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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.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23282; Directorate Identifier 2005–NM–210–AD; Amendment 39–14496; AD 2006–04–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757–200 and –300 series airplanes. This AD requires installing clamps on certain end caps of the overhead distribution ducts, and doing other specified and related investigative actions as necessary. This AD results from finding that the end caps of the overhead distribution ducts for the air conditioning system were not bonded to the ducts with an adhesive. We are issuing this AD to detect and correct loosened end caps, which could change the air flow balance in the airplane. During a smoke event in the cargo or main electronics compartment, the incorrect balance of air flow could change the smoke clearance air capacity and result in smoke and toxic fumes penetrating the flight deck and main cabin.

DATES: This AD becomes effective April 3, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 3, 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6477; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 757–200 and –300 series airplanes. That NPRM was published in the **Federal Register** on December 13, 2005 (70 FR 73663). That NPRM proposed to require installing clamps on certain end caps of the overhead distribution ducts, and doing other specified and related investigative actions as necessary.

Comments

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

Conclusion

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

Costs of Compliance

There are about 63 airplanes of the affected design in the worldwide fleet. This AD will affect about 37 airplanes of U.S. registry. The actions will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Required parts will cost between $20 and $40 per airplane, depending on airplane configuration. Based on these figures, the estimated cost of the AD for U.S. operators is between $3,145 and $3,885, or between $85 and $105 per airplane, depending on airplane configuration.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–04–14 Boeing: Amendment 39–14496. Docket No. FAA–2005–23282; Directorate Identifier 2005–NM–210–AD.

Effective Date

(a) This AD becomes effective April 3, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Boeing Model 757–200 series airplanes, having certain variable numbers as identified in Boeing Special Attention Service Bulletin 757–21–0106, dated March 24, 2005.

(2) Boeing Model 757–300 series airplanes, having certain variable numbers as identified in Boeing Special Attention Service Bulletin 757–21–0107, dated March 24, 2005.

Unsafe Condition

(d) This AD results from finding that the end caps of the overhead distribution ducts for the air conditioning system were not bonded to the ducts with an adhesive. We are issuing this AD to detect and correct loosened end caps, which could change the air flow balance in the airplane. During a smoke event in the cargo or main electronics compartment, the incorrect balance of air flow could change the smoke clearance air capacity and result in smoke and toxic fumes penetrating the flight deck and main cabin.

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.

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model 757–200 series airplanes: Boeing Special Attention Service Bulletin 757–21–0106, dated March 24, 2005; and

(2) For Model 757–300 series airplanes: Boeing Special Attention Service Bulletin 757–21–0107, dated March 24, 2005.

Install Clamps

(g) Within 12,000 flight hours or 36 months after the effective date of this AD, whichever is first: Install clamps on the end caps of the overhead distribution ducts of the air conditioning system at stations 864.88, 864.9, 866.6, and 875, as applicable, and before further flight do other specified and related investigative actions as applicable, by doing all of the applicable actions specified in the service bulletin.

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(i) You must use Boeing Special Attention Service Bulletin 757–21–0106, dated March 24, 2005; or Boeing Special Attention Service Bulletin 757–21–0107, dated March 24, 2005; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA).

For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on February 15, 2006.

Michael Zielinski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–1694 Filed 2–24–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23594; Directorate Identifier 2005–NE–54–AD; Amendment 39–14497; AD 2006–04–15]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Artouste III B, Artouste III B1, and Artouste III D Turboshaft Engines

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Turbomeca Artouste III B, Artouste III B1, and Artouste III D turboshaft engines. This AD requires removing certain fuel pumps from service and installing serviceable fuel pumps. This AD results from a report that an acceptance test facility used test equipment that was out of calibration, on certain fuel pumps, and those fuel pumps might have been accepted with a limitation in the maximum available fuel flow. We are issuing this AD to prevent reduced helicopter performance, subsequent loss of control of the helicopter, or accident.

DATES: Effective March 14, 2006.

We must receive any comments on this AD by April 28, 2006.

ADDRESSES: Use one of the following addresses to comment on this AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- 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 Turbomeca, 40220 Tarnos, France; telephone +33 05 59 74 40 00, fax +33 05 59 74 45 15, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office,

FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Turbomeca Artouste III B, Artouste III B1, and Artouste III D turboshaft engines. The DGAC advises that an acceptance test facility used test equipment that was out of calibration, on 102 fuel pumps, and those fuel pumps might have been accepted with a limitation in the maximum available fuel flow. This condition causes fuel flow limitation and therefore reduces the maximum available engine power over a portion of the helicopter flight envelope. These pumps may be installed on Eurocopter France Alouette III SE.3160, SA.316B, SA.315B, and SA.316C helicopters registered in the U.S. Turbomeca issued Mandatory Service Bulletin No. 218 73 0802, dated November 17, 2005, to address the 102 suspect fuel pumps. We cannot confirm that these fuel pumps have been removed from service and retested or replaced. The DGAC issued AD No. F–2005–201, dated December 7, 2005, in order to ensure the airworthiness of these engines in France.

Bilateral Airworthiness Agreement

These Turbomeca Artouste III series turboshaft engines are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the DGAC kept the FAA informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Turbomeca Artouste III B, Artouste III B1, and Artouste III D turboshaft engines of the same type design. We are issuing this AD to prevent reduced helicopter performance, subsequent loss of control of the helicopter, or accident. This AD requires removing affected fuel pumps from service and installing serviceable fuel pumps, within 30 days or 80 operating hours after receipt of a serviceable fuel pump, whichever occurs first, but no later than March 15, 2006.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective within 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. FAA–2006–23594; Directorate Identifier 2005–NE–54–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the DMS 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 may visit *http://dms.dot.gov*.

Examining the AD Docket

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

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 the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

2006–04–15 Turbomeca: Amendment 39–14497. Docket No. FAA–2006–23594; Directorate Identifier 2005–NE–54–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 14, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca Artouste III B, Artouste III B1, and Artouste III D turboshaft engines. These engines are installed on, but not limited to, Eurocopter France Alouette III SE.3160, SA.316B, SA.315B, and SA.316C helicopters.

Unsafe Condition

(d) This AD results from a report that an acceptance test facility used test equipment that was out of calibration, on certain fuel pumps, and those fuel pumps might have been accepted with a limitation in the maximum available fuel flow. We are issuing this AD to prevent reduced helicopter performance, subsequent loss of control of the helicopter, or accident.

Compliance

(e) You are responsible for having the actions required by this AD performed within 30 days or 80 operating hours after the receipt of a serviceable fuel pump, whichever occurs first, but no later than March 15, 2006, unless the actions have already been done.

(f) Remove from service the fuel pumps listed by serial number (SN) in the following Table 1, and install a serviceable fuel pump.

