companies is the efficiency of centralization, but argue that the use of such companies can do damage to auditability. The damage arises from the holding company practice, endorsed by the SEC, of charging service company costs to FERC Account 923—Outside Services. According to APPA/NRECA, what appears on the public utility's books is not detail about each service company cost, but instead a single large charge representing the public utility's allocated share of total service company cost. They further argue that the use of the Commission's ''Outside Services'' account implies an arm's-length relationship between the buyer of the outside services and the supplier; but in fact the relationship between service company and public utility is not at arm's length. APPA/NRECA contend that the solution for this problem would be for the Commission to require an accounting process that treats the public utility operating company incurring these inter-affiliate costs as if the public utility had incurred the costs directly. The public utility then would post the charges to the appropriate accounts (making sure to segregate the costs passed through by the service company from the public utility's own directly incurred costs), thereby facilitating oversight by the Commission and by outside auditors.[156]

160. NARUC supports a lower of cost or market standard, noting that the NARUC Guidelines state that: ''Generally, the price for services, products and the use of assets provided by a non-regulated affiliate to a regulated affiliate should be at the lower of fully allocated cost or prevailing market prices. Under appropriate circumstances, prices could be based on incremental cost, or other pricing mechanisms as determined by the regulator.'' Although the NARUC Guidelines call for more flexibility than was reflected in the NOPR, NARUC asserts that its position and the Commission's standard for the allocation of costs for non-power goods and services are consistent.[157]

161. In their reply comments, Xcel and Progress Energy submit that there are a number of fallacies to the arguments in favor of the market standard. Xcel states that, first, if the affiliated service company charges for its services at cost, it does not and cannot profit from its activities. Second, the notion that at cost pricing could cause a utility to pay a service company more for services than it would otherwise incur is, as a practical matter, also wrong. Third, the underlying premise of service company formation is that such administrative and general activities can be performed more efficiently and at a less costly rate by a service company on behalf of a utility than a utility could perform the service for itself.[158] Progress Energy contends that, typically, service companies provide administrative services such as tax, accounting, human resources, legal, information technology, finance and shareholder relations, which are materially different from other products or services needed by a utility such as fuel, vehicles, poles, transformers, etc. Specifically, the services provided by a service company are not fungible, and there is no market for such specialized services.[159]

162. On the other hand, the majority of commenters favor the continued use of the SEC's at-cost standard. Dominion and EEI argue that the Commission has not demonstrated the need to revise the current standards. They assert that the cost-allocation factors found in registered holding company system service agreements have been worked out in cooperation with both the SEC

[151] *See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement,* Order No. 592, 61 FR 68595 (Dec. 18, 1996), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,044 at 30,124–25 (1996) (*Merger Policy Statement*), *reconsideration denied,* Order No. 592–A, 62 FR 33341 (June 19, 1997), 79 FERC ¶ 61,321 (1997). Where the regulated public utility has provided non-power goods for services to the non-regulated affiliate, our policy has been that the public utility provides the goods or services at the higher of cost or market.

[152] *See, e.g.,* Georgia PSC Comments at 3, NASUCA Comments at 10, Northeast Utilities Comments at 6 (Commission should also apply standard to construction activities), Santa Clara Comments at 10–12, TANC Comments at 10–12.

[153] APPA/NRECA Comments at 9. *See also* Arkansas PSC Comments at 3, Electricity Consumers Resource Council, *et al.* (ELCON) Comments at 6, Kentucky Public Service Commission (Kentucky PSC) Comments at 1, Missouri PSC Comments at 11, NASUCA 10.

[154] *Id.* at 10. *See also* Arkansas PSC Comments at 3, Missouri PSC Comments at 14, NASUCA Comments at 10.

[155] *Id.* at 10–11. *See also* Missouri PSC Comments at 15–16.

[156] APPA/NRECA Comments at 29.

[157] NARUC Comments at 20.

[158] Xcel Reply Comments at 3–4.

[159] Progress Energy Reply Comments at 2.

and the relevant state commissions, and that there is no evidence that the application of this standard has led to cross subsidization or other forms of abuse.[160] MidAmerican emphasizes that public utilities have relied on the at cost standard as the basis for assigning the costs of non-power goods and services and that these costs may be subject to the provisions of an intercompany services agreement which has received state regulatory approval and have proven to work well.[161] In addition, Entergy argues that its existing retail rates are based on the at-cost standard and any changes will disrupt existing agreements and retail rate structures.[162] MBIA Insurance, however, also asserts that many utilities have already committed to using a lower-of-cost or market standard as part of various mergers. It contends that holding companies already applying the lower of-cost-or-market standard for non-power goods and services should continue meeting this requirement and not disrupt pre-existing arrangements.[163]

163. Dominion and EEI further argue that there is no need to revise these standards because the Commission can address this issue in ratemaking proceedings. Given the repeal of PUHCA 1935 and section 318 of the FPA, they assert that there is no longer an impediment to the exercise of the Commission's powers under sections 205 and 206 of the FPA to disallow particular expenditures made at cost that the Commission finds to be imprudent.[164] AEP adds that cost-based standards also have the benefit of being verifiable and easy to audit.[165]

164. EEI further asserts that a market test can be difficult to apply for highly-specialized goods or services because there is no market for the services supplied by a system service company and, thus, it can be extremely difficult to calculate a market price for such services. None of these difficulties accompany the at-cost standard.[166] Similarly, MidAmerican argues that, by using cost, the public utility company or affiliate is not required to undertake a potentially lengthy and subjective process to ascertain what a market price would be for the non-power goods or service, which in many instances, such as the allocation of employee labor, is not readily available due to the variation in pay scales across the industry and the country.[167] Moreover, EEI argues that there is a significant danger of under-recovery of costs under the Commission's market standard where the service company's cost to provide a service is higher than market. Thus, while the at-cost standard keeps the service company whole, a lower of cost or market standard can lead only to under-recovery and an increase in the regulated utilities' cost of capital.[168] Finally, Oklahoma Corporation Commission opposes the adoption of the Commission's market basis because it might impose additional costs on such entities due to potential requirements that companies enter into a competitive bidding processes, hire consultants, enter into special contracts, and use variable pricing structures based on the different services that are provided.[169] Santa Clara responds that the at-cost standard allows the holding company to bill its utility affiliate for the total cost of the non-power goods or services, no matter how unnecessarily high the costs might be. Thus, the holding company has no incentive to minimize its costs.[170]

165. Energy East and EPSA contend that the Commission lacks the authority to impose its pricing standard. Energy East asserts that the plain language of section 1275(b) indicates Congress' intent that the Commission should retroactively review costs and then properly allocate them. Nothing in section 1275(b), argues Energy East, indicates that Congress intended that the Commission pre-approve the cost of non-power goods and services rendered to associated public utilities under a lower of cost or market pricing standard.[171] EPSA argues that the Commission does not have authority under the FPA, NGA or PUHCA 2005 to approve the formation and corporate structure of any company in a holding company system, let alone companies that propose to provide services to holding company system companies. Thus, while the Commission has the authority to disallow a utility's recovery in its jurisdictional rates of improper affiliate charges, the Commission does not have the authority to regulate transactions among non-utility affiliates by requiring at-cost pricing, and, therefore, has no authority to impose financial and complex accounting and reporting requirements to implement at-cost pricing.[172]

166. Finally, some commenters suggest alternatives to switching to the SEC's at-cost standard. Dominion argues that service companies that have been subject to the SEC at-cost standard under PUHCA 1935 should be permitted to continue using that standard if they so elect.[173] American Transmission Company recommends that the Commission establish a rebuttable presumption that cost equals market for those companies that can demonstrate that they have appropriate purchasing practices in force for those goods or services above a certain dollar amount.[174] Entergy states that the Commission should not preclude holding company systems from deviating from the at-cost standard to the extent that such alternative pricing proposals are demonstrated to not result in inappropriate cross-subsidization of non-utility associate companies.[175] IURC states that, while in most cases, the SEC's fully-distributed cost may be appropriate, there will be instances where the market standard will be appropriate; specifically, where there is reasonable confidence that the market is sufficiently competitive to produce an unbiased competitive price. In the absence of a competitive market to determine the appropriate arm's-length value for a specific transaction, incremental costs might be appropriate.[176]

[160] Dominion Comments at 17, EEI Comments at 22–23. *See also* Cinergy Comments at 21–22, Entergy Comments 9, E.ON/LG&E Energy Comments at 14, FirstEnergy Comments at 14, Keyspan Comments at 4, Progress Energy Comments at 3, Southern Company Services Comments at 4.

[161] MidAmerican Comments at 13–14.

[162] Entergy Comments at 9. *See also* Alliant Comments at 5–6, Keyspan Comments at 4, Progress Comments at 4.

[163] MBIA Comments at 17.

[164] Dominion Comments at 18, EEI Comments at 23–24. *See also* Cinergy Comments at 23, E.ON/LG&E Energy Comments at 14, Xcel Comments at 6.

[165] AEP Comments at 5. *See also* Cinergy at 23.

[166] EEI Comments at 23. *See also* Alliant Energy Corporation (Alliant) Comments at 5–6, Ameren Comments at 16, AEP Comments at 6, Cinergy Comments at 22, Energy East Comments at 13, Entergy Comments at 10, E.ON/LG&E Energy Comments at 14, FirstEnergy Comments at 15, Keyspan Comments at 4, Progress Energy Comments at 4, Southern Company Services Comments at 4, Xcel Comments at 6.

[167] MidAmerican Comments at 13.

[168] EEI Comments at 23. *See also* Ameren Comments at 15, AEP Comments at 6, Duke Comments at 4, Entergy Comments at 10, Energy East Comments at 13–14, FirstEnergy Comments at 14.

[169] Oklahoma Corporation Commission Comments at 5–6.

[170] Santa Clara Comments at 12.

[171] Energy East Comments at 12.

[172] EPSA Comments at 10–11.

[173] Dominion Comments at 17, EEI Comments at 22–23. *See also* Black Hills Comments at 4, Energy East Comments at 13, FirstEnergy Comments at 13, NiSource Comments at 14, Northeast Utilities Comments at 5, Southern Company Services Comments at 4.

[174] American Transmission Company Comments at 4.

[175] Entergy Comments at 10–11.

[176] IURC Comments at 11.

Commission Determination

167. As an initial matter, some commenters appear to misconstrue the purposes of the Commission's request for comments on the use of the SEC's ''at-cost'' standard. Contrary to EPSA's implication that the Commission seeks to approve the formation and corporate structure of companies within a holding company system, this was not the subject of the Commission's proposal or request for comments. Rather, there are two circumstances in which the ''at-cost'' or ''market'' standard may arise in the context of the Commission's jurisdictional responsibilities. First, the Commission has a responsibility to ensure that the costs of non-power goods and services provided by a traditional, centralized service company to public utilities within the holding company system are just, reasonable, and not unduly discriminatory or preferential. This can arise in the context of a review of the prudence of costs incurred when a public utility seeks to flow through the costs in jurisdictional rates or a general review of the justness and reasonableness of the public utility's costs. It can arise in the context of an individual public utility within the holding company system or in the context of the appropriate non-discriminatory allocation *among* multiple public utilities within the same holding company system.[177] In reviewing centralized service company cost allocations, the Commission's focus would be on the costs allocated to the jurisdictional public utilities, whether the jurisdictional public utilities are bearing their fair share of costs vis-à-vis the non-regulated affiliates (*i.e.*, whether the non-regulated affiliates are receiving an undue preference), and whether costs are fairly allocated among public utilities. If the Commission disallowed costs to be allocated to public utilities or changed the allocation among multiple public utilities, this would not directly affect allocations to the non-jurisdictional, non-regulated companies. Our concern and jurisdictional responsibilities relate to how the costs are allocated to and among Commission-jurisdictional companies, not how remaining costs are allocated among the non-regulated affiliates.

168. The second context in which the ''at-cost'' or ''market'' standard is likely to arise is when a service company that is a special-purpose company within a holding company (*e.g.*, a fuel supply company or construction company), provides non-power goods or services to one or more public utilities in the same holding company system. The same potential issues arise: Whether the public utility's costs incurred in purchasing from the affiliate are prudently incurred and just and reasonable, and whether non-regulated affiliates purchasing non-power goods and services from the same special-purpose company are receiving preferential treatment vis-à-vis the public utility. The Commission in this context also, if it found costs were imprudent, unjust and unreasonable, or unduly discriminatory vis-à-vis the public utility, would develop a rate or remedy applicable to the jurisdictional public utility.

169. With these two types of situations in mind—traditional, centralized service companies and service companies that are special-purpose companies—we reach the following conclusions based on the comments. The Commission will not require traditional, centralized service companies currently using the SEC's at-cost standard to comply with the Commission's market standard for their sales of non-fuel, non-power goods and services to regulated affiliates. Fundamentally, we agree with commenters such as American Transmission Company and Progress Energy that centralized provision of accounting, human resources, legal, tax and other such services benefits ratepayers through increased efficiency and economies of scale. Further, we recognize that it is frequently difficult to define the market value of the specialized services provided by centralized service companies. Accordingly, the Commission will apply a rebuttable presumption that costs incurred under ''at cost'' pricing of such services are reasonable. However, we will entertain complaints that ''at cost'' pricing for such services exceeds the market price, but complainants will have the burden of demonstrating that that is the case.

170. We also agree with commenters such as Dominion and EEI that the Commission has the power to disallow any expenditures that it finds to be imprudent under sections 205 and 206 of the FPA, and sections 4 and 5 of the NGA. Additionally, the audit function can be used to identify and protect against any cross-subsidization between regulated public utilities and non-regulated affiliates.

171. With respect to non-power goods and services transactions between holding company affiliates other than traditional, centralized service companies, *i.e.*, service companies that are non-regulated, special-purpose affiliates such as a fuel supply company or a construction company, we will continue our prior policies.[178] First, with respect to sales from a public utility to a non-regulated, affiliated special-purpose company, we agree with APPA/NRECA that the price should be no less than cost, *i.e.*, the higher of cost or market; otherwise, a public utility could attempt to game the system and forego profits it could otherwise obtain by selling to a non-affiliate, to the benefit of its non-regulated affiliate who receives a good or service at a below-market price. When the situation is reversed, *i.e.*, the non-regulated, affiliated special-purpose company is providing non-power goods and services to the public utility affiliate, the Commission will continue to apply its market standard. The non-regulated, affiliated special-purpose company may not sell to its public utility affiliate at a price above the market price. We believe that such transactions involving such non-regulated, affiliated special-purpose companies pose a greater risk of inappropriate cross-subsidization and adverse effects on jurisdictional rates.

172. APPA/NRECA note that section 12(c) of PUHCA 1935 prohibits a public utility from providing financial support to affiliated non-utility ventures, and they suggest that the Commission continue this prohibition through its regulations. Congress did not reenact this provision of PUHCA 1935 in PUHCA 2005, and, although we believe we have authority under the FPA and NGA to impose such a restriction, we do not believe such a restriction is necessary at this time.

173. We find that APPA/NRECA raise some valid points concerning service company billings and how those amounts should be reflected in the accounts of a public utility company. However, resolution of this issue may have policy implications as well as practical accounting system implementation issues that should be

[177] While the Commission would have authority to require pre-approval of non-power goods and services cost allocations to public utilities that want recovery of such costs in Commission-juridictional rates, the Commission historically has not taken such an approach, and instead typically reviews such matters at the time the public utiltiy files for rate recovery.

[178] Our adoption of different policies for traditional, centralized service companies compared to special-purpose companies could make the distinction between the two more important than it has been previously. We view the former as performing generally corporate administration functions and the latter as providing generally a single input to utility operations, such as fuel supply, construction, or real estate. If holding companies are unclear about whether a subsidiary is a traditional, centralized service company or a special-purpose company, they may seek a determination in an appropriate proceeding. We will also monitor the issue through the auditing process.

explored more broadly than the record in this proceeding allows. Therefore, we decline to adopt at this time APPA/NRECA's recommendations on this issue.

174. We disagree with Energy East and EPSA that section 1275 of PUHCA 2005 in any way restricts this Commission's authority to impose either the market standard or the at-cost standard. By remaining silent on the standard to be employed, Congress has placed the matter squarely within the Commission's discretion. Contrary to assertions by EPSA and others, the Commission is not exceeding its authority by establishing policies governing the sale or provision of non-power goods and services by a non-regulated company to an affiliated public utility. The standard used affects jurisdictional rates, and the Commission has the authority to establish a standard insofar as it pertains to jurisdictional rates pursuant to its ratemaking authority under sections 205 and 206 of the FPA and section 4 and 5 of the NGA, as well as pursuant to the additional authority to review and authorize cost allocations requested under section 1275 of EPAct 2005.

d. Other Issues Regarding Cost-Allocation Agreements

Comments

175. APPA/NRECA assert that the language of proposed section 366.5(b) could be misinterpreted to mean that a company ''organized specifically'' for one purpose (say, providing legal services to the system's utility members) and that later takes on other responsibilities (like providing accounting services to the system's utility members) can escape review under this section (for example, at the request of a state commission). Such ''after-acquired'' functions should not preclude Commission review.[179] Similarly, MBIA Insurance contends that, even if the non-utility associate exists primarily for another purpose, such as providing services to companies outside of the system, its intra-system costs to regulated utilities should still be subject to the Commission's review, if a state or holding company opts for Commission review. To the extent that the Commission believes it may lack the authority to adopt such a regulation, MBIA Insurance urges the Commission to ask Congress to clarify or grant the Commission this authority to protect customers and prevent regulatory gaps.[180]

176. A number of commenters expressed concern about the potential preemptive effect of Commission review of cost-allocation agreements. In order to avoid any preemption issue, NARUC suggests that the filing of such agreements occur under section 304 of the FPA and section 10 of the NGA, instead of under section 205 of the FPA and section 4 of the NGA.[181] Missouri PSC states that a Commission-approved allocation should bind Commission ratemaking but not state ratemaking, except in limited circumstances, and urges the Commission to make clear that a state commission is not preempted by any Commission-determined service cost allocation, whether the initiating entity is a holding company system or another state commission.[182] In addition, Missouri PSC urges the Commission not to interpret section 1275(b) to permit gaming of the state commission retail ratemaking process by holding companies or state commissions, *i.e.*, to permit state commissions or holding companies to petition the Commission to review and authorize a holding company system-wide cost-allocation methodology that would be imposed on all state commissions. Finally, Missouri PSC contends that an interpretation of section 1275(b) giving Commission-approved cost allocations preemptive effect would also be contrary to the clear language contained within section 1275(c), which provides that: ''Nothing in this section shall affect the authority of the Commission or a state commission under other applicable law.'' Since state commissions have state law authority to set retail rates, including authority to disallow purchase costs or sales prices deemed unreasonable or imprudent, section 1275(c) on its face protects the state commissions from any asserted preemptive effect of a Commission allocation under section 1275(b).[183]

177. By contrast, Xcel and NiSource contend that any Commission-approved cost allocations under section 1275 will necessarily preempt state determinations. Xcel argues that it would negate the intent of Congress to give the Commission the authority to review these allocations if state commissions could undertake their own cost allocations and urges the Commission to avoid any kind of actions or statements that would support the argument that the preemptive effect of section 1275 is dependent on the form of filing of service agreements with the Commission.[184] NiSource states that it fails to see how the Commission can approve service company cost allocations that will apply to entities across multiple states if one of these state commissions can then simply refuse to accept the Commission's cost allocation as binding. For this reason, NiSource requests that the Commission needs to provide certainty in the final rule that a Commission-approved cost allocation is binding on the states.[185]

178. Dominion and EEI contend that the primary situation in which the Commission would need to impose a specific methodology would be a situation in which a multi-state holding company system finds that all state commissions do not approve a single allocation agreement. In such cases, the multi-state holding company system would apply to the Commission to impose consistent requirements that would eliminate the possibility of trapped costs.[186]

Commission Determination

179. In response to APPA/NRECA's concerns regarding the ''organized specifically'' language, we clarify that we do not interpret this to allow a cost allocation to escape review if the associate company later takes on additional responsibilities. In response to the comments from MBIA Insurance, the Commission has authority to review any intra-system costs to any jurisdictional company under FPA and NGA authority.

180. In response to the requests for clarification of the potential preemptive effect of section 1264 and the Commission's regulations thereunder, we believe that issues related to preemption are more appropriately addressed on a case-by-case basis to give the Commission the opportunity to consider the potential preemptive effect of section 1264 in specific circumstances. However, we anticipate that such issues would arise only in unusual circumstances.

5. Single-State Holding Company Systems and Other Classes of Transactions

181. Section 1275(d) of EPAct 2005 directs the Commission to issue rules no later than four months after the date of enactment of EPAct 2005 to exempt from the requirements of section 1275 (service allocation requests by holding

[179] APPA/NRECA Comments at 8. *See also* Missouri PSC at 9.

[180] MBIA Insurance Comments at 18.

[181] NARUC Comments at 2.

[182] Missouri PSC Comments at 9.

[183] *Id.* at 11–12. *See also* Progress Energy Comments at 9.

[184] Xcel Reply Comments at 5–6.

[185] NiSource Reply Comments at 7.

[186] Dominion Comments at 18–19, EEI Comments at 25–26.

company systems or state commission) ''any company in a holding company system whose public utility operations are confined substantially to a single state'' and any other class of transactions that the Commission finds are not relevant to the jurisdictional rates of a public utility. We interpreted this to exempt single-state holding companies and sought comments on how the Commission should define ''confined substantially to a single state.''

182. While section 1275(d) states that companies in single-state holding company systems are exempt from the ''requirements'' of section 1275, section 1275 does not impose any requirements on holding company systems or companies within these systems, but rather grants holding company systems and relevant state commissions the right to obtain Commission review and authorization of cost allocations. Instead, the only requirements in section 1275 are directed toward the Commission, in particular that ''the Commission shall review and authorize'' cost allocations if asked to do so by the holding company system or the relevant state commission. Based on the structure of section 1275, we suggested that the most reasonable interpretation of the exemption in section 1275(d) is that Congress intended to deny single-state holding company systems and state commissions having jurisdiction over a public utility in such systems the right to obtain Commission review of cost allocations pursuant to section 1275. Accordingly, we proposed to reflect this limitation by excluding single-state holding company systems from the scope of Commission review under section 366.5(b) of the Commission's regulations. The Commission invited comments on this interpretation of section 1275(d).

a. Definition of Single-State Holding Company System Exemption

Comments

183. Some commenters agree with the Commission's interpretation that section 1275(d) exempts single-state holding company systems whose public utilities operations are confined substantially to a single state (*i.e.,* all of the holding companies' public utility affiliates or subsidiaries operate principally in a single state), whereas other commenters (as discussed below) interpret the exemption to apply only to individual ''companies'' within the holding company system, *i.e.,* where the individual public utility, operating primarily in a single state.

184. A number of commenters who agree with the Commission's interpretation also suggest various modifications to the scope of the single-state holding company exemption and propose definitions of the phrase ''confined substantially to a single state.'' EEI suggests that the Commission follow SEC practice and precedent in interpreting this exemption, in particular, section 3(a)(1) of PUHCA 1935 which provides an exemption for intrastate holding companies. According to EEI, under current SEC practice, a holding company will qualify for the intrastate exemption if it derives no more than approximately 13 percent of its utility revenues from out-of-state public utility company operations. EEI further suggests that, in administering this exemption, the Commission should follow current SEC practice and require the annual submission of information in Part 3 of Form U–3A–2 by companies seeking an exemption under section 1275(d).[187] Scottish Power also agrees that Congress intended to deny single-state holding company systems and relevant state commissions the right to obtain Commission review of cost allocations pursuant to section 1275 and urges the Commission to clearly reflect this limitation by excluding single-state holding company systems from the scope of Commission review under section 366.5(b) of the Commission's regulations.[188]

185. NARUC submits that the exemption should apply to any company in a holding company system whose public utility operations are confined substantially to a single state, rather than applying the exemption to the holding company system that is confined substantially to a single state. Thus, the relevant inquiry should involve an analysis of the extent to which the individual company operates in a single state rather than the extent to which the holding company system is predominately single-state in nature.[189] NARUC further asserts that the Commission should follow the SEC's interpretation of this single-state holding company exemption under PUHCA 1935. Consistent with this precedent, NARUC proposes that, if a company in a holding company system whose public utility operation derives 70 percent or more of its gross utility operating revenues from within a single state, that individual company should be considered exempt from section 1275 and any related Commission regulations.[190] NiSource supports the 70 percent threshold because, first, it would be unusual for a traditional public utility that has its physical operations in one state to derive more than 30 percent of its gross utility operating revenues from outside that state. Second, NARUC's proposed standard correctly captures the statutory language of section 1275(d); whereas the Commission's proposed language in proposed section 366.5(c) of the NOPR is, at best, ambiguous.[191]

186. Commenters also suggested revisions to the Commission's proposed regulatory text in section 366.5. NiSource notes that the current language can be read so that a holding company with operations in multiple states falls under section 1275(b) even if its public utility is confined substantially (or entirely) to a single state. NiSource urges the Commission to modify the first sentence in section 366.5(c) to read that ''any company in a holding company system whose public utility operations are confined substantially to a single state, as defined herein, is exempt from paragraph (b) of this section.''[192] Santa Clara and TANC state that, in light of the complexities of effective state oversight and regulations of holding companies, the Commission should interpret the definition of single-state strictly and narrowly to prevent creeping variations from the letter and spirit of the exemption, and avoid a gap in effective regulation of multi-state utility holding company systems. Santa Clara and TANC therefore urge the Commission to reevaluate its interpretation of the single-state holding company exemption from Commission review under section 1275.[193] Ameren argues that the focus of the term ''confined substantially to a single state'' should be on the state or states in which a holding company system is subject to retail rate regulation since there are no ''captive'' customers who could be harmed in a state where the public utility does not have cost-based rates.[194] Finally, Public Citizen contends that the single-state exemption requires that both a public utility and its holding

[187] EEI Comments at 27–28. *See also* MidAmerican Comments at 11.

[188] Scottish Power Comments at 11.

[189] NARUC Comments at 12–13.

[190] *Id. See also* E.ON/LG&E Energy Comments at 18–19 (the standard should be whether 80 percent or more of the retail customers served by the public utilities in the holding company system are located within a single state).

[191] NiSource Comments at 9.

[192] *Id.* NiSource further states that the final rule should make clear that section 1275 applies only to traditional public utilities. In addition, if a traditional public utility engages in wholesale sales beyond its service territory, such sales should not render the utility subject to section 1275.

[193] Santa Clara Comments at 14–15, TANC Comments at 14–15.

[194] Ameren Comments at 18.

company primarily operate in a single state, so that the state is capable of regulating the holding company, as well as the public utility, under state law.[195]

Commission Determination

187. Despite the ambiguous language of section 1275(d), we believe that the most reasonable interpretation of section 1275(b) and (d) together is that section 1275(b) is designed to offer this Commission as a forum for holding company systems and state commissions to obtain cost allocations within holding companies whose public utility operations are not confined substantially to a single state. Specifically, section 1275(b) is designed to allow multi-state holding companies, or the regulatory agencies of states in which the holding company's public utility subsidiaries operate, to obtain Commission review and authorization of cost allocations. However, Congress in section 1275(d) does not permit single-state holding companies to take advantage of the procedures in section 1275(b).[196] This means that, if a holding company has several public utility subsidiaries operating in different states, even if the individual subsidiaries' businesses are each confined substantially to a single state, the holding company itself does not confine its public utility operations to a single state, and therefore, the exemption does not apply. On the other hand, if the holding company has multiple non-utility subsidiaries operating in more than one state, but one or more public utility subsidiaries that all operate primarily in the same state, the exemption would apply.

188. Several commenters agree that a holding company should be considered to be a single-state holding company if it complies with current SEC practice on granting a similar exemption under PUHCA 1935, which requires that a certain percentage of public-utility revenues be derived from operations within a single state. We believe it is reasonable to adopt a standard that is consistent with SEC rules and will define a single-state holding company as one that does not derive more than 13 percent of its public-utility revenues from outside a single state.

189. We agree with several commenters that the relevant analysis should be whether a holding company's regulated public utility operations are confined substantially to a single state, not whether the holding company itself is confined substantially to a single state. As discussed above, we interpret the single-state holding company exemption in section 1275(d) to apply in cases where a holding company has multiple non-utility subsidiaries operating in more than one state, but one public utility subsidiary that operates primarily in a single state. In such a case, the holding companies' public utility operations would be subject to the jurisdiction of a single state commission, while the holding companies' operations would not. Accordingly, we find that Public Citizen's interpretation is inconsistent with the text of section 1275(d).

b. Other Classes of Transactions That Should Be Exempted

190. In the NOPR, we concluded that an exemption under section 1275(d) forecloses Commission review under section 1275(b). In section 366.5(c) of the Commission's regulations, we proposed to establish a procedure by which the Commission, either upon petition for declaratory order or upon its own motion, may exclude from the scope of Commission review and authorization under section 366.5(b) any class of transactions that we determine are not relevant to the jurisdictional rates of a public utility. The Commission invited comments as to other classes of transactions that, pursuant to section 1275(d), should be exempted from the requirements of section 1275.

Comments

191. No comments were received on this subject. Accordingly, we will not at this time establish any blanket exemptions for certain classes of transactions.

6. Previously Authorized Activities

192. Section 1271 of EPAct 2005 states essentially that a person may continue to engage in activities or transactions authorized by rule or order as of the date of enactment of EPAct 2005 if that person continues to comply with the terms of the authorization. In the NOPR, the Commission proposed to reflect this statutory provision in section 366.6 of the Commission's regulations. The Commission also proposed to require that, if any such activities are challenged in a formal Commission proceeding, the person claiming prior authorization shall be required to provide the full text of any such authorization (whether by rule, order, or letter) and the application(s) or pleading(s) underlying such authorization (whether by rule, order, or letter).

193. A number of commenters have noted that proposed section 366.6 states that persons will be able to continue to engage in activities or transactions authorized under PUHCA 2005, and that it should instead refer to PUHCA 1935. In response to the comments, we have corrected this error in the regulations adopted here.

Comments

194. The majority of the comments supported the Commission's proposal to allow entities to rely on SEC orders, in particular, SEC financing authorizations.[197] For example, Dominion and EEI note that, with the repeal of section 318 of the FPA, many additional public utilities will become subject to Commission jurisdiction under section 204 and that, unless registered holding company public utility subsidiaries can rely on their current SEC orders, it will be necessary for them to apply immediately for Commission authorization under section 204 of the FPA. According to Dominion and EEI, this would create a substantial burden for the holding companies and their public utility subsidiaries and could also lead to a surge in section 204 applications at precisely the time that the Commission is burdened with implementing its new duties under EPAct 2005. Dominion and EEI thus recommend that the Commission in its rulemaking make a finding under section 204 of the FPA authorizing holding company public utility subsidiaries, at their option, to issue securities and assume liabilities following the effective date of PUHCA 2005, provided that they comply with the terms of their SEC financing authorization. Dominion and EEI further recommend that this authorization continue through the later of December 31, 2007 or the date on which the SEC order is set to expire.[198]

195. EEI further suggests that, to the degree it deems necessary, the Commission could condition its acceptance of SEC financing authorizations on specific requirements related to the provisions of FPA section 204, such as the restrictions on secured and unsecured debt set forth in *Westar*

[195] Public Citizen Comments at 13.

[196] With respect to NARUC's alternative interpretation of the scope of this exemption, we note that the phrase ''whose public utility operations are confined substantially to a single state'' directly follows, and thus modifies, ''holding company system'' rather than ''company.'' This interpretation is consistent with the structure of section 1275(b) which provides the election to the holding company system, rather than individual companies within it.

[197] *See, e.g.,* Cinergy Comments at 25–27, FirstEnergy Comments at 16–17, National Grid Comments at 7–8, Scottish Power Comments at 12, Xcel Comments at 6.

[198] Dominion Comments at 20–21, EEI Comments at 29–30.

Energy, Inc.[199] However, if the *Westar* or other conditions are imposed, EEI contends that they should apply prospectively only and not to securities issued prior to February 8, 2006.[200]

196. Entergy supports the Commission's proposed interpretation of the savings provision in section 1271, but asserts that there are several technical concerns regarding the manner in which the proposed rule is drafted that, if not corrected, may prevent the rule from achieving its intended purpose. Entergy urges the Commission to clarify the condition in the proposed rules insofar as it provides authority to continue to engage in ''activities or transactions'' approved by the SEC ''[u]nless, otherwise provided by Commission rule or order.'' Entergy inquires if, for example, a Commission section 204 financing order imposes a condition that is not present in an existing SEC financing order issued to another public utility under PUHCA 1935, can the other public utility continue to rely on its PUHCA 1935 order or is the applicability of the saving provision negated by the referenced condition? Similarly, Entergy asserts that there may be a question whether the ''unless otherwise provided language'' will necessitate compliance with the requirements of Part 34 of the Commission's regulations or other regulatory conditions or requirements adopted by the Commission, to the extent that such requirements are absent from an existing PUHCA 1935 financing order (which otherwise would continue in effect beyond the PUHCA 1935 repeal date as a result of the saving provision).[201]

197. Entergy also seeks clarification as to the statement in the NOPR that existing PUHCA 1935 authorizations are to remain ''in effect for the period of time provided in such authorization'' with respect to authorizations that do not contain a specified expiration date, in particular, orders authorizing creation of service companies, which typically do not reference any expiration date. Entergy recommends that authorizations granted by the SEC under PUHCA 1935 should remain in effect after repeal, unless and until such time as such authorization would otherwise expire under the applicable PUHCA 1935 order, rule or statutory provision, or until such time as the Commission issues a new order expressly modifying the authorization previously granted to the applicable company by the SEC under PUHCA 1935.[202]

198. Finally, Entergy requests clarification of the statement in the NOPR that such authorizations will remain effective only ''so long as that person continues to comply with the terms of such authorization.'' According to Entergy, many orders issued by the SEC require periodic reporting to the SEC of financing transactions that are consummated pursuant to the authorization set forth in the order, so the question arises as to whether such reporting requirements will be considered ''terms'' of the PUHCA 1935 authorization that must be satisfied in order to continue to engage in the SEC-approved financing transactions subsequent to the February 8, 2006. Entergy requests that the Commission clarify that following February 8, 2006, such reports (originally required to be filed with the SEC pursuant to Rule 24, adopted under PUHCA 1935) are to be filed with the Commission, rather than with the SEC.[203]

199. PacifiCorp requests that the Commission clarify that SEC financing authorizations will be preserved for a sufficient period of time to permit a reasonable transition period (through December 31, 2007) to the requirements of section 204 for both utilities and the Commission. PacifiCorp further requests that the Commission provide a mechanism for such further approvals until February 8, 2006, and to preserve tax treatment by retaining the right of holding companies to avail themselves of Internal Revenue Code section 1081, which section 1271 also preserves.[204]

200. MGTC requests that the Commission clarify that prior status determinations by the SEC remain valid and are grandfathered by the operation of section 1271, so that, for example, if a person was declared not to be a ''gas utility company'' by the SEC, and the facts on which that determination was made have not materially changed, that person will not be a ''natural gas company'' under PUHCA 2005 and implementing regulations. MGTC further contends that, if the Commission is not willing at this time to issue a broad declaration that prior SEC status determinations are grandfathered by section 1271, the Commission should nonetheless hold that a person that the SEC found was not a ''gas utility company'' under PUHCA 1935 will not be required to comply with the Commission's new regulations until the Commission makes an affirmative finding that the person is a ''natural gas utility'' under PUHCA 2005.[205]

201. Northeast Utilities Service Company (Northeast Utilities) notes that some registered holding companies may have obtained amendments to existing SEC orders or new orders after August 8, 2005, i.e., date of enactment of EPAct 2005, and thus urges the Commission to make clear that such modified and/or new orders should also be grandfathered, if possible.[206]

202. Some commenters, however, emphasized that section 1271 of EPAct 2005 does not insulate activities previously approved by the SEC from Commission review under the FPA or NGA.[207] According to APPA/NRECA, the savings provision in section 1271(a) of EPAct 2005, which allows entities with SEC approvals to continue engaging in the transactions so approved, does not diminish the Commission's authority to establish conditions that ensure just and reasonable rates under the FPA or NGA.[208] APPA/NRECA further emphasize that any interpretation of section 1271(a) that would limit the Commission's ability to review the effect of particular activities or transactions on Commission-jurisdictional rates would be inconsistent with section 1271(b), which makes clear that section 1271(a) does not circumscribe in any way the Commission's regulatory authority under the FPA and the NGA.[209] Similarly, Santa Clara notes that it might be argued that a conflict between section 1271(a) and 1271(b) arises when SEC rules under PUHCA 1935 require different or less rigorous standards than the Commission's rules under the FPA, *e.g.* SEC at-cost standard vs. the Commission's market standard. Santa Clara urges the Commission to clarify that all activities, including those previously authorized by the SEC and the Commission itself, are subject to review, rules, regulations and policy administered independently by the Commission under the FPA.[210]

203. Finally, Oklahoma Corporation Commission suggests that the Commission should amend proposed section 366.6 to include language that clearly articulates that said person or

[199] 102 FERC ¶ 61,186 (2003), *order rescinding authorization,* 104 FERC ¶ 61,018 (*Westar*).

[200] EEI Comments at 30.

[201] Entergy Comments at 12–13.

[202] *Id.* at 13–14.

[203] *Id. See also* NiSource Comments at 14–15 (the Commission should clarify that only the SEC's conditions and terms apply, unless the Commission states otherwise in a specific order).

[204] PacifiCorp Comments at 7–8.

[205] MGTC Reply Comments at 1, 4. *See also* Mittal Steel Reply Comments at 2–5.

[206] Northeast Utilities Comments at 6.

[207] *See, e.g.,* Arkansas PSC Comments at 7, Missouri PSC Comments at 14–15.

[208] APPA/NRECA Comments at 4. *See also* Santa Clara Comments at 17, TANC Comments at 17.

[209] *Id.* at 13–14.

[210] Santa Clara Comments at 18–19.

entity should also bear the burden of proof that that person or entity has complied with the rule, order, or letter.[211]

Commission Determination

204. In the NOPR, we noted that the repeal of PUHCA 1935 and section 318 of the FPA would give the Commission jurisdiction under section 204 of the FPA over certain issuances of securities and assumptions of liabilities by companies within holding company systems that are currently subject to the jurisdiction of the SEC. Furthermore, Congress expanded the Commission's jurisdiction over holding company acquisitions of securities through its amendments to section 203 of the FPA in section 1289 of EPAct 2005. Finally, Congress explicitly stated in section 1271(b) that nothing in PUHCA 2005 limits the Commission's authority under the FPA and the NGA. Thus, it is clear that in EPAct 2005 Congress intended to preserve, and in some ways expand, the Commission's authority over issuances of securities, assumptions of liabilities by companies within holding company systems, and holding company acquisitions of securities. However, Congress also included in PUHCA 2005 a transition provision, which allows persons to continue to rely on previously-granted SEC authorizations.

205. We will adopt section 366.6 as proposed in the NOPR and allow entities to continue to rely on SEC orders, including SEC financing authorizations. We will also grant a number of the clarifications with respect to SEC financing authorizations requested by commenters. However, the Commission will require all holding companies that intend to rely on their SEC financing authorizations to issue securities, assume liabilities, or engage in securities transactions that would otherwise be reportable under section 203 of the FPA, as amended by EPAct 2005, or section 204 of the FPA to file with the Commission a copy of these SEC orders by the effective date of PUHCA 2005. The filing of these orders will permit the Commission to maintain effective oversight of the previously-authorized activities and transactions that, due to the repeal of PUHCA 1935, are now subject to the Commission's jurisdiction under the FPA.

206. Section 1271(a) states that nothing in PUHCA 2005 or PUHCA 1935 and the rules, regulations, and orders thereunder, prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the date of enactment of PUHCA 2005, if that person continues to comply with the terms (other than an expiration date or termination date) of any such authorization. This provision, and section 366.6 of our regulations that we adopt herein, permit persons to rely on the SEC multi-year financing authorizations for the period of time provided in that authorization. Accordingly, we clarify that, to the extent companies in a holding company system engage in authorized financing transactions, in compliance with the terms of that authorization, we will not require those entities to seek additional authorization under sections 203 or 204 at this time.

207. We find that EEI's concerns regarding *Westar* are beyond the scope of this rulemaking and, therefore, we will not address them here. Instead, the Commission will consider whether to place *Westar* conditions upon future applications on a case-by-case basis.

208. Section 1271(a) permits a person to engage in previously-authorized activities if that person continues to comply with the terms of that authorization, other than an expiration date or termination date. We agree that it is necessary to provide a reasonable transition period for entities subject to the requirements of PUHCA 2005 and, therefore, we agree with Dominion and EEI that these authorizations should continue through *the later of* December 31, 2007 or the date on which the SEC order is set to expire and with PacifiCorp that section 204 authorizations should not be required until December 31, 2007, without regard to the duration of the SEC authorization. We conclude that it is reasonable to permit entities to rely on their SEC financing authorizations for the period of their duration or through December 31, 2007, whichever is later. Similarly, with respect to Entergy's request for clarification regarding authorizations for the formation of service companies, which do not have a termination date, we conclude that PUHCA 2005 does not grant the Commission authority over service company formation and thus Commission authorization is not required.

209. We will also grant Entergy's clarification that, after the effective date of PUHCA 2005 (*i.e.*, February 8, 2006), for SEC orders that require periodic reporting to the SEC of financing transactions that are consummated pursuant to the authorization set forth in the order, such reports are to be filed with the Commission, rather than with the SEC, so long as the company continues to rely on such authorization. We do not think it is reasonable to assume that Congress intended to carry forward the SEC's financing authorizations without the specific reports required to be submitted as a condition of those authorizations. More importantly, the receipt of such reports will allow the Commission to perform its oversight duties, while allowing the entities to continue to rely on these SEC financing authorizations for a reasonable transition period.

210. PacifiCorp appears to be requesting that the Commission grant further financing approvals under PUHCA 1935 until February 8, 2006, since it could not do so under PUHCA 2005, which does not take effect before that date. While the Commission has no authority to take any action under PUHCA 1935, which was entrusted to the SEC, to the extent necessary to permit continuity of financing authorizations or to preserve tax treatment referenced in section 1271(c) of PUHCA 2005,[212] the Commission will entertain requests for financing approvals prior to February 8, 2006, but will be able to make any such approvals effective only upon the effective date of PUHCA 2005, February 8, 2006.

211. As noted, section 1271(c) explicitly states that tax treatment under section 1081 of the Internal Revenue Code of 1986 as a result of transactions ordered in compliance with PUHCA 1935 shall not be affected in any manner due to the repeal of PUHCA 1935 and the enactment of PUHCA 2005, and we will comply with this provision insofar as such tax treatment is reflected in jurisdictional rates or in the Commission's Uniform System of Accounts and the SEC's Uniform System of Accounts, as they exist on the day before the date of enactment of PUHCA 2005.

212. We will also grant Northeast Utilities' request that section 1271 will apply to modifications of SEC orders made between the date of enactment and the effective date of PUHCA 2005.

213. We will also grant the clarification requested by APPA/NRECA and others that transactions entered into pursuant to prior SEC authorizations are not insulated from Commission review under the FPA and the NGA. Previously, certain securities transactions were exempted from Commission jurisdiction due to section 318 of the FPA, which Congress has repealed. While we agree that section 1271(a) permits companies within

[211] Oklahoma Corporation Commission Comments at 7.

[212] Section 1271(c) of PUHCA 2005 states that such tax treatment shall not be affected in any manner due to the repeal of PUHCA 1935 and enactment of PUHCA 2005.

holding company systems to continue to rely on SEC financing authorizations, this authorization simply permits them to engage in such transactions without prior Commission approval under sections 203 and 204 of the FPA, but does not insulate them from our review of jurisdictional rates under sections 205 and 206 of the FPA and sections 4 and 5 of the NGA.

214. We will not adopt Oklahoma Corporation Commission's suggestion that we amend section 366.6 to include language that clearly articulates that said person or entity should also bear the burden of proof that that person or entity has complied with the rule, order, or letter. We find that such an amendment is unnecessary at this time.

7. Exempt Wholesale Generators and Foreign Utility Companies

215. EPAct 2005 repeals PUHCA 1935 in its entirety, including section 32, which requires the Commission to make EWG determinations on a case-by-case basis, upon application. Although the definitional section of PUHCA 2005 references section 32 of PUHCA 1935, the Congress nevertheless repealed section 32 in its entirety and did not re-enact that provision in the new PUHCA 2005. The Commission stated in the NOPR that it believed that the most reasonable interpretation of EPAct 2005, given the omission of section 32 in the new PUHCA 2005, is that Congress did not intend the Commission to continue to make case-by-case determinations of EWG status in the future (*i.e.*, after the effective date of PUHCA 2005). Rather, we stated in the NOPR that the most reasonable interpretation of the statute is that only those entities that are holding companies with respect to persons granted EWG status before the repeal of PUHCA 1935 would qualify for an exemption from the new federal books and records access requirements under proposed section 366.3(a)(2) of the Commission's regulations. Accordingly, we proposed to remove Part 365 of the Commission's regulations, which set forth the filing requirements and ministerial procedures for persons seeking EWG status under section 32 of PUHCA 1935, and we invited comments on whether we should do so.

216. We further noted that the benefit of EWG status under PUHCA 1935 was that entities that the Commission determined to have met the definition of EWG were exempted from the myriad requirements of PUHCA 1935. The principal benefit of being an EWG under PUHCA 2005 is exemption from the new federal books and records access requirements. To the extent that these new federal books and records access requirements add to the Commission's existing very broad books and records access authority under FPA section 301 and NGA section 8, we concluded that our interpretation served to err on the side of greater customer protection.

217. We also noted that, in any event, entities that qualified as EWGs under PUHCA 1935 were not exempted from the Commission's authority under the FPA if they met the FPA definition of ''public utility,'' including the very broad access to books and records provisions of FPA section 301. Nor will they be exempt from these FPA provisions as a result of PUHCA 2005.