TABLE 1.—AFFECTED FUEL PUMP SNS

A59B	F504B	2827
A82B	F506B	2828
A91B	F537B	2830
B14B	F561B	2838
B29B	F589B	2854
B42B	F596B	2867
C27B	F607B	2868
C6B	F630B	2884
C92B	F643B	2944
D16B	F706B	3078
D18B	F724B	3175
D20B	F743B	3230
D80B	F745B	3259
D99B	F748B	3282
E49B	F759B	3343
E77B	F760B	3376
E90B	F762B	3383
F112B	F957B	3385
F131B	808	3397
F176B	1725	3458
F220B	1766	3515
F243B	1770	3548
F253B	1897	3660
F262B	1941	3746
F293B	2154	3756
F317B	2155	3757
F320B	2233	3783

TABLE 1.—AFFECTED FUEL PUMP SNS—Continued

F357B	2512	3792
F368B	2620	3826
F420B	2729	3858
F464B	2759	3888
F466B	2763	3894
F477B	2786	3979
F47B	2787	4066

Definition

(g) For the purpose of this AD, a serviceable fuel pump is:

(1) A fuel pump that is not listed in Table 1 of this AD; or

(2) A fuel pump that is listed in Table 1 of this AD that has passed a repeat of the original production acceptance test.

Alternative Methods of Compliance

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

Related Information

(i) Direction Generale de L'Aviation Civile AD No. F–2005–201, dated December 7, 2005, also addresses the subject of this AD.

(j) Turbomeca Mandatory Service Bulletin No. 218 73 0802, dated November 17, 2005, pertains to the subject of this AD.

Issued in Burlington, Massachusetts, on February 17, 2006.

Peter A. White,

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

[FR Doc. 06–1728 Filed 2–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22398; Airspace Docket No. 05–ASO–7]

RIN 2120–AA66

Establishment of High Altitude Area Navigation Routes; South Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; withdrawal.

SUMMARY: This action withdraws a final rule published in the **Federal Register** on February 15, 2006 (71 FR 7845), Docket No. FAA–2005–22398; Airspace Docket No. 05–ASO–7. This was an incorrect copy inadvertently sent to the **Federal Register.** The incorrect final rule is being withdrawn as a result of this error. The correct final rule was published February 13, 2006 (71 FR 7409), establishing 16 high altitude area navigation routes in the South Central United States.

DATES: *Effective Date:* 0901 UTC, February 27, 2006.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On February 13, 2006, the FAA published in the **Federal Register** (71 FR 7409) a final rule establishing 16 high altitude area navigation routes in the South Central United States. On February 15, 2006, the FAA inadvertently published in the **Federal Register** an obsolete version of the final rule, which contained outdated fix names (71 FR 7845). This action withdraws the incorrect final rule published in error on February 15, 2006. The rule published on February 13, 2006 (71 FR 7409) contains the correct information.

Withdrawal of Final Rule

Accordingly, pursuant to the authority delegated to me, Docket No. FAA–2005–22398; Airspace Docket No. 05–ASO–7; as published in the **Federal Register** February 15, 2006 (71 FR 7845), is hereby withdrawn.

Issued in Washington, DC, on February 17, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 06–1760 Filed 2–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22509; Airspace Docket No. 03–AWA–2]

RIN 2120–AA66

Modification of the St. Louis Class B Airspace Area; MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on February 15, 2006 (71 FR 7848), Airspace Docket No. 03–AWA–2, FAA Docket No. FAA–2005–22509. In that rule, inadvertent errors were made in the airport description of the St. Louis Class B airspace area. This action corrects those errors.

DATES: *Effective Date:* 0901 UTC, April 13, 2006.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On February 15, 2006, a final rule was published in the **Federal Register** modifying the St. Louis, MO Class B airspace area (71 FR 7848), Airspace Docket No. 03–AWA–2, FAA Docket No. FAA–2005–22509. In that final rule, inadvertent errors were made in the primary airport description. Specifically, the coordinates for the Lambert-St. Louis Airport were inadvertently listed as lat. 38°44′52″ N., long. 90°21′36″ W. This action corrects those coordinates to lat. 38°44′50″ N., long. 90°21′41″ W.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the legal description for the St. Louis Class B Airspace Area, as published in the **Federal Register** on February 15, 2006 (71 FR 7848), Airspace Docket No. 03–AWA–2, FAA Docket No. FAA–2005–22509, and incorporated by reference in 14 CFR 71.1, are corrected as follows:

§ 71.1 [Amended]

■ On page 7850, on the fourth line, correct the airport description of the Lambert-St. Louis International Airport, to read as follows:

Paragraph 3000—Class B Airspace

* * * * *

ACE MO B St. Louis, MO [Corrected]

Lambert-St. Louis International Airport
(Primary Airport)
(Lat. 38°44′50″ N., long. 90°21′41″ W.)

* * * * *

Issued in Washington, DC, on February 17, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 06–1758 Filed 2–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM06–13–000; Order No. 674]

Conditions for Public Utility Market-Based Rate Authorization Holders

Issued February 16, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to include certain rules governing the conduct of entities authorized to make sales of electricity and related products under market-based rate authorizations. This amendment is a codification of certain rules that were formerly incorporated in market-based rate sellers' tariffs.

EFFECTIVE DATE: The rule will become effective March 29, 2006.

FOR FURTHER INFORMATION CONTACT:

Mark D. Higgins, Office of the Market Oversight and Investigations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8273, *Mark.Higgins@ferc.gov.*

Frank Karabetsos, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8133, *Frank.Karabetsos@ferc.gov.*

SUPPLEMENTARY INFORMATION: Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is amending 18 CFR part 35 to codify Market Behavior Rules 1, 3, 4, and 5, rules that previously have been incorporated in market-based rate sellers' tariffs. By this order, the Commission is not substantively changing Market Behavior Rules 1, 3, 4, and 5, but merely relocating them to the Code of Federal Regulations.

2. The Commission is issuing this order as a Final Rule without a period for further public comment or a delay in the effective date. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary when the agency for good cause finds that notice and public procedure thereon is unnecessary.

3. This Final Rule makes no substantive changes in existing regulatory requirements, and, as such, it will not change the effect these regulatory provisions have on regulated entities or the general public. Moreover, the Market Behavior Rules were subject to notice and comment in June 2003 [1] and again in November 2005.[2] Additional notice and comment is unnecessary because this Final Rule is procedural, that is, it merely transplants Market Behavior Rules 1, 3, 4, and 5 from sellers' market-based rate tariffs to the Commission's regulations. This Final Rule does not make any substantive change in scope or application of the Market Behavior Rules 1, 3, 4 or 5, and it does not impose any new burden or regulatory requirement on market-based rate sellers. Based on the foregoing, the Commission has good cause to find that notice and comment procedures are unnecessary in this rulemaking.

II. Background

4. On November 17, 2003, acting pursuant to section 206 of the FPA, the Commission amended all market-based rate tariffs and authorizations to include the Market Behavior Rules.[3] The Commission determined that sellers' market-based rate tariffs and authorizations to make sales at market rates would be unjust and unreasonable unless they included clearly-delineated rules governing market participant conduct, and that the Market Behavior Rules fairly apprised market participants of their obligations in competitive power markets and were just and reasonable.[4]

5. Market Behavior Rule 1 requires sellers to follow Commission-approved rules and regulations in organized power markets. These rules and regulations are part of the ISO or RTO tariffs, and sellers' agreements to operate within ISOs and RTOs bind them to follow the applicable rules and regulations of the organized market.

6. Market Behavior Rule 2 prohibits ''actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could

[1] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, ''Order Seeking Comments on Proposed Revisions to Market-Based Rate Tariffs and Authorizations,'' 103 FERC ¶ 61,349 (2003).

[2] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, ''Order Proposing Revisions to Market-Based Rate Tariffs and Authorizations,'' 113 FERC ¶ 61,190 (2005).

[3] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *reh'g denied*, 107 FERC ¶ 61,175 (2004) (Market Behavior Rules Order). The Market Behavior Rules are currently on appeal. *See Cinergy Marketing & Trading, L.P.* v. *FERC*, Nos. 04–1168 *et al.* (D.C. Cir., filed April 28, 2004).

[4] Market Behavior Rules Order, 105 FERC ¶ 61,218 at P 3 and 158–74.

manipulate market prices, market conditions, or market rules for electric energy or electricity products.'' Actions or transactions explicitly contemplated in Commission-approved rules and regulations of an organized market, or undertaken by a market-based rate seller at the direction of an ISO or RTO, however, are not violations of Market Behavior Rule 2. In addition, Market Behavior Rule 2 prohibits certain specific behavior: Rule 2(a) prohibits wash trades; Rule 2(b) prohibits transactions predicated on submitting false information; Rule 2(c) prohibits the creation and relief of artificial congestion; and Rule 2(d) prohibits collusion for the purpose of market manipulation.

7. Market Behavior Rule 3 requires sellers to provide accurate and factual information, and not to submit false or misleading information or to omit material information, in any communication with the Commission, market monitors, ISOs, RTOs, or jurisdictional transmission providers.

8. Market Behavior Rule 4 deals with reporting of transaction information to price index publishers. It requires that if a seller reports transaction data, the data be accurate and factual, and not knowingly false or misleading, and be reported in accordance with the Commission's Price Index Policy Statement.[5] Rule 4 also requires that sellers notify the Commission of whether they report transaction data to price index publishers in accordance with the Price Index Policy Statement, and to update any changes in their reporting status.

9. Market Behavior Rule 5 requires that sellers retain for a minimum three-year period all data and information upon which they billed the prices charged for electricity and related products in sales made under their market-based rate tariffs and authorizations or in transactions the prices of which were reported to price index publishers.

10. Finally, Market Behavior Rule 6 directs sellers not to violate, or to collude with others in actions that violate, sellers' market-based rate codes of conduct or the Standards of Conduct under part 358 of our regulations.[6]

11. On November 21, 2005, the Commission proposed to rescind the Market Behavior Rules in light of the proposed rule to implement the anti-manipulation provisions of the Energy Policy Act of 2005 (EPAct 2005).[7] We noted that the central purpose of the Market Behavior Rules, as reflected in Market Behavior Rule 2, was to prohibit market manipulation and that, with the enactment of statutory authority to bar such manipulation, the Market Behavior Rules could be rescinded upon the effectiveness of the new anti-manipulation rules.[8] This would simplify the Commission's rules and provide greater clarity to the industry by avoiding duplicative or overlapping requirements, yet retain important rules governing market behavior. We noted, however, that certain provisions of the other Market Behavior Rules should be incorporated into rules of general applicability.[9] On January 19, 2006, we issued a Final Rule adopting, with minor revisions, the proposed anti-manipulation rule.[10] The new anti-manipulation rules became effective January 26, 2006.

III. Discussion

12. Concurrently with the issuance of this Final Rule, the Commission is issuing an order in Docket No. EL06–16–000 which rescinds Market Behavior Rules 2 and 6 from sellers' market-based rate tariffs.[11] As explained in the Market Behavior Rules Rescission Order, the anti-manipulation rule adopted in Order No. 670 makes it unnecessary to retain Market Behavior Rules 2 or 6. Also, as noted in the Market Behavior Rules Rescission Order, there is benefit to incorporating the substance of the other Market Behavior Rules into the Commission's regulations, and that codification is made herein.

13. Market Behavior Rule 1 is applicable in organized RTO or ISO markets. While it is essentially a restatement of existing obligations that are in the tariffs of the RTOs and ISOs, applicable to market participants through their participant agreements, there is value to reinforcing the obligation to operate in accordance with Commission-approved rules and regulations by placing this expectation in the Commission's regulations.

14. Market Behavior Rule 3 requires accurate and factual communications with the Commission, Commission-approved market monitors, Commission-approved RTOs and ISOs, or jurisdictional transmission providers. As commenters in Docket No. EL06–16–000 point out, this rule is somewhat different from the new anti-manipulation rule, as it applies to all communications, not just those that are material in furtherance of a fraudulent or deceptive scheme. Accordingly, the substance of Market Behavior Rule 3 can be incorporated into the Commission regulations without duplicating or causing undue confusion with respect to the new anti-manipulation rule.

15. Market Behavior Rule 4 requires sellers to provide accurate data to price index publishers, if the seller is reporting transactions to such publishers, and includes a requirement that sellers notify the Commission of their price reporting status and of any changes in that status. While a deliberate false report would be a violation of the new anti-manipulation rule, there is no confusion in stating this as part of the Commission's regulations and in reinforcing the importance of the Price Index Policy Statement. The second aspect of Market Behavior Rule 4, notification to the Commission of the market participant's price reporting status and of any changes in that status, is not otherwise provided for; thus, we incorporate it here in new part 35 of our regulations. This is a simple and non-burdensome way for the Commission to be informed of the prevalence of price reporting to price index developers. Codification of Market Behavior Rule 4 does not increase the burden of, or requirements for, notification in any way, because any market-based rate seller that provided a notification upon promulgation of the Market Behavior Rules in November 2003 (or thereafter) need not notify the Commission again upon the effective date of this Final Rule. Only sellers who have not previously provided a notification of their price reporting status, and sellers who have a change in their reporting status, are required to notify the Commission.

16. Market Behavior Rule 5 requires sellers to maintain certain records for a period of three years to reconstruct prices charged for electricity and related products. This is different from the record retention requirements in part 125 of our regulations, which largely are related to cost-of-service rate requirements.[12] In order to avoid potential confusion over the extent of this retention requirement, we are incorporating the record retention

[5] *Price Index Policy Statement*, 104 FERC ¶ 61,121 (2003).

[6] 18 CFR part 358 (2005).

[7] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 113 FERC ¶ 61,190 (2005); EPAct 2005 sections 261 *et seq.*, Pub. L. No. 109–58, 199 Stat. 594 (2005).

[8] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 113 FERC ¶ 61,190 at P 1 and 14.

[9] *Id.* at P 20–22.

[10] *Prohibition of Energy Market Manipulation*, Order No. 670, 71 FR 4244 (Jan. 26, 2006), FERC Stats. & Regs. ¶ 31,202, 114 FERC ¶ 61,047 (Jan. 19, 2006) (Order No. 670).