218. In addition, we noted that Congress repealed section 33 of PUHCA 1935, which addresses FUCOs. As with EWGs, we stated our belief that Congress intended to limit the exemption for persons that are holding companies with respect to FUCOs to those attaining FUCO status before repeal of PUHCA 1935. The Commission invited comments as to this interpretation of EPAct 2005.

Comments

219. Some commenters expressed support for the Commission's decision to no longer make determinations of EWG status. These commenters note that, while Congress repealed the section of PUHCA 1935 addressing EWGs, the exemption in subsection 1266(a)(2) refers to these repealed designations, they have to apply to something, and they agree with the Commission's position that the exemptions must apply only to the existing EWGs and FUCOs.[213] Public Citizen agrees that grandfathered EWGs have a reliance argument for maintaining their status, but disagrees with extending such grandfathering to new entities that are now aware that the distinction no longer exists. Furthermore, Public Citizen states that grandfathered EWGs must continue to comply with EWG requirements to maintain their grandfathered EWG status and that they should be required to make an annual filing with the Commission stating how each continues to comply with the original terms of its EWG or FUCO exemptions.[214]

220. The majority of commenters, however, opposed the Commission's proposal to stop making determinations of EWG status as contrary to Congress' intent and the plain meaning of the statute.[215] According to Calpine, by incorporating the definition of EWG into PUHCA 2005 and relying on that definition to permit holding companies with respect to only EWGs, QFs, and/or FUCOs to be exempt from the federal books and records access requirement, Congress recognized the continuing need for EWG determinations after the repeal of PUHCA 1935 takes effect; nowhere in EPAct 2005 is the exemption limited to holding companies with EWGs prior to the repeal of PUHCA 1935 takes effect. Calpine thus contends that, if Congress wanted to restrict EWG determinations to a certain time period, it knew how to do so, but chose not to.[216] Similarly, Dominion and EEI argue that, by preserving the meaning of the term ''exempt wholesale generator'' found in PUHCA 1935, Congress in essence preserved section 32(a) of PUHCA 1935, which defines an EWG, in part, as a company that the Commission determines to be an EWG. Thus, according to Dominion and EEI, the Commission's case-by-case determination process is incorporated directly in the definition.[217] Morgan Stanley argues that the Commission's interpretation effectively renders superfluous the EWG exemption contained in EPAct 2005.[218]

221. Other commenters believe that the Commission's interpretation is not a permissible one because the decision to eliminate Part 365 and future EWG determinations would produce unreasonable or unduly discriminatory results. Calpine argues that, under the Commission's interpretation of the statute, if Calpine added one more wholesale generator that would have been an EWG under Part 365, Calpine and its subsidiaries will lose the exemption and thus it is not reasonable for the addition of one wholesale generator that is identical to Calpine's EWG affiliates in every respect but one (*i.e.*, EWG status), to result in all of these companies and their affiliates being subject to the books and records access requirements and SEC rules, particularly when these companies were exempt from regulation under PUHCA 1935 and have no captive customers in need of protection.[219] Further, Calpine

[213] APP/NRECA Comments at 21, Georgia PSC Comments at 3, Santa Clara Comments at 18, TANC Comments at 18.

[214] Public Citizen Comments at 5.

[215] *See, e.g.,* Coral Power/Windenergy Comments at 8, EPSA Comments at 16–17, Goldman Sachs Comments at 5, PPM Energy Comments at 3–4.

[216] Calpine Comments at 5–6 (quoting section 1253(a) of EPAct 2005 definign ''existing qualifying cogeneration facility'').

[217] Dominion Comments at 22–23, EEI Comments at 32.

[218] Morgan Stanley Comments at 7.

[219] Calpine Comments at 6. *See also* Coral Power/Shall WindEnergy Comments at 8.

asserts that the use of proposed section 366.3(b), which would provide for entities to file for a petition for a declaratory order that they are exempt from the Commission's books and records requirements, is not an adequate alternative for Calpine due to the high costs of filing such petitions.[220] Morgan Stanley further argues that comments supporting the Commission's proposed deletion of Part 365 offer no substantive basis for why such a course of action comports with legislative intent, nor do they explain how it will not chill investor confidence or dissuade capital from entering the wholesale generation sector.[221] Finally, Dominion and EEI note that a number of states provide exemptions from state laws based on EWG status and that failure to make additional EWG determinations would also deprive those companies of the benefits of those laws.[222]

222. With respect to determinations of FUCO status, Calpine disagrees with the Commission's proposal in the NOPR. Calpine asserts that, by incorporating the definition of FUCO into PUHCA 2005 and relying on that definition to permit holding companies with respect to only EWGs, QFs, and/or FUCOs to be exempt from the federal books and records access requirement, Congress recognized the continuing need for FUCOs after the repeal of PUHCA 1935 takes effect. As with EWGs, Calpine contends that it is not reasonable for the addition of a single foreign subsidiary having no potential to impact the operations of its domestic affiliates to subject such affiliates to the books and records access requirement and the SEC rules when they were not subject to such rules under PUHCA 1935.[223]

223. EEI proposes that the Commission should exempt FUCOs from the requirement that they maintain their books and records under proposed Rule 366.2(e), but that they otherwise should be subject to the books and records access provisions of section 366.2 of the Commission's proposed regulations. According to EEI, the Commission should continue to have access to FUCO records to the extent that such records are relevant to the costs incurred by a public utility or natural gas company that is an associate of a holding company and necessary and appropriate for the proper exercise of the Commission's statutory charge under the FPA and NGA with respect to jurisdictional rates.[224]

224. Some commenters suggested that the Commission should adopt a self-certification process similar process to that used by the SEC. For example, Scottish Power argues that FUCOs that operate exclusively outside of the U.S. should not be subject to Commission oversight. The Commission should continue the SEC's practice of allowing for the creation of FUCOs by submittal of a notice filing. FUCOs and their subsidiary operations are generally separate from that of the domestic utility operations and therefore would not bear in any way on the jurisdiction rates of such utility company.[225]

Commission Determination

225. Having again reviewed the ambiguities in statutory construction, and balancing the facts that Congress repealed section 32 of PUHCA 1935 in its entirety, yet referred to section 32 in the definitional sections of PUHCA 2005, we conclude that it is reasonable to interpret PUHCA 2005 to allow entities to obtain EWG status under PUHCA 2005. However, we will reject the requests from various commenters that we retain part 365 of our regulations, which permit only case-by-case applications for EWG status.

226. Instead, in line with the comments received from Scottish Power and others, we will establish a self-certification process for companies that believe they satisfy the criteria for EWG or FUCO status. This process is similar to that used for self-certifications for QFs under the Public Utility Regulatory Policies Act of 1978, and is set forth in section 366.7. Section 366.7(a) provides that the owner or operator of an EWG or FUCO, or its representative, may file with the Commission a notice of self-certification demonstrating that it satisfies the definition of EWG or FUCO. In the case of EWGs, the owner or operator must also file a copy of the notice with the state regulatory authority of each state in which the facility is located. Notices of self-certification or self-recertification will be published in the **Federal Register**. An entity filing a good faith notice of self-certification of EWG or FUCO status will be deemed to have temporary status upon filing. If no action is taken by the Commission within 60 days after the date of filing of a self-certification notice, the exempt wholesale generator status or foreign utility company status shall be deemed to have been granted. The Office of the Secretary will periodically issue notices listing the entities whose self-certification of EWG or FUCO status is deemed to have been granted in the absence of Commission action to the contrary within 60 days after the date of filing. We believe that such a self-certification of EWG and FUCO status will be adequate in the vast majority of cases.

227. For entities that require a higher degree of legal certainty as to their status, we will permit them to seek a Commission determination of their EWG and FUCO status as defined under section 366.1 of the Commission's regulations. Specifically, section 366.7(b) provides that they may seek such a determination by filing a petition for declaratory order pursuant to Rule 207(a) of the Commission's Rules of Practice and Procedure justifying the request for EWG or FUCO status. These petitions will be noticed in the **Federal Register**. A person filing a petition for declaratory order in good faith will be deemed to have temporary EWG or FUCO status until the Commission takes action to grant or deny the petition.

228. The self-certification procedure established herein, along with the continued availability of Commission determinations of EWG and FUCO status, ensures that the EWG and FUCO exemptions will continue to be available to any persons who satisfy the statutory criteria. Moreover, we note that the self-certification procedures established herein, and advocated by various commenters, are less burdensome than the procedures established under section 32 of PUHCA 1935.

229. We disagree with commenters such as Calpine and EEI who argue that Congress, by incorporating the definition of EWGs and FUCOs into PUHCA 2005, carried over the requirement from PUHCA 1935 that the Commission make case-by-case determinations of EWG status. This argument appears to rest on the erroneous assumption that Congress effectively reenacted (only) section 32(a) of PUHCA 1935. Had Congress meant to do so, it could have simply so stated in PUHCA 2005; alternatively, it could have imported the text from section 32(a) of PUHCA 1935, with appropriate modifications, into section 1262(6) of EPAct 2005, as it did for many of the other definitions carried over from PUHCA 1935. Instead, however, Congress directed that ''[t]he terms 'exempt wholesale generator' and

[220] *Id.* at 10–11.

[221] Morgan Stanley Reply Comments at 2–3.

[222] Dominion Comments at 23, EEI Comments at 33.

[223] Calpine Comments at 8–9. *See also* EPSA Comments at 16–17, PPM Comments at 3.

[224] EEI Comments at 34. *See also* National Grid Comments at 5–8. National Grid also argues that extending the Commission's books and records mandates to FUCOs would subject them to conflicting mandates resulting in maintaining separate duplicative books and inappropriately expand the extraterritorial impact of PUHCA 2005 without any benefit to U.S. consumers.

[225] Scottish Power Comments at 14. *See also* EEI Comments at 34, Public Citizen Comments at 6.

''foreign utility company'' have the same meanings as in section 32 and 33'' of PUHCA 1935 as they existed on the day prior to the date of enactment of EPAct 2005. We believe it is a reasonable interpretation that, even if Congress preserved the option of EWG status determinations going forward, it did not prescribe the procedural mechanics requiring a case-specific Commission ruling on what it means for a person ''to be engaged directly, or indirectly through one more affiliates * * *, and exclusively in the business of owning or operating, all or part of one more eligible facilities and selling electric energy at wholesale.'' Thus, we conclude that, by repealing section 32 of PUHCA 1935, Congress left to the Commission the discretion to prescribe the procedures for obtaining EWG status.

230. As noted earlier, with respect to FUCOs, section 33 of PUHCA 1935, as amended by EPAct 1992 provided that FUCOs would be exempt from PUHCA 1935 and not deemed an electric utility company, but the exemption would not apply or be effective unless relevant state commission(s) certified that they had the authority and resources to protect ratepayers of public utility companies associated or affiliated with the FUCO. Given that PUHCA 2005 is largely a books and records statute, we will waive our accounting and reporting requirements for FUCOs. However, we will not exempt them from section 366.2 of our regulations, which allows us to obtain access as necessary with respect to jurisdictional rates. The case-by-case approach that we adopt here is consistent with our precedent concerning the treatment of FUCOs under the FPA and will allow us to ensure adequate protection of captive customers in the United States.

8. Cross-Subsidization and Encumbrances of Utility Assets

231. In the NOPR, we noted that PUHCA 2005 is primarily a ''books and records access'' statute and does not give the Commission any new substantive authorities, other than the requirement in section 1275 of EPAct 2005 that the Commission review and authorize certain non-power goods and services cost allocations among holding company members upon request. Nor does it give the Commission authority to pre-approve holding company activities. Accordingly, outside the context of reviewing a holding company transaction requiring approval under section 203 of the FPA or a proposed issuance of securities under section 204 of the FPA, the Commission will continue to rely primarily on its ratemaking authorities under sections 205 and 206 of the FPA and sections 4 and 5 of the NGA to protect jurisdictional customers against inappropriate cross-subsidization or encumbrances of utility assets on an ongoing basis.

232. In the NOPR, we also noted that the Commission already has in place, pursuant to the FPA and NGA, certain reporting requirements regarding money pools and cash management activities that affect jurisdictional companies.[226] Further, in the electric area, we have policies that protect against cross-subsidization occurring as a result of wholesale power sales between affiliates in a holding company system as well as sales of non-power goods and services between such affiliates.[227] In the NOPR, we invited comment on whether, in light of the repeal of PUHCA 1935, the Commission needs to promulgate additional rules or to adopt additional policies to protect against inappropriate cross-subsidization or encumbrances of utility assets, pursuant to our authorities under the FPA and NGA. For example, we asked whether, if it has the authority to do so, the Commission should issue rules regarding public utility holding company diversification into non-utility businesses. Would the Commission have authority to promulgate such rules under its FPA or NGA ratemaking authority? Should the Commission modify its existing cash management rules to apply not only to public utilities, natural gas companies, and oil pipelines, but also to include public utility holding companies? We sought comment on these and any other related issues in order to determine whether, in addition to the regulations being proposed herein under PUHCA 2005, the Commission may need to consider promulgating separate, additional rules under the FPA or the NGA.

Comments

233. Commenters were largely opposed to the adoption of any new rules on cross-subsidization, encumbrances of utility assets, diversification into non-utility businesses, or the extension of existing cash management rules.[228] With respect to rules on cross-subsidization and encumbrances of utility assets, several commenters emphasize that additional Commission rules are unnecessary because existing Commission and state oversight is adequate.[229] For example, E.ON and LG&E Energy assert that it is not necessary or appropriate for the Commission to promulgate additional rules or adopt additional policies with respect to cross-subsidization or encumbrances of utility assets because, with the repeal of PUHCA 1935, Congress expressed the clear intent to eliminate the comprehensive regulation of holding company systems which had been characterized by PUHCA 1935. In addition, E.ON and LG&E Energy assert that current Commission and state regulation of affiliate transactions is sufficient, emphasizing that: (i) Affiliate transactions also are controlled and/or monitored on an ongoing basis through codes of conduct in many states; (ii) the Commission regulates wholesale power sales between affiliates, which is often the largest portion of affiliate transactions activity; (iii) under section 1275 of EPAct 2005, the Commission has additional authority to review the allocation of non-power goods and service transactions between service companies and public utilities; (iv) the terms of affiliate financing transactions also are closely monitored by the Commission and state commissions to make sure that public utility capital costs are not inflated; (v) where state commissions do not have jurisdiction over such issuances, Commission authorization would be required under section 204 of the FPA; and (vi) the Commission has jurisdiction under section 203 of the FPA over the sale, lease or disposal of public utility facilities subject to Commission jurisdiction and under section 204 of the FPA, the Commission must authorize the assumption of any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person.[230] FirstEnergy argues that the routine review of each of the FirstEnergy Operating Companies by independent financial rating agencies also acts as a deterrent to inappropriate cross-

[226] *Regulation of Cash Management Practices*, Order No. 634, 68 FR 40500 (Jul. 8, 2003), III FERC Stats. & Regs. ¶ 31,145 (June 26, 2003), Order No. 634–A, 68 FR 61993 (Oct. 31, 2003), III FERC Stats. & Regs. ¶ 31,152 (2003).

[227] *See Merger Policy Statement*, FERC Stats. & Regs. ¶ 31,044 at 30,124–25. *See also Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062–65 (1994); *LG&E Power Marketing Inc.*, 68 FERC ¶ 61,247 at 62,121–24 (1994).

[228] *See, e.g.*, Alliant Comments at 6, AEP Comments at 9–10, Ameren Comments at 20, AGL Resources Comments at 8–9, Cinergy Comments at 30–31, Emera Comments at 12, Entergy Comments at 14–16, International Transmission Company Comments at 11, KeySpan Comments at 7–8, MidAmerican Comments at 14, National Grid Comments at 31–32, PacifiCorp Comments at 7–8, Progress Energy Comments at 8, Questar Comments at 5–6, Southern Company Services Comments at 8, Washington Gas & Light Comments at 5, Xcel Comments at 7, Scottish Power Comments at 14–15.

[229] *See, e.g.*, EPSA Comments at 25, FirstEnergy Comments at 17–19.

[230] E.ON/LG&E Energy Comments at 21.

subsidization or establishment of unreasonable encumbrances on utility assets.[231] Finally, Energy East agrees that no new rules are required, but contends that some benefit could be gained from a single, uniform set of federal rules on cross-subsidization and affiliate abuse and federal code of conduct to avoid potentially conflicting state-imposed standards.[232]

234. With respect to rules on diversification, several commenters argued that the Commission lacks the statutory authority to adopt such rules.[233] For example, commenters argue that the SEC had authority under section 10 and 11 of PUHCA 1935 to regulate such diversification, but that these sections were repealed and Congress did not provide the Commission with authority to issue these or similar rules and that the cross-subsidization language in the PUHCA Repeal Subtitle is only a reference to the Commission's existing authorities under the FPA, not a new grant of authority and that the Commission already has ample authority under sections 203, 205 and 206 of that statue to address whether inappropriate cross-subsidization or other forms of affiliate abuse have occurred.

235. With respect to the Commission's cash management rules, Dominion and EEI contend that there is no need to extend the Commission's current cash management rules to apply to holding companies. According to Dominion and EEI, the rules already effectively apply to holding companies because, where a jurisdictional utility is a participant in a cash management arrangement with a holding company, that arrangement must comply with Commission cash management rules and the agreement must be filed. The only ''extension'' of the rules would be to require a holding company to comply with the rule in a cash management arrangement that involved only non-utility companies. That would be an inappropriate expansion of the Commission's authority.[234]

236. A number of commenters, however, argued that the Commission should adopt additional rules to protect against the dangers of cross-subsidization and diversification into non-utility businesses,[235] in particular, structural separation requirements regarding transactions between utility and non-utility affiliates. APPA/NRECA argue that the Commission must ensure complete structural protection, so that the public utility's affiliation with a non-utility business causes no additional, non-utility risk, including the following requirements: (i) Public utility business must be conducted through corporations legally distinct (and financially insulated) from non-utility affiliates; (ii) public utilities must maintain books and records that are separate from the books and records of non-utility affiliates, and must prepare separate financial statements; (iii) public utilities must not commingle their assets or liabilities with the assets or liabilities of a non-utility affiliate, or pledge or encumber their assets on behalf of a non-utility affiliate; and (iv) service or management fees charged by a public utility's holding company parent or affiliated service company to the public utility must not include allocations of financing costs for entities other than the public utility, charges against equity in other subsidiaries of the parent holding company, or operating losses of the parent holding company or other affiliated companies.[236] MBIA Insurance argues that the Commission should impose financial and corporate separation requirements regarding transactions between utility and non-utility affiliates to adequately protect utilities and their customers: (i) A utility company must not declare or pay any dividend on any security of the utility if such action would threaten the financial integrity of the utility; (ii) utilities should have at least one independent director on their boards of directors; (iii) non-utility affiliates should not have recourse against the tangible or intangible assets of utility affiliates; (iv) a utility must not cross-subsidize or shift costs from a non-utility affiliate of the utility to the utility, and must fully disclose and fully value any assets or services by the utility that are provided for the benefit of a non-utility affiliate; (v) electricity and natural gas customers must not be subject to the financial risks of non-utility diversification, and must not be subject to rates or charges that are not reasonably related to the provision of electricity or natural gas service.[237] NARUC urges the Commission to prohibit holding companies from encumbering the assets of its public utility in order to fund a diversification program and from issuing debt or preferred securities to pay dividends to a holding company or to making unduly risky loans to any organization within the holding company system. Specifically, the Commission should guard against a situation where the relationship between a financially strong public utility and relatively weaker affiliates has the effect of increasing the utility's cost of capital to the detriment of customers. In the event that a public utility became over-leveraged as a result of subsidization of the holding company, Commission should consider taking appropriate action, including limitations of the payment of common stock dividends from the utility to a parent.[238]

237. NASUCA argues that, in the case of captive customers, the proper structural protection would be to prohibit a utility's affiliation with non-utility businesses, unless there is no risk involved. If a customer has power supply options, dealings between utilities and their non-utility affiliates could be approved if: (a) the information on the risk is fully disclosed; (b) the potential gains to the customer are commensurate with the risk; and (c) there can be no possible level of harm so large as to render the utility unable to comply with its duty to provide service reliably and economically.[239] Finally, Ohio PUC recommends that the Commission adopt rules similar to those found in its transition plan administrative rules, which prevent electric utilities from issuing any security for the acquisition, ownership, or operation of an affiliate, assuming liabilities with respect to any security of an affiliate, or pledge, mortgage, or use as collateral any of its assets for the benefit of an affiliate. In addition, Ohio PUC recommends the Commission utilize the newly-established joint federal/state board to develop ''ring-fencing'' rules to insulate regulated assets from being the subject of cross-collateralization with unregulated assets.[240]

[231] FirstEnergy Comments at 19.

[232] Energy East Comments at 14–15.

[233] *See, e.g.*, Chairman Barton Reply Comments at 10–11, Dominion Comments at 25, EEI Comments at 36, E.ON/LG&E Energy Comments at 22, EPSA Comments at 25.

[234] Dominion Comments at 24, EEI Comments at 35.

[235] *See, e.g.*, CEOB Comments at 3, Missouri PSC Comments at 30–32, Santa Clara Comments at 21–22, TANC Comments at 21–22, Utility Workers Comments at 3.

[236] APPA/NRECA Comments at 34–35.

[237] MBIA Insurance Comments at 20–24. *But see* EEI Reply Comments at 3.

[238] NARUC Comments at 13–14. National Grid and NiSource assert that NARUC has not shown that the existing protections are ineffective and that NARUC's proposed additional reporting requirements are unnecessary. National Grid Reply Comments at 7–8, NiSource Reply Comments at 5.

[239] NASUCA Comments at 11–12.

[240] Ohio PUC Comments at 6–8. AGL Resources argues that Ohio PUC's ring-fencing proposals are unnecessary, but that if the Commission decides to impose additional rules, it should do so through a collaborative process including the Commission, state commissions, and industry participants. AGL Resources Reply Comments at 2. See also National Grid Reply Comments at 7–8.

238. With respect to the procedure for implementing these structural measures to protect customers against the risks of diversification into non-utility businesses, APPA/NRECA urge the Commission to create a procedure for evaluating a public utility's acquisition of, or acquisition by, a non-utility business to ensure: (a) Compliance with aforementioned limits; (b) non-interference by the non-utility side in the management of the public utility side; and (c) that holders of the public utility's debt, and credit rating agencies which rate that debt, have confirmed that there is no risk of adverse effect on their position.[241]

239. These commenters argue that the Commission has sufficient authority to issue additional rules on cross-subsidization and diversification. For example, Arkansas PSC contends that the Commission has authority under sections 203, 205, and 206 of the FPA to issue such rules.[242] Emera argues that the Commission should use its current authority under sections 203 and 204 of the FPA to address international diversification. Emera thus urges the Commission to explain in its orders authorizing public utility financing under FPA section 204 that no public utility shall use the proceeds of any such financing to finance the acquisition or operation of a FUCO, while pledges of utility assets to support FUCO financings would similarly be restricted under FPA section 203.[243]

240. A number of entities also supported the extension of the Commission's cash management rules to public utility holding companies.[244] According to MBIA Insurance, the Commission's cash management rules are insufficient to adequately protect regulated utilities, and it urges the Commission to broaden the application of the rules beyond utilities and to apply them to holding companies.[245]

Commission Determination

241. We interpret section 1275(c) of EPAct 2005 to be a savings clause, which does not give the Commission the authority to issue additional Commission rules regarding cross-subsidization, encumbrances of utility assets, diversification into non-utility businesses, or the extension of existing cash management rules. Rather, any such authority resides in the FPA and NGA. In addition, as noted by E.ON and LG&E Energy, current Commission and state regulations already provide oversight regarding cross-subsidization and encumbrances of utility assets. Accordingly, we will monitor industry activities, and we will adopt new regulations on cross-subsidization or encumbrances of utility assets, pursuant to our FPA and NGA authorities, only at such time as our current regulations appear to be insufficient. However, these matters will be further addressed at the technical conference that we will be holding within the next year.

242. The Commission finds persuasive Dominion's argument that Congress repealed the investment diversification limitations that have been applicable to registered holding companies, and therefore we will not propose additional rules regarding diversification into non-utility businesses at this time. Moreover, we note that, if the Commission were to propose such rules, we would have to do so under our FPA and NGA authorities, as we lack the authority to do so under PUHCA 2005.

243. Finally, we will not propose to extend our cash management rules to holding companies. As noted by Dominion and EEI, the cash management rules adopted under the FPA and NGA already effectively apply to holding companies because, where a jurisdictional utility is a participant in a cash management arrangement with a holding company, that arrangement must comply with Commission cash management rules and the agreement must be filed. Therefore, the Commission will not propose to extend existing cash management rules.

9. Additional Conforming or Technical Amendments

244. Section 1272(2) of EPAct 2005 directs the Commission to submit to Congress detailed recommendations on technical and conforming amendments to federal law necessary to carry out PUHCA 2005 within four months after the date of enactment. In the NOPR, the Commission invited comments as to what technical and conforming amendments the Commission should include in this submission to Congress.

245. We received comments on recommendations we should make to Congress, as well as comments on how we should interpret certain terms in PUHCA 2005 or modifications we should make to our proposed regulatory text.

a. Amendments of Definitions

Comments

246. Oklahoma Corporation Commission requests that the definitions of ''affiliate'' and ''subsidiary'' in PUHCA 2005 be amended. Oklahoma Corporation Commission contends that the difference in the two percentages, *i.e.*, five percent for affiliates and ten percent for subsidiaries, would cause an affiliate company that is five percent owned by a holding company to be subject to Commission rules while a subsidiary that is also owned five percent by a holding company would avoid the Commission rules. Thus, it urges the Commission to consider definitions that would cause both the terms ''affiliate'' and ''subsidiary'' to have the same requirements and treatment.[246]

247. A number of entities requested amendments to the definition of ''electric utility company.'' Morgan Stanley contends that the definition of ''electric utility company'' is not in accord with other definitions in PUHCA 2005 and that Congress intended that the two types of ''public-utility companies,'' *i.e.* ''electric utility company'' and ''gas utility company'' should relate to retail activities only. Accordingly, Morgan Stanley recommends that the words ''and not for resale'' be placed at the end of the PUHCA 2005 definition of ''electric utility company'' to conform this definition with ''public utility company'' and ''gas utility company.''[247]

248. Morgan Stanley also urges the Commission to recommend to Congress that at least the entire definition of ''exempt wholesale generator'' from PUHCA 1935 be incorporated into PUHCA 2005, including other terms that appear within that defined term, namely, ''eligible facility'' from 15 U.S.C. 79z–5(a)(2), and ''affiliate'' from 15 U.S.C. 79b(a)(11)(B).[248]

249. Emera and National Grid recommend that the Commission adopt a definition of ''foreign utility company'' clarifying that a FUCO is not a ''public-utility company'', an ''electric utility company,'' or a ''gas utility company.'' Emera contends that such a definition would be consistent with section 33 of PUHCA 1935 which

[241] APPA/NRECA Comments at 35–36. *See also* NASUCA Comments at 12.

[242] Arkansas PSC Comments at 24–32.

[243] Emera Comments at 7.

[244] *See, e.g.*, Georgia PSC Comments at 4, Santa Clara Comments at 22, TANC Comments at 22. AGL Resources opposes comments to expand cash management rule, noting that some holding companies such as AGL have two cash management programs to address concerns regarding cross-subsidization and encumbrances, *i.e.*, separate utility and non-utility money pools and that the Commission's current rules allow it to review the utility money pool. AGL Resources Reply Comments at 4–5.

[245] MBIA Insurance Comments at 25.

[246] Oklahoma Corporation Commission Comments at 7.

[247] Morgan Stanley Comments at 10.

[248] *Id.*

provides that FUCOs are not ''public-utility companies.'' [249]

250. Emera and National Grid argue that the Commission should implement the exemption for passive investors by seeking an amendment the definition of ''holding company'' to exclude passive investors in a public-utility company or holding company securities, such as investment companies.[250]

251. Some commenters have requested that local distribution companies be exempted from the requirements of PUHCA 2005 and suggest that the Commission exclude them from the definition of ''natural gas company.'' For example, American Gas Association requests that the Commission clarify that local gas distribution companies that are not regulated by the Commission are not embraced within the phrase ''natural-gas company,'' noting that EPAct 2005 defines the separate term ''gas utility'' as a local distribution company. AGA asserts that, while many local distribution companies are technically ''natural-gas companies'' under the NGA because the natural gas in their systems flows in interstate commerce, the Commission does not regulate local distribution companies that are exempted under section 1(b) of the NGA, Hinshaw pipelines exempted under section 1(c) of the NGA, entities subject to service-area determinations under section 7(f) of the NGA, and local distribution companies with blanket certificates.[251] Dominion requests that the Commission clarify that this same pattern of exemption from Commission regulation will be carried over with the respect to the rules that the Commission proposes to issue here.[252] Finally, Washington Gas & Light urges the Commission to clarify that the proposed rules do not apply to local distribution companies and section 7(f) companies that have previously been exempt from regulation by the Commission. Washington Gas & Light emphasizes that no regulatory gap would result because these local distribution companies and section 7(f) companies are subject to oversight of their rates and terms and conditions of service by relevant local regulatory commissions. Washington Gas & Light further contends that failure to grant this exemption could cause federal rules, especially for rate setting purposes, to become inconsistent with the regulations promulgated by state commissions, creating compliance issues that might have to be litigated in order to find resolution.[253]

Commission Determination

252. We will reject Oklahoma Corporation Commission's request to modify the definitions of ''affiliate'' and ''subsidiary.'' Congress chose to carry over these long-standing definitions from PUHCA 1935 to PUHCA 2005 and thus clearly expressed its intent to retain these statutory thresholds. However, we emphasize that section 1262(16)(B) gives the Commission the authority to deem someone a ''subsidiary'' if necessary for the rate protection of utility customers, even for ownership interests of less than ten percent. Further, section 1264 gives the Commission the authority to examine the books and records of any company in a holding company system, including affiliates and subsidiaries. Thus, we believe that the Commission has sufficient authority to protect customers without seeking a modification of these definitions.

253. We will reject the requests of Morgan Stanley and others to amend the definitions of ''electric utility company.'' The definitions of ''electric utility company'' and ''gas utility company'' in PUHCA 1935 similarly differed in that the definition of ''electric utility company'' was not limited to retail activities. By carrying over this distinction into PUHCA 2005, it is clear that Congress did not intend that these two definitions should be consistent. Moreover, if adopted, Morgan Stanley's proposal would deprive the Commission of jurisdiction over holding companies that own public utilities, and Morgan Stanley has not provided any evidence that Congress meant to do so. With respect to the definition of ''exempt wholesale generator,'' we will grant Morgan Stanley's request to carry over the definition of ''eligible facility'' since that term is used within the definition of EWG. The definition of eligible facility and other relevant provisions are cross-referenced in the regulatory text of this final rule.

254. We deny Emera and National Grid's requests that we change the definition of FUCO to state that a FUCO shall ''not be deemed a public utility company, electric utility company or gas company under this part.'' However, we clarify the definition of FUCO to state that these companies shall not be subject to any of the requirements of this subchapter other than section 366.2. Therefore, FUCOs are not required to follow PUHCA 2005 accounting and reporting requirements, but must continue to grant the Commission access to their accounts, books, memoranda, and other records.

255. We will reject Emera's and National Grid's request that we recommend an amendment to the definition of ''holding company'' to reflect the exemption for passive investors. We have already adopted this exemption in our regulations, and thus it is unnecessary to amend the statutory definition.

256. With respect to the requests by various commenters on an amendment concerning local distribution companies that are not regulated by the Commission as natural gas companies under the NGA, we find that such a statutory amendment is unnecessary, as we have exempted local distribution companies from the books and records requirements of PUHCA 2005 in section 366(c) of our regulations, pursuant to our exemption authority under section 1266(b).

b. Other Proposed Amendments

Comments

257. EEI suggests that Commission recommend a technical amendment to section 3(c)(8) of the Investment Company Act of 1940 (ICA). According to EEI, section 3(c)(8) currently provides that, notwithstanding the definition of ''investment company'' found in section 3(a) of the ICA, a company subject to regulation under PUHCA 1935 shall not be an investment company. By the date repeal of PUHCA 1935 becomes effective, many holding companies will need to assert their exempt status under section 3(b)(1) of the ICA, or seek an order of exemption from the SEC under section 3(b)(2) of the ICA; if section 3(c)(8) is not amended, holding companies may be expected to seek the certainty provided by an SEC order under section 3(b)(2), rather than to rely on ''self-certification'' under section 3(b)(1). EEI asserts that an amendment to section 3(c)(8) would, by continuing the exemption from investment company status that holding companies have enjoyed to date, make sure that holding company financing may proceed without disruption after the date repeal of PUHCA 1935 becomes effective.[254]

258. NARUC notes that section 1270 of EPAct 2005 indicates that the Commission has the same powers to enforce the provisions of PUHCA 2005

[249] Emera Comments 3–4. *See also* National Grid Comments at 4–11.

[250] *Id.* at 9.

[251] American Gas Association Comments at 3–4. *See also* Keyspan Comments at 6.

[252] Dominion Comments at 26–27.

[253] Washington Gas & Light Comments at 3–4.

[254] EEI Comments at 37. *See also* Energy East Comments at 18–19, National Grid Comments at 34–35.

available under Sections 306 through 317 of the FPA. NARUC recommends that the Commission request an amendment clarifying that the Commission is able to enforce the provisions of PUHCA 2005 concerning natural gas companies using the equivalent powers granted under the NGA.[255]

259. EEI submits that the Commission should recommend that section 1274(a) of EPAct 2005 be amended to specify that the savings provisions of section 1271 are effective as of the date EPAct 2005 was enacted.[256] Similarly, PacifiCorp suggests that, in order to avoid any gaps, the Commission propose a correction to the savings provision in section 1271 of EPAct 2005 that allows activities and transactions authorized under PUHCA 1935 or other law until February 8, 2006, when PUHCA 2005 takes effect, to continue under the terms of the authorization notwithstanding any provision of PUHCA 2005 or related Commission regulations to the contrary.[257]

260. EEI submits that the Commission should provide a procedure similar to the SEC's general procedural rules, for submitting information on a confidential basis.[258] FirstEnergy states that certain information is contained in Form U–5S is proprietary information and that, although the Commission has rejected requests by regulated public utilities to protect the confidentiality of certain information contained in their FERC Forms 1, the SEC has permitted information reported in Form U–5S to be so protected. FirstEnergy argues that the Commission should therefore make clear that it will similarly protect the confidentiality of such information.[259]

261. FirstEnergy further contends that, because of the very limited time available to the Commission to adopt rules needed to implement PUHCA 2005, the Commission should make clear that any rules that may be adopted in this proceeding are only interim rules that will be in effect for no longer than one year. Such a procedure would enable the Commission to meet its obligation to adopt rules required for implementation of PUHCA 2005 within four months after its enactment, but would provide assurance that such hastily-crafted rules would not be in effect indefinitely. FirstEnergy contends that this approach would give the Commission and interested parties additional time in which to learn from their experience under the final rules that are adopted in this proceeding, to give further consideration to the many issues that have been raised by the Commission in the NOPR, and to work toward development of final rules that are properly designed to protect the public interest.[260]

Commission Determination

262. EEI recommends an amendment to section 3(c)(8) of the Investment Company Act of 1940, which provides that a company subject to regulation under PUHCA 1935 shall not be an ''investment company'' as defined in and regulated under the Investment Company Act of 1940.[261] While such companies can file with the SEC and seek exemption from the Investment Company Act of 1940 by claiming that they fall within other exemptions, EEI notes that an amendment to section 3(c)(8) would allow such companies to avoid having to make such filings with the SEC. The Investment Company Act of 1940, however, is not a statute with which the Commission has experience, and the amendment is not essential for the Commission to carry out its responsibilities under PUHCA 2005 or any other statute the Commission administers. Consequently, the Commission will bring this issue to the attention of Congress, but will not make any recommendation.

263. We agree with the comments of NARUC and will recommend an amendment to section 1270 clarifying that the Commission is able to enforce the provisions of PUHCA 2005 concerning natural gas companies using the equivalent powers granted under the NGA.

264. We also agree with the suggestions of EEI and others regarding the effective date of the savings provisions in section 1271, and we will recommend that section 1274(a) of EPAct 2005 be amended to specify that the savings provisions of section 1271 are effective as of the date EPAct 2005 was enacted.

265. In response to the requests of EEI and others concerning the protection of confidential information, we note that section 1264(d) provides that no member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books and records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction. Furthermore, the Commission already has in place procedures governing the treatment of confidential and other non-public information in Part 388 of its regulations. Commenters have not demonstrated that the Commission's current rules are inadequate, and we conclude that it is unnecessary to adopt further rules at this time.

266. We will also reject FirstEnergy's request that the Commission clarify that any rules adopted in this final rule are of an interim nature. Nevertheless, the Commission will evaluate the rules it adopts here on an ongoing basis based on its own experience and the submissions received from parties in individual proceedings and the technical conference.

Information Collection Statement

267. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[262] However, the Commission is carrying out an express statutory mandate spelled out in EPAct 2005. Moreover, to the extent that the Commission is carrying over and applying requirements that the SEC previously has applied, we note that the proposed regulations assume responsibility for already approved information collections and reduce their reporting burdens. Indeed, insofar as the regulations adopted herein eliminate certain SEC regulations concerning accounting, cost-allocation, recordkeeping, and related rules, they reduce the information collection burden on regulated entities.

268. In particular, we are adopting a FERC Form No. 60 (annual reports for service companies), a substantially streamlined version of what had previously been SEC Form U13–60 implemented by the SEC. In addition, we will require entities that are or become holding companies within the meaning of PUHCA 2005 to submit a simple one-time filing, FERC–65 (Notification of Holding Company Status), as compared to the more substantial filings and forms previously required by SEC Form U–5A. We establish a similar, simplified filing, as compared to the SEC's existing filings and forms, for exemptions and waivers, namely FERC–65A (Exemption Notification) and FERC–65B (Waiver Notification).

269. The Commission also eliminates the requirements contained in its own regulations in 18 CFR part 365; the corresponding information collection is

[255] NARUC Comments at 14. *See also* NASUCA Comments at 3.

[256] EEI Comments at 36. *See also* Cinergy Comments at 31, Dominion Comments at 25.

[257] PacifiCorp Comments at 6.

[258] EEI Comments at 37–38, FirstEnergy Comments at [259].

[259] FirstEnergy Comments at 8.

[260] *Id.* at 21–22.

[261] 15 U.S.C. 80a–3(c)(8) (2000).

[262] 5 CFR 1320.11 (2005).

FERC–598 ''Determinations for Entities Seeking Wholesale Generator Status.'' In its place, we are allowing a much simpler self-certification.

Public Reporting Burden: (The table below reflects both SEC reporting burden estimates and the Commission's projections.)

Data collection	Number of respondents	Number of responses	Number of hours per response	Total annual hours
SEC U–5A (current)	4	1	80	320
SEC U–13–60	65	1	13.5	878
FERC Form 60	65	1	8	520
FERC–65	110	1	3	330
FERC–65A	35	1	1	35
FERC–65B	20	1	1	20
FERC–568 (current)	112	1	6	672
FERC–598 (proposed)	27	1	3	51

Action: Revision and adoption by Commission of currently approved SEC collections of information.

OMB Control Nos.: Currently the relevant SEC and Commission information collections have the following control numbers—SEC: 3235–0153, 3235–0164, 3235–0182, 3235–0183, 3235–0306 and Commission: 1902–0166.

Frequency of Responses: The FERC Form No. 60 information collection has annual submissions while FERC Form Nos. 65, 65A, and 65B involve one-time submittals. *FERC–598 certifications will be submitted on occasion.*

Necessity of the Information: The proposed rule implements new rules under part 366 of the Commission's regulations and deletes requirements contained in part 365 of its regulations. These revisions are to implement the repeal of PUHCA 1935 and the implementation of certain provisions of the EPAct 2005.

270. For information on the requirements, submitting comments on these collection of information including ways to reduce the burden imposed by these requirements, please send your comments to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, (202–502–8415)) or send comments to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285, e-mail: *oira_submission@omb.eop.gov.*)

Environmental Analysis

271. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[263] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that carry out legislation, involve information gathering, analyses and dissemination, and involve accounting.[264] Thus, we affirm the finding made in the NOPR that this Final Rule carries out EPAct 2005 and involve information gathering and analysis and accounting and therefore falls under this exception; consequently, no environmental consideration is necessary.

Regulatory Flexibility Act Certification

272. The Regulatory Flexibility Act of 1980 (RFA) requires rulemakings to contain either a description and analysis of the effect that the rule will have on small entities or to contain a certification that the rule will not have a significant economic impact on a substantial number of small entities. [265] The Commission concludes that the Final Rule would not have such an impact on small entities. Most companies to which the Final Rule applies do not fall within the RFA's definition of small entity.[266] Therefore, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities. Moreover, PUHCA 2005 exempts certain persons, and allows the Commission to exempt other persons and classes of transactions. The various exemptions and waivers adopted herein further minimize the effect of the Final Rule on small entities, as many of the entities that should be able to take advantage of these exemptions and waivers are small entities.

Document Availability

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

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

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

[263] *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[264] 18 CFR 380.4(a)(3), (5), (16) (2005).

[265] 5 U.S.C. 603 (2000).

[266] 5 U.S.C. 601(3) (2000), citing to section 3 of the Small Business Act, 15 U.S.C. 632 (2000). Section 3 of the Small Business Act defines a ''small business concern'' as a business that is independently owned and operated and that 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, for example, 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 year did not exceed four million MWh. 13 CFR 121.201 (2005).

Effective Date and Congressional Notification

This final rule will take effect February 8, 2006. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[267] The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.[268]

List of Subjects in 18 CFR Parts 365 and 366

Electric power, Natural gas, Public utility holding companies and service companies, Reporting and recordkeeping requirements, and Cost allocations.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, under the authority of EPAct 2005, the Commission is amending Chapter I of Title 18 of the *Code of Federal Regulations*, as set forth below:

SUBCHAPTER T—[REMOVED AND RESERVED]

PART 365—[REMOVED]

■ 1. Subchapter T, consisting of part 365, is removed and reserved.

■ 2. Subchapter U, consisting of part 366, is added to read as follows:

SUBCHAPTER U—REGULATIONS UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 2005

PART 366—PUBLIC UTILITY HOLDING COMPANY ACT OF 2005

Subpart A—PUHCA 2005 Definitions and Provisions

Sec.
366.1 Definitions.
366.2 Commission access to books and records.
366.3 Exemption from Commission access to books and records; waivers of accounting, record-retention, and reporting requirements.
366.4 FERC–65, notification of holding company status, FERC–65A, exemption notification, and FERC–65B, waiver notification.
366.5 Allocation of costs for non-power goods and services.
366.6 Previously authorized activities.
366.7 Procedures for obtaining exempt wholesale generator and foreign utility company status.

Subpart B—PUHCA 2005 Accounting and Recordkeeping

366.21 Accounts and records of holding companies.
366.22 Accounts and records of service companies.
366.23 FERC Form No. 60, annual reports by service companies.

Authority: Sections 1261 *et seq.* Pub. L. 109–58, 199 Stat. 594.

Subpart A—PUHCA 2005 Definitions and Provisions

§ 366.1 Definitions.

For purposes of this part:

Affiliate. The term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

Associate company. The term ''associate company'' of a company means any company in the same holding company system with such company.

Commission. The term ''Commission'' means the Federal Energy Regulatory Commission.

Company. The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

Construction. The term ''construction'' means any construction, extension, improvement, maintenance, or repair of the facilities or any part thereof of a company, which is performed for a charge.

Electric utility company. The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale. For the purposes of this subchapter, ''electric utility company'' shall not include entities that engage only in marketing of electric energy or ''exempt wholesale generators.''

Exempt wholesale generator. The term ''exempt wholesale generator'' means any person engaged directly, or indirectly through one or more affiliates as defined in this subchapter, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale. For purposes of establishing or determining whether an entity qualifies for exempt wholesale generator status, sections 32(a)(2) through (4), and sections 32(b) through (d) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a(a)(2)–(4), 79z–5b(b)–(d)) shall apply. An exempt wholesale generator shall not be considered an electric utility company under this subchapter.

Foreign utility company. (1) The term ''foreign utility company'' means any company that owns or operates facilities that are not located in any state and that are used for the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, if such company:

(i) Derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, within the United States; and

(ii) Neither the company nor any of its subsidiary companies is a public utility company operating in the United States.

(2) A foreign utility company shall not be subject to any requirements of this subchapter other than § 366.2.

Gas utility company. The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power. For the purposes of this subchapter, ''gas utility company'' shall not include entities that engage only in marketing of natural and manufactured gas.

Goods. The term ''goods'' means any goods, equipment (including machinery), materials, supplies, appliances, or similar property (including coal, oil, or steam, but not including electric energy, natural or manufactured gas, or utility assets) which is sold, leased, or furnished, for a charge.

Holding company.

(1) *In general.* The term ''holding company'' means—

(i) Any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company; and

(ii) Any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public-utility company or holding company as to make it necessary or

[267] *See* 5 U.S.C. 804(2) (2000).

[268] *See* 5 U.S.C. 801(a)(1)(A) (2000).

appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(2) *Exclusions.* The term ''holding company'' shall not include—

(i) A bank, savings association, or trust company, or their operating subsidiaries that own, control, or hold, with the power to vote, public utility or public utility holding company securities so long as the securities are—

(A) Held as collateral for a loan;

(B) Held in the ordinary course of business as a fiduciary; or

(C) Acquired solely for purposes of liquidation and in connection with a loan previously contracted for and owned beneficially for a period of not more than two years; or

(ii) A broker or dealer that owns, controls, or holds with the power to vote public utility or public utility holding company securities so long as the securities are—

(A) Not beneficially owned by the broker or dealer and are subject to any voting instructions which may be given by customers or their assigns; or

(B) Acquired in the ordinary course of business as a broker, dealer, or underwriter with the bona fide intention of effecting distribution within 12 months of the specific securities so acquired.