[11] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, ''Order Revising Market-Based Rate Tariffs and Authorizations,'' Docket No. EL06–16–000, issued February 16, 2006 (Market Behavior Rules Rescission Order).

[12] 18 CFR part 125 (2005).

requirement in part 35 of our regulations. Market Behavior Rule 5's record retention requirement was adopted alongside Market Behavior Rule 2 to permit the Commission and interested entities to better monitor market-based rate sales and to allow the Commission sufficient time for the investigations into possible violations of the Market Behavior Rules. For the same reasons, we think the record retention requirement of Market Behavior Rule 5 is a necessary companion to the new anti-manipulation regulations, which supplanted Market Behavior Rule 2 as the Commission's prohibition of market manipulation.[13]

IV. Regulatory Flexibility Act Certification

17. The Regulatory Flexibility Act of 1980[14] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[15] The Commission is not required to make such analyses if a rule would not have such an effect. The Commission concludes that this Final Rule would not have such an impact on small entities because this Final Rule is merely a procedural codification of rules presently in market-rate based sellers' tariffs. The Final Rule continues to apply only to market-based rate sellers; the content and scope of application of the rules remains unchanged. Therefore, no regulatory flexibility analysis is required. As such, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

V. Information Collection Statement

18. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[16] This Final Rule contains no new or modified information collections, and OMB reviewed the information collections when the Market Behavior Rules were promulgated in November 2003.[17] Therefore, OMB review of this Final Rule is not required.

VI. Environmental Analysis

19. 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.[18] 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 are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[19] This rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

VII. Document Availability

20. 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.

21. From the Commission's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available on eLibrary both 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.

22. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact 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*).

VIII. Effective Date and Congressional Notification

23. These regulations are effective February 27, 2006. The Commission has determined, pursuant to 5 U.S.C. 553(d), that a delayed effective date for this Final Rule is unnecessary. The Commission finds that notice and public procedure are unnecessary for the following three reasons. First, the regulations at issue have already been noticed and commented upon extensively. When the Market Behavior Rules were first proposed in June 2003, 69 parties filed comments, and when the Commission issued a Notice of Proposed Rulemaking in November 2005 seeking comment on whether the Market Behavior Rules should be rescinded, 21 comments and 4 reply comments were filed with the Commission.[20] Second, codification of Market Behavior Rules 1, 3, 4 and 5 presents no substantive change in regulation. The Market Behavior Rules are simply being moved from sellers' tariffs to Commission regulations. The scope and application of the rules, particularly the universe of entities to which the rules apply, remain unchanged rendering their transfer to the Commission's regulations merely procedural. Third, no new burden or regulatory requirement is imposed upon regulated entities or the general public by codification of Market Behavior Rules 1, 3, 4, and 5. For instance, entities that previously filed notifications with the Commission pursuant to Market Behavior Rule 4 (new section 35.37(c)) need not notify the Commission again under this Final Rule. Therefore, based on the foregoing reasons and because there is no change in the rights and obligations of the parties impacted, the Commission finds good cause for waiving the customary 30-day notice period before the effective date of this Final Rule.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements and Uniform System of Accounts.

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[13] When the Commission seeks to impose civil penalties for a violation of the new anti-manipulation rule, a five-year statute of limitations applies. Order No. 670, 114 FERC ¶ 61,047 at P 62–3. This underscores the importance of the record retention requirement. Moreover, in the Market Behavior Rules Rescission Order issued contemporaneously herewith, we propose to extend the record retention period to five years to match this statute of limitations.

[14] 5 U.S.C. 601–612 (2000).

[15] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632 (2000). The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal years did not exceed 4 million MWh. 13 CFR 121.201 (Section 22, Utilities, North American Industry Classification System, NAICS) (2004).

[16] 5 CFR 1320.12.

[17] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003) at P 187–92.

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

[19] 18 CFR 380.4(a)(2)(ii) (2005).

[20] *See Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 103 FERC ¶ 61,349 (2003); *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 113 FERC ¶ 61,190 (2005).

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends part 35, Chapter I, Title 18, Code of Federal Regulations, as follows.

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Subpart H is added to read as follows:

Subpart H—Wholesale Sales of Electric Energy at Market-Based Rates

Sec.
35.36 Generally.
35.37 Market behavior rules.

§ 35.36 Generally.

(a) For purposes of this subpart, seller means any person that has authorization to engage in sales for resale of electric energy at market-based rates under section 205 of the Federal Power Act.

(b) The provisions of this subpart apply to all sellers authorized to make sales for resale of electric energy at market-based rates, unless otherwise ordered by the Commission.

§ 35.37 Market behavior rules.

(a) *Unit operation.* Where a seller participates in a Commission-approved organized market, seller will operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable power market. Seller is not required to bid or supply electric energy or other electricity products unless such requirement is a part of a separate Commission-approved tariff or is a requirement applicable to seller through seller's participation in a Commission-approved organized market.

(b) *Communications.* Seller will provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers, unless seller exercises due diligence to prevent such occurrences.

(c) *Price reporting.* To the extent seller engages in reporting of transactions to publishers of electricity or natural gas price indices, seller shall provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the Policy Statement issued by the Commission in Docket No. PL03–3–000 and any clarifications thereto. Unless seller has previously provided the Commission with a notification of its price reporting status, seller shall notify the Commission within 15 days of the effective date of this regulation whether it engages in such reporting of its transactions. Seller must update the notification within 15 days of any subsequent change in its transaction reporting status. In addition, Seller must adhere to such other standards and requirements for price reporting as the Commission may order.

(d) *Record retention.* Seller must retain, for a period of three years, all data and information upon which it billed the prices it charged for the electric energy or electric energy products it sold pursuant to seller's market-based rate tariff, and the prices it reported for use in price indices.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 41, 158, 286 and 349

[Docket No. RM06–2–000; Order No. 675]

Procedures for Disposition of Contested Audit Matters

Issued February 17, 2006.

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 expand due process for certain audited persons who dispute findings or proposed remedies contained in draft audit reports.

DATES: *Effective Date:* This Final Rule will become effective March 29, 2006.

FOR FURTHER INFORMATION CONTACT: John Kroeger, Office of Market Oversight and Investigations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8177, *John.Kroeger@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly

I. Introduction

1. The Final Rule expands the procedural rights of persons subject to audits conducted by Commission staff under the Federal Power Act (FPA),[1] the Natural Gas Act (NGA),[2] the Natural Gas Policy Act of 1978 (NGPA)[3] and the Interstate Commerce Act (ICA).[4] Under current practice, audited persons who disagree with non-financial audit matters approved by the Commission must seek rehearing of that order. Under the Final Rule, such audited persons may elect to file briefs with the Commission, or, in appropriate circumstances, participate in a trial-type hearing to challenge audit matters before the Commission makes its decision on the merits. This revised procedure affords enhanced due process to audited persons who disagree with the findings or proposed remedies suggested by audit staff.[5]

2. Under the Final Rule, following completion of the audit process, the Commission will issue an order on the merits with respect to non-disputed audit matters contained in a notice of deficiency, audit report, or similar document, and will notice, without making any findings on the merits, any disputed audit matters. The audited person may then elect a shortened procedure[6] or a trial-type procedure to challenge the disputed audit matters. The Commission would honor this election unless the Commission determines that there are no material facts in dispute which require a trial-type proceeding.

3. As set forth in further detail below, twelve companies filed initial comments[7] and four companies filed

[1] 16 U.S.C. 791a *et seq.* (2000).

[2] 15 U.S.C. 717 *et seq.* (2000).

[3] 15 U.S.C. 3301 *et seq.* (2000).

[4] 49 U.S.C. App. 1 *et seq.* (2000).

[5] As explained below, the Final Rule does not apply to audits pertaining to reliability that the Commission authorized in Order No. 672, *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Docket No. RM05–30–000, 114 FERC ¶ 61,104 (February 2, 2006) (ERO Audits).

[6] The term ''shortened procedure'' as used in the Final Rule and the accompanying regulatory text refers to a ''paper hearing'' or briefing of matters only, and it does not include a trial-type hearing.

[7] The entities filing initial comments in this proceeding (initial comments) were Ameren Services Company (Ameren); American Public Gas

reply comments[8] to the Notice of Proposed Rulemaking (NOPR) which the Commission issued in this docket.[9] In response to the comments, and as discussed more fully below, the Commission, among other things: Clarifies the scope of application of the Final Rule; addresses the role of interested persons in the proposed procedures; discusses informal procedures for resolving disputed audit matters between audited persons and the Commission's audit staff; and addresses comments that pertain to implementation issues and audit practices and other matters that underlie the procedures in the Final Rule.

4. In response to the filed comments, the Commission finds that a change to the proposed regulatory text is warranted to permit an audited person who has elected the shortened procedure to file a motion with the Commission for a trial-type proceeding in circumstances where a party has raised one or more new issues in the shortened procedure. In addition, three minor changes to the wording of the proposed regulatory text are warranted: (1) Clarifying that an audited person[10] may challenge, using the procedures set forth in the Final Rule, either one or more audit findings, or one or more proposed remedies, or both, in any combination; (2) specifying the number of days an audited person has to notify the Commission of its election of shortened procedures or a trial-type hearing and the number of days to file memoranda under the shortened procedure; and (3) deleting reference to Standards of Conduct or Codes of Conduct in section 349.1, which pertains to oil pipeline companies.

II. Background

5. On October 20, 2005, the Commission issued an NOPR to apply existing procedures for challenging the Commission staff's financial audit findings and proposed remedies to all Commission staff audits, including operational audit findings and proposed remedies. Pursuant to section 309 of the FPA,[11] section 16 of the NGA,[12] sections 20 and 204(a)(6) of the ICA[13] and section 501 of the NGPA,[14] the Commission proposed to amend part 41 under Subchapter B, part 158 under Subchapter E and part 286 under Subchapter I, and to add a part 349 under Subchapter P, to Title 18 of the Code of Federal Regulations. Under the proposed regulations, an audited person would be able to challenge staff audit findings and proposed remedies (collectively, audit matters) before the issuance of a Commission order on the merits of those audit matters.

6. As explained in the NOPR, relevant portions of the existing language of parts 41 and 158 of the Commission's regulations that relate to procedures for challenging audit matters date at least to 1937.[15] Those regulations address audits of financial matters. In more recent years, the Commission has expanded the scope of its audits to determine compliance with the Commission's Standards of Conduct,[16] Open Access Transmission Tariff requirements, and Codes of Conduct, among other requirements. The Final Rule will provide the enhanced procedures long applicable to financial audits to all audits, other than ERO Audits, conducted by the Commission or its staff.

III. Discussion

7. The 12 initial comments and four reply comments were overwhelmingly supportive of the Commission's efforts to provide a more complete and expansive procedure for persons subject to non-financial audits. We first address comments that identified issues pertaining to the primary scope of the proposed rule: (1) The role of interested persons; (2) appropriate informal procedures; and (3) the application of the proposed regulations to reliability audits. Next, we address comments suggesting changes to the proposed regulatory text. Finally, we address comments regarding the conduct of audits and related matters. Although these comments are beyond the scope of the issues set forth in the NOPR, the Commission believes that a discussion of these comments will add clarity to the agency's enforcement program.

A. The Role of Interested Entities

8. The proposed rule states that ''any other interested entities'' may submit memoranda in the shortened procedure. Similarly, the existing rule makes provision for filing by ''any other parties interested.''

1. Comments

9. Several commenters address whether anyone other than the audited person and the Commission staff should be able to file memoranda in the shortened procedure. For example, EEI comments that neither the proposed rule nor the Commission's regulations define the term ''any other interested entities.'' EEI asserts that historically only utility customers have intervened in contested proceedings concerning financial audits. EEI states that operational audits, in most cases, do not present rate implications, and that therefore there is no reason to permit other interested entities to file memoranda in the shortened procedure in matters involving operational audits. EEI also expresses the concern that an entity other than the audited person or Commission staff that files a memorandum in the shortened procedure could arguably be entitled to obtain in discovery non-public information pertaining to the underlying audit. EEI further seeks clarification regarding whether an interested entity may appeal the findings of an operational audit.[17]

10. The Indicated New York Transmission Owners likewise comment that the Commission should clarify the role of ''other interested persons'' in the contested audit proceeding.[18] Ameren comments that allowing interventions would jeopardize the controlled and confidential process that has traditionally allowed audited persons and the Commission staff to address compliance issues.[19] INGAA expresses the concern that, because any interested person could intervene in the shortened procedure and raise new facts or allegations or proposals for new remedies, an audited person should be

Association (APGA); American Public Power Association (APPA); American Transmission Company LLC (ATC); Association of Oil Pipe Lines (AOPL); Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation (Indicated New York Transmission Owners); Edison Electric Institute (EEI); Interstate Natural Gas Association of America (INGAA); LG&E Energy LLC (LG&E); Midwest ISO Transmission Owners; Public Service Company of New Mexico and Texas-New Mexico Power Company (PNM–TNMP); and Williston Basin Interstate Pipeline Company (Williston Basin).

[8] The entities filing reply comments in this proceeding (reply comments) were APGA; EEI; INGAA; and Williston Basin.

[9] *Procedures for Disposition of Contested Audit Matters,* 70 FR 65866 (Nov. 1, 2005); IV FERC Stats. & Regs., Proposed Regulations ¶ 32,592 (2005).

[10] The term ''person'' as used in the NOPR and in the Final Rule and the accompanying regulatory text is the same as the definition of person found in parts 101 (Definition 24) and 201 (Definition 27) of the Commission's regulations, which define ''person'' as follows: ''An individual, a corporation, a partnership, an association, a joint stock company, a business trust, or any other organized group of persons, whether incorporated or not, or any receiver or trust.''

[11] 16 U.S.C. 825h (2000).

[12] 15 U.S.C. 717o (2000).