Holding company system. The term ''holding company system'' means a holding company, together with its subsidiary companies.

Jurisdictional rates. The term ''jurisdictional rates'' means rates accepted, established or permitted by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

Natural gas company. The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

Person. The term ''person'' means an individual or company.

Public utility. The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

Public-utility company. The term ''public-utility company'' means an electric utility company or a gas utility company. For the purposes of this subchapter, the owner-lessors and owner participants in lease financing transactions involving utility assets shall not be treated as ''public-utility companies.''

Service. The term ''service'' means any managerial, financial, legal, engineering, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, or any other service (including supervision or negotiation of construction or of sales), information or data, which is sold or furnished for a charge.

Service company. The term ''service company'' means any associate company within a holding company system organized specifically for the purpose of providing non-power goods or services or the sale of goods or construction work to any public utility in the same holding company system.

Single-state holding company system. The term ''single-state holding company system'' means a holding company system whose public utility operations are confined substantially to a single state.

State commission. The term ''state commission'' means any commission, board, agency, or officer, by whatever name designated, of a state, municipality, or other political subdivision of a state that, under the laws of such state, has jurisdiction to regulate public utility companies.

Subsidiary company. The term ''subsidiary company'' of a holding company means—

(1) Any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(2) Any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

Voting security. The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company. For the purposes of this subchapter, the term ''voting security'' shall not include member interests in electric power cooperatives.

§ 366.2 Commission access to books and records.

(a) *In general.* Unless otherwise exempted by Commission rule or order, each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates. However, for purposes of this subchapter, no provision in the subchapter shall apply to or be deemed to include:

(1) the United States;

(2) A state or political subdivision of a state;

(3) Any foreign governmental authority not operating in the United States;

(4) Any agency, authority, or instrumentality of any entity referred to in paragraphs (a)(1), (2), or (3) of this section; or

(5) Any officer, agent, or employee of any entity referred to in paragraphs (a)(1), (2), (3), or (4) of this section as such in the course of his or her official duty.

(b) *Affiliate companies.* Unless otherwise exempted by Commission rule or order, each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) *Holding company systems.* The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission determines are relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) *Confidentiality.* No member, officer, or employee of the Commission

shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

§ 366.3 Exemption from Commission access to books and records; waivers of accounting, record-retention, and reporting requirements.

(a) *Exempt classes of entities.* Any person that is a holding company, solely with respect to one or more of the following, is exempt from the requirements of § 366.2 and any accounting, record-retention, or reporting requirements in this subchapter:

(1) Qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 *et seq.*);

(2) Exempt wholesale generators; or

(3) Foreign utility companies.

(b) *Exemptions of additional persons and classes of transactions.* The Commission has determined that the following persons and classes of transactions satisfy the requirements of paragraph (d) of this section and may file to obtain an exemption from the requirements this subchapter pursuant to the notification procedure contained in § 366.4(b)(1):

(1) Passive investors, so long as the ownership remains passive, including:

(i) Mutual funds,

(ii) Collective investment vehicles whose assets are managed by banks, savings and loan associations and their operating subsidiaries, or brokers/dealers; and

(iii) Persons that directly, or indirectly through their subsidiaries or affiliates, buy and sell the securities of public utilities in the ordinary course of business as a broker/dealer, underwriter or fiduciary, and not exercising operational control over the utility;

(2) Commission-jurisdictional utilities that have no captive customers and that are not affiliated with any jurisdictional utility that has captive customers, and holding companies that own or control only such utilities;

(3) Transactions where the holding company affirmatively certifies on behalf of itself and its subsidiaries, as applicable, that it will not charge, bill or allocate to the public utility or natural gas company in its holding company system any costs or expenses in connection with goods and services transactions, and will not engage in financing transactions with any such public utility or natural gas company, except as authorized by a state commission or the Commission;

(4) Transactions between or among affiliates that are independent of and do not include a public utility or natural gas company;

(5) Electric power cooperatives;

(6) Local distribution companies that are not regulated as ''natural gas companies'' pursuant to sections 1(b) or 1(c) of the Natural Gas Act, 15 U.S.C. 717(b), (c)).

(c) *Waivers.* The following persons may file to obtain a waiver of the accounting, record-retention, and filing requirements of § 366.21, 366.22, and 366.23 pursuant to the notification procedures contained in § 366.4(c)(1):

(1) Single-state holding company systems as defined in § 366.1;

(2) Holding companies that own generating facilities that total 100 MW or less in size and are used fundamentally for their own load or for sales to affiliated end-users; or

(3) Investors in independent transmission-only companies.

(d) *Commission authority to exempt additional persons and classes of transactions.* The Commission shall exempt a person or classes of transaction from the requirements of § 366.2 if, upon individual application as described in paragraph (e) of this section or upon the motion of the Commission—

(1) The Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company; or

(2) The Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company.

(e) *Other requests for exemptions and waivers.* Any person seeking an exemption or waiver that is not covered by paragraphs (b) or (c) of this section, shall file a petition for declaratory order pursuant to § 385.207(a) of this chapter justifying its request for exemption. Any person seeking such an exemption or waiver shall bear the burden of demonstrating that such an exemption is warranted.

§ 366.4 FERC–65, notification of holding company status, FERC–65A, exemption notification, and FERC–65B, waiver notification.

(a) *Notification of holding company status.* Companies that meet the definition of a holding company as provided by § 366.1 as of February 8, 2006, shall notify the Commission of their status as a holding company no later than March 10, 2006. Holding companies formed after February 8, 2006, shall notify the Commission of their status as a holding company, no later than 30 days after their formation. Notifications shall be made by submitting FERC–65 (notification of holding company status), which contains the following: The identity of the holding company and of the public utilities and natural gas companies in the holding company system; the identity of service companies or special-purpose subsidiaries providing non-power goods and services; the identity of all affiliates and subsidiaries; and their corporate relationship to each other. This filing will be for informational purposes and will not be noticed in the **Federal Register**, but will be available on the Commission's Web site.

(b) *FERC–65A (exemption notification) and petitions for exemption.* (1) Persons or companies seeking exemption from the requirements of PUHCA 2005 and the Commission's regulations thereunder under § 366.3(a), or one of the class exemptions adopted under § 366.3(b), may do so by filing FERC–65A (exemption notification). These filings will be noticed in the **Federal Register**; persons or companies that file FERC–65A must include a form of notice suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d). Persons or companies that file FERC–65A in good faith shall be deemed to have a temporary exemption upon filing. If the Commission has taken no action within 60 days after the date of filing FERC–65A, the exemption shall be deemed to have been granted. The Commission may toll the 60-day period to request additional information or for further consideration of the request; in such case, the claim for exemption will remain temporary until such time as the Commission has determined whether to grant or deny the exemption. Authority to toll the 60-day period is delegated to the Secretary or the Secretary's designee, and authority to act on uncontested FERC–65A filings is delegated to the Director of the Office of Markets, Tariffs and Rates or to the Director of the Office of Markets, Tariffs and Rates' designee.

(2) Persons or companies that do not qualify for exemption pursuant to § 366.3(a) or § 366.3(b) may seek an individual exemption from this subchapter. They may not do so by means of filing FERC–65A and instead must file a petition for declaratory order as required under § 366.3(e). Such petitions will be noticed in the **Federal Register**; persons or companies that file a petition must include a form of notice suitable for publication in the **Federal Register** in accordance with the

specifications in § 385.203(d). No temporary exemption will attach upon filing and the requested exemption will be effective only if approved by the Commission. Persons or companies may also seek exemptions for classes of transactions by filing a petition for declaratory order.

(c) *FERC–65B (waiver notification) and petitions for waiver.* (1) Persons or companies seeking a waiver of the Commission's regulations under PUHCA 2005 pursuant to § 366.3(c) may do so by filing FERC–65B (waiver notification). FERC–65B will be noticed in the **Federal Register**; persons or companies that file FERC–65B must include a form of notice suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d). Companies that file FERC–65B in good faith shall be deemed to have a temporary exemption upon filing. If the Commission has taken no action within 60 days after the date of filing of FERC–65B, the waiver shall be deemed to have been granted. The Commission may toll the 60-day period to request additional information or for further consideration of the request; in such case, the waiver will remain temporary until such time as the Commission has determined whether to grant or deny the waiver. Authority to toll the 60-day period is delegated to the Secretary or the Secretary's designee, and authority to act on uncontested FERC–65B filings is delegated to the Director of the Office of Markets, Tariffs and Rates or the Director of the Office of Markets, Tariffs and Rates' designee.

(2) Persons or companies that do not qualify for waiver pursuant to § 366.3(c) may seek an individual waiver from this subchapter. They may not do so by means of filing FERC–65B and instead must file a petition for declaratory order pursuant as required under § 366.3(e). Such petitions will be noticed in the **Federal Register**; persons or companies that file a petition must include a form of notice suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter. No temporary waiver will attach upon filing and the requested exemption will be effective only if approved by the Commission. Persons or companies may also seek waivers for classes of transactions by filing a petition for declaratory order.

(d) *Revocation of exemption or waiver.* (1) If a person or company that has been granted an exemption or waiver under paragraphs (b) or (c) of this section fails to conform with any material facts or representations presented in its submittals to the Commission, such company or company may no longer rely upon FERC–65A, FERC–65B, or a Commission determination granting the exemption or waiver.

(2) The Commission may, on its own motion or on the motion of any person, revoke the exemption or waiver granted under paragraphs (b) or (c) of this section, if the person or company fails to conform to any of the Commission's criteria under this part for obtaining the exemption or waiver.

§ 366.5 Allocation of costs for non-power goods and services.

(a) *Commission review.* In the case of non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system, at the election of the system (the public utility holding company, together with its subsidiary companies) or a state commission having jurisdiction over the public utility, the Commission shall review and authorize the allocation of the costs for such goods or services to the extent relevant to that associate company. Such election to have the Commission review and authorize cost allocations shall remain in effect until further Commission order.

(b) *Exemptions.* Any holding company system whose public utility operations are confined substantially to a single state is exempt from the requirements of paragraph (a) of this section. A holding company system's public utility operations will be deemed confined substantially to a single state if the holding company system does not derive more than 13 percent of its public-utility revenues from outside a single state. A holding company system or state commission may, pursuant to this subsection, seek a Commission determination that a holding company's public utility operations are confined substantially to a single state by filing a petition for declaratory order pursuant to Rule 207(a) of the Commission's Rules of Practice and Procedure (§ 385.207(a) of this chapter). Any holding company system or state commission seeking such a determination shall bear the burden of demonstrating that such determination is warranted.

(c) *Other classes of transactions.* Either upon petition for declaratory order or upon its own motion, the Commission may exclude from the scope of Commission review and authorization under paragraph (a) of this section any class of transactions that the Commission finds is not relevant to the jurisdictional rates of a public utility. Any holding company system or state commission seeking to obtain such a determination under this subsection shall file a petition for declaratory order pursuant to Rule 207(a) of the Commission's Rules of Practice and Procedure justifying its request for exemption (§ 385.207(a) of this chapter). Any holding company system or state commission seeking such an exemption shall bear the burden of demonstrating that such determination is warranted.

(d) Nothing in paragraphs (a) through (c) of this section shall affect the authority of the Commission under the Federal Power Act (16 U.S.C. 791 *et seq.*), the Natural Gas Act (15 U.S.C. 717 *et seq.*), or other applicable law, including the authority of the Commission with respect to rates, charges, classifications, rules, regulations, practices, contracts, facilities, and services.

§ 366.6 Previously authorized activities.

(a) *General.* Unless otherwise provided by Commission rule or order, a person may continue to engage in activities or transactions authorized under the Public Utility Holding Company Act of 1935 prior to the effective date of the Public Utility Holding Company Act of 2005, February 8, 2006, until the later of the date such authorization expires or December 31, 2007, so long as that person continues to comply with the terms of such authorization. If any such activities or transactions are challenged in a formal Commission proceeding, the person claiming prior authorization shall be required to provide at that time the full text of any such authorization (whether by rule, order, or letter) and the application(s) or pleading(s) underlying such authorization (whether by rule, order, or letter).

(b) *Financing authorizations.* Holding companies that intend to rely on financing authorization orders or letters issued by the Securities and Exchange Commission must file these orders or letters with the Commission within 30 days after the effective date of the Public Utility Holding Company Act of 2005, February 8, 2006; any reports or other submissions that, pursuant to such financing authorizations, previously were filed with the Securities and Exchange Commission must instead be filed with the Commission, effective February 8, 2006. For the purposes of this section, compliance with the terms of such financing authorizations includes the requirement to notify the Commission of any financing transactions that a holding company engages in pursuant to such financing authorization.

§ 366.7 Procedures for obtaining exempt wholesale generator and foreign utility company status.

(a) *Self-certification notice procedure.* An exempt wholesale generator or a foreign utility company, or their representative, may file with the Commission a notice of self-certification demonstrating that it satisfies the definition of exempt wholesale generator or foreign utility company. In the case of exempt wholesale generators, the person filing a notice of self-certification under this section must also file a copy of the notice with the state regulatory authority of the state in which the facility is located. Notices of self-certification will be published in the **Federal Register**. Persons that file such notices must include a form of notice suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter. A person filing a notice of self-certification in good faith will be deemed to have temporary exempt wholesale generator or foreign utility company status. If the Commission takes no action within 60 days from the date of filing of the notice of self-certification, the self-certification shall be deemed to have been granted. The Commission may toll the 60-day period to request additional information, or for further consideration of the request; in such cases, the person's exempt wholesale generator or foreign utility company status will remain temporary until such time as the Commission has determined whether to grant or deny exempt wholesale generator or foreign utility company status. Authority to toll the 60-day period is delegated to the Secretary or the Secretary's designee, and authority to act on uncontested notices of self-certification is delegated to the General Counsel or the General Counsel's designee.

(b) *Optional procedure for Commission determination of exempt wholesale generator status or foreign utility company status.* A person may file for a Commission determination of exempt wholesale generator status or foreign utility company status under § 366.1 by filing a petition for declaratory order pursuant to Rule 207(a) of the Commission's Rules of Practice and Procedure (§ 385.207(a) of this chapter), justifying its request for exemption. Persons that file petitions must include a form of notice suitable for publication in the **Federal Register** in accordance with the specifications in § 385.203(d) of this chapter. Authority to act on uncontested notices of self-certification is delegated to the General Counsel or the General Counsel's designee.

(c) *Revocation of status.* (1) If an exempt wholesale generating facility or a foreign utility company fails to conform with any material facts or representations presented by the applicant in its submittals to the Commission, the notice of self-certification of the status of the facility or Commission order certifying the status of the facility may no longer be relied upon.

(2) The Commission may, on its own motion or on the application of any person, revoke the status of a facility or company, if the facility or company fails to conform to any of the Commission's criteria under this part.

Subpart B—PUHCA 2005 Accounting and Recordkeeping

§ 366.21 Accounts and records for holding companies.

(a) *General.* Unless otherwise exempted or granted a waiver by Commission rule or order, every holding company shall maintain and make available to the Commission books, accounts, memoranda, and other records of all of its transactions in sufficient detail to permit examination, audit and verification, as necessary and appropriate for the protection of utility customers with respect to jurisdictional rates, of the financial statements, schedules and reports required to be filed with the Commission or issued to stockholders.

(b) Unless otherwise exempted or granted a waiver by Commission rule or order, beginning January 1, 2007, all holding companies must comply with the Commission's record-retention requirements for public utilities and licensees or for natural gas companies, as appropriate (parts 125 and 225 of this chapter). Until December 31, 2006, holding companies registered under the Public Utility Holding Company Act of 1935 (16 U.S.C. 79a *et seq.*) may follow either the Commission's record-retention rules for public utilities and licensees or for natural gas companies, as appropriate (parts 125 and 225 of this chapter), or the Security and Exchange Commission's record-retention rules in 17 CFR part 257.

(c) Nothing in this section shall relieve any company subject thereto from compliance with the requirements as to recordkeeping and record-retention that may be prescribed by any other regulatory agency.

§ 366.22 Accounts and records of service companies.

(a) *Record-retention requirements*—(1) *General.* Unless otherwise exempted or granted a waiver by Commission rule or order, beginning January 1, 2007, every service company shall maintain and make available to the Commission such books, accounts, memoranda, and other records in such manner and preserve them for such periods, as the Commission prescribes in parts 125 and 225 of this chapter in sufficient detail to permit examination, audit, and verification, as necessary and appropriate for the protection of utility customers with respect to jurisdictional rates.

(2) *Transition period.* Until December 31, 2006, service companies in holding company systems registered under the Public Utility Holding Company Act of 1935 (16 U.S.C. 79a *et seq.* (2000)) may follow either the Commission's record-retention requirements in parts 125 and 225 of this chapter or the Securities and Exchange Commission's record-retention rules in 17 CFR part 257.

(3) Nothing in this section shall relieve any service company subject thereto from compliance with requirements as to record-retention that may be prescribed by any other regulatory agency.

(b) *Accounting requirements*—(1) *General.* Unless otherwise exempted or granted a waiver by Commission rule or order, beginning January 1, 2007, every service company that is not a special-purpose company (*e.g.*, a fuel supply company or a construction company) shall maintain and make available to the Commission such books, accounts, memoranda, and other records as the Commission prescribes in parts 101 and 201 of this chapter, in sufficient detail to permit examination, audit, and verification, as necessary and appropriate for the protection of utility customers with respect to jurisdictional rates. Every such service company shall maintain and make available such books, accounts, memoranda, and other records in such manner as are prescribed in parts 101 and 201 of this chapter, and shall keep no other records with respect to the same subject matter except:

(i) Records other than accounts;

(ii) Records required by federal or state law;

(iii) Subaccounts or supporting accounts which are not inconsistent with the accounts required either by the Uniform System of Accounts in parts 101 and 201 of this chapter; and

(iv) Such other accounts as may be authorized by the Commission.

(2) *Transition period.* Until December 31, 2006, service companies in holding company systems registered under the Public Utility Holding Company Act of 1935 (16 U.S.C. 79a *et seq.*), as described in paragraph (b)(1) of this

section, may follow either the Commission's Uniform System of Accounts in parts 101 and 201 of this chapter or the Securities and Exchange Commission's Uniform System of Accounts in 17 CFR part 256.

(3) Nothing in this section shall relieve any service company subject thereto from compliance with requirements as to accounting that may be prescribed by any other regulatory agency.

§ 366.23 FERC Form No. 60, annual reports by service companies.

(a) *General.* Unless otherwise exempted or granted a waiver by Commission rule or order, every service company in a holding company system that is not a special-purpose company (*e.g.*, a fuel supply company or a construction company) that provides non-power goods or services to a Commission-jurisdictional public utility or natural gas company shall file with the Commission by May 1, 2006 and by May 1 each year thereafter, a report, FERC Form No. 60, for the prior calendar year. Every such report shall be submitted on the FERC Form No. 60 then in effect and shall be prepared in accordance with the instructions incorporated in such form. For good cause shown, the Commission may extend the time within which any such report is to be filed or waive the requirements applicable to any such report. The authority to act on motions for extensions of time to file any such reports or to waive the requirements applicable to any such reports, including granting or denying such motions, in whole or in part, is delegated to the Chief Accountant or the Chief Accountant's designee.

(b) *Transition period.* Service companies in holding company systems exempted from the requirements of the Public Utility Holding Company Act of 1935 (16 U.S.C. 79a *et seq.*) need not file an annual report, FERC Form No. 60, for calendar years 2005 and 2006.

Note: The following appendixes will not appear in the Code of Federal Regulations.

Appendix 1 List of Commenters

Acronym	Name
AGL Resources	AGL Resources Inc.
Alcoa	Alcoa Inc.
	Allegheny Energy Inc.
Alliant	Alliant Energy Corporation.
Ameren	Ameren Services Company.
AEP	American Electric Power Service Corporation.
AGA	American Gas Association.
American National Power	American National Power, Inc.
APGA	American Public Gas Association.
APPA/NRECA	American Public Power Association/National Rural Electric Cooperative Association.
	American Transmission Company LLC.
Cooperatives	Arizona Electric Power Cooperative, Inc./Southwest Transmission Cooperative, Inc./Sierra Southwest Cooperative Services, Inc.
Arkansas PSC	Arkansas Public Service Commission.
Barclays	Barclays Global Investors, N.A.
Barrick	Barrick Goldstrike Mines Inc.
Black Hills	Black Hills Corporation.
CEOB	California Electricity Oversight Board.
Calpine	Calpine Corporation.
	Capital Research and Management Company.
Cinergy	Cinergy Corporation.
	City of Redding, California.
Santa Clara	City Santa Clara, California.
Chairman Barton	Congressman Joe Barton.
ConEd	Consolidated Edison Company of New York, Inc.
Coral Power and Shell WindEnergy	Coral Power, LLC and Shell WindEnergy Inc.
Detroit Edison	Detroit Edison Company.
Dominion	Dominion Resources, Inc.
Duke Energy	Duke Energy Corporation.
EEI	Edison Electric Institute.
EPSA	Electric Power Supply Association.
ELCON	Electricity Consumers Resource Council/American Iron and Steel Institute/American Chemistry Council/Portland Cement Association.
Emera	Emera Incorporated.
Energy East	Energy East Corporation.
Entergy	Entergy Services, Inc.
E.ON/LG&E Energy	E.ON AG and LG&E Energy LLC.
Exelon	Exelon Corporation.
FirstEnergy	FirstEnergy Service Company.
FPL Group	FPL Group, Inc.
Georgia PSC	Georgia Public Service Commission.
Goldman Sachs	The Goldman Sachs Group, Inc.
IURC	Indiana Utility Regulatory Commission.
	International Transmission Company.
	Investment Advisor Association.
	Investment Company Institute.
Kentucky PSC	Kentucky Public Service Commission.
Keyspan	Keyspan Corporation.
MBIA	MBIA Insurance Corporation.
MGTC	MGTC Inc.
MidAmerican	MidAmerican Energy Holdings Company.
Missouri PSC	Missouri Public Service Commission.

Acronym	Name
Mittal Steel	Mittal Steel USA ISG, Inc.
Morgan Stanley	Morgan Stanley Capital Group Inc.
NARUC	National Association of Regulatory Utility Commissioners.
NASUCA	National Association of State Utility Consumer Advocates.
National Fuel	National Fuel Gas Company.
National Grid	National Grid USA.
NiSource	NiSource Inc.
Northeast Utilities	Northeast Utilities Service Company.
	PG&E Corporation.
Ohio PUC	Public Utilities Commission of Ohio.
Oklahoma Corporation	Oklahoma Corporation Commission.
	Pacificorp.
	Pepco Holding, Inc./Potomac Electric Power Company/Atlantic City.
	Electric Company/Delmarva Power & Light Company/Conectiv.
	Energy Supply, Inc./PEPCO Energy Services Inc./PHI Service Company and other system companies.
	Portland General Electric Company.
PPL	PPL Companies.
	PPM Energy, Inc.
Progress Energy	Progress Energy, Inc.
Public Citizen	Public Citizen Inc.
Wisconsin PSC	Public Service Commission of Wisconsin.
	Questar Corporation.
	Scottish Power.
	Southern Company Services, Inc.
TANC	Transmission Agency of Northern California.
	Tri-State Generation/Transmission Association, Inc.
Utility Workers	Utility Workers Union of America.
	WGL Holdings, Inc. and Washington Gas & Light Company.
Xcel	Xcel Energy Services Inc.

Appendix 2 FERC Form No. 60

United States

Federal Energy Regulatory Commission

Washington, DC 20426

FORM 60

ANNUAL REPORT

FOR THE PERIOD

Beginning _____ and Ending _____

To the

Federal Energy Regulatory Commission of

(Exact Name of Reporting Company)

A _____ Service Company

(''Mutual'' or ''Subsidiary'')

Date of Incorporation _____ If not Incorporated, Date of Organization _____.

State or Sovereign Power under which Incorporated or Organized _____

Location of Principal Executive Offices of Reporting Company _____

Name, title, and address of officer to whom correspondence concerning this report should be addressed:

(Name) (Title) (Address)

Name of Principal Holding Company under which Reporting Company is organized:

Instructions For Use of Form 60

1. Timing of Filing

On or before the first day of May in each calendar year, each mutual service company and each subsidiary service company shall file with Commission an annual report on Form 60 and in accordance with the Instructions for that form.

2. Number of Copies

Each annual report shall be filed in duplicate. The company should prepare and retain at least one extra copy for itself in case correspondence with reference to the report becomes necessary.

3. Period Covered by Report

The first report filed by the company shall cover the period from the date the Uniform System of Accounts was required to be made effective as to that company to the end of that calendar year. Subsequent reports should cover a calendar year.

4. Report Format

Reports shall be submitted on the forms prepared by the Commission. If the space provided on any sheet of such form is inadequate, additional sheets may be inserted of the same size as a sheet of the form or folded to each size.

5. Money Amounts Displayed

All money amounts required to be shown in financial statements may be expressed in whole dollars, in thousands of dollars or in hundred thousands of dollars, as appropriate and subject to provisions of Regulation S–X (210.3–01).

6. Deficits Displayed

Deficits and other like entries shall be indicated by the use of either brackets or a parenthesis with corresponding reference in footnotes (Regulation S–X, 210.3–01(c)).

7. Major Amendments or Corrections

Any company desiring to amend or correct a major omission or error in a report after it has been filed with the Commission shall submit an amended report including only those pages, schedules and entries that are to be amended or corrected. A cover letter shall be submitted requesting the Commission to incorporate the amended report changes and shall be signed by a duly authorized officer of the company.

8. Definitions

Definitions contained in Instruction 01–8 to the Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies, Public Utility Holding Act of 2005, shall be applicable to words or terms used specifically within this Form 60.

9. Organization Chart

The Service Company shall submit with each annual report a copy of its current organization chart.

10. Methods of Allocation

The Service Company shall submit with each annual report a listing of the currently effective methods of allocation being used by the service company and on file and approved previously by the Securities and Exchange Commission pursuant to the Public Utility Holding Company Act of 19355.

11. Annual Statement of Compensation for Use of Capital Billed

The service company shall submit with each annual report a copy of the annual statement supplied to each associate company in support of the amount of compensation for use of capital billed during the calendar year.

12. Collection of Information

The information requested by this form is being collected under authority of the Public

Utility Holding Act of 2005. The Commission estimates that it will take each respondent thirteen and one-half (13.5) hours to respond to this collection of information. A response to this form is mandatory. The information on this form will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid OMB control number is displayed.

13. Where To File

File Form 60 at the following address:

Federal Energy Regulatory Commission,
888 First Street, NE.,
Washington, DC 20426.

LISTING OF SCHEDULES AND ANALYSIS OF ACCOUNTS

Description of Schedules and Accounts	Schedule or Account No.	Page No.
Comparative Balance Sheet	Schedule I	5
Service Company Property	Schedule II	7
Accumulated Provision for Depreciation and Amortization of Service Company Property.	Schedule III	8
Investments	Schedule IV	9
Accounts Receivable from Associate Companies	Schedule V	9
Fuel Stock Expenses Undistributed	Schedule VI	10
Stores Expense Undistributed	Schedule VII	10
Miscellaneous Current and Accrued Assets	Schedule VIII	11
Miscellaneous Deferred Debits	Schedule IX	11
Research, Development, or Demonstration Expenditures	Schedule X	12
Proprietary Capital	Schedule XI	12
Long-Term Debt	Schedule XII	13
Current and Accrued Liabilities	Schedule XIII	14
Notes to Financial Statements	Schedule XIV	14
Comparative Income Statement	Schedule XV	15
Analysis of Billing—Associate Companies	Account 457	16
Analysis of Billing—Nonassociate Companies	Account 458	17
Analysis of Charges for Service—Associate and Nonassociate Companies	Schedule XVI	18
Schedule of Expense Distribution by Department or Service Function	Schedule XVII	19
Departmental Analysis of Salaries	Account 920	20
Miscellaneous General Expenses	Account 930.2	20
Notes to Statement of Income	Schedule XVIII	21
Organization Chart		22
Methods of Allocation		22
Annual Statement of Compensation for Use of Capital Billed		22

ANNUAL REPORT OF _____

SCHEDULE I—COMPARATIVE BALANCE SHEET

[Give balance of the Company as of December 31 of the current and prior year.]

Account	Assets and other debits	As of December 31,	
		Current	Prior
	Service Company Property		
101	Service company property (Schedule II)		
107	Construciton work in progress (Schedule II)		
	Total Property		
108	Less: Accumulated provision for depreciation and amortization of service company property (Schedule III)		
	Net Service Company Property		
	Investments		
123	Investments in associate companies (Schedule IV)		
124	Other investments (Schedule IV)		
	Total Investments		
	Current and Accrued Assets		
131	Cash		
134	Special deposits		
135	Working funds		
136	Temporary cash investments (Schedule IV)		
141	Notes receivable		
143	Accounts receivable		
144	Accumulated provision for uncollectible accounts		
146	Accounts receivable from associate companies (Schedule V)		
152	Fuel stock expenses undistributed (Schedule VI)		
154	Materials and supplies		
163	Stores expense undistributed (Schedule VII)		
	Prepayments		
165	Miscellaneous current and accrued assets (Schedule VIII)		
174	Total Current and Accrued Assets		

SCHEDULE I—COMPARATIVE BALANCE SHEET—Continued

[Give balance of the Company as of December 31 of the current and prior year.]

Account	Assets and other debits	As of December 31,	
		Current	Prior
	Deferred Debits		
	Unamortized debt expense		
181	Clearing accounts		
184	Miscellaneous deferred debits (Schedule IX)		
186	Research, development, or demonstration expenditures (Sch. X)		
188	Accumulated deferred income taxes		
190	Total Deferred Debits		
	Total Assets and Other Debits		

ANNUAL REPORT OF _____

SCHEDULE I—COMPARATIVE BALANCE SHEET

Account	Liabilities and proprietary capital	As of December 31,	
		Current	Prior
	Proprietary Capital		
201	Common stock issued (Schedule XI)		
211	Miscellaneous paid-in-capital (Schedule XI)		
215	Appropriated retained earnings (Schedule XI)		
216	Unappropriated retained earnings (Schedule XI)		
	Total Proprietary Capital		
	Long-Term Debt		
223	Advances from associate companies (Schedule XII)		
224	Other long-term debt (Schedule XII)		
225	Unamortized premium on long-term debt		
226	Unamortized discount on long-term debt-debit		
	Total Long-Term Debt		
	Current and Accrued Liabilities		
228	Accumulated provision for pensions and benefits		
231	Notes payable		
232	Accounts payable		
233	Notes payable to associate companies (Schedule XIII)		
234	Accounts payable to associate companies (Schedule XIII)		
236	Taxes accrued		
237	Interest accrued		
241	Tax collections payable		
242	Miscellaneous current and accrued liabilities (Schedule XIII)		
243	Obligations under capital leases—Current		
	Total Current and Accrued Liabilities		
	Deferred Credits		
253	Other deferred credits		
255	Accumulated deferred investment tax credits		
	Total Deferred Credits		
282	Accumulated Deferred Income Taxes		
	Total Liabilities and Proprietary Capital		

ANNUAL REPORT OF _____ For the Year Ended _____

SCHEDULE II—SERVICE COMPANY PROPERTY

Account	Description	Balance at beginning of year	Additions	Retirements or sales	Other changes [1]	Balance at close of year
301	Organization					
303	Miscellaneous Intangible Plant					
304	Land and Land Rights					
305	Structures and Improvements					
306	Leasehold Improvements					
307	Equipment [2]					
308	Office Furniture and Equipment					

SCHEDULE II—SERVICE COMPANY PROPERTY—Continued

Account	Description	Balance at beginning of year	Additions	Retirements or sales	Other changes [1]	Balance at close of year
309	Automobiles, Other Vehicles and Related Garage Equipment					
310	Aircraft and Airport Equipment					
311	Other Property: [3]					

Sub-Totals Total

107 Construction Work in Progress [4]

Subaccount description	Additions	Balance at close of year

ANNUAL REPORT OF _____ For the Year Ended _____

SCHEDULE III—ACCUMULATED PROVISION FOR DEPRECIATION AND AMORTIZATION OF SERVICE COMPANY PROPERTY

Account	Description	Balance at beginning of year	Additions charged to account 403	Retirements	Other changes additions (deductions) *	Balance at close of year
301	Organization					
303	Miscellaneous Intangible Plant					
304	Land and Land Rights					
305	Structures and Improvements					
306	Leasehold Improvements					
307	Equipment					
308	Office Furniture and Equipment					
309	Automobiles, Other Vehicles and Related Garage Equipment					
310	Aircraft and Airport Equipment					
311	Other Service Company Property:					

* Provide an explanation of those changes considered material.

ANNUAL REPORT OF _____ For the Year Ended _____

SCHEDULE IV—INVESTMENTS

[Instructions: Complete the following schedule concerning investments. Under Account 124 "Other Investments", state each investment separately, with description, including the name of issuing company, number of shares or principal amount, etc. Under Account 136, "Temporary Cash Investments", list each investment separately.]

Description	Balance at beginning of year	Balance at close of year
Account 123—Investment in Associate Companies		
Account 124—Other Investments		
Account 136—Temporary Cash Investments		
Total		

ANNUAL REPORT OF _____ For the Year Ended _____

[1] Provide an explanation of those changes considered material.

[2] Subaccounts are required for each class of equipment owned. The service company shall provide a listing by subaccount of equipment additions during the year and balance at the close of the year.

[3] Describe other service company property.

[4] Describe construction work in progress.

SCHEDULE V—ACCOUNTS RECEIVABLE FROM ASSOCIATE COMPANIES

[Instructions: Complete the following schedule listing accounts receivable from each associate company. Where the service company has provided accommodation or convenience payments for associate companies, a separate listing of total payments for each associate company by subaccount should be provided.]

Description	Balance at beginning of year	Balance at close of year
Account 146—Accounts Receivable from Associate Companies		
Total		
Analysis of Convenience or Accommodation Payments: Total Payments for each associate		
Total Payments		

ANNUAL REPORT OF _____ For the Year Ended _____

SCHEDULE VI—FUEL STOCK EXPENSES UNDISTRIBUTED

[Instructions: Report the amount of labor and expenses incurred with respect to fuel stock expenses during the year and indicate amount attributable to each associate company. Under the section headed ''Summary'' listed below give and overall report of the fuel functions performed by the service company.]

Description	Labor	Expenses	Total
Account 152—Fuel Stock Expenses Undistributed			
Total			
Summary:			

ANNUAL REPORT OF _____ For the Year Ended _____

SCHEDULE VII—STORES EXPENSE UNDISTRIBUTED

[Instructions: Report the amount of labor and expenses incurred with respect to stores expense during the year and indicate amount attributable to each associate company.]

Description	Labor	Expenses	Total
Account 163—Stores Expense Undistributed			
Total			

ANNUAL REPORT OF _____ For the Year Ended _____

SCHEDULE VIII—MISCELLANEOUR CURRENT AND ACCRUED ASSETS

[Instructions: Provide detail of items in this account. Items less than $10,000 may be grouped, showing the number of items in each group.]

Description	Balance at beginning of year	Balance at close of year
Account 174—Miscellaneous Current and Accrued Assets		
Total		

ANNUAL REPORT OF _____ For the Year End _____

SCHEDULE IX—MISCELLANEOUS DEFERRED DEBITS

[Instructions: Provide detail of items in this account. Items less than $10,000 may be grouped, showing the number of items in each group.]

Description	Balance at beginning of year	Balance at close of year
Account 186—Miscellaneous Deferred Debits		
Total		

ANNUAL REPORT OF _____ For the Year Ended _____

SCHEDULE X—RESEARCH, DEVELOPMENT OR DEMONSTRATION EXPENDITURES

[Instructions: Provide a description of each material research, development, or demonstration project which incurred costs by the service corporation during the year.]

Description	Amount
Account 188—Research, Development, or Demonstration Expenditures Total	

ANNUAL REPORT OF _____ For the Year Ended _____

SCHEDULE XI—PROPRIETARY CAPITAL

Account No.	Class of stock	Number of shares authorized	Par or stated value per share	Outstanding number of shares	Close of period total amount
201	Common Stock Issued				

Instructions: Classify amounts in each account with brief explanation, disclosing the general nature of transactions which give rise to the reported amounts.

Description_____Amount

Account 211—Miscellaneous Paid-In Capital

Account 215—Appropriated Retained Earnings

Total

Instructions:

Give particulars concerning net income or (loss) during the year, distinguishing between compensation for the use of capital owed or net loss remaining from servicing nonassociates per the General Instructions of the Uniform System of Accounts. For dividends paid during the year in cash or otherwise, provide rate percentage, amount of dividend, date declared and date paid.

Description	Balance at beginning of year	Net income or (loss)	Dividend paid	Balance at close of year
Account 216—Unappropriated Retained Earnings.				

ANNUAL REPORT OF _____ For the Year Ended _____

SCHEDULE XII—LONG-TERM DEBT

[Instructions: Advances from associate companies should be reported separately for advances on notes, and advances on open accounts. Names of associate companies from which advances were received shall be shown under the class and series of obligation column. For Account 224—Other long-term debt, provide the name of creditor company or organization, terms of the obligation, date of maturity, interest rate, and the amount authorized and outstanding.]

Name of creditor	Term of obligation class & series of obligation	Date of maturity	Interest rate	Amount authorized	Balance at beginning of year	Additions deductions *	Balance at close of year
Account 223 Advances From Associate Companies Account 224—Other Long-Term Debt: Total							

* Given an explanation of deductions:

ANNUAL REPORT OF _____ For the Year Ended _____

SCHEDULE XIII—CURRENT AND ACCRUED LIABILITIES

[Instructions: Provide balance of notes and accounts payable to each associate company. Give description and amount of miscellaneous current and accrued liabilities. Items less than $10,000 may be grouped, showing the number of items in each group.]

Description	Balance at beginning of year	Balance at close of year
Account 233—Notes Payable to Associate Companies Total Account 234—Accounts Payable to Associate Companies Total		

SCHEDULE XIII—CURRENT AND ACCRUED LIABILITIES—Continued

[Instructions: Provide balance of notes and accounts payable to each associate company. Give description and amount of miscellaneous current and accrued liabilities. Items less than $10,000 may be grouped, showing the number of items in each group.]

Description	Balance at beginning of year	Balance at close of year
Account 242—Miscellaneous and Accrued Liabilities		
Total		

ANNUAL REPORT OF _____

For the Year Ended _____

Schedule XIV—Notes to Financial Statements

Instructions: The space below is provided for important notes regarding the financial statements or any account thereof. Furnish particulars as to any significant contingent assets or liabilities existing at the end of the year. Notes relating to financial statements shown elsewhere in this report may be indicated here by reference.

ANNUAL REPORT OF _____

For the Year Ended _____

SCHEDULE XV—COMPARATIVE INCOME STATEMENT

Account	Description	Current year	Prior year
	Income		
457	Services rendered to associate companies taxes		
458	Services rendered to non associate companies		
421	Miscellaneous income or loss		
	Total Income		
	Expense		
920	Salaries and wages		
921	Office supplies and expenses		
922	Administrative expense transferred—credit		
923	Outside services employed		
924	Property insurance		
925	Injuries and damages		
926	Employee pensions and benefits		
928	Regulatory commission expense		
930.1	General advertising expenses		
930.2	Miscellaneous general expenses		
931	Rents		
403	Depreciation and amortization expense		
408	Taxes other than income taxes		
409	Income taxes		
410	Provision for deferred income taxes		
411	Provision for deferred income taxes—credit		
411.5	Investment Tax Credit		
426.1	Donations		
426.5	Other deductions		
427	Interest on long-term debt		
430	Interest on debt to associate companies		
431	Other interest expense		
	Total Expense		
	Net Income of (Loss)		

ANNUAL REPORT OF _____ For the Year Ended _____

ANALYSIS OF BILLING ASSOCIATE COMPANIES—ACCOUNT 457

Name of associate company	Direct costs charged	Indirect costs charged	Compensation for use of capital	Total amount billed
	457–1	457–2	457–3	
Total				

For the Year Ended _____

ANNUAL REPORT OF _____

ANALYSIS OF BILLING ASSOCIATE COMPANIES—ACCOUNT 458

[Instruction: Provide a brief description of the services rendered to each nonassociate company:]

Name of associate company	Direct costs charged	Indirect costs charged	Compensation for use of capital	Total amount billed
	458–1	458–2	458–3	

ANNUAL REPORT OF _____ For the Year Ended _____

SCHEDULE XVI—ANALYSIS OF CHARGES FOR SERVICE—ASSOCIATE AND NONASSOCIATE COMPANIES

[Instruction: Total cost of service will equal for associate and nonassociate companies the total amount billed under their separate analysis of billing schedules.]

Acct.	Description of items	Associate company			Nonassociate company			Total charges for services		
		Direct cost	Indirect cost	Total cost	Direct cost	Indirect cost	Total cost	Direct cost	Indirect cost	Total cost
920	Salaries and wages									
921	Office supplies and expenses									
922	Administrative expense transferred—credit									
923	Outside services employed									
924	Property insurance									
925	Injuries and damages									
926	Employee pensions and benefits									
928	Regulatory commission expense									
930.1	General advertising expenses									
930.2	Miscellaneous general expense									
931	Rents									
403	Depreciation and amortization expense									
408	Taxes other than income taxes									
409	Income taxes									
410	Provision for deferred income taxes									
411	Provision for deferred income taxes—credit									
411.5	Investment Tax Credit									
426.1	Donations									
426.5	Other deductions									
427	Interest on long-term debt									
430	Interest on debt to associate companies									
431	Other interest expense									
	Total Expense									
	Compensation for Use of Equity Capital									
	Interest on Debt to Associate Companies									
	Total Cost of Service									

ANNUAL REPORT OF _____
For the Year Ended _____

SCHEDULE XVII—SCHEDULE OF EXPENSE DISTRIBUTION BY DEPARTMENT OR SERVICE FUNCTION

[Instruction: Indicate each department or service function. (See Instruction 01–3 General Structure of Accounting System: Uniform System of Accounts).]

Account	Description of items	Total amount	Overhead	Department or service function
920	Salaries and wages			
921	Office supplies and expenses			
922	Administrative expense transferred—credit			
923	Outside services employed			
924	Property insurance			
925	Injuries and damages			
926	Employees pensions and benefits			
928	Regulatory commission expenses			
930.1	General advertising expenses			
930.2	Miscellaneous general expenses			
931	Rents			
403	Depreciation and amortization expenses			
408	Taxes other than income taxes			
409	Income taxes			
410	Provision for deferred taxes			
411	Provision for deferred taxes—credit			
411.5	Investment tax credit			
426.1	Donations			
426.5	Other deductions			
427	Interest on long-term debt			
430	Interest on debt to associated companies			
431	Other interest expense			

ANNUAL REPORT OF _____ For the Year Ended _____

DEPARTMENTAL ANALYSIS OF SALARIES

Name of Department indicate each department or service function	Departmental Salary Expense Included in Amounts Billed to Others				Number of personnel end of year
	Total amount	Parent company	Other associates	Nonassociates	
Total					

ANNUAL REPORT OF _____ For the Year Ended _____

MISCELLANEOUS GENERAL EXPENSES—ACCOUNT 930.2

[Instructions: Provide a listing of the amount included in Account 930.2, "Miscellaneous General Expenses" classifying such expenses according to their nature. Payments and expenses permitted by Section 321 (b)(2) of the Federal Election Campaign Act, as amended by Public Law 94–283 in 1976 (2 U.S.C. 441(b)(2)) shall be separately classified.]

Description	Amount
Total	

ANNUAL REPORT OF _____
For the Year Ended _____

SCHEDULE XVIII—Notes to Statement of Income

Instructions: The space below is provided for important notes regarding the statement of income or any account thereof. Furnish particulars as to any significant increase in services rendered or expenses incurred during the year. Notes related to financial statements shown elsewhere in this report may be indicated here by reference.

ANNUAL REPORT OF _____
For the Year Ended _____

Organization Chart

ANNUAL REPORT OF _____
For the Year Ended _____

Methods of Allocation

ANNUAL REPORT OF _____
For the Year Ended _____

Annual Statement of Compensation for Use of Capital Billed

ANNUAL REPORT OF _____
For the Year Ended _____

Signature Clause

Pursuant to the requirements of the Public Utility Holding Company Act of 2005 and the rules and regulations of the Federal Energy Regulatory Commission issued thereunder, the undersigned company has duly caused this report to be signed on its behalf by the undersigned officer thereunto duly authorized.

_____

(Name of Reporting Company)

_____

(Signature of Signing Officer)

_____

(Printed Name and Title of Signing Officer)

Date: _____

[FR Doc. 05–24116 Filed 12–19–05; 8:45 am]

BILLING CODE 6717–01–P

Federal Register

Tuesday,
December 20, 2005

Part IV

Department of Transportation

Federal Transit Administration

FTA Fiscal Year 2006 Apportionments and Allocations; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 2006 Apportionments and Allocations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The ''Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006'' (Pub. L. 109–115), signed into law by President Bush on November 30, 2005, appropriates funds for all of the surface transportation programs of the Department of Transportation for the fiscal year ending September 30, 2006. This notice provides information on the FY 2006 transit appropriations for the FTA assistance programs, and apportions and allocates FY 2006 funds. The Notice also makes corrections to information in the SAFETEA–LU implementation Notice published in the **Federal Register** on November 30, 2005.

FOR FURTHER INFORMATION CONTACT: For general information about this notice contact Mary Martha Churchman, Director, Office of Transit Programs, (202) 366–2053. Please contact the appropriate FTA regional office for any specific requests for information or technical assistance. The Appendix at the end of this notice includes contact information for FTA regional offices.

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I. Overview

This document apportions or allocates annual appropriations among potential program recipients. In addition, the document contains specific instructions or guidance for FTA programs and funding, in the ''Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006'' (Pub. L. 109–115, November 30, 2005; hereafter called the 2006 Appropriations Act).

On November 30, 2005, the FTA Notice entitled ''FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users'' was published in the **Federal Register.** That Notice contains information about FTA program guidance, requirements, period of availability, and other important information for FY 2006, and should be used together with this document. It can be found on the FTA Web site at *http://www.fta.dot.gov/2930_ENG_HTML.htm,* and is also available for public comment on the DOT Docket Web site: *http://dms.dot.gov* identified by DOT DMS Docket Number FTA–2005–23089. Two corrections to the November 30 Notice are included in this Notice.

II. FY 2006 Funding for FTA Programs

The three major FTA program areas included in the notice are formula and bus grants, capital investments, and research. Of the 17 separate FTA programs contained in this notice that fall under the major program area headings, the funding for 10 is apportioned by statutory formula. Funding for the other seven is allocated on a discretionary or competitive basis.

A. Funding Based on FY 2006 Appropriations Act

The 2006 Appropriations Act provides funding from the General Fund of the Treasury and Mass Transit Account of the Highway Trust Fund that totals $8.59 billion for FTA programs. This amount is slightly less than the $8.62 billion authorized for FY 2006 in SAFETEA–LU. Table 1 shows the SAFETEA–LU authorized funding levels for transit programs. Table 2 of this document shows the appropriated funding levels for FTA programs for FY 2006. The 2006 Appropriations Act made funding available for the entire fiscal year.

B. Apportionments and Allocations

An apportionment or allocation table is included in this Notice for each program, except for the Section 5340 Growing States and High Density States Formula. The apportionments for this formula were combined with the Section 5307 or Section 5311 apportionments, as appropriate, and shown as a single amount, as directed by Congress in the SAFETEA–LU conference report. The amount shown in a table for an urbanized area, State, or specific project or recipient is available for obligation or award to a grant, under the respective FTA program.

Because we combined Sections 5307 and 5340 apportionments as directed by Congress, we did not include in this Notice a separate breakout of the apportionment amounts to urbanized areas (UZAs) or States for Small Transit Intensive Cities (STIC) or for Section 5340 formulas. However, this information is available and may be obtained from the FTA regional offices for your UZA or State.

Unless the law provides otherwise, earmarked project allocations for Clean Fuels, Bus and Bus Facility, New Starts, Alternative Analysis, and the National Research Program must conform to the eligibility requirements of the particular program. Prospective recipients are encouraged to contact the appropriate FTA regional office to discuss project eligibility. The regional office can provide technical assistance to help develop an eligible project.

III. Specific Directions and Instructions in the 2006 Appropriations Act

The 2006 Appropriations Act and accompanying conference report include instructions on the use or disposition of selected program funding,

and on the use of funds for particular projects. These provisions are listed below, with supplemental information where appropriate.

(1) The Appropriations Act transfers $47,766,000 from the Fixed Guideway Modernization program to New Starts for activities under that program.

(2) The Appropriations Act transfers $25,215,000 available for the Clean Fuels program to the Bus and Bus Facility program. Of the $43,000,000 made available for the Clean Fuels program, $17,785,000 remains available for Clean Fuels projects authorized by SAFETEA–LU.

(3) The Conference Report directs FTA not to reallocate funds designated for certain Bus and New Starts projects designated in FY 2003 and prior years. These extended earmarks are listed in Table 19, along with several other bus projects extended by previous Congressional action.

(4) Section 113 provides that ''notwithstanding any other provision of law, projects and activities described in the statement of managers accompanying this Act under the headings ''Federal-Aid Highways'' and ''Federal Transit Administration'' shall be eligible for fiscal year 2006 funds made available for the project for which each project or activity is so designated: Provided, That the Federal share payable on account of any such projects and activities subject to this section shall be the same as the share required by the Federal program under which each project or activity is designated unless otherwise provided in this Act.'' This general provision makes the Section 5309 bus projects and activities designated in the FY 2006 conference report eligible for the purposes indicated. The specific bus and clean fuels projects designated in SAFETEA–LU are also eligible by virtue of being in statute. In some instances, FTA may approve use of the funds under the Section 5309 Bus and Bus Facilities or Clean Fuels program for eligible activities other than those designated in statute or report language upon clarification from the relevant House and Senate committees on authorization or appropriations respectively.

(5) The New Starts project allocations listed in Table 12 include some projects which may not have yet conducted or completed alternatives analysis. Pursuant to SAFETEA–LU, FY 2006 New Starts funds may only be used for preliminary engineering, final design, and construction. A New Starts project designated to receive Section 5309 New Starts funds in the FY 2006 Appropriations Act must complete alternatives analysis and be approved by FTA to enter preliminary engineering before expending FY 2006 New Starts funds for preliminary engineering.

(6) Section 112 provides funding for activities eligible under Title 23 or Title 49 at 100 percent Federal share, and are available until expended. Surface Transportation Projects and Highway Priority Projects to be funded under this section are designated in the conference report. These earmarks include some transit projects, similar to Section 115 and Section 117 in the FY 2004 and FY 2005 appropriations acts. Recipients of designations for transit projects under Section 112 should initiate discussions with the appropriate FHWA division office to identify transit projects that may be administered by FTA and request that FHWA allot the funds to FTA.

(7) Section 145 states that amounts made available from the bus category of the Capital Investment Grants Account or Discretionary Grants Account in this or any other previous Appropriations Act that remain unobligated or unexpended in a grant for a multimodal transportation facility in Burlington, Vermont, may be used for site-preparation and design purposes of a multimodal transportation facility in a different location within Burlington, Vermont, than originally intended notwithstanding previous expenditures incurred for such purposes at the original location.

(8) Section 146 provides that notwithstanding any other provision of law, funds designated in the conference report accompanying Public Law 108–447 and Public Law 108–199 for the King County Metro Park and Ride on First Hill, Seattle, Washington, shall be available to the Swedish Hospital parking garage, Seattle, Washington, subject to the same conditions and requirements of section 125 of Division H of Public Law 108–447.

(9) Section 147 provides that funds in this Act that are apportioned to the Charleston Area Regional Transportation Authority to carry out section 5307 may be used to acquire land, equipment, or facilities used in public transportation from another governmental authority in the same geographic area. The non-Federal share under section 5307 may include revenues from the sale of advertising and concessions.

(10) Section 148 provides that notwithstanding any other provision of law, any unobligated funds designated to the Jacksonville Transportation Authority, Community Transportation Coordinator Program under the heading ''Job Access and Reverse Commute Grants'' in the statement of the managers accompanying Public Law 108–199, may be made available to the Jacksonville Transportation Authority for any purpose authorized under the Job Access and Reverse Commute program.

(11) Section 149 provides that notwithstanding any other provision of law, any funds made available to the South Shore Commuter Rail, Indiana, project under the Federal Transit Administration Capital Investment Grants Account in Division H of Public Law 108–447 that remain available may be used for remodernization of the South Shore Commuter Rail system.

IV. Corrections

The following corrections are made to information in the **Federal Register** published November 30, entitled ''FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users'' (70 FR 71950 *et seq.*).

1. In the description of eligibility of intercity bus and intercity rail facilities in section IV part (A), subsection 4 ''Intercity Bus and Intercity Rail'' on page 71952, the phrase ''physical and functional relationship to public transportation'' should read ''physical or functional relationship to public transportation.''

2. In the description of the Job Access Reverse Commute Program in section VI part (M), page 71967, under subsection 2, ''Basis for Formula Apportionment,'' in the 2nd paragraph, the phrase ''persons with disabilities'' should read ''low-income individuals and welfare recipients.''

Issued on: December 13, 2005.

David B. Horner,

Acting Deputy Administrator.

Appendix—FTA Regional Offices

Richard H. Doyle, Regional Administrator, Region 1—Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Tel. 617 494–2055

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

Letitia Thompson, Regional Administrator, Region 2—New York, One Bowling Green, Room 429, New York, NY 10004–1415, Tel. No. 212 668–2170

States served: New Jersey, New York, and the Virgin Islands

Susan Borinsky, Regional Administrator, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215 656–7100

States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia

Yvette G. Taylor, Regional Administrator, Region 4—Atlanta, Atlanta Federal Center,

Suite 17T50, 61 Forsyth Street SW, Atlanta, GA 30303, Tel. 404 562–3500
States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, and Tennessee
Don Gismondi, Deputy Regional Administrator, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312 353–2789
States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin
Robert C. Patrick, Regional Administrator, Region 6—Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817 978–0550
States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas
Mokhtee Ahmad, Regional Administrator, Region 7—Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. 816 329–3920
States served: Iowa, Kansas, Missouri, and Nebraska
Lee O. Waddleton, Regional Administrator, Region 8—Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228–2583, Tel. 720–963–3300
States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming
Leslie T. Rogers, Regional Administrator, Region 9—San Francisco, 201 Mission Street, Room 2210, San Francisco, CA 94105–1926, Tel. 415 744–3133
States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands
Rick Krochalis, Regional Administrator, Region 10—Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Tel. 206 220–7954
States served: Alaska, Idaho, Oregon, and Washington

BILLING CODE 4910–57–P

FEDERAL TRANSIT ADMINISTRATION

TABLE 1

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)
Authorized Programs and Funding Levels -- Fiscal Years 2005-2009 (in $000)

Authorization / Program	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	Total
Alaska Railroad (Section 5307)	$4,811	---	---	---	---	$4,811
Clean Fuels Grant Program (Section 5308)	49,600	43,000	45,000	49,000	51,500	238,100
Over-the-Road Bus Accessibility Program (Section 5310)	6,894	7,500	7,600	8,300	8,800	39,094
Urban Area Formula Grants (Section 5307)	3,593,196	3,466,681	3,606,175	3,910,843	4,160,365	18,737,260
Bus and Bus Facilities Grants (Section 5309)	669,600	822,250	855,500	927,750	984,000	4,259,100
Fixed Guideway Modernization (Section 5309)	1,204,685	1,391,000	1,448,000	1,570,000	1,666,500	7,280,185
Metropolitan Transportation Planning (section 5303)	59,903	78,584	81,893	88,510	93,887	402,777
Statewide Transportation Planning (Section 5304)	12,513	16,416	17,107	18,490	19,613	84,139
Special Needs for Elderly Individuals and Individuals with Disabilities (Section 5310)	94,527	112,000	117,000	127,000	133,500	584,027
Formula Grants for Other Than Urbanized Areas (Section 5311)	250,890	388,000	404,000	438,000	465,000	1,945,890 1/
Rural Transportation Assistance Program (Section 5311(a)(3)) (2% Takedown)	5,208	7,760	8,080	8,760	9,300	39,108
Public Transportation on Indian Reservations (Section 5311(c))	---	8,000	10,000	12,000	15,000	45,000
Job Access and Reverse Commute Formula Program (Section 5316)	124,000	138,000	144,000	156,000	164,500	726,500
New Freedom Program (Section 5317)	---	78,000	81,000	87,500	92,500	339,000
Growing States and High Density States Formula (Section 5340)	---	388,000	404,000	438,000	465,000	1,695,000
National Transit Database (Section 5335)	---	3,500	3,500	3,500	3,500	14,000
Alternatives Analysis Program (Section 5339)	---	25,000	25,000	25,000	25,000	100,000
Alternative Transportation in Parks and Public Lands (Section 5320)	---	22,000	23,000	25,000	26,900	96,900
Major Capital Investment Grants of $75,000,000 or more (Section 5309(d)) (New Starts)	1,437,830	1,503,000	1,366,000	1,500,000	1,609,250	7,416,080
Capital Investment Grants Less Than $75,000,000 (Section 5309(e)) (Small Starts)	---	---	200,000	200,000	200,000	600,000
National Research Program (Section 5314)	37,200	37,700	40,400	44,600	48,450	208,350
Transit Cooperative Research (Section 5313(a))	8,184	9,000	9,300	9,600	10,000	46,084
National Transit Institute (Section 5315)	3,968	4,300	4,300	4,300	4,300	21,168
University Research Centers (Section 5506)	5,952	7,000	7,000	7,000	7,000	33,952
Administrative Expenses	77,376	82,000	85,000	92,500	98,500	435,376
Total Funding Federal Transit Administration	**$7,646,336**	**$8,622,931**	**$8,974,775**	**$9,730,893**	**$10,338,065**	**$45,313,000**

1/ The amounts for Section 5311 for fiscal years 2006 - 2009 are the total amounts authorized for the program. Funding for the Rural Transportation Assistance Program and the Public Transportation on Indian Reservation Program, which are authorized takedowns from Section 5311, have not been deducted but are shown for information purposes.

FEDERAL TRANSIT ADMINISTRATION

TABLE 2

FY 2006 APPROPRIATIONS AND APPORTIONMENTS FOR GRANT PROGRAMS

SOURCE OF FUNDS	APPROPRIATION & APPORTIONMENT
FORMULA AND BUS GRANTS	
Section 5303 Metropolitan Transportation Planning Program	
Total Available	$78,584,000
Less Oversight (one-half percent)	(392,920)
Total Apportioned	$78,191,080
Section 5304 Statewide Transportation Planning Program	
Total Available	$16,416,000
Less Oversight (one-half percent)	(82,080)
Total Apportioned	$16,333,920
Section 5307 Urbanized Area Formula Program	
Total Available	$3,466,681,000
Less Oversight (three-fourths percent)	(26,000,108)
Reapportioned Funds	8,069,144
Total Apportioned	$3,448,750,036
Section 5308 Clean Fuels Formula Program	17,785,000 1/
Section 5309 Bus and Bus Facility Program	
Total Available	$847,465,000 2/
Less Oversight (one percent)	(8,417,150)
Total Allocated	$839,047,850
Section 5309 Fixed Guideway Modernization	
Total Available	$1,343,234,000 3/
Less Oversight (one percent)	(13,432,340)
Total Apportioned	$1,329,801,660
Section 5310 Special Needs for Elderly Individuals and Individuals with Disabilities Program	
Total Available	$112,000,000
Less Oversight (one-half percent)	(560,000)
Total Apportioned	$111,440,000
Section 5311 Nonurbanized Area Formula Program	
Total Available	$372,240,000
Less Oversight (one-half percent)	(1,940,000)
Total Apportioned	$370,300,000
Section 5311(b)(3) Rural Transit Assistance Program (RTAP)	
Total Available	$7,760,000
Less Amount Reserved for National RTAP	(1,164,000)
Total Apportioned	$6,596,000
Section 5311(c) Public Transportation on Indian Reservations	
Total Available	$8,000,000
Section 5316 Job Access and Reverse Commute Program	
Total Available	$138,000,000
Total Apportioned	$138,000,000
Section 5317 New Freedom Program	
Total Available	$78,000,000
Total Apportioned	$78,000,000
Section 5339 Alternative Analysis Program	
Total Available	$25,000,000
Total Allocated	$25,000,000
Section 5340 Growing States and High Density States Formula	
Total Available	$388,000,000 4/
Total Apportioned	$388,000,000
Over-the-Road Bus Accessibility Program (Pub. L. 105-85, Section 3038)	$7,500,000
CAPITAL INVESTMENT GRANTS	
Section 5309 New Starts	
Total Available	$1,503,000,000 5/
Less Oversight (one percent)	(15,030,000)
Total Allocated	$1,487,970,000
RESEARCH	
Section 5314 National Research Program	$54,900,000
TOTAL APPROPRIATION (Above Grant Programs)	**$8,464,565,000** 6/
TOTAL APPORTIONMENT/ALLOCATION (Above Grant Programs)	**$8,405,615,546**

1/ Funding available for Cleans Fuels after $25,215,000 is transferred to the Bus and Bus Facility program.

2/ Includes $25,215,000 transferred from the Clean Fuels program. Also includes $5,750,000 for the AK - Intermodal facility improvements at the Port of Anchorage project that will be transferred to MARAD.

3/ Funding available for Fixed Guideway Modernization program after $47,766,000 is transferred to New Starts.

4/ In accordance with language in the SAFETEA-LU conference report, apportionments derived from the Section 5340 formula are combined with the Section 5307 or Section 5311 apportionments, as appropriate. The amount of Section 5340 funds combined with Section 5307 apportionments is $327,465,660, and the amount combined with Section 5311 is $60,534,340, based on use of 2000 Census data and Census Bureau annual estimates of population released 12/22/04.

5/ Includes $47,766,000 transferred from the Fixed Guideway Modernization program.

6/ The total amount appropriated for FTA programs in the 2006 Appropriations Act is $8.59 billion. The amount shown here only includes funding for the programs included in this notice and shown above.

FEDERAL TRANSIT ADMINISTRATION

TABLE 3

FY 2006 SECTION 5303 METROPOLITAN TRANSPORTATION PLANNING PROGRAM AND SECTION 5304 STATEWIDE TRANSPORTATION PLANNING PROGRAM APPORTIONMENTS

STATE	SECTION 5303 APPORTIONMENT	SECTION 5304 APPORTIONMENT
Alabama	$591,875	$154,552
Alaska	312,764	81,670
Arizona	1,563,741	311,153
Arkansas	312,764	81,670
California	12,300,831	2,390,046
Colorado	1,171,827	255,805
Connecticut	868,555	226,786
Delaware	312,764	81,670
District of Columbia	312,764	81,670
Florida	5,109,825	1,072,438
Georgia	2,015,405	398,886
Hawaii	312,764	81,670
Idaho	312,764	81,670
Illinois	4,336,207	775,260
Indiana	1,178,000	271,565
Iowa	339,900	88,755
Kansas	397,425	96,163
Kentucky	496,019	124,739
Louisiana	774,921	201,876
Maine	312,764	81,670
Maryland	1,752,690	342,147
Massachusetts	2,302,821	448,647
Michigan	2,572,375	523,761
Minnesota	1,097,783	215,899
Mississippi	312,764	81,670
Missouri	1,157,893	246,065
Montana	312,764	81,670
Nebraska	312,764	81,670
Nevada	572,451	133,461
New Hampshire	312,764	81,670
New Jersey	3,627,275	617,327
New Mexico	312,764	81,670
New York	6,913,697	1,234,418
North Carolina	1,146,691	299,426
North Dakota	312,764	81,670
Ohio	2,488,309	582,097
Oklahoma	452,362	118,122
Oregon	695,869	157,331
Pennsylvania	3,212,427	653,728
Puerto Rico	1,297,455	276,801
Rhode Island	323,173	81,670
South Carolina	571,329	149,186
South Dakota	312,764	81,670
Tennessee	903,945	236,040
Texas	5,739,809	1,177,990
Utah	532,990	139,175
Vermont	312,764	81,670
Virginia	1,774,462	375,255
Washington	1,666,796	342,652
West Virginia	312,764	81,670
Wisconsin	926,959	226,308
Wyoming	312,764	81,670
TOTAL	**$78,191,080**	**$16,333,920**

FEDERAL TRANSIT ADMINISTRATION
TABLE 4

FY 2006 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

(Note: In accordance with language in the SAFETEA-LU conference report, an urbanized area apportionments for Section 5307 and Section 5340 were combined to show a single amount. An area's apportionment amount includes regular Section 5307 funds, Small Transit Intensive Cities funds, and Growing States and High Density States formula funds, as appropriate.)

URBANIZED AREA/STATE	APPORTIONMENT
1,000,000 or more in Population	$2,705,154,510
200,000 - 999,999 in Population	677,666,792
50,000 - 199,999 in Population	393,394,394
National Total	$3,776,215,696
Amounts Apportioned to Urbanized Areas 1,000,000 or more in Population:	
Atlanta, GA	$55,604,557
Baltimore, MD	48,164,697
Boston, MA--NH--RI	121,331,714
Chicago, IL--IN	208,263,615
Cincinnati, OH--KY--IN	16,628,770
Cleveland, OH	25,842,639
Columbus, OH	10,527,950
Dallas--Fort Worth--Arlington, TX	55,897,316
Denver--Aurora, CO	37,074,081
Detroit, MI	37,111,420
Houston, TX	57,833,807
Indianapolis, IN	10,105,948
Kansas City, MO--KS	12,107,102
Las Vegas, NV	19,807,175
Los Angeles--Long Beach--Santa Ana, CA	236,905,453
Miami, FL	85,244,523
Milwaukee, WI	19,200,378
Minneapolis--St. Paul, MN	40,468,906
New Orleans, LA	15,610,271
New York--Newark, NY--NJ--CT	746,750,789
Orlando, FL	16,306,834
Philadelphia, PA--NJ--DE--MD	124,344,247
Phoenix--Mesa, AZ	38,068,811
Pittsburgh, PA	31,672,821
Portland, OR--WA	32,484,608
Providence, RI--MA	28,001,285
Riverside--San Bernardino, CA	23,515,655
Sacramento, CA	17,798,440
San Antonio, TX	19,612,967
San Diego, CA	48,080,524
San Francisco--Oakland, CA	117,252,329
San Jose, CA	34,438,912
San Juan, PR	36,051,763
Seattle, WA	78,672,257
St. Louis, MO--IL	28,756,857
Tampa--St. Petersburg, FL	20,256,568
Virginia Beach, VA	14,806,584
Washington, DC--VA--MD	134,551,937
Total	**$2,705,154,510**

FEDERAL TRANSIT ADMINISTRATION
TABLE 4

FY 2006 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

(Note: In accordance with language in the SAFETEA-LU conference report, an urbanized area apportionments for Section 5307 and Section 5340 were combined to show a single amount. An area's apportionment amount includes regular Section 5307 funds, Small Transit Intensive Cities funds, and Growing States and High Density States formula funds, as appropriate.)

URBANIZED AREA/STATE	APPORTIONMENT
Amounts Apportioned to Urbanized Areas 200,000 to 999,999 in Population	
Aguadilla--Isabela--San Sebastian, PR	$4,732,905
Akron, OH	5,983,775
Albany, NY	9,190,345
Albuquerque, NM	6,482,023
Allentown--Bethlehem, PA--NJ	6,768,700
Anchorage, AK	21,139,939
Ann Arbor, MI	4,127,664
Antioch, CA	5,387,415
Asheville, NC	1,556,058
Atlantic City, NJ	8,830,398
Augusta-Richmond County, GA--SC	2,134,825
Austin, TX	15,965,252
Bakersfield, CA	5,333,297
Barnstable Town, MA	4,538,331
Baton Rouge, LA	4,447,506
Birmingham, AL	5,659,988
Boise City, ID	2,302,772
Bonita Springs--Naples, FL	1,236,458
Bridgeport--Stamford, CT--NY	21,837,048
Buffalo, NY	14,821,641
Canton, OH	3,313,585
Cape Coral, FL	3,560,776
Charleston--North Charleston, SC	3,058,296
Charlotte, NC--SC	11,852,511
Chattanooga, TN--GA	2,810,458
Colorado Springs, CO	4,793,963
Columbia, SC	3,640,283
Columbus, GA--AL	1,917,873
Concord, CA	18,197,263
Corpus Christi, TX	4,230,865
Davenport, IA--IL	3,300,210
Dayton, OH	13,604,773
Daytona Beach--Port Orange, FL	3,812,703
Denton--Lewisville, TX	2,277,955
Des Moines, IA	4,733,544
Durham, NC	5,171,561
El Paso, TX--NM	9,877,292
Eugene, OR	4,011,735
Evansville, IN--KY	1,826,585
Fayetteville, NC	2,116,862
Flint, MI	5,104,483
Fort Collins, CO	1,944,287
Fort Wayne, IN	2,504,945
Fresno, CA	7,172,901
Grand Rapids, MI	6,039,230
Greensboro, NC	2,672,878
Greenville, SC	1,822,293
Gulfport--Biloxi, MS	1,628,795

FEDERAL TRANSIT ADMINISTRATION
TABLE 4

FY 2006 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

(Note: In accordance with language in the SAFETEA-LU conference report, an urbanized area apportionments for Section 5307 and Section 5340 were combined to show a single amount. An area's apportionment amount includes regular Section 5307 funds, Small Transit Intensive Cities funds, and Growing States and High Density States formula funds, as appropriate.)

URBANIZED AREA/STATE	APPORTIONMENT
Harrisburg, PA	4,353,369
Hartford, CT	17,325,149
Honolulu, HI	22,410,583
Huntsville, AL	1,566,472
Indio--Cathedral City--Palm Springs, CA	3,526,367
Jackson, MS	2,203,274
Jacksonville, FL	13,925,080
Knoxville, TN	3,526,554
Lancaster, PA	3,333,442
Lancaster--Palmdale, CA	6,330,765
Lansing, MI	4,426,852
Lexington-Fayette, KY	3,079,206
Lincoln, NE	2,360,943
Little Rock, AR	3,357,940
Louisville, KY--IN	10,794,638
Lubbock, TX	2,615,519
Madison, WI	5,951,069
McAllen, TX	3,013,724
Memphis, TN--MS--AR	11,634,248
Mission Viejo, CA	8,279,819
Mobile, AL	2,606,272
Modesto, CA	3,503,805
Nashville-Davidson, TN	6,870,266
New Haven, CT	16,641,329
Ogden--Layton, UT	5,057,705
Oklahoma City, OK	6,600,436
Omaha, NE--IA	6,373,167
Oxnard, CA	6,813,871
Palm Bay--Melbourne, FL	4,029,305
Pensacola, FL--AL	2,634,259
Peoria, IL	2,610,629
Port St. Lucie, FL	2,064,347
Poughkeepsie--Newburgh, NY	14,771,311
Provo--Orem, UT	4,271,068
Raleigh, NC	5,131,467
Reading, PA	2,567,838
Reno, NV	4,437,697
Richmond, VA	8,831,417
Rochester, NY	10,068,482
Rockford, IL	2,330,186
Round Lake Beach--McHenry--Grayslake, IL--WI	3,590,800
Salem, OR	3,282,432
Salt Lake City, UT	18,836,750
Santa Rosa, CA	3,320,307
Sarasota--Bradenton, FL	5,718,741
Savannah, GA	2,780,954
Scranton, PA	3,638,865
Shreveport, LA	2,794,531
South Bend, IN--MI	3,499,455
Spokane, WA--ID	6,152,229
Springfield, MA--CT	11,389,118
Springfield, MO	1,889,600

FEDERAL TRANSIT ADMINISTRATION
TABLE 4

FY 2006 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

(Note: In accordance with language in the SAFETEA-LU conference report, an urbanized area apportionments for Section 5307 and Section 5340 were combined to show a single amount. An area's apportionment amount includes regular Section 5307 funds, Small Transit Intensive Cities funds, and Growing States and High Density States formula funds, as appropriate.)

URBANIZED AREA/STATE	APPORTIONMENT
Stockton, CA	7,264,403
Syracuse, NY	6,109,491
Tallahassee, FL	2,247,603
Temecula--Murrieta, CA	2,215,136
Thousand Oaks, CA	2,483,193
Toledo, OH--MI	5,789,739
Trenton, NJ	7,766,715
Tucson, AZ	9,769,831
Tulsa, OK	5,163,320
Victorville--Hesperia--Apple Valley, CA	2,416,553
Wichita, KS	4,337,595
Winston-Salem, NC	2,445,003
Worcester, MA--CT	7,916,660
Youngstown, OH--PA	3,142,653
Total	**$677,666,792**

FEDERAL TRANSIT ADMINISTRATION
TABLE 4

FY 2006 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

(Note: In accordance with language in the SAFETEA-LU conference report, an urbanized area apportionments for Section 5307 and Section 5340 were combined to show a single amount. An area's apportionment amount includes regular Section 5307 funds, Small Transit Intensive Cities funds, and Growing States and High Density States formula funds, as appropriate.)

URBANIZED AREA/STATE	APPORTIONMENT
Amounts Apportioned to State Governors for Urbanized Areas 50,000 to 199,999 in Population	
ALABAMA	$7,101,337
Anniston, AL	646,697
Auburn, AL	598,180
Decatur, AL	569,016
Dothan, AL	545,435
Florence, AL	818,934
Gadsden, AL	536,662
Montgomery, AL	2,213,516
Tuscaloosa, AL	1,172,897
ALASKA	$478,337
Fairbanks, AK	478,337
ARIZONA	$3,445,217
Avondale, AZ	967,737
Flagstaff, AZ	618,515
Prescott, AZ	644,463
Yuma, AZ--CA	1,214,502
ARKANSAS	$4,843,741
Fayetteville--Springdale, AR	1,891,268
Fort Smith, AR--OK	1,158,410
Hot Springs, AR	466,373
Jonesboro, AR	488,150
Pine Bluff, AR	606,818
Texarkana, TX--Texarkana, AR	232,722
CALIFORNIA	$53,880,542
Atascadero--El Paso de Robles (Paso Robles), CA	589,462
Camarillo, CA	869,924
Chico, CA	1,143,545
Davis, CA	2,046,874
El Centro, CA	770,590
Fairfield, CA	1,977,968
Gilroy--Morgan Hill, CA	1,007,466
Hanford, CA	925,768
Hemet, CA	1,579,456
Livermore, CA	1,172,831
Lodi, CA	1,295,927
Lompoc, CA	740,090
Madera, CA	745,576
Manteca, CA	819,411
Merced, CA	1,834,328
Napa, CA	1,468,247
Petaluma, CA	878,388
Porterville, CA	820,732
Redding, CA	1,185,849
Salinas, CA	2,978,486
San Luis Obispo, CA	1,234,910
Santa Barbara, CA	3,694,502
Santa Clarita, CA	3,248,787
Santa Cruz, CA	2,946,774
Santa Maria, CA	1,806,333
Seaside--Monterey--Marina, CA	2,586,101
Simi Valley, CA	2,047,923
Tracy, CA	1,079,771
Turlock, CA	1,106,475

FEDERAL TRANSIT ADMINISTRATION
TABLE 4

FY 2006 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

(Note: In accordance with language in the SAFETEA-LU conference report, an urbanized area apportionments for Section 5307 and Section 5340 were combined to show a single amount. An area's apportionment amount includes regular Section 5307 funds, Small Transit Intensive Cities funds, and Growing States and High Density States formula funds, as appropriate.)

URBANIZED AREA/STATE	APPORTIONMENT
Vacaville, CA	1,531,742
Vallejo, CA	3,733,567
Visalia, CA	1,682,971
Watsonville, CA	1,015,273
Yuba City, CA	1,305,058
Yuma, AZ--CA	9,437
COLORADO	$8,098,620
Boulder, CO	2,098,279
Grand Junction, CO	964,214
Greeley, CO	1,262,301
Lafayette--Louisville, CO	809,013
Longmont, CO	1,465,030
Pueblo, CO	1,499,783
CONNECTICUT	$17,577,265
Danbury, CT--NY	6,884,888
Norwich--New London, CT	2,826,449
Waterbury, CT	7,865,928
DELAWARE	$1,167,924
Dover, DE	1,140,494
Salisbury, MD--DE	27,430
FLORIDA	$20,870,082
Brooksville, FL	955,518
Deltona, FL	1,548,996
Fort Walton Beach, FL	1,574,210
Gainesville, FL	2,645,499
Kissimmee, FL	2,022,758
Lady Lake, FL	446,570
Lakeland, FL	2,360,707
Leesburg--Eustis, FL	950,866
North Port--Punta Gorda, FL	1,192,971
Ocala, FL	989,691
Panama City, FL	1,399,882
St. Augustine, FL	546,485
Titusville, FL	959,035
Vero Beach--Sebastian, FL	1,215,602
Winter Haven, FL	1,543,998
Zephyrhills, FL	517,294
GEORGIA	$8,632,465
Albany, GA	947,996
Athens-Clarke County, GA	1,292,923
Brunswick, GA	479,077
Dalton, GA	513,309
Gainesville, GA	770,821
Hinesville, GA	554,196
Macon, GA	1,558,176
Rome, GA	1,108,837
Valdosta, GA	583,383
Warner Robins, GA	823,747

FEDERAL TRANSIT ADMINISTRATION
TABLE 4

FY 2006 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

(Note: In accordance with language in the SAFETEA-LU conference report, an urbanized area apportionments for Section 5307 and Section 5340 were combined to show a single amount. An area's apportionment amount includes regular Section 5307 funds, Small Transit Intensive Cities funds, and Growing States and High Density States formula funds, as appropriate.)

URBANIZED AREA/STATE	APPORTIONMENT
HAWAII	$1,967,054
Kailua (Honolulu County)--Kaneohe, HI	1,967,054
IDAHO	$3,780,635
Coeur d'Alene, ID	807,200
Idaho Falls, ID	791,391
Lewiston, ID--WA	342,284
Nampa, ID	1,113,499
Pocatello, ID	726,261
ILLINOIS	$10,661,412
Alton, IL	876,417
Beloit, WI--IL	136,620
Bloomington--Normal, IL	1,838,439
Champaign, IL	2,531,571
Danville, IL	560,454
Decatur, IL	1,333,968
DeKalb, IL	794,597
Dubuque, IA--IL	27,729
Kankakee, IL	795,041
Springfield, IL	1,766,576
INDIANA	$10,017,652
Anderson, IN	973,718
Bloomington, IN	1,479,096
Columbus, IN	558,548
Elkhart, IN--MI	1,355,863
Kokomo, IN	684,325
Lafayette, IN	1,917,173
Michigan City, IN--MI	740,080
Muncie, IN	1,448,439
Terre Haute, IN	860,410
IOWA	$7,917,005
Ames, IA	1,399,584
Cedar Rapids, IA	1,999,930
Dubuque, IA--IL	733,135
Iowa City, IA	1,578,053
Sioux City, IA--NE--SD	974,047
Waterloo, IA	1,232,256
KANSAS	$2,973,711
Lawrence, KS	1,347,964
St. Joseph, MO--KS	11,889
Topeka, KS	1,613,858
KENTUCKY	$2,747,534
Bowling Green, KY	595,641
Clarksville, TN--KY	257,579
Huntington, WV--KY--OH	536,319
Owensboro, KY	719,118
Radcliff--Elizabethtown, KY	638,877
LOUISIANA	$7,696,730
Alexandria, LA	746,376
Houma, LA	1,294,340
Lafayette, LA	1,865,572
Lake Charles, LA	1,301,264
Mandeville--Covington, LA	599,197
Monroe, LA	1,113,782
Slidell, LA	776,199

FEDERAL TRANSIT ADMINISTRATION
TABLE 4

FY 2006 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

(Note: In accordance with language in the SAFETEA-LU conference report, an urbanized area apportionments for Section 5307 and Section 5340 were combined to show a single amount. An area's apportionment amount includes regular Section 5307 funds, Small Transit Intensive Cities funds, and Growing States and High Density States formula funds, as appropriate.)

URBANIZED AREA/STATE	APPORTIONMENT
MAINE	$3,697,176
Bangor, ME	591,421
Dover--Rochester, NH--ME	62,842
Lewiston, ME	897,871
Portland, ME	2,017,212
Portsmouth, NH--ME	127,830
MARYLAND	$10,074,355
Aberdeen--Havre de Grace--Bel Air, MD	2,792,348
Cumberland, MD-WV-PA	780,585
Frederick, MD	1,843,612
Hagerstown, MD--WV--PA	1,387,280
Salisbury, MD--DE	871,575
St. Charles, MD	1,443,967
Westminster, MD	954,988
MASSACHUSETTS	$6,395,006
Leominster--Fitchburg, MA	2,224,828
Nashua, NH--MA	485
New Bedford, MA	3,022,054
Pittsfield, MA	1,147,639
MICHIGAN	$12,706,447
Battle Creek, MI	795,752
Bay City, MI	1,072,858
Benton Harbor--St. Joseph, MI	590,300
Elkhart, IN--MI	16,870
Holland, MI	1,014,417
Jackson, MI	1,189,152
Kalamazoo, MI	2,255,319
Michigan City, IN--MI	4,839
Monroe, MI	569,546
Muskegon, MI	1,558,358
Port Huron, MI	1,138,631
Saginaw, MI	1,554,006
South Lyon--Howell--Brighton, MI	946,399
MINNESOTA	$4,918,993
Duluth, MN--WI	1,268,627
Fargo, ND--MN	471,360
Grand Forks, ND--MN	100,586
La Crosse, WI--MN	75,287
Rochester, MN	1,495,800
St. Cloud, MN	1,507,333
MISSISSIPPI	$1,174,950
Hattiesburg, MS	623,361
Pascagoula, MS	551,589
MISSOURI	$3,964,645
Columbia, MO	1,092,510
Jefferson City, MO	521,662
Joplin, MO	671,473
Lee's Summit, MO	687,027
St. Joseph, MO--KS	991,973
MONTANA	$2,717,194
Billings, MT	1,182,342
Great Falls, MT	767,737
Missoula, MT	767,115

FEDERAL TRANSIT ADMINISTRATION
TABLE 4

FY 2006 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

(Note: In accordance with language in the SAFETEA-LU conference report, an urbanized area apportionments for Section 5307 and Section 5340 were combined to show a single amount. An area's apportionment amount includes regular Section 5307 funds, Small Transit Intensive Cities funds, and Growing States and High Density States formula funds, as appropriate.)

URBANIZED AREA/STATE	APPORTIONMENT
N. MARIANA ISLANDS	$671,398
Saipan, MP	671,398
NEBRASKA	$189,837
Sioux City, IA--NE--SD	189,837
NEVADA	$686,930
Carson City, NV	686,930
NEW HAMPSHIRE	$4,869,268
Dover--Rochester, NH--ME	692,312
Manchester, NH	1,634,211
Nashua, NH--MA	1,937,147
Portsmouth, NH--ME	605,598
NEW JERSEY	$3,811,689
Hightstown, NJ	1,377,907
Vineland, NJ	1,536,001
Wildwood--North Wildwood--Cape May, NJ	897,781
NEW MEXICO	$2,698,670
Farmington, NM	495,698
Las Cruces, NM	1,075,860
Santa Fe, NM	1,127,112
NEW YORK	$10,428,005
Binghamton, NY--PA	2,643,215
Danbury, CT--NY	72,867
Elmira, NY	1,212,768
Glens Falls, NY	764,344
Ithaca, NY	1,267,700
Kingston, NY	1,236,436
Middletown, NY	683,622
Saratoga Springs, NY	779,123
Utica, NY	1,767,930
NORTH CAROLINA	$10,808,019
Burlington, NC	934,150
Concord, NC	1,081,274
Gastonia, NC	1,301,934
Goldsboro, NC	553,781
Greenville, NC	925,567
Hickory, NC	1,580,398
High Point, NC	1,301,215
Jacksonville, NC	955,301
Rocky Mount, NC	620,266
Wilmington, NC	1,554,133
NORTH DAKOTA	$3,299,525
Bismarck, ND	1,014,356
Fargo, ND--MN	1,545,728
Grand Forks, ND--MN	739,441
OHIO	$9,092,802
Huntington, WV--KY--OH	351,544
Lima, OH	753,682
Lorain--Elyria, OH	2,549,749
Mansfield, OH	805,237
Middletown, OH	1,051,302
Newark, OH	1,049,029
Parkersburg, WV--OH	247,370
Sandusky, OH	533,533

FEDERAL TRANSIT ADMINISTRATION
TABLE 4

FY 2006 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

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URBANIZED AREA/STATE	APPORTIONMENT
Springfield, OH	1,018,501
Weirton, WV--Steubenville, OH--PA	424,762
Wheeling, WV--OH	308,093
OKLAHOMA	$2,112,280
Fort Smith, AR--OK	21,932
Lawton, OK	919,289
Norman, OK	1,171,059
OREGON	$2,789,864
Bend, OR	587,870
Corvallis, OR	661,081
Longview, WA--OR	15,750
Medford, OR	1,525,163
PENNSYLVANIA	$14,297,308
Altoona, PA	970,310
Binghamton, NY--PA	43,307
Cumberland, MD-WV-PA	132
Erie, PA	2,833,024
Hagerstown, MD--WV--PA	12,130
Hazleton, PA	553,077
Johnstown, PA	1,210,901
Lebanon, PA	738,671
Monessen, PA	1,233,971
Pottstown, PA	698,313
State College, PA	1,852,952
Uniontown--Connellsville, PA	550,028
Weirton, WV--Steubenville, OH--PA	2,630
Williamsport, PA	1,487,033
York, PA	2,110,829
PUERTO RICO	$10,238,204
Arecibo, PR	1,394,381
Fajardo, PR	796,811
Florida--Barceloneta--Bajadero, PR	620,334
Guayama, PR	810,333
Juana Diaz, PR	544,307
Mayaguez, PR	1,261,209
Ponce, PR	2,776,048
San German--Cabo Rojo--Sabana Grande, PR	975,668
Yauco, PR	1,059,113
RHODE ISLAND	0
SOUTH CAROLINA	$6,584,363
Anderson, SC	615,035
Florence, SC	997,226
Mauldin--Simpsonville, SC	755,889
Myrtle Beach, SC	1,404,394
Rock Hill, SC	633,727
Spartanburg, SC	1,278,916
Sumter, SC	899,176
SOUTH DAKOTA	$2,590,248
Rapid City, SD	787,228
Sioux City, IA--NE--SD	32,265
Sioux Falls, SD	1,770,755
TENNESSEE	$6,382,156
Bristol, TN--Bristol, VA	333,723
Clarksville, TN--KY	970,771

FEDERAL TRANSIT ADMINISTRATION
TABLE 4

FY 2006 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

(Note: In accordance with language in the SAFETEA-LU conference report, an urbanized area apportionments for Section 5307 and Section 5340 were combined to show a single amount. An area's apportionment amount includes regular Section 5307 funds, Small Transit Intensive Cities funds, and Growing States and High Density States formula funds, as appropriate.)

URBANIZED AREA/STATE	APPORTIONMENT
Cleveland, TN	535,143
Jackson, TN	813,425
Johnson City, TN	920,762
Kingsport, TN--VA	807,352
Morristown, TN	498,824
Murfreesboro, TN	1,502,156
TEXAS	$33,863,274
Abilene, TX	1,290,525
Amarillo, TX	2,242,599
Beaumont, TX	1,480,237
Brownsville, TX	2,680,141
College Station--Bryan, TX	1,753,657
Galveston, TX	1,390,681
Harlingen, TX	1,224,570
Killeen, TX	2,190,259
Lake Jackson--Angleton, TX	869,572
Laredo, TX	3,657,551
Longview, TX	794,825
McKinney, TX	622,565
Midland, TX	1,180,738
Odessa, TX	1,296,102
Port Arthur, TX	1,457,960
San Angelo, TX	985,553
Sherman, TX	737,760
Temple, TX	769,925
Texarkana, TX--Texarkana, AR	443,803
Texas City, TX	1,141,509
The Woodlands, TX	1,053,267
Tyler, TX	1,093,256
Victoria, TX	571,496
Waco, TX	1,825,098
Wichita Falls, TX	1,109,625
UTAH	$1,819,736
Logan, UT	1,130,239
St. George, UT	689,497
VERMONT	$1,370,730
Burlington, VT	1,370,730
VIRGIN ISLANDS	811,984 1/
VIRGINIA	$8,202,522
Blacksburg, VA	675,389
Bristol, TN--Bristol, VA	195,287
Charlottesville, VA	1,360,890
Danville, VA	517,858
Fredericksburg, VA	968,589
Harrisonburg, VA	592,928
Kingsport, TN--VA	15,301
Lynchburg, VA	1,209,237
Roanoke, VA	2,114,350
Winchester, VA	552,693
WASHINGTON	$13,087,628
Bellingham, WA	1,573,013
Bremerton, WA	2,327,151
Kennewick--Richland, WA	1,668,282
Lewiston, ID--WA	199,931
Longview, WA--OR	709,304
Marysville, WA	1,161,421
Mount Vernon, WA	794,190
Olympia--Lacey, WA	1,997,285

FEDERAL TRANSIT ADMINISTRATION
TABLE 4

FY 2006 SECTION 5307 AND SECTION 5340 URBANIZED AREA APPORTIONMENTS

(Note: In accordance with language in the SAFETEA-LU conference report, an urbanized area apportionments for Section 5307 and Section 5340 were combined to show a single amount. An area's apportionment amount includes regular Section 5307 funds, Small Transit Intensive Cities funds, and Growing States and High Density States formula funds, as appropriate.)

URBANIZED AREA/STATE	APPORTIONMENT
Wenatchee, WA	1,040,056
Yakima, WA	1,616,995
WEST VIRGINIA	$5,492,501
Charleston, WV	2,133,676
Cumberland, MD-WV-PA	21,839
Hagerstown, MD--WV--PA	285,829
Huntington, WV--KY--OH	949,825
Morgantown, WV	575,328
Parkersburg, WV--OH	645,115
Weirton, WV--Steubenville, OH--PA	294,703
Wheeling, WV--OH	586,186
WISCONSIN	$16,235,147
Appleton, WI	2,399,369
Beloit, WI--IL	504,030
Duluth, MN--WI	399,681
Eau Claire, WI	1,331,374
Fond du Lac, WI	625,364
Green Bay, WI	2,251,775
Janesville, WI	788,389
Kenosha, WI	1,703,483
La Crosse, WI--MN	1,260,380
Oshkosh, WI	1,328,528
Racine, WI	1,877,306
Sheboygan, WI	1,027,408
Wausau, WI	738,060
WYOMING	$1,454,277
Casper, WY	682,835
Cheyenne, WY	771,442
Total	**$393,394,394**

1/ Language in section 5307(l) provides for the treatment of the Virgin Islands as an urbanized area.

FEDERAL TRANSIT ADMINISTRATION

TABLE 5

FY 2006 SECTION 5307 APPORTIONMENT FORMULA

Distribution of Available Funds

Of the funds made available to the Section 5307 program, a one percent takedown is authorized for Small Transit Intensive Cities. This amount is apportioned to the Governors based on a separate formula that uses criteria related to specific service performance categories.

The remaining 99% is apportioned to small, medium, and large sized urbanized areas (UZAs). 9.32% is made available for UZAs 50,000-199,999 in population, and 90.68% to UZAs 200,000 or more in population.