[13] 49 U.S.C. App. 20 and 204(a)(6) (2000).

[14] 15 U.S.C. 3411 (2000).

[15] *See* Federal Power Commission, Rules of Practice and Regulations 301(a) (Revised Jan. 1, 1937).

[16] *See* 18 CFR part 358 (2005).

[17] EEI initial comments at 16–17.

[18] Indicated New York Transmission Owners initial comments at 3–4.

[19] Ameren initial comments at 3–4.

able to change its election from shortened procedure to trial-type proceeding for good cause shown in light of any new issues raised.[20] Finally, APGA comments that an interested entity should be able to participate in the decision of whether a shortened procedure or a trial-type hearing will be used to determine contested audit matters, and that the rights of interested entities should be strengthened.[21]

2. Commission Determination

11. In this Final Rule, as is now the case in financial audits, the Commission will permit other interested entities to file memoranda in the shortened procedure. An entity other than the audited person may have an interest in the outcome of the contested audit proceeding and may have information about the audited person's operations or proposed remedy that would inform the Commission's determination regarding the contested issue. The Commission will use the same standard for permitting interested entities to file memoranda in the shortened procedure as it uses to permit interventions in other proceedings.[22] In addition, an interested entity may include in its initial memorandum filed pursuant to the shortened procedure a motion to intervene in the proceeding.[23]

12. The Final Rule defines the shortened procedure as consisting of the filing of two rounds of memoranda, and thus there will be no opportunity in this procedure for any interested entity to use the discovery process to obtain information from the audited person.[24] By permitting interested entities to file memoranda in the shortened procedure, the Commission is not affecting the non-public conduct of the audit that includes communications between the audited person and the Commission staff regarding compliance issues. The interested entity that files memoranda in the shortened procedure will have access only to publicly available filings and not to any non-public communications.

13. The Commission adopts in part INGAA's suggestion that an audited person be permitted to change its election of the shortened procedure in favor of a trial-type procedure for good cause shown after an interested entity files a memorandum in the shortened procedure that raises a new matter. Within 20 days after the last date that reply memoranda under the shortened procedure may be timely filed, the audited person who elected the shortened procedure may file a motion with the Commission requesting a trial-type hearing if new issues are raised by a party. To prevail in such a motion, the audited person must show that a party to the shortened procedure raised one or more new issues of material fact relevant to resolution of a matter in the shortened procedure such that fundamental fairness requires a trial-type hearing to resolve the new issue or issues so raised. Parties to the shortened procedure and the Commission staff may file responses to the motion. In ruling upon the motion, the Commission may determine that some or all of the issues be litigated in a trial-type hearing. Further, the Commission can also set a matter for hearing *sua sponte*, if warranted.

14. The Commission declines to adopt APGA's suggestion that the Commission permit an interested entity to participate in the initial election of the shortened procedure or the trial-type hearing. The election belongs to the audited person. The election provides the audited person a voice in how it may contest audit findings with which it disagrees. We conclude that the best approach is to permit the audited person to make the election for the shortened procedure or the trial-type election alone, subject to the requirement, as stated in the proposed rule, that the Commission will honor that election except when there are no material facts in dispute requiring a trial-type hearing.

B. Informal Procedures

15. In the NOPR, the Commission invited public comments on whether the Commission should also provide informal procedures before proceeding with the formal procedures contained in the NOPR.[25]

1. Comments

16. A number of commenters express support for the continuation of informal contacts between the audit staff and the audited person during the course of the audit and up to the point where the audited person informs audit staff in writing that the audited person contests one or more audit findings or proposed remedies.[26] Commenters also provide suggestions for additional informal procedures. EEI urges the Commission to provide for a mechanism by which the audited company may raise a concern with the management of the audit staff. EEI further states that it would support an additional informal procedure to resolve disputes after an audit concludes but before the shortened procedure or the trial-type hearing begins.[27] Ameren comments in favor of an additional informal procedure that would provide the audited person an opportunity to review draft audit findings and discuss those findings with audit staff.[28] Williston Basin comments that an informal audit conference would allow the audited person to resolve issues without incurring the expense of more formal procedures.[29] APGA notes the ''long-standing practice'' of the audit staff engaging in informal contacts and discussions with audited persons, but requests that the Commission explicitly state that only formal contacts may occur between the audit staff and the audited person with respect to the substance of any audit.[30]

2. Commission Determination

17. The Commission agrees with the commenters that asserted that informal discussions between the audited person and audit staff are useful and should continue where they are appropriate. Nothing in the Final Rule is intended to discourage these informal contacts. While it is not clear precisely what APGA means by ''formal contacts,'' requiring such contacts, as APGA suggests, would unduly impede the flow of communication between audit staff and an audited person that is essential to understand company records and the Commission therefore rejects this suggestion.

18. The Commission also does not see a compelling need to establish a specific informal procedure. An audited person may request to speak with management of the audit staff at any time during an audit up to the time that it indicates in writing that it contests specified findings or proposed remedies.[31] An audited person may contact management of the audit staff directly or through the audit staff. Informal resolution of issues that arise in audits is in the public interest. Furthermore, a specific informal procedure is not necessary to provide an audited person

[20] INGAA initial comments at 2–3.

[21] APGA initial comments at 4.

[22] *See* 18 CFR 385.214(b) (2005).

[23] If an interested entity is granted intervention, that entity will obtain party status with all the ensuing rights and responsibilities of a party.

[24] With respect to discovery in a trial-type proceeding conducted pursuant to the Final Rule, the applicable standards under part 385 of the Commission's regulations will apply. The presiding administrative law judge will rule on discovery procedures and motions as in other contested hearings.

[25] NOPR at P 11.

[26] *See* EEI initial comments at 20–21; LG&E initial comments at 3.

[27] EEI initial comments at 21.

[28] Ameren initial comments at 7.

[29] Williston Basin initial comments at 3–4.

[30] APGA initial comments at 3.

[31] For an explanation of how staff conducts an audit, see *http://www.ferc.gov/legal/maj-ord-reg/land-docs/order2004/resources.asp.*

an opportunity to comment on a draft audit report. Under the audit staff's current practice, at the end of the audit process the audit staff provides an audited person a draft audit report for review and comment. Audit staff considers these comments and discusses them with the audited person. Finally, an audited person is routinely provided an audit conference at the end of the audit process to try to resolve disputed issues or clarify points that the audited person believes are not clear. At this ''wrap-up'' conference, the audited person may discuss with the audit staff and its management proposed audit findings and proposed remedies, as well as information provided to staff in the audit and the application of that information to applicable law.[32] The wrap-up conference is similar to the meeting that EEI described in its comments. The availability of a wrap-up conference ensures that the questions and concerns of audited persons are meaningfully addressed and obviates the need for the Commission to promulgate a specific informal procedure.

C. Reliability Audits

1. Comments

19. Two commenters ask whether the proposed rule would apply to reliability audits.[33]

2. Commission Determination

20. The Final Rule will apply to all audits conducted by Commission staff except for ERO Audits. A little background regarding ERO Audits will provide useful context. Order No. 672 was promulgated under the authority of the Energy Policy Act of 2005 (EPAct 2005).[34] Section 1211 of the EPAct 2005 amended the FPA by adding a new section 215 on electric reliability. FPA section 215(e) establishes an Electric Reliability Organization (ERO) with authority to impose a penalty under certain circumstances on a user, owner or operator of the bulk-power system for violation of a reliability standard approved by the Commission. FPA section 215(e) also authorizes the Commission, on its own motion or upon complaint, to order compliance with a reliability standard and to impose a penalty against a user or owner or operator of the bulk-power system.

21. Any audit or review of compliance with reliability standards conducted by an ERO will, by definition, not be an audit conducted by the Commission. Accordingly, the procedures set forth in the Final Rule will not apply to audits or compliance reviews conducted by an ERO. In addition, audits that are expressly conducted by the Commission staff pursuant to the provisions of Order No. 672 will not be subject to the procedures contained in the Final Rule. The Commission is excluding ERO Audits from the scope of the Final Rule because aspects of the Commission's program with respect to such audits remain to be determined. The Commission may reconsider this decision after an ERO is certified.

D. Right To Challenge Audit Findings or Proposed Remedies

1. Comments

22. Ameren and EEI point out that in the NOPR the Commission referred to audit findings and proposed remedies collectively as audit matters and seeks assurance that an audited person may use the procedures set forth in the proposed regulations to challenge either an audit finding, or a proposed remedy, or both.[35]

2. Commission Determination

23. A situation may occur in which an audited person does not challenge a finding that it violated a Commission requirement, but the audited person does not agree with the remedial measure associated with the finding. In this situation, the audited person may wish to challenge the audit report, deficiency report, or other document with respect to the proposed remedy alone. The NOPR did not clearly specify that an audited person may challenge just the proposed remedy. The Commission clarifies that an audited person may do so, and the regulatory text is modified accordingly to clearly state that an audited person may challenge one or more audit findings, or one or more proposed remedies, or both, in any combination.

E. Time Frames

1. Comments

24. EEI notes that under the proposed section 41.1, the Commission shall provide the audited person a specified number of days to respond with respect to disputed audit matters. EEI also notes that the Commission did not specify the number of days in section 41.3 that an audited person will have to file memoranda pursuant to the shortened procedure. EEI urges that the Commission specify in sections 41.1 and 41.2 that an audited person shall have 30 days to respond to a Commission order that notes, but does not address on the merits, one or more disputed findings or proposed remedies. EEI also urges that the Commission specify in section 41.3 that initial memoranda be filed within 45 days and that reply memoranda be filed 20 days later.[36]

2. Commission Determination

25. The Commission accepts EEI's recommended changes with respect to the noted time limits for filings. The existing section 41.1 does not specify a time period for an audited person to respond to the Commission with respect to a noticed finding or proposed remedy with which he or she may disagree. Specifying the number of days for the noted filings will promote certainty. Therefore, the Commission will change the regulatory text to indicate the number of days for making the noted filings.[37] Specifically, section 41.1 will indicate that an audited person will have 30 days to respond with respect to a disputed audit matter. Section 41.3 will indicate that initial memoranda must be filed within 45 days and reply memoranda must be filed 20 days later.[38]

F. Excision of Certain References in Part 349

1. Comments

26. AOPL notes that the proposed section 349.1, which would apply to oil pipelines, provides that an audit may result in findings that an audited person has not complied with the Commission's requirements under the Standards of Conduct or the Code of Conduct, and that these requirements do not apply to oil pipelines.[39]

2. Commission Determination

27. The referenced requirements do not apply to oil pipelines. Accordingly, to avoid confusion, the Commission shall excise the phrase ''matters under the Standards of Conduct or the Code of Conduct'' from the regulatory text of section 349.1 in the Final Rule.

[32] Audit staff will provide the audit report, notice of deficiency or similar document before it is made public. The wrap-up conference is also described on the Commission's Web site at *http://www.ferc.gov/legal/maj-ord-reg/land-docs/order2004/resources.asp.*

[33] *See* EEI initial comments at 19–20; and Indicated New York Transmission Owners initial comments at 4.

[34] Public Law 109–58, 119 Stat. 594 (2005).

[35] Ameren initial comments at 7–8; EEI initial comments at 17–18.

[36] EEI initial comments at 18. AOPL also advocated that specific filing time periods be provided. AOPL initial comments at 2–3.

[37] Under the Commission's existing authority, it retains the right to modify the time limits in appropriate circumstances.

[38] Conforming changes are made in 18 CFR 158.1, 158.3, 286.103, 286.105, 349.1 and 349.3.

[39] AOPL initial comments at 3.

G. The Commission May Take ''Other Action''

1. Comments

28. Williston Basin requests that the Commission remove the phrase ''or taking other action'' from proposed sections 41.2, 158.2, 286.104 and 349.2 because it appears to give the Commission the opportunity to change the findings or proposed remedies or possibly to take other action inconsistent with the original findings and proposed remedies. The relevant language reads as follows: ''Upon issuance of a Commission order that notes a finding or findings, with or without proposed remedies, with which the audited person has disagreed, the audited person may: Acquiesce in the findings and proposed remedies by not timely responding to the Commission order, in which case the Commission may issue an order approving them or taking other action * * *.''

2. Commission Determination

29. The Commission declines to remove the words ''or taking other action'' as Williston Basin requests. These words are needed to permit the Commission flexibility to decline to adopt the finding or findings or proposed remedy or remedies to which the audited person acquiesced by not timely filing the required document. The Commission may revise an audit report even where there is no party challenging the contents of that report because the Commission must always discharge its obligation to act consistent with the public interest according to its statutory authority.[40] An audited person who believes it is aggrieved by a Commission order that changes an audit report in the circumstances Williston Basin describes may seek rehearing of the Commission order.

H. Other Issues

30. A number of commenters assert that a lack of clear rules causes them to be surprised by new and changing regulatory requirements. Despite good faith attempts at compliance, these commenters state, they are subject to a ''gotcha'' approach to auditing that forces them to meet ''moving target'' requirements. As noted above, while these and similar comments regarding the audit process are outside the scope of the proposed rule, the Commission believes that addressing them will provide greater clarity to the agency's enforcement program.