UZA Population and Weighting Factors

50,000-199,999 in population : 9.32% of available Section 5307 funds
(Apportioned to Governors)

50% apportioned based on population

50% apportioned based on population x population density

200,000 and greater in population: 90.68% of available Section 5307 funds
(Apportioned to UZAs)

33.29% (Fixed Guideway Tier*)

95.61% (Non-incentive Portion of Tier)

--- at least 0.75% to each UZA with commuter rail and pop. 750,000 or greater

60% - fixed guideway revenue vehicle miles

40% - fixed guideway route miles

4.39% ("Incentive" Portion of Tier)

-- at least 0.75% to each UZA with commuter rail and pop. 750,000 or greater

-- fixed guideway passenger miles x fixed guideway passenger miles/operating cost

66.71% ("Bus" Tier)

90.8% (Non-incentive Portion of Tier)

73.39% for UZAs with population 1,000,000 or greater

50% - bus revenue vehicle miles

25% - population

25% - population x population density

26.61% for UZAs pop. < 1,000,000

50% - bus revenue vehicle miles

25% - population

25% - population x density

9.2% ("Incentive" Portion of Tier)

-- bus passenger miles x bus passenger miles/operating cost

* Includes all fixed guideway modes, such as heavy rail, commuter rail, light rail, trolleybus, aerial tramway, inclined plane, cable car, automated guideway transit, ferryboats, exclusive busways, and HOV lanes.

FEDERAL TRANSIT ADMINISTRATION

TABLE 6

FISCAL YEAR 2006 FORMULA PROGRAMS APPORTIONMENT DATA UNIT VALUES

	APPORTIONMENT DATA UNIT VALUE
Section 5307 Urbanized Area Formula Program - Bus Tier	
Urbanized Areas Over 1,000,000:	
Population	$2.88893743
Population x Density	$0.00073302
Bus Revenue Vehicle Mile	$0.38293426
Urbanized Areas Under 1,000,000:	
Population	$2.64759743
Population x Density	$0.00115842
Bus Revenue Vehicle Mile	$0.49886941
Bus Incentive (PM denotes Passenger Mile):	
Bus PM x Bus PM = / Operating Cost	$0.00721551
Section 5307 Urbanized Area Formula Program - Fixed Guideway Tier	
Fixed Guideway Revenue Vehicle Mile	$0.56908098
Fixed Guideway Route Mile	$30,434
Commuter Rail Floor	$7,390,333
Fixed Guideway Incentive:	
Fixed Guideway PM x Fixed Guideway PM = / Operating Cost	$0.00058621
Commuter Rail Incentive Floor	$339,332
Section 5307 Urbanized Area Formula Program - Areas Under 200,000	
Population	$5.32507528
Population x Density	$0.00264893
Section 5307 Small Transit Intensive Cities	
For Each Qualifying Performance Category	$133,334

Section 5309 Capital Program - Fixed Guideway Modernization

	Tier 2	Tier 3	Tier 4	Tier 5	Tier 6	Tier 7
Legislatively Specified Areas:						
Revenue Vehicle Mile	$0.03043443	-------	$0.13671435	$0.03492742	$0.02302907	$0.17264190
Route Mile	$2,122.43	-------	$7,825.39	$2,676.47	$1,764.71	$13,229.46
Other Urbanized Areas:						
Revenue Vehicle Mile	$0.16288440	$0.00576164	$0.13671435	$0.07458322	$0.06088426	$0.68464608
Route Mile	$4,758.70	$168.33	$7,825.39	$2,103.64	$1,717.25	$19,310.59

Note: Unit values for Section 5307 do not take into account Section 5340 funding added to the program.

FEDERAL TRANSIT ADMINISTRATION

TABLE 7

URBANIZED AREAS 200,000 OR MORE IN POPULATION ELIGIBLE TO USE SECTION 5307 FUNDS FOR OPERATING ASSISTANCE

State	2000 Census Urbanized Area Description	Population	FY 2002 Apportionment	FY 2006 Apportionment Operating Limitation a/
AL	Huntsville, AL	213,253	$1,677,473	$838,737
CA	Antioch, CA	217,591	$1,914,688	$957,344
CA	Indio--Cathedral City--Palm Springs, CA	254,856	$1,849,608	$924,804
	(Indio-Coachella, CA -- $621,797)			
	(Palm Springs, CA -- $1,227,811)			
CA	Lancaster--Palmdale, CA	263,532	$2,206,544	$1,103,272
CA	Santa Rosa, CA	285,408	$2,636,339	$1,318,170
CA	Victorville--Hesperia--Apple Valley, CA	200,436	$1,311,837	$655,919
CA	Temecula--Murrieta, CA	229,810	----------	$623,817
CO	Fort Collins, CO	206,757	$1,156,197	$578,099
CT	Bridgeport--Stamford, CT--NY	888,890	$9,676,425	$4,838,213
	(Stamford, CT-NY -- $5,332,860)			
	(Norwalk, CT -- $4,343,565)			
CT	Hartford, CT	851,535	$2,824,453	$1,412,227
	(Bristol, CT -- $983,277)			
	(New Britain, CT -- $1,841,176)			
FL	Port St. Lucie, FL	270,774	$1,982,206	$991,103
	(Fort Pierce, FL -- $1,142,501)			
	(Stuart, FL -- $839,705)			
FL	Bonita Springs--Naples, FL	221,251	$954,953	$477,477
FL	Tallahassee, FL	204,260	$1,617,975	$808,988
GA	Savannah, GA	208,886	$1,824,225	$912,113
ID	Boise City, ID	272,625	$2,021,464	$1,010,732
IL	Round Lake Beach--McHenry--Grayslake, IL--WI	226,848	$1,088,609	$544,305
IL	Chicago, IL--IN	8,307,904	$6,599,240	$3,299,620
	(Aurora, IL -- $2,290,318)			
	(Crystal Lake, IL -- $746,464)			
	(Elgin, IL -- $1,652,124)			
	(Joliet, IL -- $1,910,334)			
IN	Evansville, IN--KY	211,989	$2,251,898	$1,125,949
MA	Barnstable Town, MA	243,667	$538,120	$269,060
MA	Boston, MA--NH--RI	4,032,484	$4,760,673	$2,380,337
	(Brockton, MA -- $1,906,558)			
	(Lowell, MA-NH -- $2,366,926)			
	(Taunton, MA -- $487,189)			
MD	Baltimore, MD	2,076,354	$858,335	$429,168
	(Annapolis, MD -- $858,335)			
MO	Springfield, MO	215,004	$1,748,930	$874,465
MS	Gulfport--Biloxi, MS	205,754	$1,687,127	$843,564
NC	Winston-Salem, NC	299,290	$1,811,413	$905,707
NC	Asheville, NC	221,570	$968,044	$484,022
NC	Greensboro, NC	267,884	$2,211,540	$1,105,770
NE	Lincoln, NE	226,582	$2,658,761	$1,329,381
NJ	Atlantic City, NJ	227,180	$1,842,968	$921,484
NY	Poughkeepsie--Newburgh, NY	351,982	$2,225,147	$1,112,574
	(Poughkeepsie, NY -- $1,507,504)			
	(Newburgh, NY -- $717,643)			
OH	Youngstown, OH--PA	417,437	$465,043	$232,522
	(Sharon, PA-OH -- $465,043)			
OH	Cincinnati, OH--KY--IN	1,503,262	$1,384,842	$692,421
	(Hamilton, OH -- $1,384,842)			
OR	Eugene, OR	224,049	$2,559,936	$1,279,968
OR	Salem, OR	207,229	$2,070,221	$1,035,111
PA	Reading, PA	240,264	$2,636,837	$1,318,419
PA	Lancaster, PA	323,554	$2,258,871	$1,129,436
PR	Aguadilla--Isabela--San Sebastian, PR	299,086	$1,148,984	$574,492
PR	San Juan, PR	2,216,616	$5,925,223	$2,962,612
	(Caguas, PR -- $2,811,557)			

FEDERAL TRANSIT ADMINISTRATION

TABLE 7

URBANIZED AREAS 200,000 OR MORE IN POPULATION ELIGIBLE TO USE SECTION 5307 FUNDS FOR OPERATING ASSISTANCE

State	2000 Census Urbanized Area Description	Population	FY 2002 Apportionment	FY 2006 Apportionment Operating Limitation a/
	(Cayey, PR -- $831,273)			
	(Humacao, PR -- $719,451)			
	(Vega Baja-Manati, PR -- $1,562,942)			
RI	Providence, RI--MA	1,174,548	$2,695,482	$1,347,741
	(Newport, RI -- $644,329)			
	(Fall River, MA-RI -- $2,051,153)			
TX	Lubbock, TX	202,225	$1,939,424	$969,712
TX	Denton--Lewisville, TX	299,823	$1,291,722	$645,861
	(Denton, TX -- $599,570)			
	(Lewisville, TX -- $692,152)			
VA	Richmond, VA	818,836	$1,016,957	$508,479
	(Petersburg, VA -- $1,016,957)			

a/ The amount shown represents the maximum amount allowable,in accordance with section 5307(b)(2), based on funding provided in the 2006 Appropriations Act. In cases where an urbanized area's FY 2006 apportionment is less than the maximum, FTA will set the operating assistance budget, in TEAM-Web, at an amount not to exceed the FY 2006 apportionment.

Note: For informational purposes, the affected 1990 census small urbanized areas (less than 200,000 population) that were merged into an existing urbanized area of at least 200,000 population are shown in parentheses immediately below the eligible 2000 census urbanized area. FTA is unable to identify the urbanized areas which now incorporate rural areas that received Section 5311 in FY 2002 and they are not included in this table.

FEDERAL TRANSIT ADMINISTRATION

TABLE 8

FISCAL YEAR 2006 SECTION 5308 CLEAN FUELS PROGRAM ALLOCATIONS

State	Earmark ID	Project	Unobligated Allocation
California	E-2006-CLNF-000	San Joaquin Region Transit District, California, Hybrid Diesel-Electric Replacement Buses	$250,000
Colorado	E-2006-CLNF-001	Denver Regional Transit District-Bus Replacements	916,000
Delaware	E-2006-CLNF-002	Delaware Statewide Bus and Bus Replacement (with Clean Fuel (hybrid) vehicles))	1,750,000
Delaware	E-2006-CLNF-003	University of Delaware Fuel Cell Bus Program	160,000
Georgia	E-2006-CLNF-004	Metropolitan Atlanta Rapid Transit Authority-Clean Fuel Buses	2,291,000
Kentucky	E-2006-CLNF-005	Transit Authority of Northern Kentucky-TANK Bus Replacement Project	458,000
Kentucky	E-2006-CLNF-006	Transit Authority of River City-New Hybrid Electric Bus	687,000
New Mexico	E-2006-CLNF-007	City of El Paso-Sun Metro-Bus Replacements	687,000
New Mexico	E-2006-CLNF-008	Santa Fe, NM, Trails Bus and Bus Facilities	450,000
Nevada	E-2006-CLNF-009	Lake Tahoe, NV MPO Bus replacement	1,000,000
New York	E-2006-CLNF-010	Westchester, NY, Bee Line Bus Replacement	450,000
Ohio	E-2006-CLNF-011	Southwest Ohio Regional Transit Authority-Bus Replacements	687,000
Rhode Island	E-2006-CLNF-012	Rhode Island, Statewide Bus and Van Replacement	5,250,000
Tennessee	E-2006-CLNF-013	Sevierville County, TN Transportation Board-Alternative Fuel Buses	229,000
Texas	E-2006-CLNF-014	METRO of Harris County-Discretionary Bus Program	2,291,000
Texas	E-2006-CLNF-015	The District, The Woodlands, TX-Bus Replacement Program	229,000
	Total Allocations		**$17,785,000**

FEDERAL TRANSIT ADMINISTRATION
TABLE 9

FY 2006 SECTION 5309 FIXED GUIDEWAY MODERNIZATION APPORTIONMENTS

STATE	AREA	APPORTIONMENT
Alaska	Anchorage, AK - Alaska Railroad	$13,378,830
Arizona	Phoenix--Mesa, AZ	2,704,022
California	Antioch, CA	2,237,729
California	Concord, CA	13,087,436
California	Lancaster--Palmdale, CA	2,137,425
California	Los Angeles--Long Beach--Santa Ana, CA	39,320,088
California	Mission Viejo, CA	1,462,034
California	Oxnard, CA	1,183,809
California	Riverside--San Bernardino, CA	3,973,508
California	Sacramento, CA	3,514,240
California	San Diego, CA	15,403,051
California	San Francisco--Oakland, CA	73,708,905
California	San Jose, CA	13,891,240
California	Thousand Oaks, CA	652,953
Colorado	Denver--Aurora, CO	3,513,300
Connecticut	Hartford, CT	1,684,168
Connecticut	Southwestern Connecticut	40,923,229
District of Columbia	Washington, DC--VA--MD	77,845,280
Florida	Jacksonville, FL	149,390
Florida	Miami, FL	21,366,180
Florida	Orlando, FL	172,985
Florida	Tampa--St. Petersburg, FL	133,070
Georgia	Atlanta, GA	28,619,511
Hawaii	Honolulu, HI	1,272,749
Illinois	Chicago, IL--IN	149,648,581
Illinois	Round Lake Beach-McHenry-Grayslake, IL-WI	2,380,509
Indiana	South Bend, IN--MI	804,659
Louisiana	New Orleans, LA	3,224,767
Maryland	Baltimore Commuter Rail	20,341,159
Maryland	Baltimore, MD	10,359,965
Massachusetts	Boston, MA	78,198,853
Massachusetts	Worcester, MA-CT	1,197,859
Michigan	Detroit, MI	329,589
Minnesota	Minneapolis--St. Paul, MN	7,102,864
Missouri	Kansas City, MO--KS	32,987
Missouri	St. Louis, MO--IL	4,439,292
New Jersey	Atlantic City, NJ	1,184,282
New Jersey	Northeastern New Jersey	93,573,638
New Jersey	Trenton, NJ	1,638,258
New York	Buffalo, NY	1,342,689
New York	New York	391,871,170
New York	Poughkeepsie-Newburgh, NY	2,349,313
Ohio	Cleveland, OH	13,265,430
Ohio	Dayton, OH	5,414,570
Oregon	Portland, OR--WA	7,685,919
Pennsylvania	Harrisburg, PA	791,912
Pennsylvania	Philadelphia, PA-NJ-DE-MD	98,591,126
Pennsylvania	Pittsburgh, PA	21,016,476
Puerto Rico	San Juan, PR	2,148,047
Rhode Island	Providence, RI--MA	2,581,781
Tennessee	Chattanooga, TN--GA	90,808
Tennessee	Memphis, TN--MS--AR	359,470
Texas	Dallas--Fort Worth--Arlington, TX	6,667,793
Texas	Houston, TX	8,564,915
Virginia	Virginia Beach, VA	1,311,416
Washington	Seattle, WA	26,760,480
West Virginia	Morgantown, WV	1,120,050
Wisconsin	Madison, WI	798,285
Wisconsin	Milwaukee, WI	277,616
	TOTAL	**$1,329,801,660**

FEDERAL TRANSIT ADMINISTRATION

TABLE 10

FY 2006 FIXED GUIDEWAY MODERNIZATION PROGRAM APPORTIONMENT FORMULA

Tier 1 First $497,700,000 to the following areas:

Baltimore	$	8,372,000
Boston	$	38,948,000
Chicago/N.W. Indiana	$	78,169,000
Cleveland	$	9,509,500
New Orleans	$	1,730,588
New York	$	176,034,461
N. E. New Jersey	$	50,604,653
Philadelphia/So. New Jersey	$	58,924,764
Pittsburgh	$	13,662,463
San Francisco	$	33,989,571
SW Connecticut	$	27,755,000

Tier 2 Next $70,000,000 as follows: Tier 2(A): 50 percent is allocated to areas identified in Tier 1; Tier 2(B): 50 percent is allocated to other urbanized areas with fixed guideway tiers in operation at least seven years. Funds are allocated by the Urbanized Area Formula Program fixed guideway tier formula factors that were used to apportion funds for the fixed guideway modernization program in FY 1997.

Tier 3 Next $5,700,000 as follows: Pittsburgh 61.76%; Cleveland 10.73%; New Orleans 5.79%; and 21.72% is allocated to all other areas in Tier 2(B) by the same fixed guideway tier formula factors used in fiscal year 1997.

Tier 4 Next $186,600,000 as follows: All eligible areas using the same year fixed guideway tier formula factors used in fiscal year 1997.

Tier 5 Next $70,000,000 as follows: 65% to the 11 areas identified in Tier 1, and 35% to all other areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment that is less than 7 years old in the year of the apportionment will be deleted from the database.

Tier 6 Next $50,000,000 as follows: 60% to the 11 areas identified in Tier 1, and 40% to all other areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment less than 7 years old in the year of the apportionment will be deleted from the database.

Tier 7 Remaining amounts as follows: 50% to the 11 areas identified in Tier 1, and 50% to all other areas using the most current Urbanized Area Formula Program fixed guideway formula factors. Any segment that is less than 7 years old in the year of the apportionment will be deleted from the database.

FEDERAL TRANSIT ADMINISTRATION

TABLE 11

Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
AK	E-2006-BUSP-000		Alaska Native Medical Center intermodal bus/parking facility	750,000
AK	E-2006-BUSP-001	427	Alaska Native Medical Center intermodal parking facility	1,150,000
AK	E-2006-BUSP-002	466	Anchorage-Transit Needs	229,000
AK	E-2006-BUSP-003	422	C Street Expanded bus facility and inter-modal parking garage, Anchorage, AK	1,150,000
AK	E-2006-BUSP-004	425	CITC Non-profit Services Center inter-modal parking facility, Anchorage, AK	690,000
AK	E-2006-BUSP-005	541	Hoonah, AK-Intermodal Ferry Dock	458,000
AK	E-2006-BUSP-006	416	Improve marine inter-modal facilities in Ketchikan	3,220,000
AK	E-2006-BUSP-1096	436	Intermodal facility improvements at the Port of Anchorage	5,750,000 a/
AK	E-2006-BUSP-007	236	Juneau, Alaska-transit bus acquisition and transit center	345,000
AK	E-2006-BUSP-008	550	Juneau-Transit Bus Acquisition and Transit Center	344,000
AK	E-2006-BUSP-009	553	Ketchikan, Alaska-Transit Needs	57,000
AK	E-2006-BUSP-010	574	Matsu, Alaska-Transit Needs	115,000
AK	E-2006-BUSP-011	423	Morris Thompson Cultural and Visitors Center intermodal parking facility, Fairbanks, AK	575,000
AK	E-2006-BUSP-012	596	North Slope Borough, AK-Transit Purposes	458,000
AK	E-2006-BUSP-013	597	North Star Borough, AK-Transit Purposes	229,000
AK	E-2006-BUSP-014	616	Sitka, Alaska-Transit Needs	57,000
AK	E-2006-BUSP-015		Skagway Intermodal facility, Alaska	1,000,000
AK	E-2006-BUSP-016	664	Wrangell, AK-Ferry Infrastructure	229,000
AL	E-2006-BUSP-017		Alabama Association of Area Agencies on Aging Bus and Van Purchase	200,000
AL	E-2006-BUSP-018	461	Alabama Institute for Deaf and Blind-Bus project	115,000
AL	E-2006-BUSP-019		Alabama State Docks Choctaw Point Terminal	2,160,000
AL	E-2006-BUSP-020	462	Alabama State Port Authority-Choctaw Point Terminal	4,582,000
AL	E-2006-BUSP-021	437	American Village/Montevallo, Alabama construction of closed loop Access Road, bus lanes and parking facility	76,912
AL	E-2006-BUSP-022	98	Birmingham, AL Expansion of Downtown Intermodal Facility, Phase II	384,560
AL	E-2006-BUSP-023	496	City of Birmingham, AL-Birmingham Downtown Intermodal Terminal, Phase II	1,145,000
AL	E-2006-BUSP-024	501	City of Huntsville, AL- Cummings Park Intermodal Center	1,145,000
AL	E-2006-BUSP-025	503	City of Montgomery, AL-ITS Acquisition and Implementation	916,000
AL	E-2006-BUSP-026	504	City of Montgomery, AL-Montgomery Airport Intermodal Center	916,000
AL	E-2006-BUSP-027	507	City of Tuscaloosa, AL-Intermodal Facility	1,374,000
AL	E-2006-BUSP-028		Family Connection of Shelby County Trans Project, AL	50,000
AL	E-2006-BUSP-029		Gadsden State Community College Transit Project, AL	600,000
AL	E-2006-BUSP-030	528	Gadsden, AL-Community Buses	115,000
AL	E-2006-BUSP-031	534	Gulf Shores, AL-Community Bases	229,000
AL	E-2006-BUSP-032		Lawson State Community College, Alabama	450,000
AL	E-2006-BUSP-033	582	Mobile County, AL Commission-Bus project	115,000
AL	E-2006-BUSP-034		Mobile Waterfront Infrastructure Development, AL	600,000
AL	E-2006-BUSP-035		Montgomery Bus Stop, Shelters and Bus GPS Tracking System, Alabama	200,000
AL	E-2006-BUSP-036		Trolley Plaza, AL	125,000
AL	E-2006-BUSP-037	644	University of Alabama in Birmingham Intermodal Facility	1,604,000
AL	E-2006-BUSP-038	645	University of Alabama in Huntsville Intermodal Facility	1,374,000
AL	E-2006-BUSP-039	646	University of Alabama Intermodal Facility South	2,062,000
AL	E-2006-BUSP-040	647	University of Alabama Transit System	344,000
AL	E-2006-BUSP-041	650	US Space and Rocket Center, AL-Tramway Expansion	229,000
AR	E-2006-BUSP-042	487	Central Arkansas Transit Authority Facility Upgrades	450,000
AR	E-2006-BUSP-043		City of Texarkana, AR	400,000
AR	E-2006-BUSP-044	231	Harrison, Arkansas-Trolley Barn	7,691
AR	E-2006-BUSP-045		State of Arkansas—Bus and Bus Facilities	4,000,000
AR	E-2006-BUSP-046	263	Wilmar, AR Develop the Southeast Arkansas Intermodal Facility	384,560
AZ	E-2006-BUSP-047		Coconino County Bus Facilities, AZ	1,000,000
AZ	E-2006-BUSP-048	304	Coconino County buses and bus facilities for Flagstaff, AZ	240,350
AZ	E-2006-BUSP-049	229	Coconino County, Arizona-Bus and bus facilities for the Sedona Transit System	182,666
AZ	E-2006-BUSP-050		East Valley Bus Maintenance Facility, AZ	1,000,000
AZ	E-2006-BUSP-051		Intermodal Center, Scottsdale, AZ	810,000
AZ	E-2006-BUSP-052	47	Phoenix, AZ Construct City of Phoenix para-transit facility (Dial-A-Ride)	192,280
AZ	E-2006-BUSP-053	346	Phoenix, AZ Construct metro bus facility in Phoenix's West Valley	961,400
AZ	E-2006-BUSP-054	150	Phoenix, AZ Construct regional heavy bus maintenance facility	192,280
AZ	E-2006-BUSP-055		Phoenix/Avondale/Glendale Bus Expansion, Arizona	1,500,000
AZ	E-2006-BUSP-056		Phoenix/Glendale West Valley Operating Facility, Arizona	1,000,000
AZ	E-2006-BUSP-057	26	Scottsdale, Arizona-Plan, design, and construct intermodal center	480,700
AZ	E-2006-BUSP-058		Sun Tran CNG Buses and Facilities	2,000,000
AZ	E-2006-BUSP-059	203	Tempe, Arizona-Construct East Valley Metro Bus Facility	1,249,820
AZ	E-2006-BUSP-060		Tucson SunTran Alternative Fuel Bus Replacement, AZ	1,500,000
AZ	E-2006-BUSP-061		Tucson SunTran Bus Storage and Maintenance Facility, AZ	5,000,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 11

Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
CA	E-2006-BUSP-062		ADA Paratransit Vehicles, San Diego, CA	500,000
CA	E-2006-BUSP-063	75	Alameda County, CA AC Transit Bus Rapid Transit Corridor Project	96,140
CA	E-2006-BUSP-064	288	Alameda County, CA AC Transit Bus Rapid Transit Corridor Project	384,560
CA	E-2006-BUSP-065	398	Amador County, California-Regional Transit Center	192,280
CA	E-2006-BUSP-066	76	Baldwin Park, CA Construct vehicle and bicycle parking lot and pedestrian rest area at transit center	384,560
CA	E-2006-BUSP-067	227	Berkeley, CA Construct Ed Roberts Campus Intermodal Transit Disability Center	576,840
CA	E-2006-BUSP-068		Blue Line Trolley Shelter Improvements, CA	350,000
CA	E-2006-BUSP-069		Burbank Airport Hybrid Shuttle Demonstration Project, CA	500,000
CA	E-2006-BUSP-070	119	Burbank, CA CNG Transit Vehicles Purchase for Local Transit Network Expansion	86,526
CA	E-2006-BUSP-071	396	Burbank, CA Construction of Empire Area Transit Center near Burbank Airport	48,070
CA	E-2006-BUSP-072	190	Calexico, CA Purchase new buses for the Calexico Transit System	57,684
CA	E-2006-BUSP-073	132	Carson, CA Purchase one bus	48,070
CA	E-2006-BUSP-074	407	Carson, CA Purchase one trolley-bus vehicle	48,070
CA	E-2006-BUSP-075	108	Carson, CA Purchase two transfer facility	96,140
CA	E-2006-BUSP-076	54	City of Alameda, CA Plan, design, and construct intermodal facility	384,560
CA	E-2006-BUSP-077	155	City of Livermore, CA Construct Bus Facility for Livermore Amador Valley Transit Authority	432,630
CA	E-2006-BUSP-078		City of Modesto's Bus Maintenance Facility, CA	500,000
CA	E-2006-BUSP-079		Construct bus shelters in Bellflower, CA	250,000
CA	E-2006-BUSP-080		Corona Transit Center, CA	500,000
CA	E-2006-BUSP-081	158	Covina, El Monte, Baldwin Park, Upland, CA Parking and Electronic Signage Improvements	336,490
CA	E-2006-BUSP-082	207	Culver City, CA Purchase compressed natural gas buses and expand natural gas fueling facility	711,436
CA	E-2006-BUSP-083	17	Davis, CA Davis Multi-Modal Station to improve entrance to Amtrak Depot and parking lot, provide additional parking and improve service	192,280
CA	E-2006-BUSP-084	11	Development of Gold Country Stage Transit Transfer Center, Nevada County, CA	178,882
CA	E-2006-BUSP-085		East County Bus Maintenance Facility, CA	1,000,000
CA	E-2006-BUSP-086	339	East San Diego County, California-Bus Maintenance Facility Expansion	384,560
CA	E-2006-BUSP-087		Ed Roberts Campus, Berkeley, CA	300,000
CA	E-2006-BUSP-088		El Garces Intermodal Station, Needles, CA	2,000,000
CA	E-2006-BUSP-089	101	Emeryville, CA Expand & Improve Inter-modal Transit Center at Amtrak Station	192,280
CA	E-2006-BUSP-090	222	Escondido, CA-Construct Bus Maintenance Facility	96,140
CA	E-2006-BUSP-091		Fairfield/Vacaville Intermodal Station, CA	500,000
CA	E-2006-BUSP-092		Foothill Transit, San Gabriel Valley, CA	3,300,000
CA	E-2006-BUSP-093	387	Fresno, CA-Develop program of low-emission transit vehicles	192,280
CA	E-2006-BUSP-094	260	Gardena, CA Purchase of alternative fuel buses for service expansion, on-board security system and bus facility training equipment	1,178,676
CA	E-2006-BUSP-095	212	Glendale, CA Construction of Downtown Streetcar Project	192,280
CA	E-2006-BUSP-096	1	Glendale, CA Purchase of CNG Buses for Glendale Beeline Transit System	88,833
CA	E-2006-BUSP-097		Golden Empire Transit traffic signal priority project, CA	250,000
CA	E-2006-BUSP-098		Greater Sacramento Regional Bus Replacement/Bus Facility Expansion, CA	1,000,000
CA	E-2006-BUSP-099	414	Hercules, CA Inter-modal Rail Station Improvements	288,420
CA	E-2006-BUSP-100		Intermodal Park and Ride Facility at Discovery, CA	300,000
CA	E-2006-BUSP-101		Intermodal Transit Center, Bell Gardens, CA	400,000
CA	E-2006-BUSP-102		Interstate 15 managed lanes, San Diego, CA	1,000,000
CA	E-2006-BUSP-103		La Habra Shuttle Senior Transportation Program, CA	157,000
CA	E-2006-BUSP-104		Lakewood Bus Stop Improvements, Lakewood, California	400,000
CA	E-2006-BUSP-105		Livermoore Amador Valley Satellite Maintenance and Operations Facility, California	1,000,000
CA	E-2006-BUSP-106		Long Beach Transit Bus Purchase, California	750,000
CA	E-2006-BUSP-107	276	Long Beach, Ca Museum of Latin American Art, Long Beach, to build intermodal park and ride facility	384,560
CA	E-2006-BUSP-108	332	Long Beach, CA Park and Ride Facility	192,280
CA	E-2006-BUSP-109	295	Long Beach, CA Purchase one larger (75. passengers) and two smaller (40 passengers) ferryboats and construct related dock work to facilitate the use and accessibility of the ferryboats	576,840
CA	E-2006-BUSP-110	410	Long Beach, CA Purchase ten clean fuel buses	576,840
CA	E-2006-BUSP-111	443	Los Angeles County Metropolitan Transit Authority, CA capital funds for facility improvements to support the Cal State Northridge tram system	62,491
CA	E-2006-BUSP-112		Los Angeles Valley College Bus Station Extension, California	750,000
CA	E-2006-BUSP-113	140	Los Angeles, CA Crenshaw Bus Rapid Transit	1,639,764
CA	E-2006-BUSP-114	223	Los Angeles, CA Design and construct improved transit and pedestrian linkages between Los Angeles Community College and nearby MTA rail stop and bus lines	288,420
CA	E-2006-BUSP-115	307	Los Angeles, CA Improve safety, mobility and access between LATTC, Metro line and nearby bus stops on Grand Ave between Washington and 23rd	96,140
CA	E-2006-BUSP-116	121	Los Angeles, CA Improve transit shelters, sidewalks lighting and landscaping around Cedar's-Sinai Medical Center	288,420
CA	E-2006-BUSP-117	326	Los Angeles, CA Install permanent irrigation system and enhanced landscaping on San Fernando Valley rapid bus transit way	576,840
CA	E-2006-BUSP-118	36	Los Angeles, CA Wilshire-Vermont subway station reconstruction	192,280
CA	E-2006-BUSP-119	6	Los Angeles, CA, Construction of Intermodal Transit Center at California State University Los Angeles	151,901
CA	E-2006-BUSP-120	567	Los Angeles, CA, Fly-Away Bus System Expansion	500,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 11

Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
CA	E-2006-BUSP-121	566	Los Angeles, CA, LAX Intermodal Transportation Center Rail and Bus System Expansion	500,000
CA	E-2006-BUSP-122	311	Mammoth Lakes, California-Regional Transit Maintenance Facility	96,140
CA	E-2006-BUSP-123	112	Mariposa, CA-Yosemite National Park CNG-Hydrogen transit buses and facilities	480,700
CA	E-2006-BUSP-124	266	Martinez, CA Inter-modal Facility Restoration	288,420
CA	E-2006-BUSP-125	285	Metro Gold Line Foothill Extension Light Rail Transit Project from Pasadena, CA to Montclair, CA	2,884,200
CA	E-2006-BUSP-126	39	Monrovia, California-Transit Village Project	576,840
CA	E-2006-BUSP-127		Monrovia, Los Angeles County, CA, Transit Village	1,500,000
CA	E-2006-BUSP-128	200	Montebello, CA Bus Lines Bus Fleet Replacement Project	134,596
CA	E-2006-BUSP-129	186	Monterey Park, CA Bus enhancement and improvements-construct maintenance facility and purchase clean-fuel buses to improve transit service	307,648
CA	E-2006-BUSP-130	321	Monterey Park, CA Catch Basins at Transit Stop Installation	61,530
CA	E-2006-BUSP-131	191	Monterey Park, CA Safety improvements at a bus stop including creation of bus loading areas and street improvements	307,648
CA	E-2006-BUSP-132		Monterey Salinas Transit, Monterey, California	400,000
CA	E-2006-BUSP-133	375	Monterey, CA Purchase bus equipment	192,280
CA	E-2006-BUSP-134	43	Needles, California-El Garces Intermodal Facility	384,560
CA	E-2006-BUSP-135		New Bus Facility Capital Improvements, California (San Joaquin)	1,000,000
CA	E-2006-BUSP-136	92	Norwalk, CA Transit System Bus Procurement and Los Angeles World Airport Remote Fly-Away Facility Project	153,824
CA	E-2006-BUSP-137	392	Oakland, CA Construct Bay Trail between Coliseum BART station and Martin Luther King, Jr. Regional Shoreline	173,052
CA	E-2006-BUSP-138	352	Oakland, CA Construct streetscape & intermodal improvements at BART Station Transit Villages	192,280
CA	E-2006-BUSP-139		OCTA BRT	1,500,000
CA	E-2006-BUSP-140		Ojai Multi-Agency Transportation Facility, CA	250,000
CA	E-2006-BUSP-141		Omni Trans Para Transit Vehicles	300,000
CA	E-2006-BUSP-142	173	Ontario, CA Construct Omnitrans Transcenter	192,580
CA	E-2006-BUSP-143	194	Orange County Transit Authority, California-Security surveillance and monitoring equipment	1,017,161
CA	E-2006-BUSP-144	244	Orange County, CA Purchase buses for rapid transit	192,280
CA	E-2006-BUSP-145	366	Orange County, CA Transportation Projects to Encourage Use of Transit to Reduce Congestion	192,280
CA	E-2006-BUSP-146		Pacific Station Multimodal Facility, Santa Cruz, California	400,000
CA	E-2006-BUSP-147		Palm Springs Aerial Tramway Bus Project, CA	600,000
CA	E-2006-BUSP-148	45	Palm Springs, California-Sunline Transit bus purchase	96,140
CA	E-2006-BUSP-149	70	Palm Springs, California-Sunline Transit: CalStrat-Weststart fuel cell bus program	192,280
CA	E-2006-BUSP-150		Paramount Easy Rider Clean-Air Buses, Paramount, California	200,000
CA	E-2006-BUSP-151	399	Pasadena, CA ITS Improvements	192,280
CA	E-2006-BUSP-152	116	Pleasant Hill, CA Construct Diablo Valley College Bus Transit Center	288,420
CA	E-2006-BUSP-153		Redondo Beach Coastal Shuttle Transit Vehicles, California	700,000
CA	E-2006-BUSP-154	251	Redondo Beach, CA Capital Equipment procurement of 12. Compressed Natural Gas (CNG) Transit Vehicles for Coastal Shuttle Services by Beach Cities Transit	153,824
CA	E-2006-BUSP-155	286	Richmond, CA BART Parking Structure	961,400
CA	E-2006-BUSP-156		Riverside Transit Center, CA	750,000
CA	E-2006-BUSP-157	171	Riverside, California-RTA Advanced Traveler Information System	96,140
CA	E-2006-BUSP-158		Rosemary Children's Services' Transportation Program, California	75,000
CA	E-2006-BUSP-159	189	Sacramento, CA Bus enhancement and improvements-construct maintenance facility and purchase clean-fuel buses to improve transit service	384,560
CA	E-2006-BUSP-160	84	Sacramento, CA Construct intermodal station and related improvements	1,345,960
CA	E-2006-BUSP-161		SamTrans Revenue Collection System, California	300,000
CA	E-2006-BUSP-162	253	San Bernardino, CA Implement Santa Fe Depot improvements in San Bernardino	96,140
CA	E-2006-BUSP-163		San Diego Bus Rapid Transportation Demonstration Project, California	700,000
CA	E-2006-BUSP-164	282	San Diego, CA Completion of San Diego Joint Transportation Operations Center (JTOC)	384,560
CA	E-2006-BUSP-165	314	San Diego, CA Widen sidewalks and bus stop entrance, and provide diagonal parking, in the Skyline Paradise Hills neighborhood (Reo Drive)	57,684
CA	E-2006-BUSP-166	183	San Fernando Valley, CA Reseda Blvd. Bus Rapid Transit Route	115,368
CA	E-2006-BUSP-167	127	San Fernando, CA Purchase CNG buses and related equipment and construct facilities	584,531
CA	E-2006-BUSP-168		San Francisco Muni Buses and Bus Facilities, California	2,000,000
CA	E-2006-BUSP-169	377	San Francisco, CA Construct San Francisco Muni Islais Creek Maintenance Facility	1,153,680
CA	E-2006-BUSP-170	287	San Francisco, CA Implement ITS on Muni Transit System	576,840
CA	E-2006-BUSP-171	403	San Francisco, CA Implement Transbay Terminal-Caltrain Downtown Extension Project	2,691,920
CA	E-2006-BUSP-172	381	San Francisco, CA Redesign and renovate intermodal facility at Glen Park Community	793,155
CA	E-2006-BUSP-173	341	San Gabriel Valley, CA-Foothill Transit Park and Rides	1,826,660
CA	E-2006-BUSP-174	254	San Joaquin, California Regional Rail-Altamont Commuter Express Corridor inter-modal centers	769,120
CA	E-2006-BUSP-175	382	San Luis Ray, California-Transit Center Project	96,140
CA	E-2006-BUSP-176		San Luis Rey Transit Center	500,000
CA	E-2006-BUSP-177	145	Santa Ana, CA Improve Santa Ana transit terminal	192,280
CA	E-2006-BUSP-178	147	Santa Barbara, CA-Expansion of Regional Intermodal Transit Center	57,684
CA	E-2006-BUSP-179		Santa Clara Valley Transit Authority Paratransit Vehicle, California	500,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 11

Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
CA	E-2006-BUSP-180	364	Santa Monica, CA Construct intermodal park-and-ride facility at Santa Monica College campus on South Bundy Drive near Airport Avenue	192,280
CA	E-2006-BUSP-181	172	Santa Monica, CA Purchase and service LNG buses for Santa Monica's Big Blue Bus to meet increased ridership needs and reduce emissions	721,050
CA	E-2006-BUSP-182		Shuttle bus to transport seniors in Bell Gardens, California	100,000
CA	E-2006-BUSP-183		Simi Valley Public Transit Radio Communications, CA	250,000
CA	E-2006-BUSP-184		Solana Beach Transit Center, Solana Beach, CA	500,000
CA	E-2006-BUSP-185	313	Solana Beach, CA-Construct Intermodal Facility	288,420
CA	E-2006-BUSP-186	27	Sonoma County, CA Purchase of CNG buses	96,140
CA	E-2006-BUSP-187	401	South Pasadena, CA Silent Night Grade Crossing Project	173,052
CA	E-2006-BUSP-188	383	South San Francisco, CA Construction of Ferry Terminal at Oyster Point in South San Francisco to the San Francisco Bay Water Transit Authority	913,330
CA	E-2006-BUSP-189		Spencer Avenue Bus Transfer Center, Oroville, CA	350,000
CA	E-2006-BUSP-190	388	Sylmar, CA Los Angeles Mission College Transit Center construction	48,070
CA	E-2006-BUSP-191	315	Temecula, California-Intermodal Transit Facility	96,140
CA	E-2006-BUSP-192	85	Torrance Transit System, CA Acquisition of EPA and CARB-certified low emission replacement buses	576,840
CA	E-2006-BUSP-193		Torrance Transit System, California	400,000
CA	E-2006-BUSP-194	459	Transbay Terminal/ Caltrain Downtown Extension Project	4,025,000
CA	E-2006-BUSP-195	35	Union City, CA Inter-modal Station, Phase 1: Modify BART station	817,190
CA	E-2006-BUSP-196		Vallejo Intermodal Station, California	850,000
CA	E-2006-BUSP-197		Victor Valley Trans Operation/Maintenance Facility	750,000
CA	E-2006-BUSP-198		Visalia Bus Operations and Maintenance Facility	250,000
CA	E-2006-BUSP-199		Visalia CNG Bus Conversion	250,000
CA	E-2006-BUSP-200	195	Woodland Hills, CA Los Angeles Pierce College Bus Rapid Transit Station Extension	192,280
CA	E-2006-BUSP-201	83	Woodland, CA Yolobus operations, maintenance, administration facility expansion and improvements to increase bus service with alternative fuel buses	384,560
CA	E-2006-BUSP-202		Yorba Linda Senior Mobility Program—TRAILS	41,000
CA	E-2006-BUSP-203		Yosemite Area Regional Transportation System	250,000
CA	E-2006-BUSP-204		Zero Emission Bus Demonstration, Santa Clara, California	400,000
CO	E-2006-BUSP-205		Bus Rapid Transit in Western Slope Area, CO	400,000
CO	E-2006-BUSP-206	449	City of Aspen, CO Bus and Bus Facilities	134,596
CO	E-2006-BUSP-207	448	City of Durango, CO Bus and Bus Facilities	48,070
CO	E-2006-BUSP-208	509	Colorado Association of Transit Agencies/Colorado Transit Coalition-Colorado Statewide Buses and Bus Facilities	5,956,000
CO	E-2006-BUSP-209		Colorado Transit Coalition, CO	3,000,000
CO	E-2006-BUSP-210	518	Denver Regional Transit District-Bus Maintenance Facility	687,000
CO	E-2006-BUSP-211	520	Denver Regional Transit District-Denver Union Station Multimodal Renovations	458,000
CO	E-2006-BUSP-212	521	Denver Regional Transit District-US 36 Corridor BRT	1,604,000
CO	E-2006-BUSP-213	167	Denver, CO Denver Union Station Inter-modal Center	1,057,540
CO	E-2006-BUSP-214	435	Denver, Colorado-Regional Transportation District Bus Replacement	384,560
CO	E-2006-BUSP-215	441	Grand Valley Transit, CO Bus and Bus Facilities	96,140
CO	E-2006-BUSP-216	188	Mountain Express, Crested Butte, CO Bus and Bus Facilities	96,140
CO	E-2006-BUSP-217	444	Pueblo Transit, CO Bus and Bus Facilities	48,070
CO	E-2006-BUSP-218	445	Roaring Fork Transit Authority, CO Bus and Bus Facilities	144,210
CO	E-2006-BUSP-219	446	Steamboat Springs, CO Bus and Bus Facilities	144,210
CO	E-2006-BUSP-220	450	Town of Snowmass Village, CO Bus and Bus Facilities	57,684
CO	E-2006-BUSP-221	447	Town of Telluride, CO Bus and Bus Facilities	62,120
CT	E-2006-BUSP-222		Bridgeport Intermodal Transport Center, CT	4,000,000
CT	E-2006-BUSP-223	44	Bridgeport, Connecticut-Greater Bridgeport Transit Authority Bus Facility	96,140
CT	E-2006-BUSP-224	478	Bridgeport, CT Facility Expansion/Improvement	350,000
CT	E-2006-BUSP-225	90	Buses and bus related facilities throughout the State of Connecticut	1,153,680
CT	E-2006-BUSP-226	523	Downtown Middletown, CT, Transportation Infrastructure Improvement Project	2,000,000
CT	E-2006-BUSP-227	218	Enfield, Connecticut-intermodal station	576,840
CT	E-2006-BUSP-228	394	Hartford, CT Buses and bus-related facilities	769,120
CT	E-2006-BUSP-229		Inter-Modal Center, Middletown, CT	300,000
CT	E-2006-BUSP-230	267	Middletown, CT Construct intermodal center	288,420
CT	E-2006-BUSP-231	589	New Haven, CT Bus Maintenance Facility	2,000,000
CT	E-2006-BUSP-232	269	New London, Connecticut-Intermodal Transportation Center and Streetscapes	96,140
CT	E-2006-BUSP-233		Northwestern Connecticut Central Transit Facility	300,000
CT	E-2006-BUSP-234		Norwalk Pulse Point Joint Improvements, CT	250,000
CT	E-2006-BUSP-235	369	Norwalk, Connecticut-Pulse Point Joint Development inter-modal facility	96,140
CT	E-2006-BUSP-236		South Norwalk Intermodal Facility, Norwalk, CT	1,000,000
CT	E-2006-BUSP-237		Stamford Urban Transitway Phase II, CT	3,000,000
CT	E-2006-BUSP-238	131	Stonington and Mystic, Connecticut-Intermodal Center parking facility and Streetscape	469,163
CT	E-2006-BUSP-239	32	Torrington, CT Construct bus-related facility (Northwestern Connecticut Central Transit District)	384,560
CT	E-2006-BUSP-240	270	Vernon, Connecticut-Intermodal Center, Parking and Streetscapes	1,461,328

FEDERAL TRANSIT ADMINISTRATION

TABLE 11

Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
CT	E-2006-BUSP-241	657	Waterbury, CT Bus Maintenance Facility	2,000,000
DC	E-2006-BUSP-242		Union Station Intermodal Transportation Center, Washington, D.C.	700,000
DC	E-2006-BUSP-243		WMATA Bus Purchase	1,500,000
DE	E-2006-BUSP-244		Automotive-Based Fuel Cell Hybrid Bus Program, DE	1,000,000
DE	E-2006-BUSP-245		Bus Replacement and Facilities, DE	1,000,000
DE	E-2006-BUSP-246	169	Delaware-University of Delaware Fuel Cell Bus Deployment	96,140
FL	E-2006-BUSP-247		2nd St/Andrews Ave/3rd St Enhancements, Fort Lauderdale, FL	500,000
FL	E-2006-BUSP-248		7th Avenue Transit Hub, FL	400,000
FL	E-2006-BUSP-249		Alternative fuel buses, Broward County, FL	1,000,000
FL	E-2006-BUSP-250	470	Bay County, FL - Transit Facility	458,000
FL	E-2006-BUSP-251		Broward County Alternative Fuel Buses, FL	115,000
FL	E-2006-BUSP-252		Broward County Southwest Bus Facility, FL	1,000,000
FL	E-2006-BUSP-253	297	Broward County, FL - Purchase Buses and construct bus facilities	384,560
FL	E-2006-BUSP-254	69	Broward County, FL Buses & Bus Facilities	1,249,820
FL	E-2006-BUSP-255	479	Broward County-Bus and Bus Facilities	458,000
FL	E-2006-BUSP-256	117	Broward, FL Purchase new articulated buses and bus stop improvements on State Road 7. (SR 7) between Golden Glades Interchange and Glades Road	96,140
FL	E-2006-BUSP-257	439	Central Florida Commuter Rail intermodal facilities	961,400
FL	E-2006-BUSP-258	453	Central Florida Commuter Rail Intermodal Facilities	690,000
FL	E-2006-BUSP-259	488	Central Florida Regional Transportation Authority-LYNX Bus Fleet Expansion Program	1,145,000
FL	E-2006-BUSP-260		CFRTA LYNX Bus Fleet Expansion, FL	1,350,000
FL	E-2006-BUSP-261	498	City of Gainesville Regional Transit System-Facility Expansion	229,000
FL	E-2006-BUSP-262	508	Collier County Transit-Transit Facility	229,000
FL	E-2006-BUSP-263	23	Construct intermodal transportation & parking facility, City of Winter Park, Florida	96,140
FL	E-2006-BUSP-264		Flagler County Buses and Bus Facilities, FL	300,000
FL	E-2006-BUSP-265	80	Flagler County, Florida-bus facility	115,368
FL	E-2006-BUSP-266	527	Florida Department of Transportation-Palm Beach County Replacement Buses	229,000
FL	E-2006-BUSP-267	344	Gainesville, FL Bus Facility Expansion	769,120
FL	E-2006-BUSP-268	213	Gainesville, FL Bus Rapid Transit Study	96,140
FL	E-2006-BUSP-269	95	Gainesville, FL Bus Replacement	769,120
FL	E-2006-BUSP-270	538	Hillsborough Area Regional Transit-Bus Rapid Transit Improvements	458,000
FL	E-2006-BUSP-271	539	Hillsborough, FL, Hillsborough Area regional Transit Authority	1,000,000
FL	E-2006-BUSP-272		Homestead East-West Bus Connector, FL	500,000
FL	E-2006-BUSP-273		Intermodal Terminal Center, Jacksonville, FL	1,000,000
FL	E-2006-BUSP-274		Jacksonville Transportation Authority Bus and Bus Facilities, FL	340,000
FL	E-2006-BUSP-275	548	Jacksonville Transportation Authority-Bus Fleet Replacement and Equipment	1,145,000
FL	E-2006-BUSP-276	306	Jacksonville, FL Bus Replacement	1,345,960
FL	E-2006-BUSP-277	107	Jacksonville, FL Paratransit Vehicles	865,260
FL	E-2006-BUSP-278	549	Jacksonville, FL Transportation Authority Paratransit Program	350,000
FL	E-2006-BUSP-279		JARC Hartline, Hillsborough County, FL	250,000
FL	E-2006-BUSP-280		Key West Buses and Bus Facilities, FL	500,000
FL	E-2006-BUSP-281		Lakeland Area Citrus Connection Transit Systems	250,000
FL	E-2006-BUSP-282	558	Lakeland Area Mass Transit District/Citrus Connection-Capital Funding Needs	458,000
FL	E-2006-BUSP-283	238	Levy County, Florida-Purchase 2. wheel chair equipped passenger buses and related equipment	57,684
FL	E-2006-BUSP-284	103	Longwood, Florida-Construct Intermodal Transportation Facility	96,140
FL	E-2006-BUSP-285	308	Miami Dade, FL N.W. 7th Avenue Transit Hub	576,840
FL	E-2006-BUSP-286	211	Miami-Dade County, Florida-buses and bus facilities	1,153,680
FL	E-2006-BUSP-287	432	Miami-Dade County, Florida-buses and bus facilities	769,120
FL	E-2006-BUSP-288	133	Miami-Dade County, Florida-Transit Security System	574,917
FL	E-2006-BUSP-289	580	Miami-Dade Transit 7th Avenue NW Transit Hub	229,000
FL	E-2006-BUSP-290	454	Miami-Dade Transit Dadeland South Intermodal Center	460,000
FL	E-2006-BUSP-291		Miramar Town Center Transit Hub, Miramar, Florida	500,000
FL	E-2006-BUSP-292		National Center for Transportation Needs (TRANSPO), FL	750,000
FL	E-2006-BUSP-293	136	Ocala and Marion County, Florida-replacement buses	576,840
FL	E-2006-BUSP-294	294	Orlando, FL Bus Replacement	796,120
FL	E-2006-BUSP-295	14	Orlando, Florida-LYNX Bus Fleet Expansion Program	173,052
FL	E-2006-BUSP-296	125	Palm Beach County, FL Plan and Construct Belle Glade Combined Passenger Transit Facility	672,980
FL	E-2006-BUSP-297	367	Palm Beach, FL 20 New Buses for Palm Tran	288,420
FL	E-2006-BUSP-298	248	Palm Beach, FL Palm Tran AVL-APC system with smart card fare boxes	48,070
FL	E-2006-BUSP-299		Palm Tran, Palm Beach County, FL	250,000
FL	E-2006-BUSP-300		Pasco County Public Transportation Bus Purchase, FL	500,000
FL	E-2006-BUSP-301		Pasco County Transit Construction, FL	500,000
FL	E-2006-BUSP-302		Pasco County Transit Facilities Project, FL	250,000
FL	E-2006-BUSP-303	600	Pinellas County Metropolitan Planning Organization-Pinellas Mobility Initiative: BRT and Guide way	229,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 11

Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
FL	E-2006-BUSP-304	415	Purchase Buses and construct bus facilities in Broward County, FL	432,630
FL	E-2006-BUSP-305	420	Purchase Buses and construct bus facilities in Broward County, FL	384,560
FL	E-2006-BUSP-306		Purchase of Five Transit Buses, Pasco County, FL	250,000
FL	E-2006-BUSP-307		Putnam County, FL Ride Solutions Buses	750,000
FL	E-2006-BUSP-308	400	South FL Region, FL Regional Universal Automated Fare Collection System (UAFC) (for bus system)	384,560
FL	E-2006-BUSP-309	623	South Florida Regional Transportation Authority-West Palm Beach Intermodal Facility	458,000
FL	E-2006-BUSP-310	622	South Florida Regional Transportation Authority-West Palm Improvements, for any activity eligible under section 5309	3,436,000
FL	E-2006-BUSP-311		Space Coast Area Transit Bus Terminal, FL	200,000
FL	E-2006-BUSP-312		St Johns County, FL Council on Aging Buses	500,000
FL	E-2006-BUSP-313	31	St. Augustine, Florida-Intermodal Transportation Center and related pedestrian and landscape improvements	192,280
FL	E-2006-BUSP-314	390	St. Lucie County, FL Purchase Buses	192,280
FL	E-2006-BUSP-315		TALTRAN Bus Expansion Project, Florida	1,000,000
FL	E-2006-BUSP-316		Taltran Bus Fleet Replacement	500,000
FL	E-2006-BUSP-317	402	Tampa, FL Establish Transit Emphasis Corridor Project	144,210
FL	E-2006-BUSP-318	148	Tampa, FL Purchase buses and construct bus facilities	432,630
FL	E-2006-BUSP-319		Treasure Coast Connector, St. Lucie County, FL	500,000
FL	E-2006-BUSP-320		Trolley Shelter, West Palm Beach, Florida	250,000
FL	E-2006-BUSP-321		Trolley System, Boynton Beach, FL	250,000
FL	E-2006-BUSP-322		Winter Haven Transit Terminal/Buses	1,000,000
GA	E-2006-BUSP-323		Acquisition of MARTA Transit Buses, GA	500,000
GA	E-2006-BUSP-324	355	Albany, GA Bus replacement	57,684
GA	E-2006-BUSP-325	255	Albany, GA Multimodal Facility	153,824
GA	E-2006-BUSP-326	357	Athens, GA Buses and Bus Facilities	273,038
GA	E-2006-BUSP-327	247	Atlanta, GA Inter-modal Passenger Facility Improvements	384,560
GA	E-2006-BUSP-328	384	Atlanta, GA MARTA Clean Fuel Bus Acquisition	1,153,680
GA	E-2006-BUSP-329	469	Auburn University-Intermodal Parking Garage	916,000
GA	E-2006-BUSP-330	144	Augusta, GA Buses and Bus Facilities	76,912
GA	E-2006-BUSP-331		Buses and Bus Facilities, GA	500,000
GA	E-2006-BUSP-332		Chatham Area Transit Authority bus and facility, GA	500,000
GA	E-2006-BUSP-333		City of Moultrie, Georgia, Intermodal Facility	500,000
GA	E-2006-BUSP-334	110	Cobb County, GA Cobb County Smart Card Technology/ Bus Facility Improvements	192,280
GA	E-2006-BUSP-335	91	Columbus, GA Bus replacement	57,684
GA	E-2006-BUSP-336	510	Columbus, Georgia/Phoenix City, Alabama-National Infantry Museum Multimodal Facility	389,000
GA	E-2006-BUSP-337	49	Columbus, Georgia-Buses & Bus Facilities	186,319
GA	E-2006-BUSP-338	530	Georgia Department of Transportation-Georgia Statewide Bus and Bus Facilities	2,062,000
GA	E-2006-BUSP-339		Georgia GRTA Xpress Implementation Buses	2,250,000
GA	E-2006-BUSP-340	60	Georgia Statewide Bus Program	38,456
GA	E-2006-BUSP-341	275	Jesup, Georgia-Train Depot intermodal center	192,280
GA	E-2006-BUSP-342		MARTA Atlanta Clean Fuel Buses	1,000,000
GA	E-2006-BUSP-343		MARTA Automated Smart Card Fare Collection Systems, Georgia	375,000
GA	E-2006-BUSP-344	374	Metro-Atlanta, GA MARTA Automated Smart-Card Fare Collection System	192,280
GA	E-2006-BUSP-345		Metropolitan Atlanta Rapid Transit Authority acquisition of clean buses, Georgia	2,610,000
GA	E-2006-BUSP-346	406	Moultrie, GA Inter-modal facility	57,684
GA	E-2006-BUSP-347		Purchase Transit Buses for Macon Transit Authority, Georgia	500,000
GA	E-2006-BUSP-348	329	Quitman, Clay, Randolph, Stewart Co., GA Bus project	48,070
GA	E-2006-BUSP-349	256	Savannah, GA Bus and Bus Facilities-Chatham Area Transit	961,400
GA	E-2006-BUSP-350	348	Savannah, Georgia-Water Ferry River walk intermodal facilities	384,560
GA	E-2006-BUSP-351	96	SEPTA Montgomery County Intermodal Improvements at Glenside and Jenkintown Station Parking Garages	961,400
GA	E-2006-BUSP-352	206	Sylvester, GA Inter-modal Facility	38,456
GA	E-2006-BUSP-353	298	Thomasville, GA Bus Replacement	38,456
GU	E-2006-BUSP-354		MTA transit vehicles for disabled persons, Guam	300,000
HI	E-2006-BUSP-355		Honolulu Bus and Bus Facilities, HI	6,000,000
HI	E-2006-BUSP-356	540	Honolulu, HI, Bus Facilities	1,350,000
HI	E-2006-BUSP-357		Rural Bus Program, HI	4,000,000
IA	E-2006-BUSP-358		10 new fixed-route buses, Cedar Rapids, IA	150,000
IA	E-2006-BUSP-359	440	Ames, Iowa-Expansion of CyRide Bus Maintenance Facility	384,560
IA	E-2006-BUSP-360	475	Black Hawk County, IA UNI Multimodal Project	687,000
IA	E-2006-BUSP-361		City of Coralville Intermodal Facility, IA	575,000
IA	E-2006-BUSP-362		Cyride/Ames Iowa Bus Garaga facility	1,000,000
IA	E-2006-BUSP-363	242	Des Moines, IA Purchase 40 foot buses	192,280
IA	E-2006-BUSP-364	545	Iowa Department of Transportation-Iowa Statewide Buses and Bus Replacement	2,749,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 11

Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
IA	E-2006-BUSP-365		Johnson County SEATS Para-Transit Facility Program, IA	100,000
IA	E-2006-BUSP-366		Statewide Bus Replacement, Iowa	1,400,000
IA	E-2006-BUSP-367		UNI Multimodal Project, Cedar Falls, Iowa	1,575,000
IA	E-2006-BUSP-368		University of Norther Iowa Multi	250,000
ID	E-2006-BUSP-369	176	Boise, ID-Multimodal facility	865,260
ID	E-2006-BUSP-370	543	Idaho Department of Transportation - Idaho Statewide ITS for Public Transportation	344,000
ID	E-2006-BUSP-371		Idaho Statewide ITS	100,000
ID	E-2006-BUSP-372		Idaho Transit Coalition Bus Capital Investment	2,150,000
ID	E-2006-BUSP-373		Idaho Transit Coalition Buses and Bus Facilities	750,000
ID	E-2006-BUSP-374	652	Valley Regional Transit, ID-Downtown Boise Multimodal	1,329,000
IL	E-2006-BUSP-375		95th Street Red Line Station, IL	800,000
IL	E-2006-BUSP-376	473	Bi-State Development Agency-St. Louis Bridge Repair/Reconstruction, for any activity eligible under section 5309	1,145,000
IL	E-2006-BUSP-377	474	Bi-State Development Agency-St. Louis Metro Bus Fare Collection Program	3,665,000
IL	E-2006-BUSP-378	433	Centralia, Illinois-South Central Mass Transit District Improvements	76,912
IL	E-2006-BUSP-379	226	Champaign, IL-Construct park and ride lot with attached daycare facility	288,420
IL	E-2006-BUSP-380	221	Chicago, IL Construct intermodal facility at 35th Street at Metra Ride Line (Northside)	961,400
IL	E-2006-BUSP-381	219	College	57,684
IL	E-2006-BUSP-382	491	Chicago, IL, Cermak Road, Bus Rapid Transit	200,000
IL	E-2006-BUSP-383	358	Cicero, Chicago Establish Transit Signal Priority, Cicero Ave., Pace Suburban Bus	192,280
IL	E-2006-BUSP-384	4	Des Plaines, Wauconda, Cook and Lake Counties, IL Rand Road Transit Signal Priority	153,824
IL	E-2006-BUSP-385	296	Elgin to Rockford, Illinois-Intermodal stations along planned Metra Union Pacific West Line extension alignment, including necessary alternatives analysis	96,140
IL	E-2006-BUSP-386	114	Geneva, Illinois-Construct commuter parking deck for Metra Service	769,120
IL	E-2006-BUSP-387		IL Statewide buses and facilities	8,000,000
IL	E-2006-BUSP-388	291	Joliet, Illinois-Union Station commuter parking facility	552,805
IL	E-2006-BUSP-389	250	Maywood, IL Purchase buses	9,614
IL	E-2006-BUSP-390	429	Normal, Illinois-Multimodal Transportation Center	384,560
IL	E-2006-BUSP-391	163	Normal, Illinois-Multimodal Transportation Center, including facilities for adjacent public and nonprofit uses	961,400
IL	E-2006-BUSP-392		PACE Bus Service to the College of DuPage, Glen Ellyn, IL	200,000
IL	E-2006-BUSP-393		Pace Suburban Bus Transit Signal Priority, Illinois	500,000
IL	E-2006-BUSP-394	365	Pace Suburban Bus, IL South Suburban BRT Mobility Network	96,140
IL	E-2006-BUSP-395		Placerville Station II	1,000,000
IL	E-2006-BUSP-396	404	Rock Island, IL Improve Rock Island Mass Transit District Bus Facility	96,140
IL	E-2006-BUSP-397	608	Rock Island, Illinois, Metrolink Transit Maintenance Facility	200,000
IL	E-2006-BUSP-398	632	Springfield, IL, Multimodal Transit Terminal	800,000
IL	E-2006-BUSP-399	259	St. Charles, IL-Intermodal Parking Structures	865,260
IL	E-2006-BUSP-400		Town of Normal Multimodal Transportation Center, IL	2,000,000
IL	E-2006-BUSP-401	265	enhancements	153,824
IL	E-2006-BUSP-402	135	Wheaton, IL Pace Suburban Bus-Purchase buses	192,280
IN	E-2006-BUSP-403		Bloomington Public Transportation Corporation, IN	1,200,000
IN	E-2006-BUSP-404	109	Bloomington, IN-Bus and transfer facility	924,867
IN	E-2006-BUSP-405		Bloomington, Indiana University Campus Bus System, IN	600,000
IN	E-2006-BUSP-406		Bus Purchase and Upgrades, Columbus, IN	500,000
IN	E-2006-BUSP-407		Cherry Street Joint Development Project, IN	250,000
IN	E-2006-BUSP-408		City of Anderson Intermodal Center Project, IN	125,000
IN	E-2006-BUSP-409		Fort Wayne Citilink, IN	125,000
IN	E-2006-BUSP-410	529	Gary, Indiana, Gary Airport Station Modernization and Shuttle Service Project	350,000
IN	E-2006-BUSP-411	544	Indianapolis Downtown Transit Center	800,000
IN	E-2006-BUSP-412	235	Indianapolis, IN Construct the Ivy Tech State College Multi-Modal Facility	961,400
IN	E-2006-BUSP-413	5	Indianapolis, IN Downtown Transit Center	2,691,920
IN	E-2006-BUSP-414	220	Indianapolis, IN IndySMART program to relieve congestion, improve safety and air quality	384,560
IN	E-2006-BUSP-415	378	Indianapolis, IN Relocate and improve inter-modal transportation for pedestrian to Children's Museum of Indianapolis	2,691,920
IN	E-2006-BUSP-416	417	Indianapolis, Indiana-Children's Museum Intermodal Center	192,280
IN	E-2006-BUSP-417		Ivy Tech Multi-Modal Facility, Indianapolis, IN	300,000
IN	E-2006-BUSP-418		Ivy Tech State College Multi-Modal Facility, IN	175,000
IN	E-2006-BUSP-419	546	Ivy Tech State College, Indiana Multimodal Center	150,000
IN	E-2006-BUSP-420		Lafayette Bus Replacement, IN	750,000
IN	E-2006-BUSP-421		Lake County Bus Systems, IN	500,000
IN	E-2006-BUSP-422		Muncie Indiana Transit System	1,200,000
IN	E-2006-BUSP-423		N. Indiana Mental Health Trans. Partnership	250,000
IN	E-2006-BUSP-424		NIMHTP, Madison Center, South Bend, IN	500,000
IN	E-2006-BUSP-425	617	South Bend, Indiana, TRANSPO Bus Operations Center	800,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 11

Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
IN	E-2006-BUSP-426	141	South Bend, Indiana-Construct South Bend Bus Operations Center	192,280
IN	E-2006-BUSP-427	637	Terre Haute, Indiana--Cherry Street Joint Development Project	800,000
KS	E-2006-BUSP-428	53	Johnson Co., KS Bus and bus related facilities [I-35. corridor], Johnson Co. Transit	384,560
KS	E-2006-BUSP-429		Johnson County Fleet Vehicle Replacement, KS	350,000
KS	E-2006-BUSP-430	551	Kansas City Area Transportation Authority-Bus Project	2,291,000
KS	E-2006-BUSP-431	552	Kansas Department of Transportation-Kansas Statewide Transit Buses, Bus Facilities, and Bus ITS	2,749,000
KS	E-2006-BUSP-432		Kansas Statewide Bus and Bus Facilities, KS	700,000
KS	E-2006-BUSP-433		Wichita Transit Authority, KS	800,000
KS	E-2006-BUSP-434		Wyandotte County Unified Government Transit, KS	500,000
KY	E-2006-BUSP-435		Foothills Community Action Partnership Foothills Express Transit Expansion Project, KY	350,000
KY	E-2006-BUSP-436		Fulton County Transit Authority, KY	220,000
KY	E-2006-BUSP-437		Harlan County Transit Center, KY	500,000
KY	E-2006-BUSP-438		Henderson Area Rapid Transit Authority, KY	44,000
KY	E-2006-BUSP-439		Lincoln County Senior Citizen Bus, Kentucky	400,000
KY	E-2006-BUSP-440		Paducah Area Transit System in Paducah, Kentucky	1,100,000
KY	E-2006-BUSP-441		Pennyrile Allied Community Services	93,000
KY	E-2006-BUSP-442	372	Richmond, KY Purchase buses, bus equipment and facilities	138,442
KY	E-2006-BUSP-443		Southern and Eastern Ky Bus and Bus Facilities	500,000
KY	E-2006-BUSP-444		TARC—purchase of 10 hybrid electric buses	500,000
KY	E-2006-BUSP-445	639	Transit Authority of Lexington, KY-Rehabilitation of Building for Maintenance and Administration	916,000
LA	E-2006-BUSP-446		Bus Terminal and Support Facility, Lake Charles, LA	1,000,000
LA	E-2006-BUSP-447	484	Capital Area Transit System-Baton Rouge BRT	687,000
LA	E-2006-BUSP-448		Greater Ouachita Port intermodal facility, LA	400,000
LA	E-2006-BUSP-449	72	Hammond, Louisiana-Passenger Intermodal facility at Southeastern University	38,456
LA	E-2006-BUSP-450		Intermodal Facility, Ouachita Parish, LA	500,000
LA	E-2006-BUSP-451		LA Statewide buses and facilities	4,000,000
LA	E-2006-BUSP-452	555	Lafayette City-Parish Consolidated Government, LA-Lafayette Multimodal Transportation Facility	229,000
LA	E-2006-BUSP-453		Lafayette Louisiana Multimodal Transportation Facility	150,000
LA	E-2006-BUSP-454	556	Lafayette, Indiana, City Bus of Greater Lafayette	500,000
LA	E-2006-BUSP-455	239	Lafayette, Louisiana-Lafayette Transit System bus replacement program	173,052
LA	E-2006-BUSP-456	356	Lafayette, Louisiana-Multimodal center, Final Phase	576,840
LA	E-2006-BUSP-457	568	Louisiana Department of Transportation and Development-Statewide Vehicles and Equipment	229,000
LA	E-2006-BUSP-458	170	Louisiana-Construct pedestrian walkways between Caddo St. and Milam St. along Edwards St. in Shreveport, LA	195,280
LA	E-2006-BUSP-459		New Orleans Union Passenger Terminal Rehab, Louisiana	1,000,000
LA	E-2006-BUSP-460	55	New Orleans, LA Inter-modal Riverfront Center	96,140
LA	E-2006-BUSP-461	67	New Orleans, LA Plan and construct New Orleans Union Passenger Terminal intermodal facilities	192,280
LA	E-2006-BUSP-462	243	New Orleans, LA Regional Planning Commission, bus and bus facilities	96,140
LA	E-2006-BUSP-463	310	River Parishes, LA South Central Planning and Development Commission, bus and bus facilities	192,280
LA	E-2006-BUSP-464	606	facilities	160,000
LA	E-2006-BUSP-465		RiverSphere Multimodal Facility, Louisiana	200,000
LA	E-2006-BUSP-466	277	Shreveport, LA-intermodal Transit Facility	644,138
LA	E-2006-BUSP-467	625	Southeastern Louisiana University Intermodal Facility	300,000
LA	E-2006-BUSP-468	283	St. Bernard Parish, LA Intermodal facility improvements	192,280
LA	E-2006-BUSP-469		ULM Intermodal Facility, Monroe, LA	1,000,000
MA	E-2006-BUSP-470	118	Attleboro, MA Construction, engineering and site improvements at the Attleboro Intermodal Center	384,560
MA	E-2006-BUSP-471	472	Berkshire, MA, Berkshire Regional Transit Authority Bus Maintenance Facility	50,000
MA	E-2006-BUSP-472	59	Beverly, MA Design and Construct Beverly Deport Intermodal Transportation Center	384,560
MA	E-2006-BUSP-473	273	Boston, MA Harbor Park Pavilion & Inter-modal Station	240,350
MA	E-2006-BUSP-474		Brockton Area Transit Authority Replacement Buses, MA	1,031,459
MA	E-2006-BUSP-475	174	Brockton, MA Bus replacement for the Brockton Area Transit Authority	288,420
MA	E-2006-BUSP-476		Construction of Amesbury Bus Facility, MA	1,200,000
MA	E-2006-BUSP-477	330	Framingham, MA Local Intra-Framingham Transit System enhancements	346,104
MA	E-2006-BUSP-478		Franklin Multimodal Center, MA	1,500,000
MA	E-2006-BUSP-479		Gardner Maintenance Facility Construction, MA	800,000
MA	E-2006-BUSP-480	124	Haverhill, MA Design and Construct Inter-modal Transit Parking Improvements	1,076,768
MA	E-2006-BUSP-481	21	Hingham, MA Higham Marine Intermodal Center Improvements: Enhance public transportation infrastructure/parking	1,730,520
MA	E-2006-BUSP-482		Holyoke Multimodal Center, MA	1,750,000
MA	E-2006-BUSP-483		Intermodal Station Improvements, Salem and Beverly, MA	1,200,000
MA	E-2006-BUSP-484	563	Lawrence, MA, Gateway Intermodal and Quadant Area Reuse Project	600,000
MA	E-2006-BUSP-485	280	Lowell, MA Implementation of LRTA bus replacement plan	192,280
MA	E-2006-BUSP-486	569	Lowell, MA, Lowell Regional Transit	600,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 11

Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
MA	E-2006-BUSP-487		MART Advanced Vehicle Locator System (AVL), Massachusetts	500,000
MA	E-2006-BUSP-488		MART Maintenance Facility, Fitchburg, Massachusetts	1,200,000
MA	E-2006-BUSP-489		MART Vehicle Replacement, Massachusetts	1,200,000
MA	E-2006-BUSP-490	42	Medford, MA Downtown revitalization featuring construction of a 200 space Park and Ride Facility	384,560
MA	E-2006-BUSP-491	257	Newburyport, MA Design and Construct Intermodal Facility	384,560
MA	E-2006-BUSP-492		North Leomister Parking Improvements, Massachusetts	720,000
MA	E-2006-BUSP-493		Public Transit for STCC College Students, Massachusetts	700,000
MA	E-2006-BUSP-494	139	Quincy, MA MBTA Purchase high speed catamaran ferry for Quincy Harbor Express Service	384,560
MA	E-2006-BUSP-495		Rapid Transit Handicap Accessibility, Newton, Massachusetts	1,200,000
MA	E-2006-BUSP-496	161	Revere, MA Inter-modal transit improvements in the Wonderland station (MBTA) area	346,104
MA	E-2006-BUSP-497	88	Rockport, MA Rockport Commuter Rail Station Improvements	528,770
MA	E-2006-BUSP-498	370	Salem, MA Design and Construct Salem Intermodal Transportation Center	384,560
MA	E-2006-BUSP-499	205	Woburn, MA Construction of an 89 space park and ride facility to be located on Magazine Hill, in the Heart of Woburn Square	346,104
MD	E-2006-BUSP-500	122	Baltimore, MD Construct Intercity Bus Intermodal Terminal	961,400
MD	E-2006-BUSP-501	499	City of Gaithersburg, Maryland-Bus and paratransit vehicle for seniors	112,000
MD	E-2006-BUSP-502	303	Howard County, MD Construct Central Maryland Transit Operations and Maintenance Facility	961,400
MD	E-2006-BUSP-503	542	Howard County, MD Construct Central Maryland Transit Operations and Maintenance Facility	250,000
MD	E-2006-BUSP-504	571	MARC Intermodal Odenton and Edgewood Station Improvements	368,000
MD	E-2006-BUSP-505	573	Maryland Statewide Bus Facilities and Buses	5,500,000
MD	E-2006-BUSP-506		Maryland Statewide Bus Program	500,000
MD	E-2006-BUSP-507	224	Montgomery County, MD Wheaton CBD Intermodal Access Program	96,140
MD	E-2006-BUSP-508	214	Mount Rainier, MD Intermodal and Pedestrian Project	86,526
MD	E-2006-BUSP-509		Silver Spring Transit Center, Maryland	3,000,000
MD	E-2006-BUSP-510	615	Silver Spring, Maryland, Transit Center	7,000,000
MD	E-2006-BUSP-511	8	Silver Spring, MD Construct Silver Spring Transit Center in downtown Silver Spring	701,822
MD	E-2006-BUSP-512		Southern Maryland Commuter Bus Initiative	2,000,000
MD	E-2006-BUSP-513	629	Southern Maryland Commuter Initiative	2,700,000
ME	E-2006-BUSP-514	19	Bar Harbor, ME Purchase new buses to enhance commuting near the Jackson Labs	57,684
ME	E-2006-BUSP-515	483	Campobello Park, ME, Bus Acquisition	22,000
ME	E-2006-BUSP-516		Intermodal Facility, Augusta, ME	700,000
ME	E-2006-BUSP-517	570	Maine Department of Transportation-Acadia Intermodal Facility	687,000
MI	E-2006-BUSP-518		1st District Bus Replacement and Facilities, MI	2,000,000
MI	E-2006-BUSP-519		Allegan County Transportation Services, MI	89,000
MI	E-2006-BUSP-520		Automation Alley/BUSolutions, MI	2,000,000
MI	E-2006-BUSP-521	301	Barry County, MI-Barry County Transit equipments and dispatching software	28,842
MI	E-2006-BUSP-522		Battle Creek Transit Bus Replacement, MI	1,200,000
MI	E-2006-BUSP-523		Bay City MTA New and Replacement Vehicles, MI	400,000
MI	E-2006-BUSP-524		Berrien County Public Transportation, MI	150,000
MI	E-2006-BUSP-525	204	Boysville of Michigan Transportation System	646,061
MI	E-2006-BUSP-526		Capital Area Transportation Authority, Hybrid Public Transportation Vehicles Purchase, Lansing, MI	2,000,000
MI	E-2006-BUSP-527		Cass County Transit, MI	80,000
MI	E-2006-BUSP-528	502	City of Kalamazoo, MI bus Replacement	2,500,000
MI	E-2006-BUSP-529		City of Midland Dial-A-Ride Section 5309, MI	366,000
MI	E-2006-BUSP-530		Clare County Transit Administration Facility, MI	460,000
MI	E-2006-BUSP-531		Communication Equipment and Bus, Belding, MI	76,000
MI	E-2006-BUSP-532		Deneka Maintenance Facility, MI	500,000
MI	E-2006-BUSP-533		Detroit Bus Leasing and Expansion, MI	2,000,000
MI	E-2006-BUSP-534	319	Detroit Bus Maintenance Facility	1,730,520
MI	E-2006-BUSP-535	522	Detroit Department of Transportation Bus Replacement	2,000,000
MI	E-2006-BUSP-536	2	Detroit Fare Collection System	769,120
MI	E-2006-BUSP-537	156	Detroit Replacement Buses	961,400
MI	E-2006-BUSP-538	320	Detroit, MI Bus Replacement	1,442,100
MI	E-2006-BUSP-539	9	Detroit, MI Enclosed heavy-duty maintenance facility with full operational functions for up to 300 buses	865,260
MI	E-2006-BUSP-540		Dowagiac Dial A Ride, MI	50,000
MI	E-2006-BUSP-541	208	Eastern Upper Peninsula, MI Ferry Dock and Facility upgrades for Drummond Island Ferry Services	48,070
MI	E-2006-BUSP-542		Flint MTA New and Replacement Vehicles, MI	300,000
MI	E-2006-BUSP-543	526	Flint, MI, Mass Transportation Authority Bus Maintenance Facility	750,000
MI	E-2006-BUSP-544	531	Grand Rapids, Michigan, The Rapid, Bus Replacement	1,100,000
MI	E-2006-BUSP-545	249	Grand Rapids, MI-Purchase replacement and expansion buses	2,816,902
MI	E-2006-BUSP-546		Greater Lapeer Transportation Authority, MI	500,000
MI	E-2006-BUSP-547		Harbor Transit, MI	404,000
MI	E-2006-BUSP-548		Hillsdale Dial-A-Ride, MI	500,000
MI	E-2006-BUSP-549	79	Ionia County, MI-Purchase and Implementation of communication equipment improvements	113,445

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Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
MI	E-2006-BUSP-550		Kalamazoo Metro Transit, MI	1,000,000
MI	E-2006-BUSP-551		Kalkaska County Transportation Facility, MI	400,000
MI	E-2006-BUSP-552		Lake Erie Transit Hybrid Transit Buses, MI	700,000
MI	E-2006-BUSP-553		Lake Erie Transit Maintenance Bay Expansion, Michigan	500,000
MI	E-2006-BUSP-554	560	Lansing, MI, Capital Area Transportation Authority, Bus Replacement and Bus Related ITS	750,000
MI	E-2006-BUSP-555		Ludington Mass Transportation Authority	320,000
MI	E-2006-BUSP-556		Macatawa Area Express	250,000
MI	E-2006-BUSP-557	572	Marquette County, Michigan Transit Authority Bus passenger facility	300,000
MI	E-2006-BUSP-558	581	Michigan Department of Transportation (MDOT) Bus Replacement	2,000,000
MI	E-2006-BUSP-559	293	Muskegon, Michigan-Muskegon Area Transit Terminal and related improvements	384,560
MI	E-2006-BUSP-560	601	Port Huron, Michigan, Blue Water Area Transportation Commission, Bus Maintenance Facility	1,000,000
MI	E-2006-BUSP-561		Roscommon Transportation Authority Route Service	200,000
MI	E-2006-BUSP-562		Sanilac Co. Transit Authority, MI	500,000
MI	E-2006-BUSP-563		St. Joseph County Transit	80,000
MI	E-2006-BUSP-564	634	Suburban Mobility Authority for Regional Transportation (SMART) Bus Maintenance Facility	1,500,000
MI	E-2006-BUSP-565		Suburban Mobility Authority for Regional Transportation (SMART), MI	5,000,000
MI	E-2006-BUSP-566		Vehicle Acquisition for Ionia Dial-A-Ride, MI	144,000
MI	E-2006-BUSP-567		Yates Township Dial-A-Ride Transportation System, MI	400,000
MN	E-2006-BUSP-568		Cedar Avenue Bus Rapid Transit, Dakota County, MN	750,000
MN	E-2006-BUSP-569		City of Northfield, MN Transit Station	280,000
MN	E-2006-BUSP-570	40	Duluth, MN Downtown Duluth Area Transit facility improvements	384,560
MN	E-2006-BUSP-571	177	Fond du Lac Reservation, MN Purchase buses	28,842
MN	E-2006-BUSP-572		Greater Minnesota Transit Capital	1,000,000
MN	E-2006-BUSP-573		Greater Minnesota Transit Capitol—5309 Buses and Bus Facilities, Rock County	500,000
MN	E-2006-BUSP-574		I–35W BRT 46th Street Station, Minneapolis, MN	1,000,000
MN	E-2006-BUSP-575	577	Metro Transit/Metropolitan Council, MN-Bus/Bus Capital	2,176,000
MN	E-2006-BUSP-576		Minnesota Transit Cap.—5309 Buses and Bus Facilities—St. Peter	250,000
MN	E-2006-BUSP-577		Northwest Busway, Minneapolis, Minnesota	1,000,000
MN	E-2006-BUSP-578	185	St. Paul to Hinckley, MN Construct bus amenities along Rush Line Corridor	288,420
MN	E-2006-BUSP-579	342	St. Paul, MN Union Depot Multi Modal Transit Facility	384,560
MN	E-2006-BUSP-580		The UEL Bus Stop, University of Minnesota Twin Cities Transitway, MN	50,000
MN	E-2006-BUSP-581		Twin Cities Dial A Ride	89,000
MO	E-2006-BUSP-582		City of Clinton, Missouri, Buses and Bus Facilities, MO	50,000
MO	E-2006-BUSP-583		City of Lamar, Missouri, new transit vehicle	20,000
MO	E-2006-BUSP-584		City of Marshfield, new transit vehicles, MO	50,000
MO	E-2006-BUSP-585		City Utilities of Springfield bus facilities, MO	1,650,000
MO	E-2006-BUSP-586		Franklin County Transportation Council, MO	456,000
MO	E-2006-BUSP-587		Intermodal Transfer Facility at Duncan and Boyle, MO	700,000
MO	E-2006-BUSP-588		Jefferson City, Missouri, Buses and Bus Facilities	350,000
MO	E-2006-BUSP-589	345	Kansas City, MO Bus Transit Infrastructure	192,280
MO	E-2006-BUSP-590		KCATA buses, MO	3,850,000
MO	E-2006-BUSP-591		METRO St Louis Downtown Shuttle Trolley, Missouri	750,000
MO	E-2006-BUSP-592		OATS buses and bus facilities, Missouri	2,200,000
MO	E-2006-BUSP-593	598	OATS, Incorporated, MO-ITS Information and Billing System and Bus Facilities	3,894,000
MO	E-2006-BUSP-594		Ray County Transit Buses and Bus Equipment, Missouri	50,000
MO	E-2006-BUSP-595		South East Missouri Transportation Service, Missouri	1,100,000
MO	E-2006-BUSP-596	624	Southeast Missouri Transportation Service-Bus Project	458,000
MO	E-2006-BUSP-597		Southern Missouri Buses and Bus Facilities	1,500,000
MS	E-2006-BUSP-598	130	Coahoma County, Mississippi Purchase buses for the Aaron E. Henry Community Health Services Center, Inc./DARTS transit service	28,842
MS	E-2006-BUSP-599		Handicap Buses Desoto County, MS	150,000
MS	E-2006-BUSP-600		Inter-city Transit Companies, Meridian, MS	200,000
MS	E-2006-BUSP-601	547	Jackson State University, MS-Busing Project	1,145,000
MS	E-2006-BUSP-602		JATRAN bus replacement, MS	550,000
MT	E-2006-BUSP-603		Billings Public Bus and Transfer, MT	1,250,000
MT	E-2006-BUSP-604	129	Bozeman, Montana-Vehicular Parking Facility	769,150
MT	E-2006-BUSP-605	476	Bozeman, MT, Intermodal and parking facility	168,000
MT	E-2006-BUSP-606		Helena Transit Facility, MT	250,000
MT	E-2006-BUSP-607		Kalispell Buses, MT	100,000
MT	E-2006-BUSP-608		Lewistown Bus Facility, Montana	300,000
MT	E-2006-BUSP-609	584	Montana Department of Transportation-Statewide Bus Facilities and Buses	687,000
MT	E-2006-BUSP-610		Mountain Line Bus, Montana	875,000
MT	E-2006-BUSP-611		Pablo Bus Facility, Montana	200,000
MT	E-2006-BUSP-612		Pablo Buses, Montana	150,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 11

Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
MT	E-2006-BUSP-613		Poplar Transit Facility Renovation, Montana	80,000
MT	E-2006-BUSP-614		Public Bus Transfer and Parking Facility, MT	1,250,000
MT	E-2006-BUSP-615		University of Montana bus maintenance facility	250,000
NC	E-2006-BUSP-616	490	Charlotte Area Transit System/City of Charlotte-Charlotte Multimodal Station	2,291,000
NC	E-2006-BUSP-617	217	Charlotte, NC Construct Charlotte Multimodal Station	1,499,784
NC	E-2006-BUSP-618	351	Charlotte, North Carolina-Eastland Community Transit Center	384,560
NC	E-2006-BUSP-619	228	Charlotte, North Carolina-Multimodal Station	769,120
NC	E-2006-BUSP-620	154	City of Greenville, NC Expansion Buses and Greenville Intermodal Center	685,286
NC	E-2006-BUSP-621	324	Elon, North Carolina-Piedmont Authority for Regional Transportation buses and bus facilities	230,736
NC	E-2006-BUSP-622	302	Greensboro, North Carolina-Piedmont Authority for Regional Transportation Multimodal Transportation Center	2,407,346
NC	E-2006-BUSP-623	52	Greensboro, North Carolina-Replacement buses	1,111,378
NC	E-2006-BUSP-624		High Point International Furniture Market Transportation Terminal, NC	850,000
NC	E-2006-BUSP-625	537	High Point, NC-Intermodal Facility	275,000
NC	E-2006-BUSP-626	335	High Point, North Carolina-Bus Terminal	1,153,860
NC	E-2006-BUSP-627	594	North Carolina Department of Transportation-North Carolina Statewide Bus and Bus Facilities	5,727,000
NC	E-2006-BUSP-628	143	Raleigh, NC Purchase eighteen replacement buses to replace buses that have reached their useful life according to Federal Transit Administration regulations	384,560
NC	E-2006-BUSP-629		Statewide Bus and Bus Facilities, NC	2,000,000
NC	E-2006-BUSP-630	134	Town of Chapel Hill, NC Park and Ride Lot	288,420
NC	E-2006-BUSP-631		Town of Chapel Hill, North Carolina Replacement Bus	750,000
NC	E-2006-BUSP-632		Triangle Transit Authority Replacement Buses, North Carolina	500,000
NC	E-2006-BUSP-633	57	Wilmington, NC Build Intermodal Center	192,280
NC	E-2006-BUSP-634		Winston-Salem Union Station Intermodal Facility, NC	250,000
ND	E-2006-BUSP-635	595	North Dakota Department of Transportation/Statewide Bus	1,000,000
ND	E-2006-BUSP-636		North Dakota Statewide Transit	1,250,000
NE	E-2006-BUSP-637	505	City of Omaha-Creighton University Intermodal Facility	687,000
NE	E-2006-BUSP-638	160	Kearney, Nebraska-RYDE Transit Bus Maintenance and Storage Facility	384,560
NE	E-2006-BUSP-639	586	Nebraska Department of Roads-Bus Maintenance and Storage Facility for RYDE in Kearney, NE	458,000
NE	E-2006-BUSP-640	587	Nebraska Department of Roads-Statewide Vehicles, Facilities, and Related Equipment Purchases	916,000
NE	E-2006-BUSP-641	240	Nebraska-statewide transit vehicles, facilities, and related equipment	769,120
NE	E-2006-BUSP-642	599	Omaha, NE, Buses and Fare boxes	610,000
NE	E-2006-BUSP-643		StarTran Farebox Technology Upgrades, Nebraska	65,000
NH	E-2006-BUSP-644	418	Windham, New Hampshire--Construction of Park and Ride Bus facility at Exit 3	711,436
NJ	E-2006-BUSP-645		Atlantic City Regional Medical Center Bus Project, NJ	250,000
NJ	E-2006-BUSP-646	468	Atlantic City, NJ Jitney	750,000
NJ	E-2006-BUSP-647		Bergen Intermodal Stations and Park N'Rides, NJ	2,000,000
NJ	E-2006-BUSP-648		Bloomfield Intermodal Facilities and Park-and-Ride, NJ	500,000
NJ	E-2006-BUSP-649	86	Burlington County, NJ-BurLink and Burlington County Transportation System vehicles and equipment	769,120
NJ	E-2006-BUSP-650	28	Camden, NJ Construction of the Camden County Intermodal Facility in Cramer Hill	192,280
NJ	E-2006-BUSP-651		Central NJ Intermodal Stations and Park & Rides	500,000
NJ	E-2006-BUSP-652	12	Hoboken, NJ Rehabilitation of Hoboken Inter-modal Terminal	730,664
NJ	E-2006-BUSP-653	102	Jersey City, NJ Construct West Entrance to Pavonia-Newport PATH Station	384,560
NJ	E-2006-BUSP-654		Kapkowski Road Transportation Planning Area Project, NJ	500,000
NJ	E-2006-BUSP-655	389	Lakewood, NJ-Ocean County Bus service and parking facilities	576,840
NJ	E-2006-BUSP-656	138	Long Branch, NJ Design and construct facilities for ferry service from Long Branch, NJ to New York City and other destinations	769,120
NJ	E-2006-BUSP-657	38	Monmouth County, NJ Construction of main bus facility for Freehold Township, including a terminal and repair shop	384,560
NJ	E-2006-BUSP-658		Morristown Intermodal Historic Station, NJ	3,000,000
NJ	E-2006-BUSP-659	209	Morristown, New Jersey-Intermodal Historic Station	192,280
NJ	E-2006-BUSP-660	46	National Park Service Design and construct 2.1-mile segment to complete Sandy Hook multiuse pathway in Sandy Hook, NJ	192,280
NJ	E-2006-BUSP-661	340	New Jersey Inter-modal Facilities and Bus Rolling Stock	576,840
NJ	E-2006-BUSP-662	328	New Jersey Transit Community Shuttle Buses	96,140
NJ	E-2006-BUSP-663		Newark Penn Station Intermodal Improvements, New Jersey	1,000,000
NJ	E-2006-BUSP-664	13	Newark, NJ Penn Station Intermodal Improvements including the rehabilitation of boarding areas	192,280
NJ	E-2006-BUSP-665		NJ Transit Jitney Bus Replacement, Atlantic City	250,000
NJ	E-2006-BUSP-666		NW NJ Multi-County Intermodal Transit Initiative	1,000,000
NJ	E-2006-BUSP-667		Regional Intermodal Transportaiton, South Amboy, New Jersey	500,000
NJ	E-2006-BUSP-668		Saint Peter's McGrinley Square Intermodal Facility, New Jersey	800,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 11

Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
NJ	E-2006-BUSP-669	29	Sandy Hook, NJ National Park Service Construct year-round ferry dock at Sandy Hook Unit of Gateway National Recreation Area	192,280
NJ	E-2006-BUSP-670	393	South Amboy, NJ Construction of improvements to facilities at South Amboy Station under S Amboy, NJ Regional Intermodal Initiative	1,538,240
NJ	E-2006-BUSP-671	618	South Brunswick, NJ Transit System	1,000,000
NJ	E-2006-BUSP-672	643	Trenton Intermodal Station	5,500,000
NJ	E-2006-BUSP-673	61	Trenton, New Jersey-Trenton Train Station Rehabilitation	288,420
NJ	E-2006-BUSP-674	181	Trenton, NJ Development of Trenton Trolley System	192,280
NJ	E-2006-BUSP-675	62	Trenton, NJ Reconstruction and rehabilitation of the Trenton Train Station	1,345,960
NJ	E-2006-BUSP-676		Valley Hospital Bus Transportation, NJ	75,000
NM	E-2006-BUSP-677	464	Albuquerque, NM, Ride Bus and Bus Facilities	1,500,000
NM	E-2006-BUSP-678		Buses and Bus Facilities, Farmington, NM	320,000
NM	E-2006-BUSP-679		Buses and Bus Facilities, Las Cruces, NM	1,000,000
NM	E-2006-BUSP-680		City of Albuquerque Transit Vehicles, NM	225,000
NM	E-2006-BUSP-681	562	Las Cruces, NM, Road Runner Bus and Bus Facilities	200,000
NM	E-2006-BUSP-682		Northern New Mexico Park and Ride	450,000
NM	E-2006-BUSP-683		Transit Vehicles for Albuquerque, NM	500,000
NM	E-2006-BUSP-684		West Side Transit Facility, Albuquerque, NM	825,000
NV	E-2006-BUSP-685		Boulder Highway Max Bus Rapid Transit System, NV	450,000
NV	E-2006-BUSP-686	405	Las Vegas, NV Construct Boulder Highway BRT system and purchase vehicles and related equipment	384,560
NV	E-2006-BUSP-687	199	Las Vegas, NV Construct Central City Inter-modal Transportation Terminal	1,153,680
NV	E-2006-BUSP-688	371	Las Vegas, NV Construct Las Vegas West Care Intermodal Facility	48,070
NV	E-2006-BUSP-689		Nevada Statewide Bus and Bus Facilities, NV	3,000,000
NV	E-2006-BUSP-690	603	Regional Transportation Commission of Southern Nevada-Central City Intermodal Transportation Terminal	916,000
NV	E-2006-BUSP-691		Reno and Sparks Intermodal Transportation Terminals and Related Development, NV	500,000
NV	E-2006-BUSP-692	18	Reno-Sparks, Nevada-Intermodal Transportation Terminals and Related Development	769,120
NV	E-2006-BUSP-693		RTC Transit Maintenance Facility, NV	500,000
NV	E-2006-BUSP-694	630	Southern Nevada Transit Coalition, Public Transit Building Acquisition	300,000
NV	E-2006-BUSP-695	656	Washoe County, NV Bus and Bus Facilities	1,000,000
NY	E-2006-BUSP-696	74	Albany-Schenectady, NY Bus Rapid Transit Improvements in NY Route 5. Corridor.	192,280
NY	E-2006-BUSP-697	463	Albany-Schenectady, NY, Bus Rapid Transit Improvements in NY Route 5	500,000
NY	E-2006-BUSP-698		Automated Light study along Route 59, NY	100,000
NY	E-2006-BUSP-699		Boro Park JCC Bus Purchase, NY	250,000
NY	E-2006-BUSP-700	271	Bronx, NY Botanical Garden metro North Rail station Intermodal Facility	192,280
NY	E-2006-BUSP-701	20	Bronx, NY Establish an intermodal transportation facility at the Wildlife Conservation Society Bronx Zoo	192,280
NY	E-2006-BUSP-702	279	Bronx, NY Establish an intermodal transportation facility at the Wildlife Conservation Society Bronx Zoo	192,280
NY	E-2006-BUSP-703	166	Bronx, NY Hebrew Home for the Aged elderly and disabled transportation support	36,053
NY	E-2006-BUSP-704	338	Bronx, NY Intermodal Facility near Exit 6. of the Bronx River Parkway	48,070
NY	E-2006-BUSP-705	234	Bronx, NY Jacobi Intermodal Center to North Central Bronx Hospital bus system	60,088
NY	E-2006-BUSP-706	10	Bronx, NY Wildlife Conservation Society intermodal transportation facility at the Bronx Zoo	84,123
NY	E-2006-BUSP-707	197	Brooklyn, NY Construct a multi-modal transportation facility	269,192
NY	E-2006-BUSP-708	408	Brooklyn, NY Construct a multi-modal transportation facility in the vicinity of Downstate Medical Center	192,280
NY	E-2006-BUSP-709	41	Brooklyn, NY New Urban Center-Broadway Junction Intermodal Center	184,589
NY	E-2006-BUSP-710	56	Brooklyn, NY-Rehabilitation of Bay Ridge 86th Street Subway Station	769,120
NY	E-2006-BUSP-711	419	Brooklyn, NY--Rehabilitation of Bay Ridge 86th Street Subway Station	769,120
NY	E-2006-BUSP-712	192	Buffalo, NY Inter-modal Center Parking Facility	192,280
NY	E-2006-BUSP-713		Bus and Bus Facilities, Clarkstown and White Plains, NY	300,000
NY	E-2006-BUSP-714		Bus Facility 65th Intermodal Station, NY	1,000,000
NY	E-2006-BUSP-715	245	Bus to provide York-town, New York internal circulator to provide transportation throughout the Town	35,572
NY	E-2006-BUSP-716		Central New York Regional Transportation Authority	1,500,000
NY	E-2006-BUSP-717	230	Construction of Third Bus Depot on Staten Island	2,307,360
NY	E-2006-BUSP-718	146	Cooperstown, New York-Intermodal Transit Center	961,400
NY	E-2006-BUSP-719	363	Corning, New York-Transportation Center	961,400
NY	E-2006-BUSP-720	512	Corning, NY, Phase II Corning Preserve Transportation Enhancement Project	350,000
NY	E-2006-BUSP-721	284	Cornwall, NY-Purchase Bus	16,728
NY	E-2006-BUSP-722		Electric, Next-Generation Transit Buses, Broome County Transit, NY	800,000
NY	E-2006-BUSP-723	300	Geneva, New York-Multimodal facility-Construct passenger rail center	96,140
NY	E-2006-BUSP-724		Intermodal transportation facility, Huntington Hospital, NY	500,000
NY	E-2006-BUSP-725	317	Jamestown, NY Rehabilitation of Intermodal Facility and associated property	384,560
NY	E-2006-BUSP-726	343	Kings County, NY Construct a multi-modal transportation facility	192,280
NY	E-2006-BUSP-727		Lakeside Center Hub, Prospect Park, Brooklyn, New York	700,000
NY	E-2006-BUSP-728		Nassau County Hub and Centre, NY	1,000,000
NY	E-2006-BUSP-729		Nassau County, New York Bus Replacement	1,000,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 11

Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
NY	E-2006-BUSP-730	368	Nassau County, NY Conduct planning and engineering for transportation system (HUB)	1,345,960
NY	E-2006-BUSP-731	585	Nassau County, NY, Conduct planning, engineering, and construction for transportation system (HUB)	1,000,000
NY	E-2006-BUSP-732	25	New York City, NY First Phase Implementation of Bus Rapid Transit System	192,280
NY	E-2006-BUSP-733	376	New York City, NY Purchase Handicapped-Accessible Livery Vehicles	192,280
NY	E-2006-BUSP-734	590	New York City, NY, Bronx Zoo Intermodal Facility	350,000
NY	E-2006-BUSP-735	591	New York City, NY, Enhance Transportation Facilities Near W. 65th Street and Broadway	350,000
NY	E-2006-BUSP-736	592	New York City, NY, Highline Project, for Studies, Design, and Construction	1,000,000
NY	E-2006-BUSP-737	593	New York, Improvements to Moynihan Station	1,000,000
NY	E-2006-BUSP-738		NFTA Hybrid Buses, Amherst, Erie County, New York	750,000
NY	E-2006-BUSP-739	77	Niagara Falls, NY Relocation, Development, and Enhancement of Niagara Falls International Railway Station/Intermodal Transportation Center	1,076,768
NY	E-2006-BUSP-740		Niagara Frontier Transportation Authority Buses, New York	500,000
NY	E-2006-BUSP-741	373	Niagara Frontier Transportation Authority, NY Replacement Buses	192,280
NY	E-2006-BUSP-742		North Hempstead Green Bus Fleet, New York	600,000
NY	E-2006-BUSP-743	322	Oneonta, New York-bus replacement	28,842
NY	E-2006-BUSP-744	379	Ramapo, NY Transportation Safety Field Bus	48,070
NY	E-2006-BUSP-745		Renaissance Square, NY	5,000,000
NY	E-2006-BUSP-746		RGRTA Hampton Corners Livingston County, NY	1,000,000
NY	E-2006-BUSP-747	252	Rochester, New York-Renaissance Square transit center	865,260
NY	E-2006-BUSP-748	430	Rochester, New York-Renaissance Square Transit Center	432,630
NY	E-2006-BUSP-749	607	Rochester, NY, Renaissance Square Intermodal Facility, Design and Construction	1,000,000
NY	E-2006-BUSP-750	609	Rockland County, NY Express Bus	600,000
NY	E-2006-BUSP-751		Seniors Transportation, Inc. Buses and Bus Facilities, New York	100,000
NY	E-2006-BUSP-752		St. George Terminal, Staten Island, NY	1,000,000
NY	E-2006-BUSP-753		Suffolk County Buses and Bus Facilities, New York	400,000
NY	E-2006-BUSP-754	386	Suffolk County, NY Design and construction of intermodal transit facility in Wyandanch	884,488
NY	E-2006-BUSP-755	353	Suffolk County, NY Purchase four handicapped accessible vans to transport veterans to and from the VA facility in Northport	53,838
NY	E-2006-BUSP-756	635	Syracuse, New York, Syracuse University Connective Corridor Transit Project	800,000
NY	E-2006-BUSP-757	261	Thendra-Webb and Utica, New York-Install handicap lifts in intermodal centers	19,228
NY	E-2006-BUSP-758		Third Bus Depot on Staten Island, NY—South Shore	2,000,000
NY	E-2006-BUSP-759	289	Town of Warwick, NY Bus Facility Warwick Transit System	105,754
NY	E-2006-BUSP-760	451	Utica, New York Transit Multimodal Facilities	1,150,000
NY	E-2006-BUSP-761	78	Utica, New York-Union Station Boehlert Center siding track improvements	19,228
NY	E-2006-BUSP-762	182	Utica, New York-Union Station rehabilitation and related infrastructure improvements	96,140
NY	E-2006-BUSP-763		Westchester County Bee-Line Bus Replacement, New York	250,000
NY	E-2006-BUSP-764	264	Westchester County, NY Bus replacement program	721,050
NY	E-2006-BUSP-765	149	Yonkers, NY Trolley Bus Acquisition	72,105
OH	E-2006-BUSP-766	362	Akron, OH Construct City of Akron Commuter Bus Transit Facility	288,420
OH	E-2006-BUSP-767	318	Akron, Ohio Construct Downtown Multi-modal Transportation Center	769,120
OH	E-2006-BUSP-768	105	Akron, Ohio-West Market Street transit center and related pedestrian improvements	124,982
OH	E-2006-BUSP-769		Central Ohio Transit Authority Paratransit Facility	1,500,000
OH	E-2006-BUSP-770	489	Central Ohio Transit Authority-Paratransit and Small Bus Service Facility	458,000
OH	E-2006-BUSP-771	241	Cincinnati, Ohio-Construct Uptown Crossings Joint Development Transit Project	576,840
OH	E-2006-BUSP-772	89	Cincinnati, Ohio-Metro Regional Transit Hub Network Eastern Neighborhoods	177,859
OH	E-2006-BUSP-773	327	Cleveland, OH Construct East Side Transit Center	576,840
OH	E-2006-BUSP-774	202	Cleveland, OH Construct Fare Collection System Project, Cuyahoga County	96,140
OH	E-2006-BUSP-775	179	Cleveland, OH Construct passenger inter-modal center near Dock 32	165,361
OH	E-2006-BUSP-776	411	Cleveland, OH Construction of an inter-modal facility and related improvements at University Hospitals facility on Euclid Avenue	192,280
OH	E-2006-BUSP-777	51	Cleveland, Ohio acquisition of buses Greater Cleveland Regional Transit Authority	192,280
OH	E-2006-BUSP-778	258	Cleveland, Ohio-Euclid Avenue and East 93rd Street intermodal facility	1,634,380
OH	E-2006-BUSP-779	198	Cleveland, Ohio-Euclid Avenue University Hospital intermodal facility	865,260
OH	E-2006-BUSP-780	50	Cleveland, Ohio-University Circle Intermodal facility	1,634,380
OH	E-2006-BUSP-781	380	Columbiana County, OH Construct Inter-modal Facility	961,400
OH	E-2006-BUSP-782	7	Columbus, OH-Central Ohio Transit Authority Paratransit Facility	1,153,680
OH	E-2006-BUSP-783	292	Cuyahoga County, Ohio-Ohio Department of Transportation transit improvements	28,842
OH	E-2006-BUSP-784	120	Dayton Airport Inter-modal Rail Feasibility Study	144,210
OH	E-2006-BUSP-785	516	Dayton-Wright Stop Plaza	458,000
OH	E-2006-BUSP-786		Downtown Akron Transportation Center, OH	300,000
OH	E-2006-BUSP-787	347	Eastlake, Ohio-Eastlake Stadium transit intermodal facility	817,190
OH	E-2006-BUSP-788	309	Elyria, OH Construct the New York Central Train Station into an intermodal transportation hub	393,789
OH	E-2006-BUSP-789	349	Kent, OH Construct Kent State University Intermodal Facility serving students and the general public	192,280
OH	E-2006-BUSP-790	104	Marietta, Ohio Construction of transportation hub to accommodate regional bus traffic	96,140
OH	E-2006-BUSP-791	576	Metro Regional Transit Authority/City of Akron-Downtown Transit Center/Akron	1,604,000
OH	E-2006-BUSP-792	87	Niles, OH Acquisition of bus operational and service equipment of Niles Trumbull Transit	38,456

FEDERAL TRANSIT ADMINISTRATION

TABLE 11

Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
OH	E-2006-BUSP-793		Ohio Statewide Buses and Bus Facilities	5,600,000
OH	E-2006-BUSP-794		Prospect and East 21st Street Intermodal Transportation Center, OH	875,000
OH	E-2006-BUSP-795	385	Springfield, OH-City of Springfield Bus Transfer Station and Associated Parking	48,070
OH	E-2006-BUSP-796		Tech Town Transportation Center, OH	750,000
OH	E-2006-BUSP-797	34	Toledo, OH TARTA/TARPS Passenger Inter-modal Facility construction	1,442,100
OH	E-2006-BUSP-798		Uptown Crossings Joint Development Transit Project, Cincinnati, OH	1,000,000
OH	E-2006-BUSP-799	64	Zanesville, OH-bus system signage and shelters	15,623
OK	E-2006-BUSP-800		Enhance Oklahoma Transit Association Public System	500,000
OK	E-2006-BUSP-801		Oklahoma DOT Transit Program Division	500,000
OR	E-2006-BUSP-802	442	Albany, OR North Albany Park and Ride	183,124
OR	E-2006-BUSP-803	165	Albany, OR Rehabilitate Building At Multimodal Transit Station	292,998
OR	E-2006-BUSP-804	272	Bend, Oregon-replacement vans	192,280
OR	E-2006-BUSP-805	66	Canby, OR bus and bus facilities	28,842
OR	E-2006-BUSP-806	187	Columbia County, OR To purchase buses	26,919
OR	E-2006-BUSP-807	299	Corvallis, OR Bus Replacement	283,842
OR	E-2006-BUSP-808	159	Eugene, OR Lane Transit District, Vehicle Replacement	686,714
OR	E-2006-BUSP-809	325	Grants Pass, OR Purchase Vehicles For Use By Josephine Community Transit	39,143
OR	E-2006-BUSP-810	99	Gresham, Oregon Construct a new light rail station and transit plaza on Portland MAX system and serve Gresham Civic neighborhood	269,192
OR	E-2006-BUSP-811	168	Lane Transit District, Bus Rapid Transit Progressive Corridor Enhancements	569,845
OR	E-2006-BUSP-812	323	Lincoln, County, OR bus purchase	48,070
OR	E-2006-BUSP-813	175	Molalla, OR South Clackamas Transportation District, bus purchase	19,228
OR	E-2006-BUSP-814		Park and Ride Facility, Ashland, OR	250,000
OR	E-2006-BUSP-815	16	upgrades	19,228
OR	E-2006-BUSP-816	93	Salem, OR bus and bus facilities	384,560
OR	E-2006-BUSP-817		Sandy Transit Bus Facility, Oregon	375,000
OR	E-2006-BUSP-818	106	Sandy, Oregon Transit Bus Facility	134,596
OR	E-2006-BUSP-819		SMART Multi-Modal Transit Center and Bus Maintenance Facility, Oregon	500,000
OR	E-2006-BUSP-820	180	Tillamook, OR construction of a transit facility	19,228
OR	E-2006-BUSP-821	216	Wilsonville, OR South Metro Area Rapid Transit, bus and bus facilities	48,070
OR	E-2006-BUSP-822	82	Yamhill County, OR For the construction of bus shelters, park and ride facilities, and a signage strategy to increase ridership	21,151
PA	E-2006-BUSP-823		Adams Co. Transit Authority purchase of buses, PA	500,000
PA	E-2006-BUSP-824	225	Allentown, Pennsylvania-Design and Construct Intermodal Transportation Center	384,560
PA	E-2006-BUSP-825	456	Altoona Multimodal Transportation Facility Parking Garage	230,000
PA	E-2006-BUSP-826	465	AMTRAN Altoona, PA-Buses and Transit System Improvements	687,000
PA	E-2006-BUSP-827		Area Transit Authority, PA	1,000,000
PA	E-2006-BUSP-828	467	Area Transportation Authority of North Central Pennsylvania-Vehicle Replacements	229,000
PA	E-2006-BUSP-829		BARTA—Auto Vehicle Locator System, PA	800,000
PA	E-2006-BUSP-830		BARTA—Franklin Street Station Intermodal, PA	500,000
PA	E-2006-BUSP-831	471	Beaver County, PA Transit Authority Bus Replacement/ Related Equipment Replacement	229,000
PA	E-2006-BUSP-832		Bucks County Intermodal Facility, PA	500,000
PA	E-2006-BUSP-833		Bus Purchase for Red Rose Transit Authority, Lancaster, PA	750,000
PA	E-2006-BUSP-834		Bus Replacements, PA	500,000
PA	E-2006-BUSP-835	481	Butler Township, PA-Cranbury Area Transit Service	802,000
PA	E-2006-BUSP-836	428	Butler, PA-Multimodal Transit Center Construction	192,280
PA	E-2006-BUSP-837		Cambria County Transit Authority, PA	1,000,000
PA	E-2006-BUSP-838	482	Cambria County, PA Transit Authority-Bus Replacements	687,000
PA	E-2006-BUSP-839		Capital Area Transit (CAT), PA	750,000
PA	E-2006-BUSP-840		Centre Area Transportation Intermodal Facility, PA	500,000
PA	E-2006-BUSP-841	123	Cheltenham, PA Glenside Rail Station Parking Garage project involving the construction of a 300-400 space parking lot at Easton Road and Glenside Avenue	192,280
PA	E-2006-BUSP-842		Chestnut Hill Parking Foundation, Cheltenham, PA	250,000
PA	E-2006-BUSP-843		Church Street Transportation Center, PA	225,000
PA	E-2006-BUSP-844	500	City of Hazleton, PA-Hazleton Intermodal Center	321,000
PA	E-2006-BUSP-845		Coatesville Train Station, Coatesville, PA	1,000,000
PA	E-2006-BUSP-846	513	County of Lackawanna Transit System-Scranton Intermodal Transportation Center	229,000
PA	E-2006-BUSP-847		County of Lebanon Transit (COLT), PA	300,000
PA	E-2006-BUSP-848		Crawford Internmodal Transportation Facility, PA	350,000
PA	E-2006-BUSP-849	514	Cumberland-Dauphin-Harrisburg Transit Authority-Purchase of Buses and Spare Units	229,000
PA	E-2006-BUSP-850		Easton Intermodal, PA	400,000
PA	E-2006-BUSP-851	81	Easton, Pennsylvania-Design and construct Intermodal Transportation Center	384,560
PA	E-2006-BUSP-852		Endless Mountain Transportation Authority, Bradford County, PA	300,000
PA	E-2006-BUSP-853	524	Erie, PA Metropolitan Transit Authority-Bus Acquisitions	229,000
PA	E-2006-BUSP-854	431	Erie, PA-EMTA Vehicle Acquisition	384,560

FEDERAL TRANSIT ADMINISTRATION

TABLE 11

Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
PA	E-2006-BUSP-855		Fayette Area Coordinated Transportation, PA	1,500,000
PA	E-2006-BUSP-856		Gettysburg Bus and Bus Facilities, PA	250,000
PA	E-2006-BUSP-857	331	Gettysburg, Pennsylvania-transit transfer center	172,860
PA	E-2006-BUSP-858		Hazleton Intermodal, PA	1,500,000
PA	E-2006-BUSP-859	458	Hershey, Pennsylvania Intermodal Center and Parking Garage	57,500
PA	E-2006-BUSP-860	233	Intermodal Facilities in Bucks County (Croydon and Levittown Stations)	576,840
PA	E-2006-BUSP-861	457	Lancaster County, Pennsylvania Intermodal Center and Parking Facility	57,500
PA	E-2006-BUSP-862		Lancaster Intermodal, Pennsylvania	2,000,000
PA	E-2006-BUSP-863	37	Lancaster, PA-bus replacement	182,666
PA	E-2006-BUSP-864	559	Lancaster, PA-Intermodal Project	160,000
PA	E-2006-BUSP-865	564	Lehigh and Northampton Transportation Authority, PA-Allentown Intermodal Transportation Center	458,000
PA	E-2006-BUSP-866		Mid Mon Valley Transit Authority, Pennsylvania	1,500,000
PA	E-2006-BUSP-867	583	Monroe Township, PA-Clarion County Buses	151,000
PA	E-2006-BUSP-868		Monroe Township/Clarion University Transit	660,000
PA	E-2006-BUSP-869		Montgomery County Intermodal, Pennsylvania	500,000
PA	E-2006-BUSP-870	588	New Castle, PA Area Transit Authority-Bus Purchases/Park and Ride Facility	170,000
PA	E-2006-BUSP-871		Northumberland County Transportation, PA	200,000
PA	E-2006-BUSP-872		Paoli Transportation Center	2,000,000
PA	E-2006-BUSP-873	201	Philadelphia, PA Cruise Terminal Transportation Ctr. Phila. Naval Shipyard	672,980
PA	E-2006-BUSP-874	137	Philadelphia, PA Improvements to the existing Penn's Landing Ferry Terminal	769,120
PA	E-2006-BUSP-875	413	Philadelphia, PA Penn's Landing water shuttle parking lot expansion and water shuttle ramp infrastructure construction	211,508
PA	E-2006-BUSP-876	22	Philadelphia, PA Philadelphia Zoo Intermodal Transportation project w/parking consolidation, pedestrian walkways, public transportation complements & landscape improvements to surface parking lots	961,400
PA	E-2006-BUSP-877	274	Philadelphia, PA SEPTA's Market St. Elevated Rail project in conjunction with Philadelphia Commercial Development Corporation for improvements and assistance to entities along rail corridor	269,192
PA	E-2006-BUSP-878	316	Philadelphia, Pennsylvania-SEPTA Market Street Elevated Line parking facility	769,120
PA	E-2006-BUSP-879	126	Pittsburgh, PA Clean Fuel Bus Procurement	96,140
PA	E-2006-BUSP-880		Port Authority of Allegheny County Bus Acquisition, Pennsylvania	3,100,000
PA	E-2006-BUSP-881	397	Pottsville, PA Union Street Trade and Transfer Center Intermodal Facility	384,560
PA	E-2006-BUSP-882	48	Project provides for the engineering and construction of a transportation center in Paoli, Chester County	192,280
PA	E-2006-BUSP-883		Pullman Multi-Modal Transit Center, Pennsylvania	500,000
PA	E-2006-BUSP-884	424	Sharon, PA-Bus Facility Construction	96,140
PA	E-2006-BUSP-885		Shenango Valley Shuttle Service, Pennsylvania	250,000
PA	E-2006-BUSP-886	626	Southeastern Pennsylvania Transportation Authority-Bucks County Intermodal (Croydon and Levittown)	687,000
PA	E-2006-BUSP-887	627	Southeastern Pennsylvania Transportation Authority-Paoli Transportation Center	687,000
PA	E-2006-BUSP-888	628	Southeastern Pennsylvania Transportation Authority-Villanova-SEPTA Intermodal	687,000
PA	E-2006-BUSP-889	642	Transit Authority of Warren County, PA-Impact Warren	229,000
PA	E-2006-BUSP-890		Union Station Intermodal Trade and Transit Center, Pennsylvania	1,250,000
PA	E-2006-BUSP-891		Union/Snyder Transportation Authority Union County, PA	1,000,000
PA	E-2006-BUSP-892	33	Warren, PA-Construct Intermodal Transportation Center and related pedestrian and landscape improvements	288,420
PA	E-2006-BUSP-893	660	Westmoreland County Transit Authority, PA-Bus Replacement	229,000
PA	E-2006-BUSP-894		Westmoreland Transit Authority, Pennsylvania	750,000
PA	E-2006-BUSP-895	661	Wilkes-Barre Intermodal Facility	1,374,000
PA	E-2006-BUSP-896		Williamsport Trade and Transit Centre Expansion, Pennsylvania	675,000
PA	E-2006-BUSP-897	662	Williamsport, PA Bureau of Transportation-Williamsport Trade and Transit Centre Expansion	687,000
PA	E-2006-BUSP-898		York Co. Transit Auth. (PA) purchase of buses	500,000
PA	E-2006-BUSP-899	65	York, Pennsylvania-Rabbit Transit facilities and communications equipment	532,712
PR	E-2006-BUSP-900	128	Bayamon, Puerto Rico-bus terminal	115,368
PR	E-2006-BUSP-901	421	Bayamon, Puerto Rico-Purchase of Trolley Cars	163,438
PR	E-2006-BUSP-902	3	Lares, PR-Trolley buses-for the purchase of two trolley buses that will offer transportation through the urban zone in the Municipality of Lares	50,762
PR	E-2006-BUSP-903	164	Puerto Rico-Caribbean National Forest buses and nonprofit uses	576,840
PR	E-2006-BUSP-904	152	San Juan, Puerto Rico-bus security equipment	576,840
PR	E-2006-BUSP-905	71	San Juan, Puerto Rico-Buses	192,280
PR	E-2006-BUSP-906	58	Yabucoca, Puerto Rico-Trolley Buses	33,649
RI	E-2006-BUSP-907	246	Providence, RI Expansion of Elmwood Paratransit Maintenance Facility	961,400
RI	E-2006-BUSP-908		Rhode Island Public Transit Authority Elmwood Avenue Maintenance Facility Improvements	1,240,000
RI	E-2006-BUSP-909		Rhode Island Public Transit Authority Transit Security Improvements	200,000
RI	E-2006-BUSP-910	115	Rhode Island Statewide Bus Fleet	1,153,680
RI	E-2006-BUSP-911		Rhode Island Statewide Vehicle Replacement	500,000
RI	E-2006-BUSP-912	604	Rhode Island, RIPTA Elmwood Facility Expansion	1,600,000
RI	E-2006-BUSP-913		Warwick Para-Transit Vehicles, Rhode Island	135,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 11

Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
SC	E-2006-BUSP-914	533	Greensville, SC Transit Authority-City of Greenville Multimodal Transportation Center Improvements	229,000
SC	E-2006-BUSP-915	619	South Carolina Department of Transportation-Transit Facilities Construction Program	458,000
SC	E-2006-BUSP-916	620	South Carolina Department of Transportation-Vehicle Acquisition Program	1,833,000
SC	E-2006-BUSP-917		Vehicle Acquisition, SC	1,600,000
SD	E-2006-BUSP-918		Pine Ridge Transit System, South Dakota	600,000
SD	E-2006-BUSP-919	621	South Dakota Department of Transportation-Statewide Buses and Bus Facilities	3,166,000
SD	E-2006-BUSP-920		Statewide Bus and Bus Facilities, SD	4,000,000
TN	E-2006-BUSP-921		Downtown Nashville Transit Transfer Facility, TN	800,000
TN	E-2006-BUSP-922		Knoxville Electric Transit Intermodal Center, TN	1,000,000
TN	E-2006-BUSP-923	237	Knoxville, Tennessee-Central Station Transit Center	1,961,256
TN	E-2006-BUSP-924	554	Knoxville, TN-Central Station	573,000
TN	E-2006-BUSP-925	565	Lipscomb University, TN-Intermodal Parking Garage	344,000
TN	E-2006-BUSP-926		Memphis Airport Intermodal Facility, Tennessee	1,375,000
TN	E-2006-BUSP-927	579	Metropolitan Transit Authority-Nashville Downtown Transit Transfer Facility	2,749,000
TN	E-2006-BUSP-928	268	Nashville, TN Construct a parking garage on the campus of Lipscomb University, Nashville	384,560
TN	E-2006-BUSP-929	412	Nashville, TN Construct Downtown Nashville Transit Transfer Facility	288,420
TN	E-2006-BUSP-930	30	Sevier County, Tennessee-U.S. 441 bus rapid transit	48,070
TN	E-2006-BUSP-931		Southeast Tennessee Human Resource Agency	500,000
TN	E-2006-BUSP-932		Tennessee Department of Transportation Buses and Bus Facilities	500,000
TN	E-2006-BUSP-933	636	Tennessee Department of Transportation-Statewide Tennessee Transit ITS and Bus Replacement Proje	2,749,000
TN	E-2006-BUSP-934		TN DOT Job Access Reverse Commute	500,000
TN	E-2006-BUSP-935		TN Statewide Bus and Bus Facilities	5,500,000
TN	E-2006-BUSP-936	649	University of Memphis-Pedestrian Bridge	687,000
TN	E-2006-BUSP-937		Upper Cumberland Human Resource Agency, Tennessee	350,000
TX	E-2006-BUSP-938	426	Abilene, TX Vehicle replacement and facility improvements for transit system	76,912
TX	E-2006-BUSP-939		Brazos Transit District Bus Replacement, TX	125,000
TX	E-2006-BUSP-940		Brazos Transit District, Capital Cost Contracting, TX	1,000,000
TX	E-2006-BUSP-941	480	Brownsville Urban System, TX--City-Wide Transit Improvement Project	916,000
TX	E-2006-BUSP-942	162	Brownsville, TX Brownsville Urban System City-Wide Transit Improvement Project	480,700
TX	E-2006-BUSP-943	153	Bryan, TX The District-Bryan Intermodal Transit Terminal and Parking Facility	576,840
TX	E-2006-BUSP-944		Bus Replacement, TX	1,000,000
TX	E-2006-BUSP-945		Bus Shelters, Dallas, TX	500,000
TX	E-2006-BUSP-946		Bus/Vehicle Replacement, Lufkin, TX	300,000
TX	E-2006-BUSP-947		Capital Metro Expansion and Improvement, TX	2,100,000
TX	E-2006-BUSP-948		Capital Metro North Operating Facility, TX	500,000
TX	E-2006-BUSP-949		Capital Metro Rapid Bus Project, TX	750,000
TX	E-2006-BUSP-950	485	Capital Metropolitan Transportation Authority, TX-Bus Replacements	2,291,000
TX	E-2006-BUSP-951	455	Carrollton, Texas Downtown Regional Multimodal Transit Hub	230,000
TX	E-2006-BUSP-952		City of Brownsville Urban System, TX	500,000
TX	E-2006-BUSP-953		City of El Paso Sun Metro Bus Replacement, TX	2,000,000
TX	E-2006-BUSP-954		City of Lubbock Citibus Improvement, TX	500,000
TX	E-2006-BUSP-955	506	City of Round Rock, TX-Downtown Intermodal Transportation Terminal	229,000
TX	E-2006-BUSP-956		Complete intermodal transit facility, Lufkin, TX	750,000
TX	E-2006-BUSP-957		Compressed Natural Gas (CNG) Buses, TX	1,000,000
TX	E-2006-BUSP-958	111	Construct West Houston and Fort Bend County, Texas-bus transit corridor	384,560
TX	E-2006-BUSP-959		Corpus Christi Bus and Bus Facilities, TX	80,000
TX	E-2006-BUSP-960	438	Corpus Christi, TX Corpus Regional Transit Authority for maintenance facility improvements	480,700
TX	E-2006-BUSP-961	515	Dallas Area Rapid Transit-Bus passenger Facilities	229,000
TX	E-2006-BUSP-962	336	Dallas, TX Bus Passenger Facilities	2,461,184
TX	E-2006-BUSP-963	196	Design Downtown Carrollton, Texas Regional Multi-Modal Transit Hub Station	384,560
TX	E-2006-BUSP-964		Enhancements to Bus Terminal in McAllen, TX	500,000
TX	E-2006-BUSP-965		Fort Bend Co, TX, Park & Ride	500,000
TX	E-2006-BUSP-966	290	Galveston, Texas-Intermodal center and parking facility, The Strand	865,260
TX	E-2006-BUSP-967	536	Harris County-West Houston-Fort Bend Bus Transit Corridor: Uptown Westpark Terminal	229,000
TX	E-2006-BUSP-968		Hill County Transit Administration Facility, TX	500,000
TX	E-2006-BUSP-969		Houston METRO Bus Transit Centers, TX	2,030,000
TX	E-2006-BUSP-970		Hunt County Committee on Aging, TX	500,000
TX	E-2006-BUSP-971		ITS Security Equipment for Buses, TX	500,000
TX	E-2006-BUSP-972	561	Laredo-North Laredo Transit Hub-Bus Maintenance Facility	687,000
TX	E-2006-BUSP-973		Lubbock/Citibus Low-Floor Buses, Paratransit Vans and Facilities, and Passenger Amenities, TX	80,000
TX	E-2006-BUSP-974		Midland Bus Facilities, Texas	80,000
TX	E-2006-BUSP-975		Midland Bus Facilities, TX	50,000
TX	E-2006-BUSP-976		Midland County Board of Commissioners Connection	500,000
TX	E-2006-BUSP-977		Rolling Stock for HCTD Urban System, TX	1,500,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 11

Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
TX	E-2006-BUSP-978	24	Roma, TX Bus Facility	100,947
TX	E-2006-BUSP-979	610	San Angelo, TX Street Railroad Company-Transit Fleet Replacement	229,000
TX	E-2006-BUSP-980	210	San Antonio, TX Improve VIA bus facility and purchase new buses	1,345,960
TX	E-2006-BUSP-981		San Antonio—New Buses, Bus Facility Improvements, and Bus-Related Projects TX	100,000
TX	E-2006-BUSP-982		The District-Bryan/College Station Bus Replacement, Texas	500,000
TX	E-2006-BUSP-983	653	VIA Metropolitan Transit Authority, TX-Bus & Bus Facility Improvements	1,145,000
TX	E-2006-BUSP-984	63	Zapata, Texas Purchase Bus vehicles	60,088
UT	E-2006-BUSP-985		Brigham City Buses and Bus Facilities, UT	150,000
UT	E-2006-BUSP-986		Commuter Rail Hub Planning and Renovation of the Historic Brigham City Train Depot, UT	75,000
UT	E-2006-BUSP-987		Ogden Buses and Bus Facilities, UT	250,000
UT	E-2006-BUSP-988		Regional Bus and Bus Facilities: Intermodal Terminals, UT, including Gateway TRAX station	1,500,000
UT	E-2006-BUSP-989	178	Sandy City, UT Construct transit hub station and TRAX station at 9400 South	384,560
UT	E-2006-BUSP-990		Statewide Bus and Bus Facilities, Utah	1,700,000
UT	E-2006-BUSP-991		Sun-Tran Operations and Maintenance Facility Expansion, UT	250,000
UT	E-2006-BUSP-992		Transit Center 9400 South Sandy, Utah	500,000
UT	E-2006-BUSP-993		Utah Intermodal Transit Hubs, Utah	200,000
UT	E-2006-BUSP-994	651	Utah Statewide Bus and Bus Facilities	6,882,000
UT	E-2006-BUSP-995		West Valley City Intermodal Terminal, Utah	375,000
UT	E-2006-BUSP-996		Westminster College Intermodal Transportation Facilities Expansion for Shuttle Buses, Utah	1,250,000
VA	E-2006-BUSP-997		Alexandria Transit Service Improvements, VA	1,000,000
VA	E-2006-BUSP-998	409	Alexandria, VA Eisenhower Avenue Inter-modal Station improvements, including purchase of buses and construction of bus shelters	480,700
VA	E-2006-BUSP-999	232	Alexandria, VA Royal Street Bus Garage Replacement	96,140
VA	E-2006-BUSP-1000		Arlington County Bus Transfer Facility, VA	400,000
VA	E-2006-BUSP-1001	278	Arlington County, VA Columbia Pike Bus Improvements	672,980
VA	E-2006-BUSP-1002	142	Arlington County, VA Crystal City-Potomac Yard Busway, including construction of bus shelters	576,840
VA	E-2006-BUSP-1003	359	Arlington County, VA Pentagon City Multimodal Improvements	384,560
VA	E-2006-BUSP-1004	157	Bealeton, Virginia-Intermodal Station Depot Refurbishment	52,877
VA	E-2006-BUSP-1005		Blacksburg Transit Intermodal Facility, VA	200,000
VA	E-2006-BUSP-1006		Buses and Bus Facilities, Danville, VA	300,000
VA	E-2006-BUSP-1007	492	City of Alexandria, VA-City-Wide Transit Improvements	229,000
VA	E-2006-BUSP-1008	493	City of Alexandria, VA-Potomac Yard Transit Improvements	229,000
VA	E-2006-BUSP-1009	494	City of Alexandria, VA-Replace Royal Street Bus Garage	687,000
VA	E-2006-BUSP-1010	495	City of Alexandria, VA-Valley Pedestrian & Transit	229,000
VA	E-2006-BUSP-1011	511	Commonwealth of Virginia-Statewide Bus Capital Program	3,436,000
VA	E-2006-BUSP-1012	15	Fairfax County, VA Richmond Highway (U.S. Route1) Public Transportation Improvements	384,560
VA	E-2006-BUSP-1013	525	Fairfax County, Virginia-Richmond Highway Initiative	458,000
VA	E-2006-BUSP-1014	281	Falls Church, VA Falls Church Intermodal Transportation Center	384,560
VA	E-2006-BUSP-1015	97	Fredericksburg, Virginia-Improve and repair Fredericksburg Station	480,700
VA	E-2006-BUSP-1016		Greater Lynchburg Transit Company Vehicle Replacement, VA	400,000
VA	E-2006-BUSP-1017		Greater Richmond Transit Company Bus Operations and Maintenance Facility, VA	2,000,000
VA	E-2006-BUSP-1018	532	Greater Richmond Transit, VA-Bus Operations/Maintenance Facility	1,145,000
VA	E-2006-BUSP-1019		Hampton Roads Southside Bus Facility, VA	1,000,000
VA	E-2006-BUSP-1020		Hampton Roads Transit Bus Facilities, VA	2,250,000
VA	E-2006-BUSP-1021	535	Hampton Roads Transit, VA-Southside Bus Facility	229,000
VA	E-2006-BUSP-1022	391	Hampton Roads, VA Final design and construction for a Hampton Roads Transit Southside Bus Facility	384,560
VA	E-2006-BUSP-1023		Jamestown 2007 Natural Gas Bus purchase, VA	250,000
VA	E-2006-BUSP-1024	354	Norfolk, Virginia-Final Design and Construction Southside Bus Facility	336,490
VA	E-2006-BUSP-1025	68	Northern Neck and Middle Peninsula, Virginia-Bay Transit Multimodal Facilities	624,910
VA	E-2006-BUSP-1026		Park-and-Ride Lot, Springfield, VA	1,000,000
VA	E-2006-BUSP-1027		Petersburg Multi-Modal Transit Center, VA	500,000
VA	E-2006-BUSP-1028		Petersburg Transit Intermodal Facility, VA	300,000
VA	E-2006-BUSP-1029	602	Potomac & Rappahannock Transportation Commission, VA-Buses for Service Expansion	229,000
VA	E-2006-BUSP-1030		Potomac and Rappahannock Transit Commission Buses for service expansion, VA	1,200,000
VA	E-2006-BUSP-1031		Richmond Highway Public Transportation Initiative, VA	2,400,000
VA	E-2006-BUSP-1032	360	Richmond, VA Design and construction for a bus operations and maintenance facility for Greater Richmond Transit Company	288,420
VA	E-2006-BUSP-1033	184	Richmond, VA Renovation and construction for Main Street Station	211,508
VA	E-2006-BUSP-1034	434	Roanoke, VA-Bus restoration in the City of Roanoke	48,070
VA	E-2006-BUSP-1035	312	Roanoke, Virginia-Improve Virginian Railway Station	48,070
VA	E-2006-BUSP-1036	305	Roanoke, Virginia-Intermodal Facility	38,456
VA	E-2006-BUSP-1037	361	Roanoke, Virginia-Roanoke Railway and Link Passenger facility	96,140
VI	E-2006-BUSP-1038		Virgin Island Transit VITRAN, Virgin Islands	300,000
VT	E-2006-BUSP-1039		Bellows Falls Multimodal Facility, VT	1,000,000

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TABLE 11

Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
VT	E-2006-BUSP-1040	477	Brattleborough, VT, Intermodal Center	600,000
VT	E-2006-BUSP-1041		Burlington Transit Facilities, VT	1,000,000
VT	E-2006-BUSP-1042	486	CCTA, VT, Bus, Facilities and Equipment	300,000
VT	E-2006-BUSP-1043	633	State of Vermont Buses, Facilities and Equipment	250,000
WA	E-2006-BUSP-1044		Ben Franklin Transit, Maintenance and Operations Facility, WA	500,000
WA	E-2006-BUSP-1045		Clallam Transit, WA	220,000
WA	E-2006-BUSP-1046		Everett Transit, Bus and Paratransit Vehicle Replacement, WA	825,000
WA	E-2006-BUSP-1047		Grant Transit, WA	225,000
WA	E-2006-BUSP-1048		Grays Harbor Transit, Transit Center Expansion, WA	780,000
WA	E-2006-BUSP-1049		Grays Harbor Transit, WA	65,000
WA	E-2006-BUSP-1050	395	Ilwaco, WA Construct park and ride	19,228
WA	E-2006-BUSP-1051	94	Ilwaco, WA Procure shuttles for Lewis and Clark National Historical Park	19,228
WA	E-2006-BUSP-1052		Island Transit, WA	480,000
WA	E-2006-BUSP-1053	337	Island Transit, WA Operations Base Facilities Project	461,472
WA	E-2006-BUSP-1054		Jefferson County Transit, WA	365,000
WA	E-2006-BUSP-1055		King County Airfield Transfer Area, WA	1,200,000
WA	E-2006-BUSP-1056		King County Metro Park and Ride on First Hill, WA	1,200,000
WA	E-2006-BUSP-1057		King County Metro, Bus Radio Replacement Program, WA	2,000,000
WA	E-2006-BUSP-1058		Link Transit Low Floor Coaches Chelan/Leavenworth, WA	500,000
WA	E-2006-BUSP-1059		Mason County Transit, Washington	150,000
WA	E-2006-BUSP-1060	193	Mukilteo, WA Multi-Modal Terminal	1,115,224
WA	E-2006-BUSP-1061	334	North Bend, Washington-Park and Ride	153,824
WA	E-2006-BUSP-1062	333	Oak Harbor, WA Multimodal Facility	192,280
WA	E-2006-BUSP-1063		Port Angeles International Gateway Project, Washington	800,000
WA	E-2006-BUSP-1064		Pullman Transit, Washington	50,000
WA	E-2006-BUSP-1065		Puyallup Transit Center Park and Ride, Washington	780,000
WA	E-2006-BUSP-1066	613	Seattle, WA Multimodal Terminal Redevelopment & Expansion	800,000
WA	E-2006-BUSP-1067		Skagit Transit Bus Acquisition, Washington	425,000
WA	E-2006-BUSP-1068		Skagit Transit Chuckanut Dr. Station in Burlington, Washington	300,000
WA	E-2006-BUSP-1069	113	Snohomish County, WA Community Transit bus purchases and facility enhancement	576,840
WA	E-2006-BUSP-1070		Sound Transit, Eastgate Transit Access, Washington	1,500,000
WA	E-2006-BUSP-1071		SW King County-Highline CC Intermodal Transit Facility and Parking Garage	850,000
WA	E-2006-BUSP-1072	151	Thurston County, WA Replace Thurston County Buses	173,052
WA	E-2006-BUSP-1073		Twin Transit, Washington	160,000
WA	E-2006-BUSP-1074		Valley Transit, Washington	275,000
WA	E-2006-BUSP-1075	654	Washington Southworth Terminal Redevelopment	1,000,000
WA	E-2006-BUSP-1076	655	Washington, King Street Transportation Center-Intercity Bus Terminal Component	50,000
WI	E-2006-BUSP-1077		7th District Buses and Bus Facilities, WI	1,050,000
WI	E-2006-BUSP-1078	350	Milwaukee, WI Rehabilitate Intermodal transportation facility at downtown Milwaukee's Amtrak Station, increase parking for bus passengers	865,260
WI	E-2006-BUSP-1079	100	State of Wisconsin buses and bus facilities	3,143,778
WI	E-2006-BUSP-1080	452	State of Wisconsin Transit Intermodal Facilities	1,150,000
WI	E-2006-BUSP-1081		Wisconsin Statewide Buses and Bus Facilities	2,125,000
WI	E-2006-BUSP-1082	663	Wisconsin, Statewide Buses and Bus Facilities	600,000
WV	E-2006-BUSP-1083	73	West Virginia Construct Beckley Intermodal Gateway pursuant to the eligibility provisions for projects listed under section 3030(d)(3) of P.L.. 105-178.	4,614,720
WV	E-2006-BUSP-1084	658	West Virginia, Statewide Bus and Bus Facilities	5,000,000
WY	E-2006-BUSP-1085	665	Wyoming Department of Transportation-Wyoming Statewide Bus and Bus Related Facilities	687,000
			subtotal.....	789,653,164
Ferry Boat Systems Projects				
CA	E-2006-BUSP-1086		San Francisco Water Transit Authority	2,500,000
MA	E-2006-BUSP-1087		Massachusetts Bay Transportation Authority Ferry System	2,500,000
ME	E-2006-BUSP-1088		Maine State Ferry Service, Rockland	650,000
ME	E-2006-BUSP-1089		Swans Island, Maine Ferry Service	350,000
NJ	E-2006-BUSP-1090		Camden, New Jersey Ferry System	1,000,000
NY	E-2006-BUSP-1091		Governor's Island, New York Ferry System	1,000,000
NY	E-2006-BUSP-1092		Staten Island Ferry	1,000,000
PA	E-2006-BUSP-1093		Philadelphia Penn's Landing Ferry Terminal	1,000,000
			subtotal.....	10,000,000
Other Projects				
--	E-2006-BUSP-1094		Fuel Cell Bus Program	11,250,000
PA	E-2006-BUSP-1095		Bus Testing	3,000,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 11

Fiscal Year 2006 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	SAFETEA-LU Project No.	Project	Allocation
			subtotal.....	14,250,000
--	--		Unallocated amount to be distributed	25,144,686
			Grand Total.....	839,047,850

a/ Funds to be transferred to the Maritime Administration pursuiant to Section 10204 of SAFETEA-LU (Pub. L. 109-59), which states: "Any funds provided for the Federal share, and any funds provided for the non-Federal share, for an intermodal transportation maritime facility at the Port of Anchorage, Alaska, or for access to that facility shall be transferred to and administered by the Administrator of the Maritime Administration".

FEDERAL TRANSIT ADMINISTRATION

TABLE 12

FY 2006 SECTION 5309 NEW STARTS PROGRAM ALLOCATIONS

State	Earmark ID	Project Location and Description	Allocation
Alaska	E2006-NWST-000	Denali Commission	4,963,209
Alaska/Hawaii	E2006-NWST-001	Alaska and Hawaii Ferry	14,889,626 a/
Arizona	E2006-NWST-002	Central Phoenix/East Valley LRT	89,337,758
California	E2006-NWST-003	ACE Gap Closure San Joaquin County	4,963,209
California	E2006-NWST-004	Los Angeles-Metro Gold Line Eastside Light Rail Extension	79,411,341
California	E2006-NWST-005	Mid-Coast Light Rail Transit Extension	7,107,315
California	E2006-NWST-006	Mission Valley East	7,643,342
California	E2006-NWST-007	Oceanside Escondido Rail Project	12,120,156
California	E2006-NWST-008	San Francisco BART Extension to San Francisco International Airport	81,257,655
California	E2006-NWST-009	San Francisco Muni Third St. Light Rail Project	24,816,044
California	E2006-NWST-010	Santa Barbara Coast Rail Track Improvement Project	992,642
California	E2006-NWST-011	Silicon Valley Rapid Transit Corridor Project, Santa Clara County	6,452,171
Colorado	E2006-NWST-012	Southeast Corridor Multi-Modal Project (T-REX)	79,411,341
Colorado	E2006-NWST-013	West Corridor Light Rail	4,963,209
Connecticut	E2006-NWST-014	Hartford-New Britain Busway Project	5,955,851
Connecticut	E2006-NWST-015	Stamford Urban Transitway	9,926,418
Delaware	E2006-NWST-016	Northeast Corridor Commuter Rail Project	1,414,515
Florida	E2006-NWST-017	Central Florida Commuter Rail System	10,919,059
Florida	E2006-NWST-018	City of Miami Streetcar	1,985,284
Florida	E2006-NWST-019	Ft. Lauderdale Downtown Rail Link	992,642
Florida	E2006-NWST-020	Miami-Dade Transit County Metrorail Extension	9,926,418
Georgia	E2006-NWST-021	Atlanta—Georgia 400 North Line Corridor Project	992,642
Illinois	E2006-NWST-022	CTA Douglas Blue Line	44,817,776
Illinois	E2006-NWST-023	CTA Ravenswood Brown Line	39,705,670
Illinois	E2006-NWST-024	CTA Yellow Line	992,642
Illinois	E2006-NWST-025	Metra	41,869,629
Illinois	E2006-NWST-026	Ogden Avenue Transit Corridor/Circle Line	992,642
Indiana	E2006-NWST-027	North Indiana Commuter Transit District Recapitalization	4,963,209
Massachusetts	E2006-NWST-028	North Shore Corridor Blue Line Extension	1,985,284
Massachusetts	E2006-NWST-029	Silver Line Phase III	3,970,567
Massachusetts	E2006-NWST-030	Boston/Fitchburg Massachusetts Rail Corridor	1,985,284
Maryland	E2006-NWST-031	Baltimore Central Light Rail Double Track Project	12,328,611
Maryland	E2006-NWST-032	Baltimore Red Line and Green Line	1,985,284
Michigan	E2006-NWST-033	Ann Arbor//Detroit Commuter Rail	4,963,209
Michigan	E2006-NWST-034	Detroit Center City Loop	3,970,567
Minnesota	E2006-NWST-035	North Star Corridor Commuter Rail Project	1,985,284
Minnesota	E2006-NWST-036	St. Paul Central Corridor, St. Paul/Minneapolis	1,985,284
Missouri	E2006-NWST-037	Kansas City, Missouri—Southtown BRT	12,209,494
North Carolina	E2006-NWST-038	Charlotte-South Corridor LRT	54,595,297
North Carolina	E2006-NWST-039	Triangle Transit Authority Regional Rail System (Raleigh-Durham)	19,852,835
New Jersey	E2006-NWST-040	Hudson-Bergen Light Rail MOS-2	99,264,176
New Jersey	E2006-NWST-041	Northern Branch Bergen County	2,481,604
New Jersey	E2006-NWST-042	Northwest New Jersey-Northeast Pennsylvania Passenger Rail	9,926,418
New Jersey	E2006-NWST-043	Trans Hudson Midtown Corridor	12,224,383
New Mexico	E2006-NWST-044	Commuter Rail, Albuquerque to Santa Fe	496,321
Nevada	E2006-NWST-045	Regional Fixed Guideway Project	2,977,925

FEDERAL TRANSIT ADMINISTRATION

TABLE 12

FY 2006 SECTION 5309 NEW STARTS PROGRAM ALLOCATIONS

State	Earmark ID	Project Location and Description	Allocation
New York	E2006-NWST-046	Eastside Access Project	337,498,192
New York	E2006-NWST-047	Second Avenue Subway	24,816,044
Ohio	E2006-NWST-048	Cleveland-Euclid Corridor Transportation Project	24,592,216
Oregon	E2006-NWST-049	North Corridor Interstate MAX LRT Extension	17,976,742
Oregon	E2006-NWST-050	Washington County Commuter Rail Project	14,889,626
Pennsylvania	E2006-NWST-051	Corridor One Regional Rail Project	1,488,963
Pennsylvania	E2006-NWST-052	North Shore Connector	54,595,297
Pennsylvania	E2006-NWST-053	Schuylkill Valley Metro	3,970,567
Puerto Rico	E2006-NWST-054	San Juan Tren Urbano	7,986,286
Rhode Island	E2006-NWST-055	Rhode Island Integrated Commuter Rail Project	5,955,851
South Carolina	E2006-NWST-056	City of Rockhill Trolley Study	397,057
Tennessee	E2006-NWST-057	East Corridor Commuter Rail	5,955,851
Texas	E2006-NWST-058	Dallas Northwest/Southeast Light Rail MOS	11,911,701
Texas	E2006-NWST-059	Houston Metro	11,911,701
Utah	E2006-NWST-060	Commuter Rail	8,933,776
Utah	E2006-NWST-061	Mid-Jordan Light Rail Transit Line	496,321
Virginia	E2006-NWST-062	Dulles Corridor Rapid Transit Project, Virginia	25,808,686
Virginia	E2006-NWST-063	Gainesville-Haymarket VRE Service Extension	1,439,331
Washington	E2006-NWST-064	Seattle Sound Transit	79,411,341
Washington	E2006-NWST-065	Sounder Commuter Rail	4,963,209
	Total Allocation		**$1,487,970,000**

a/ SEC. 144. Funds made available for Alaska or Hawaii ferry boats or ferry terminal facilities pursuant to 49 U.S.C. 5309(m)(2)(B) may be used to construct new vessels and facilities, or to improve existing vessels and facilities, including both the passenger and vehicle-related elements of such vessels and facilities, and for repair facilities: Provided, That not more than $3,000,000 of the funds made available pursuant to 49 U.S.C. 5309(m)(2)(B) may be used by the State of Hawaii to initiate and operate a passenger ferryboat services demonstration project to test the viability of different intra-island and inter-island ferry boat routes and technology: Provided further, That notwithstanding 49 U.S.C. 5302(a)(7), funds made available for Alaska or Hawaii ferry boats may be used to acquire passenger ferry boats and to provide passenger ferry transportation services within areas of the State of Hawaii under the control or use of the National Park Service.

FEDERAL TRANSIT ADMINISTRATION

TABLE 13

FY 2006 SECTION 5310 SPECIAL NEEDS FOR ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES APPORTIONMENTS

STATE	APPORTIONMENT
Alabama	$1,944,561
Alaska	268,904
American Samoa	62,591
Arizona	2,031,828
Arkansas	1,254,323
California	11,811,629
Colorado	1,416,743
Connecticut	1,377,597
Delaware	409,547
District of Columbia	354,693
Florida	7,538,263
Georgia	2,834,061
Guam	165,221
Hawaii	563,249
Idaho	537,815
Illinois	4,369,934
Indiana	2,304,739
Iowa	1,193,158
Kansas	1,070,588
Kentucky	1,793,440
Louisiana	1,785,596
Maine	634,309
Maryland	1,897,827
Massachusetts	2,516,778
Michigan	3,636,820
Minnesota	1,673,837
Mississippi	1,257,879
Missouri	2,201,514
Montana	448,850
N. Mariana Islands	63,726
Nebraska	713,467
Nevada	870,010
New Hampshire	540,416
New Jersey	3,198,661
New Mexico	786,724
New York	7,571,010
North Carolina	3,168,644
North Dakota	356,794
Ohio	4,251,293
Oklahoma	1,477,134
Oregon	1,369,944
Pennsylvania	5,016,644
Puerto Rico	1,715,898
Rhode Island	546,845
South Carolina	1,695,371
South Dakota	392,463
Tennessee	2,358,795
Texas	7,013,666
Utah	708,239
Vermont	336,452
Virgin Islands	157,164
Virginia	2,487,181
Washington	2,116,799
West Virginia	947,876
Wisconsin	1,933,928
Wyoming	288,562
TOTAL	**$111,440,000**

FEDERAL TRANSIT ADMINISTRATION

TABLE 14

FY 2006 SECTION 5311 AND SECTION 5340 NONURBANIZED APPORTIONMENTS AND SECTION 5311(b)(3) RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) APPORTIONMENTS

(Note: In accordance with language in the SAFETEA-LU conference report apportionments for Section 5311 and Section 5340 were combined to show a single amount. The State's apportionment under the column heading "Section 5311 and 5340 Apportionment" includes Section 5311 and Growing States funds.)

STATE	SECTIONS 5311 AND 5340 APPORTIONMENT	SECTION 5311(b)(3) APPORTIONMENT
Alabama	$11,127,226	$155,996
Alaska	5,100,433	77,683
American Samoa	191,340	12,080
Arizona	7,934,852	109,391
Arkansas	8,492,047	130,823
California	19,467,563	204,877
Colorado	7,010,522	104,519
Connecticut	2,289,065	85,229
Delaware	1,062,324	74,171
Florida	11,517,207	156,228
Georgia	14,331,485	180,342
Guam	517,183	15,621
Hawaii	1,657,973	78,640
Idaho	4,894,643	90,061
Illinois	11,933,032	162,384
Indiana	11,429,207	161,939
Iowa	8,504,637	130,782
Kansas	7,887,632	118,764
Kentucky	10,780,561	154,875
Louisiana	8,656,906	135,206
Maine	4,594,003	99,896
Maryland	4,213,415	101,277
Massachusetts	2,932,136	90,926
Michigan	14,600,805	187,006
Minnesota	10,727,002	145,169
Mississippi	9,716,462	143,607
Missouri	11,635,576	155,948
Montana	6,323,125	89,257
N. Mariana Islands	29,459	10,273
Nebraska	5,512,778	97,905
Nevada	4,142,153	76,691
New Hampshire	2,962,194	89,836
New Jersey	2,746,149	88,987
New Mexico	6,888,109	99,741
New York	14,752,762	191,072
North Carolina	18,475,137	220,725
North Dakota	3,335,209	79,939
Ohio	16,802,497	211,771
Oklahoma	9,482,866	136,428
Oregon	8,210,547	117,482
Pennsylvania	17,011,034	212,795
Puerto Rico	1,183,992	77,053
Rhode Island	494,124	69,365
South Carolina	9,286,518	142,644
South Dakota	4,128,119	85,345
Tennessee	11,846,644	163,936
Texas	28,379,729	284,909
Utah	4,029,727	82,615
Vermont	2,218,882	83,282
Virginia	10,458,604	150,888
Washington	8,026,211	122,749
West Virginia	5,664,172	111,963
Wisconsin	11,329,041	156,551
Wyoming	3,909,321	78,358
TOTAL	**$430,834,340**	**$6,596,000**

FEDERAL TRANSIT ADMINISTRATION

Table 15

FY 2006 NATIONAL RESEARCH PROGRAM ALLOCATIONS

State	Earmark ID	Project	Allocation
Alabama	E2006-NATR-000	Biodiesel Hybrid Bus Research, AL	$1,000,000
Alabama	E2006-NATR-001	Transportation Hybrid Electric Vehicle and Fuel Cell Research -- University of Alabama	500,000
Alabama	E2006-NATR-002	Transportation Infrastructure and Logistics Research - University of Alabama - Huntsville	500,000
Alabama	E2006-NATR-003	Trauma Care System Research and Development - University of Alabama - Birmingham	500,000
California	E2006-NATR-004	CALSTART/WESTART Advanced Transit Technology	2,000,000
California	E2006-NATR-005	Regional Transit Training Consortium Pilot Program - Southern CA Regional Transit Training Consortium	270,000
California	E2006-NATR-006	Research Hybrid Fueled Technology Transit System, CA	250,000
Connecticut	E2006-NATR-007	Advanced Technology Bus Rapid Transit Project -- Southeastern CT Advanced Technology BRT Project	500,000
Connecticut	E2006-NATR-008	Greater New Haven Transit District Fuel Cell-Powered Bus Research	500,000
District of Columbia	E2006-NATR-009	CTAA of America Nationwide Joblinks	800,000
District of Columbia	E2006-NATR-010	Project ACTION	3,000,000
District of Columbia	E2006-NATR-011	Public Transportation National Security Study - National Academy of Sciences	250,000
Florida	E2006-NATR-012	National Bus Rapid Transit Institute -- University of South Florida	1,750,000
Georgia	E2006-NATR-013	Center for Transportation and the Environment, Southern Fuel Cell Coalition/ Flywheel Development	1,660,000
Kansas	E2006-NATR-014	Wichita State University: mass transit vehicle crash protection	250,000
Kentucky	E2006-NATR-015	Application of Information Technology to Transportation Logistics and Security -- Northern Kentucky Universit	400,000
Maryland	E2006-NATR-017	Transit Career Ladder Training Program	1,000,000
Massachusetts	E2006-NATR-016	Boston-Fitchburg, MA Rail Corridor	640,000
Michigan	E2006-NATR-018	Automation Alley BUSolution	1,500,000
Minnesota	E2006-NATR-019	Hennepin County Community Works	500,000
New Jersey	E2006-NATR-021	Center for Advanced Transportation Initiatives - Rutgers Center for Advanced Transportation Initiatives	500,000
New Jersey	E2006-NATR-022	Institute of Technology's Transportation, Economic, and Land Use System -- NJ TELUS	500,000
North Dakota	E2006-NATR-020	Small Urban and Rural Transit Center -- North Dakota State University	800,000
Ohio	E2006-NATR-023	Advanced Vehicle Emission Reduction Sensor Program, Ohio	500,000
Ohio	E2006-NATR-024	Intelligent Transportation System Pilot Project -- Ohio State University	465,000
Oregon	E2006-NATR-025	Center for Transit Oriented Development	1,000,000
Oregon	E2006-NATR-026	Cognitive Impairment Study -- Oregon	1,000,000
Oregon	E2006-NATR-027	Portland, Oregon Streetcar Prototype Purchase and Deployment - TriMet	1,000,000
Pennsylvania	E2006-NATR-028	American Cities Transportation Institute, PA	500,000
Pennsylvania	E2006-NATR-029	CIMERC, PA (National Bioterrorism Civilian Medical Emergency Response Center)	1,000,000
Pennsylvania	E2006-NATR-030	Hydrogen Fuel Cell Shuttle Deployment Demonstration Project -- Allentown, PA	800,000
Pennsylvania	E2006-NATR-031	Regional Public Safety Training Center -- Lehigh-Carbon Community College	500,000
Pennsylvania	E2006-NATR-032	Transit Security Training Facility -- Chester County Community College	750,000
Tennessee	E2006-NATR-033	Advanced Transportation Technology Institute	1,000,000
Tennessee	E2006-NATR-034	Low Cost Carbon Fiber Production Technology, TN	1,000,000
Texas	E2006-NATR-035	University of Texas, Austin, Flywheel bus and truck program	1,000,000
Washington	E2006-NATR-036	City of Mount Vernon, WA -- Transit and Development Study	200,000
Washington	E2006-NATR-037	Washington State Ferries Wireless Over Water Project	1,000,000
West Virginia	E2006-NATR-040	WVU Exhaust Emission Testing Initiative, WV	1,400,000
Wisconsin	E2006-NATR-038	Transport 2020, WI	1,000,000
Wisconsin	E2006-NATR-039	Wisconsin Supplemental Transportation Rural Assistance Program -- WI DOT	2,000,000
----------	E2006-NATR-041	Human Services Transportation Coordination	1,600,000
----------	E2006-NATR-042	National Technical Assistance Center for Senior Transportation (Section 5314(b))	1,000,000
----------	E2006-NATR-043	Pilot Program for Remote Infrared Audible Signs	500,000
----------	E2006-NATR-044	Public Transportation Participation Pilot Program	1,000,000
----------	E2006-NATR-045	Transportation Equity Research Program	1,000,000
	TOTAL ALLOCATION		$40,785,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 16

FY 2006 SECTION 5316 JOB ACCESS AND REVERSE COMMUTE APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
UZAs 200,000 or more in Population	$82,800,000
UZAs 50,000-199,999 in Population	27,600,000
Nonurbanized	27,600,000
National Total	$138,000,000

Amounts Apportioned to Urbanized Areas 200,000 or more in Population:

Aguadilla--Isabela--San Sebastian, PR	$536,205
Akron, OH	251,350
Albany, NY	233,133
Albuquerque, NM	329,573
Allentown--Bethlehem, PA--NJ	218,587
Anchorage, AK	84,807
Ann Arbor, MI	122,465
Antioch, CA	85,588
Asheville, NC	115,197
Atlanta, GA	1,356,582
Atlantic City, NJ	98,093
Augusta-Richmond County, GA--SC	193,400
Austin, TX	410,186
Bakersfield, CA	321,480
Baltimore, MD	879,811
Barnstable Town, MA	75,874
Baton Rouge, LA	297,660
Birmingham, AL	359,704
Boise City, ID	98,237
Bonita Springs--Naples, FL	74,055
Boston, MA--NH--RI	1,387,779
Bridgeport--Stamford, CT--NY	263,137
Buffalo, NY	489,511
Canton, OH	114,033
Cape Coral, FL	149,003
Charleston--North Charleston, SC	221,929
Charlotte, NC--SC	280,764
Chattanooga, TN--GA	170,588
Chicago, IL--IN	3,573,680
Cincinnati, OH--KY--IN	585,030
Cleveland, OH	785,270
Colorado Springs, CO	171,168
Columbia, SC	193,607
Columbus, GA--AL	150,675
Columbus, OH	492,784
Concord, CA	101,641
Corpus Christi, TX	202,536
Dallas--Fort Worth--Arlington, TX	2,007,554
Davenport, IA--IL	127,173
Dayton, OH	306,588

FEDERAL TRANSIT ADMINISTRATION

TABLE 16

FY 2006 SECTION 5316 JOB ACCESS AND REVERSE COMMUTE APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
Daytona Beach--Port Orange, FL	137,918
Denton--Lewisville, TX	84,142
Denver--Aurora, CO	705,530
Des Moines, IA	128,708
Detroit, MI	1,701,914
Durham, NC	153,993
El Paso, TX--NM	647,219
Eugene, OR	134,348
Evansville, IN--KY	100,341
Fayetteville, NC	153,615
Flint, MI	209,295
Fort Collins, CO	86,633
Fort Wayne, IN	121,417
Fresno, CA	484,614
Grand Rapids, MI	209,354
Greensboro, NC	116,899
Greenville, SC	156,367
Gulfport--Biloxi, MS	117,897
Harrisburg, PA	119,547
Hartford, CT	317,829
Honolulu, HI	299,046
Houston, TX	2,248,397
Huntsville, AL	92,023
Indianapolis, IN	467,592
Indio--Cathedral City--Palm Springs, CA	169,365
Jackson, MS	190,082
Jacksonville, FL	399,629
Kansas City, MO--KS	525,792
Knoxville, TN	212,576
Lancaster, PA	110,275
Lancaster--Palmdale, CA	165,402
Lansing, MI	152,261
Las Vegas, NV	617,235
Lexington-Fayette, KY	126,343
Lincoln, NE	94,889
Little Rock, AR	195,544
Los Angeles--Long Beach--Santa Ana, CA	8,089,759
Louisville, KY--IN	407,028
Lubbock, TX	144,588
Madison, WI	142,478
McAllen, TX	674,202
Memphis, TN--MS--AR	588,326
Miami, FL	2,826,927
Milwaukee, WI	592,276
Minneapolis--St. Paul, MN	721,045
Mission Viejo, CA	111,879
Mobile, AL	232,713
Modesto, CA	208,549
Nashville-Davidson, TN	336,792
New Haven, CT	202,314

FEDERAL TRANSIT ADMINISTRATION

TABLE 16

FY 2006 SECTION 5316 JOB ACCESS AND REVERSE COMMUTE APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
New Orleans, LA	754,641
New York--Newark, NY--NJ--CT	9,144,031
Ogden--Layton, UT	142,078
Oklahoma City, OK	429,327
Omaha, NE--IA	260,632
Orlando, FL	554,917
Oxnard, CA	187,962
Palm Bay--Melbourne, FL	164,233
Pensacola, FL--AL	179,877
Peoria, IL	119,851
Philadelphia, PA--NJ--DE--MD	2,199,275
Phoenix--Mesa, AZ	1,451,864
Pittsburgh, PA	762,742
Port St. Lucie, FL	135,457
Portland, OR--WA	658,460
Poughkeepsie--Newburgh, NY	139,640
Providence, RI--MA	555,906
Provo--Orem, UT	167,354
Raleigh, NC	169,389
Reading, PA	109,616
Reno, NV	136,764
Richmond, VA	328,346
Riverside--San Bernardino, CA	1,035,890
Rochester, NY	305,397
Rockford, IL	112,551
Round Lake Beach--McHenry--Grayslake, IL--WI	46,631
Sacramento, CA	743,089
Salem, OR	206,805
Salt Lake City, UT	326,853
San Antonio, TX	869,499
San Diego, CA	1,415,204
San Francisco--Oakland, CA	1,263,138
San Jose, CA	466,298
San Juan, PR	3,207,788
Santa Rosa, CA	106,253
Sarasota--Bradenton, FL	226,455
Savannah, GA	135,907
Scranton, PA	194,769
Seattle, WA	971,462
Shreveport, LA	201,879
South Bend, IN--MI	123,233
Spokane, WA--ID	180,509
Springfield, MA--CT	278,879
Springfield, MO	119,831
St. Louis, MO--IL	862,036
Stockton, CA	265,855
Syracuse, NY	206,405
Tallahassee, FL	133,923
Tampa--St. Petersburg, FL	987,908
Temecula--Murrieta, CA	88,006

FEDERAL TRANSIT ADMINISTRATION

TABLE 16

FY 2006 SECTION 5316 JOB ACCESS AND REVERSE COMMUTE APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
Thousand Oaks, CA	47,569
Toledo, OH--MI	254,738
Trenton, NJ	100,038
Tucson, AZ	445,867
Tulsa, OK	288,163
Victorville--Hesperia--Apple Valley, CA	132,105
Virginia Beach, VA	623,688
Washington, DC--VA--MD	1,204,076
Wichita, KS	183,743
Winston-Salem, NC	133,567
Worcester, MA--CT	181,129
Youngstown, OH--PA	221,158
Total	**$82,800,000**

Amounts Apportioned to State Governors for Urbanized Areas 50,000 to 199,999 in Population

ALABAMA	$772,326
ALASKA	34,803
ARIZONA	278,390
ARKANSAS	496,430
CALIFORNIA	2,875,082
COLORADO	462,904
CONNECTICUT	282,254
DELAWARE	47,503
FLORIDA	1,608,925
GEORGIA	881,417
HAWAII	52,174
IDAHO	298,722
ILLINOIS	634,654
INDIANA	679,281
IOWA	408,367
KANSAS	186,798
KENTUCKY	253,940
LOUISIANA	801,761
MAINE	259,157
MARYLAND	303,222
MASSACHUSETTS	243,826
MICHIGAN	859,943
MINNESOTA	233,350
MISSISSIPPI	143,870
MISSOURI	287,685
MONTANA	220,467
N. MARIANA ISLANDS	79,998
NEBRASKA	14,710
NEVADA	38,089
NEW HAMPSHIRE	221,048
NEW JERSEY	141,547
NEW MEXICO	273,301
NEW YORK	518,528

FEDERAL TRANSIT ADMINISTRATION

TABLE 16

FY 2006 SECTION 5316 JOB ACCESS AND REVERSE COMMUTE APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
NORTH CAROLINA	880,729
NORTH DAKOTA	167,226
OHIO	647,275
OKLAHOMA	175,291
OREGON	223,952
PENNSYLVANIA	848,035
PUERTO RICO	2,597,480
SOUTH CAROLINA	495,316
SOUTH DAKOTA	125,194
TENNESSEE	575,648
TEXAS	3,096,313
UTAH	127,434
VERMONT	66,088
VIRGINIA	588,468
WASHINGTON	765,868
WEST VIRGINIA	524,520
WISCONSIN	702,191
WYOMING	98,500
Total	**$27,600,000**

Amounts Apportioned to State Governors for Nonurbanized Areas Less than 50,000 in Population

ALABAMA	$923,920
ALASKA	89,989
AMERICAN SAMOA	83,028
ARIZONA	496,739
ARKANSAS	696,647
CALIFORNIA	1,406,108
COLORADO	261,281
CONNECTICUT	67,326
DELAWARE	61,353
FLORIDA	797,497
GEORGIA	1,094,243
GUAM	83,140
HAWAII	109,831
IDAHO	238,458
ILLINOIS	622,191
INDIANA	552,780
IOWA	397,200
KANSAS	395,656
KENTUCKY	1,006,835
LOUISIANA	861,939
MAINE	266,278
MARYLAND	171,791
MASSACHUSETTS	107,336
MICHIGAN	740,813
MINNESOTA	474,144
MISSISSIPPI	998,665
MISSOURI	812,399

FEDERAL TRANSIT ADMINISTRATION

TABLE 16

FY 2006 SECTION 5316 JOB ACCESS AND REVERSE COMMUTE APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
MONTANA	240,430
N. MARIANA ISLANDS	47,236
NEBRASKA	246,691
NEVADA	74,007
NEW HAMPSHIRE	115,327
NEW JERSEY	91,667
NEW MEXICO	465,278
NEW YORK	885,267
NORTH CAROLINA	1,391,749
NORTH DAKOTA	127,122
OHIO	947,360
OKLAHOMA	749,628
OREGON	379,534
PENNSYLVANIA	1,006,135
PUERTO RICO	357,843
RHODE ISLAND	15,749
SOUTH CAROLINA	771,436
SOUTH DAKOTA	190,711
TENNESSEE	899,314
TEXAS	2,202,355
UTAH	135,668
VERMONT	122,685
VIRGIN ISLANDS	83,472
VIRGINIA	647,244
WASHINGTON	466,553
WEST VIRGINIA	545,274
WISCONSIN	470,773
WYOMING	105,905
Total	**$27,600,000**

FEDERAL TRANSIT ADMINISTRATION

TABLE 17

FY 2006 SECTION 5317 NEW FREEDOM APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
UZAs 200,000 or more in Population	$46,800,000
UZAs 50,000-199,999 in Population	15,600,000
Nonurbanized	15,600,000
National Total	$78,000,000

Amounts Apportioned to Urbanized Areas 200,000 or more in Population:

Aguadilla--Isabela--San Sebastian, PR	88,332
Akron, OH	150,369
Albany, NY	77,716
Albuquerque, NM	148,980
Allentown--Bethlehem, PA--NJ	152,015
Anchorage, AK	41,991
Ann Arbor, MI	64,535
Antioch, CA	56,800
Asheville, NC	68,227
Atlanta, GA	1,043,890
Atlantic City, NJ	72,730
Augusta-Richmond County, GA--SC	102,485
Austin, TX	212,217
Bakersfield, CA	116,740
Baltimore, MD	650,182
Barnstable Town, MA	66,860
Baton Rouge, LA	131,953
Birmingham, AL	230,066
Boise City, ID	56,643
Bonita Springs--Naples, FL	78,202
Boston, MA--NH--RI	1,200,233
Bridgeport--Stamford, CT--NY	258,928
Buffalo, NY	289,240
Canton, OH	69,950
Cape Coral, FL	103,925
Charleston--North Charleston, SC	122,045
Charlotte, NC--SC	209,095
Chattanooga, TN--GA	105,316
Chicago, IL--IN	2,496,971
Cincinnati, OH--KY--IN	364,092
Cleveland, OH	504,099
Colorado Springs, CO	95,923
Columbia, SC	104,975
Columbus, GA--AL	68,164
Columbus, OH	261,617
Concord, CA	128,716
Corpus Christi, TX	78,696
Dallas--Fort Worth--Arlington, TX	1,086,398
Davenport, IA--IL	67,633
Dayton, OH	175,803

FEDERAL TRANSIT ADMINISTRATION

TABLE 17

FY 2006 SECTION 5317 NEW FREEDOM APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
Daytona Beach--Port Orange, FL	86,503
Denton--Lewisville, TX	60,941
Denver--Aurora, CO	476,816
Des Moines, IA	94,412
Detroit, MI	1,225,405
Durham, NC	72,604
El Paso, TX--NM	154,598
Eugene, OR	55,343
Evansville, IN--KY	60,146
Fayetteville, NC	65,790
Flint, MI	107,066
Fort Collins, CO	42,388
Fort Wayne, IN	73,060
Fresno, CA	166,469
Grand Rapids, MI	134,989
Greensboro, NC	76,298
Greenville, SC	90,443
Gulfport--Biloxi, MS	56,356
Harrisburg, PA	91,495
Hartford, CT	256,267
Honolulu, HI	172,101
Houston, TX	1,057,449
Huntsville, AL	48,968
Indianapolis, IN	320,499
Indio--Cathedral City--Palm Springs, CA	78,700
Jackson, MS	91,247
Jacksonville, FL	259,935
Kansas City, MO--KS	356,519
Knoxville, TN	115,003
Lancaster, PA	78,200
Lancaster--Palmdale, CA	61,515
Lansing, MI	75,434
Las Vegas, NV	377,309
Lexington-Fayette, KY	59,533
Lincoln, NE	45,811
Little Rock, AR	104,505
Los Angeles--Long Beach--Santa Ana, CA	3,381,448
Louisville, KY--IN	228,596
Lubbock, TX	52,495
Madison, WI	72,265
McAllen, TX	114,915
Memphis, TN--MS--AR	293,627
Miami, FL	1,548,847
Milwaukee, WI	367,320
Minneapolis--St. Paul, MN	508,979
Mission Viejo, CA	135,372
Mobile, AL	107,529
Modesto, CA	86,025
Nashville-Davidson, TN	195,788
New Haven, CT	170,517

FEDERAL TRANSIT ADMINISTRATION

TABLE 17

FY 2006 SECTION 5317 NEW FREEDOM APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
New Orleans, LA	329,345
New York--Newark, NY--NJ--CT	5,693,860
Ogden--Layton, UT	76,404
Oklahoma City, OK	198,658
Omaha, NE--IA	139,507
Orlando, FL	318,046
Oxnard, CA	100,166
Palm Bay--Melbourne, FL	105,546
Pensacola, FL--AL	96,944
Peoria, IL	64,063
Philadelphia, PA--NJ--DE--MD	1,541,706
Phoenix--Mesa, AZ	824,495
Pittsburgh, PA	541,392
Port St. Lucie, FL	89,430
Portland, OR--WA	370,806
Poughkeepsie--Newburgh, NY	98,008
Providence, RI--MA	344,554
Provo--Orem, UT	52,005
Raleigh, NC	117,346
Reading, PA	71,103
Reno, NV	77,716
Richmond, VA	229,706
Riverside--San Bernardino, CA	394,788
Rochester, NY	167,606
Rockford, IL	70,023
Round Lake Beach--McHenry--Grayslake, IL--WI	49,918
Sacramento, CA	365,698
Salem, OR	49,583
Salt Lake City, UT	191,203
San Antonio, TX	363,656
San Diego, CA	672,663
San Francisco--Oakland, CA	894,196
San Jose, CA	408,455
San Juan, PR	638,326
Santa Rosa, CA	72,673
Sarasota--Bradenton, FL	187,637
Savannah, GA	73,310
Scranton, PA	126,448
Seattle, WA	676,025
Shreveport, LA	79,518
South Bend, IN--MI	76,854
Spokane, WA--ID	89,524
Springfield, MA--CT	171,403
Springfield, MO	53,313
St. Louis, MO--IL	574,344
Stockton, CA	93,425
Syracuse, NY	94,377
Tallahassee, FL	66,112
Tampa--St. Petersburg, FL	640,984
Temecula--Murrieta, CA	58,809

FEDERAL TRANSIT ADMINISTRATION

TABLE 17

FY 2006 SECTION 5317 NEW FREEDOM APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
Thousand Oaks, CA	49,550
Toledo, OH--MI	144,188
Trenton, NJ	84,528
Tucson, AZ	198,357
Tulsa, OK	157,415
Victorville--Hesperia--Apple Valley, CA	55,803
Virginia Beach, VA	359,208
Washington, DC--VA--MD	1,028,118
Wichita, KS	99,867
Winston-Salem, NC	78,371
Worcester, MA--CT	124,367
Youngstown, OH--PA	121,959
Total	**$46,800,000**

Amounts Apportioned to State Governors for Urbanized Areas 50,000 to 199,999 in Population

ALABAMA	391,927
ALASKA	34,231
ARIZONA	145,693
ARKANSAS	254,153
CALIFORNIA	1,646,416
COLORADO	269,011
CONNECTICUT	262,894
DELAWARE	31,136
FLORIDA	1,122,107
GEORGIA	456,205
HAWAII	51,059
IDAHO	187,042
ILLINOIS	385,737
INDIANA	400,232
IOWA	239,136
KANSAS	108,437
KENTUCKY	123,376
LOUISIANA	396,062
MAINE	138,389
MARYLAND	271,145
MASSACHUSETTS	179,831
MICHIGAN	582,536
MINNESOTA	130,326
MISSISSIPPI	64,931
MISSOURI	154,259
MONTANA	216,757
N. MARIANA ISLANDS	52,367
NEBRASKA	8,239
NEVADA	34,461
NEW HAMPSHIRE	222,780
NEW JERSEY	113,113
NEW MEXICO	144,756
NEW YORK	308,611

FEDERAL TRANSIT ADMINISTRATION

TABLE 17

FY 2006 SECTION 5317 NEW FREEDOM APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
NORTH CAROLINA	608,190
NORTH DAKOTA	170,222
OHIO	401,042
OKLAHOMA	68,591
OREGON	115,854
PENNSYLVANIA	526,439
PUERTO RICO	530,247
SOUTH CAROLINA	330,574
SOUTH DAKOTA	166,601
TENNESSEE	321,728
TEXAS	1,371,071
UTAH	65,445
VERMONT	46,441
VIRGINIA	371,845
WASHINGTON	463,668
WEST VIRGINIA	281,723
WISCONSIN	523,900
WYOMING	109,064
Total	**$15,600,000**

Amounts Apportioned to State Governors for Nonurbanized Areas Less than 50,000 in Population

ALABAMA	482,021
ALASKA	78,614
AMERICAN SAMOA	17,233
ARIZONA	200,432
ARKANSAS	350,829
CALIFORNIA	691,391
COLORADO	174,946
CONNECTICUT	87,217
DELAWARE	47,943
FLORIDA	497,055
GEORGIA	617,890
GUAM	51,136
HAWAII	67,254
IDAHO	107,938
ILLINOIS	428,874
INDIANA	433,896
IOWA	276,986
KANSAS	234,170
KENTUCKY	431,748
LOUISIANA	337,886
MAINE	153,641
MARYLAND	161,318
MASSACHUSETTS	107,618
MICHIGAN	557,999
MINNESOTA	313,967
MISSISSIPPI	451,575
MISSOURI	421,568

FEDERAL TRANSIT ADMINISTRATION

TABLE 17

FY 2006 SECTION 5317 NEW FREEDOM APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
MONTANA	137,883
N. MARIANA ISLANDS	1,960
NEBRASKA	170,534
NEVADA	58,430
NEW HAMPSHIRE	119,378
NEW JERSEY	86,114
NEW MEXICO	165,355
NEW YORK	590,958
NORTH CAROLINA	829,609
NORTH DAKOTA	64,214
OHIO	635,818
OKLAHOMA	356,135
OREGON	237,421
PENNSYLVANIA	686,286
PUERTO RICO	66,258
RHODE ISLAND	18,560
SOUTH CAROLINA	397,928
SOUTH DAKOTA	106,351
TENNESSEE	493,287
TEXAS	1,067,905
UTAH	64,990
VERMONT	71,360
VIRGIN ISLANDS	34,106
VIRGINIA	441,158
WASHINGTON	260,925
WEST VIRGINIA	243,075
WISCONSIN	358,316
WYOMING	52,541
Total	**$15,600,000**

FEDERAL TRANSIT ADMINISTRATION

TABLE 18

FY 2006 Section 5339 Alternative Analysis Program Allocations

State	Earmark ID	Project Location and Description	Allocation
California	E2006-ALTA-000	San Gabriel Valley-Gold Line Foothill Extension Corridor Study	$1,250,000
Illinois	E2006-ALTA-001	Metra BNSF Naperville to Aurora Corridor Study	1,250,000
Illinois	E2006-ALTA-002	Metra-West Line Extension, Elgin to Rockford Study	1,000,000
Maryland	E2006-ALTA-003	Baltimore Red Line/Green Line Transit Project Study	1,500,000
Minnesota	E2006-ALTA-004	Minnesota Red Rock Corridor/Rush Line/Central Corridors Studies	2,000,000
Mississippi	E2006-ALTA-005	Madison-Ridgeland Transportation Commission, Mississippi, Madison LRT Corridor Study	350,000
North Carolina	E2006-ALTA-006	Piedmont Authority Regional Transportation East-West Corridor Study	1,000,000
New Jersey	E2006-ALTA-007	Trans-Hudson Midtown Corridor Study	1,500,000
New Jersey	E2006-ALTA-008	Monmouth-Ocean-Middlesex Counties, New Jersey Corridor Study	1,250,000
New Jersey	E2006-ALTA-009	New Jersey Transit Midtown Project Study	2,500,000
New Mexico	E2006-ALTA-010	Middle Rio Grande Coalition of Governments, Albuquerque to Santa Fe Corridor Study	500,000
Oregon	E2006-ALTA-011	Lane County, Oregon Bus Rapid Transit Phase II Corridor Study	500,000
Oregon	E2006-ALTA-012	Portland Streetcar, Oregon Corridor Study	1,500,000
South Carolina	E2006-ALTA-013	South Carolina Department of Transportation Light Rail Study	300,000
Tennessee	E2006-ALTA-014	Sevierville County Transportation Board, Sevier County BRT Study	500,000
Utah	E2006-ALTA-015	Provo Orem BRT Study	500,000
Washington	E2006-ALTA-016	Sound Transit I-90 Long-Range Plan Corridor Studies	750,000
Wisconsin	E2006-ALTA-017	Madison and Dane Counties, Wisconsin Transport 2020 Corridor Study	750,000
---------	---------	Unallocated amount to be distributed	6,100,000
	Total Allocation		**$25,000,000**

FEDERAL TRANSIT ADMINISTRATION

TABLE 19

EXTENDED EARMARKS FOR BUS AND BUS FACILITY AND NEW STARTS PROGRAMS

State	Earmark ID	Project	Unobligated Allocation
FY 2003 and Prior Years Bus and Bus Facility Program Earmarks			
Alabama	E2003-BUSP-015	Hoover & Vestavia Hills Diesel Hybrid Electric Buses, 2003	$983,679
Alabama	E2003-BUSP-017	Jefferson County, Diesel Hybrid Electric Buses, 2003	737,759
California	E-2002-BUSP-066	Fort Bragg Bus Storage Facility/North Ukiah Transit Center, 2002	297,009
Connecticut	E2003-BUSP-071	Hartford-New Britain Busway Project, 2003	7,377,590
Connecticut	E2003-BUSP-073	Hollyhock Station/Intermodal Transportation Center, Norwich, 2003	2,606,748
Georgia	E2003-BUSP-106	Macon Intermodal Center, 2003	1,967,357
Georgia	E-2002-BUSP-155	Macon terminal intermodal station, 2002	885,044
Indiana	E-2002-BUSP-182	Indianapolis downtown transit facility, 2002	2,943,342
Indiana	E2003-BUSP-122	Indianapolis Downtown Transit Facility, 2003	4,426,554
Kansas	E2003-BUSP-128	Lawrence Transit System Transfer Center, 2003	491,839
Massachusetts	E2003-BUSP-147	Attleboro Intermodal Mixed-Use Garage Facility, 2003	737,759
Massachusetts	E-2002-BUSP-236	Springfield Union Station intermodal facility, 2002	2,440,116
Massachusetts	E2003-BUSP-162	Springfield Union Station Intermodal Redevelopment Project, 2003	5,902,072
Montana	E-2002-BUSP-319	Statewide bus and bus facilities, MT, 2002	806,496
Nebraska	E2003-BUSP-230	Metro Area Transit - Intermodal Facility, 2003	983,679
New York	E2003-BUSP-705	Buffalo, New York Inner Harbor Redevelopment Project, 2003	4,918,393
New York	E2003-BUSP-260	Jamaica Intermodal Facilities, 2003	1,475,518
New York	E2003-BUSP-706	Oneida County buses and transit items, 2003	885,311
New York	E-2002-BUSP-370	Tompkins County bus and bus facilities/Tompkins Consolidated Area transit center,	57,778
Pennsylvania	E2003-BUSP-299	Easton Intermodal Terminal, 2003	1,967,357
Pennsylvania	E-1998-BUSP-178	Wilkes Barre intermodal facility, 1998	969,794
Pennsylvania	E-1999-BUSP-325	Wilkes Barre intermodal facility, 1999	1,240,625
Pennsylvania	E-2000-BUSP-337	Wilkes Barre intermodal facility, 2000	1,226,369
Pennsylvania	E-2001-BUSP-405	Wilkes Barre intermodal transportation center, 2001	990,315
Pennsylvania	E-2002-BUSP-434	Wilkes-Barre Intermodal facility, 2002	990,029
Pennsylvania	E2003-BUSP-312	Wilkes-Barre Intermodal Facility, 2003	245,920
South Carolina	E2003-BUSP-320	Intermodal/Inland Port Terminal, 2003	983,679
Washington	E2003-BUSP-361	Aurora Avenue Bus Rapid Transit, 2003	1,379,518
West Virginia	E2003-BUSP-385	Monongalia Courthouse Annex in Morgantown - Intermodal Parking Facility, 2003	3,442,875
West Virginia	E-2002-BUS-536	Morgantown Intermodal parking facility, 2002	278,058
	Total Unobligated Extended Bus and Bus Facility Earmarked Allocations		**$48,308,532**
FY 2003 and Prior Years New Starts Program Earmarks			
Connecticut	E2003-NWST-014	Bridgeport, Connecticut, Intermodal Transportation Center Project, 2003	$2,458,956
Delaware	E2003-NWST-106	Wilmington, Delaware, Downtown Transit Corridor Project, 2003	3,854,249
Delaware	E2003-NWST-019	Wilmington, Delaware, Train Station Improvements, 2003	1,327,165
District of Columbia	E2002-NWST-700	Dulles Corridor Project, 2002	24,750,327
District of Columbia	E2003-NWST-017	Washington, District of Columbia, Dulles Corridor Rapid Transit Project, 2003	26,064,934
Indiana	E2001-NWST-169	Indianapolis, Indiana Northeast-Downtown Corridor Project, 2001	1,797,009
Indiana	E2002-NWST-186	Northeast Indianapolis, Indiana, Downtown Corridor Project, 2002	2,475,033
Maryland	E2002-NWST-247	Maryland (MARC) Commuter Rail Improvements Projects, 2002	5,880,157
Maryland	E2003-NWST-017	Maryland, MARC Commuter Rail Improvements , 2003	11,557,093
Minnesota	E2003-NWST-032	Minneapolis, Minnesota, Northstar Corridor , 2003	4,917,912
Nevada	E2003-NWST-040	Las Vegas, Nevada, Resort Corridor Fixed Guideway, 2003	6,885,077
New Mexico	E2002-NWST-348	Albuquerque, NM- Light Rail Project, 2002	990,013
New Mexico	E2001-NWST-307	Albuquerque/Greater Albuquerque Mass Transit Project, 2001	495,321
New Mexico	E2000-NWST-268	Greater Albuquerque Mass Rail Transit Project, 2000	3,326,316
Wisconsin	E2001-NWST-491	Kenosha-Racine-Milwaukee Rail Extension Project, 2001	1,743,651
Wisconsin	E2002-NWST-534	Kenosha-Racine-Milwaukee Rail Extension Project, 2002	1,980,026
	Total Unobligated Extended New Starts Earmarked Allocations		**$100,503,239**

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.J. Res. 75/P.L. 109–128

Making further continuing appropriations for the fiscal year 2006, and for other purposes. (Dec. 18, 2005; 119 Stat. 2549)

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