1. Precedential Value of Audit Findings

a. Comments

31. Several commenters ask the Commission to clarify whether audit reports, settlements and orders on contested audit matters constitute binding precedent for non-parties. EEI states that the Commission must provide an opportunity for comment with respect to any requirement set forth in an audit report, settlement or order on a contested audit matter that the Commission proposes to make generally applicable.[41] APGA asks the Commission to explain the precedential value of an audit finding.[42] Ameren urges that if the Commission seeks to impose requirements or remedies imposed in an individual audit proceeding on the regulated community in general, the Commission should proceed by a separate generic proceeding that provides notice to the public and the opportunity to comment.[43] PNM–TNMP comments that the settlement of an audit or investigation should not have precedential effect except as to the settling entity.[44]

b. Commission Determination

32. Unless the Commission expressly states it is making findings that apply to other parties, an audit report and a Commission order approving an uncontested audit report are not binding on entities other than the audited person or persons who agreed not to contest the audit report that the Commission approved. To this extent, such an order, like an order approving an uncontested settlement, does not have precedential value.[45] The Commission routinely makes this point in orders it issues approving stipulation and consent agreements in part 1b investigations.[46] An uncontested audit report is similar to a stipulation and consent agreement to the extent that the audited person consents to the contents of the audit report. By contrast, a Commission order to resolve a contested matter does have precedential effect.[47] An audited person that selects the shortened procedure or the trial-type hearing to resolve a dispute regarding an audit staff finding or remedy is participating in a contested, on-the-record proceeding, and, like any other such proceeding before the Commission, the legal reasoning and conclusions of the resulting order apply to non-parties. The Commission has substantial discretion to establish rules of general application by adjudication and need not necessarily employ a separate generic proceeding.[48]

2. Cooperation With Audit Staff

a. Comments

33. Some commenters ask the Commission to clarify a number of issues regarding cooperation of audited persons. EEI asserted that it should not be considered a lack of cooperation for a company being audited to seek to narrow the scope of information requests. EEI requests that the Commission clarify whether the discussions with staff of this nature

[40] For this reason, the Commission may revise or reject an uncontested settlement. *See Panhandle Eastern Pipe Line Company,* 95 F.3d 62, 64 (D.C. Cir. 1996) (''[W]e have held that the Commission should approve an uncontested settlement 'only upon a finding that the settlement appears to be fair and reasonable and in the public interest.' '' (Citation omitted.)); *Alternative Dispute Resolution,* Order No. 578, 60 FR 19494 (Apr. 19, 1995), *FERC Stats. & Regs.* ¶ 31,018 at 31,331 (1995) (''[T]he Commission may refashion an uncontested settlement to comport with the public interest * * *.''); *Carolina Power & Light Company*, 51 FERC ¶ 61,403 (1990) (The Commission rejected a provision of an uncontested settlement).

[41] EEI initial comments at 6–7.

[42] APGA initial comments at 3.

[43] Ameren initial comments at 3.

[44] PNM-TNMP initial comments at 3.

[45] *See, e.g., United Municipal Distributors Group* v. *FERC,* 732 F.2d 202, 207 n. 8 (D.C. Cir. 1984) (''The Commission's regulations thus permit it to approve uncontested offers of settlement without a determination on the merits that the rates approved are 'just and resonable.' The Commission's approval of an uncontested settlement has no precedential value as settled practice.''); *New York Power Authority,* 105 FERC ¶ 61,102 at P 87 (2003) (''It is well established that settlements have no precedential value.''). *See also Kelley* v. *FERC,* 96 F.3d 1482, 1490 (D.C. Cir. 1996) (collecting cases).

[46] *See. e.g., The Willliams Companies,* 111 FERC ¶ 61,392 at 62,651 (2005) (''The Commission's approval of the Agreement does not constitute precedent regarding any principle or issue in any proceeding.'').

[47] *See, e.g., Enbridge Pipelines (KPC),* 102 FERC ¶ 61,310 at n. 74 (2003) (a Commission order approving a contested settlement is a legal precedent of the Commission).

[48] *NLRB* v. *Bell Aerospace Corp.,* 416 U.S. 267, 294 (1974) (''[A]djudicative cases may and do serve as vehicles for the formulation of agency policies.''); *SEC* v. *Chenery Corp.,* 332 U.S. 194, 203 (1947) (''[T]he choice made between proceeding by general rule or by individual, *ad hoc* litigation is one that lies primarily in the informed discretion of the administrative agency.''); *Michigan-Wisconsin Pipeline Co.* v. *FPC,* 520 F.2d 84, 89 (D.C. Cir. 1975) (''[T]here is no question that the Commission may attach precedential and even controlling weight to principles developed in one proceeding and then apply them under appropriate circumstances in a stare decisis manner.''); *Pacific Gas and Electric Co.* v. *FPC,* 506 F.2d 33, 38 (D.C. Cir. 1974) (''[A]gency may establish binding policy through rulemaking procedures * * * or through adjudications which constitute binding precedents.''); *AEP Power Marketing, Inc.,* 108 FERC ¶ 61,026 at P 187 (2004) (''Our decision to establish new policy in the context of case-specific proceedings is clearly within our authority.''); *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 103 FERC ¶ 61,349 at P 51 (2003) (''The Commission, moreover, is not limited to notice and comment rulemaking to develop policy. Agencies generally are permitted considerable discretion to choose whether to proceed by rulemaking or by adjudication.'').

would indicate a lack of cooperation.[49] EEI and Ameren also ask the Commission to clarify that it does not demonstrate a lack of cooperation to assert the attorney-client privilege in good faith.[50]

b. Commission Determination

34. On October 20, 2005, the Commission issued a policy statement to provide guidance and regulatory certainty regarding the agency's enforcement of the statutes, orders, rules and regulations it administers.[51] The Policy Statement addressed the factors the Commission will take into account in determining remedies for violations, including applying the enhanced civil penalty authority provided by EPAct 2005. The Commission stressed that one of these factors would be cooperation, which was discussed in a general sense [52] and described with respect to specific factors.[53] The Commission also addressed qualitative factors, such as wholehearted cooperation and cooperation with respect to certain aspects yet not with others.[54] In addition, the Commission listed conduct that would indicate a lack of cooperation.[55]

35. In sum, the Policy Statement set forth that the Commission expects cooperation, that the Commission will give consideration to exemplary cooperation, *i.e.*, ''cooperation which quickly ends wrongful conduct, determines the facts, and corrects a problem,'' [56] and that a lack of cooperation would be weighed in deciding appropriate remedies for non-compliance.[57] The Commission did not suggest that efforts by an audited person taken in good faith to resolve issues that arise in the course of an audit would be construed as evidence of non-cooperation. Where an audited person believes that data requests create a substantial burden that could be relieved by limiting the scope of the request, by the audited person providing other information that would achieve the same purpose, or by some other resolution that would satisfy audit staff, an audited person is not failing to cooperate if it suggests changes to, or narrowing of, the data requests. Similarly, an audited person who appropriately interposes the attorney-client privilege will not be considered non-cooperative. However, the interposition of the privilege where it does not apply and that is designed to frustrate audit staff's efforts to obtain information could be evidence of non-cooperation.

3. Public Treatment of Contested Audit Matters

a. Comments

36. Two commenters ask the Commission to keep information regarding contested audit matters confidential. Ameren asserts that the Commission should ensure that all contested audit proceedings remain completely confidential until a final Commission determination has been made. Ameren also asks the Commission to clarify that, if an audited company challenges any of the audit staff's proposed findings under the contested audit procedures, the Commission not issue a notice or other statement releasing any proposed staff findings or remedies to the public. Instead, Ameren urges that any additional paper or formal hearing procedures on the contested audit findings should be kept confidential until a final determination is made by the Commission. Ameren notes that the public release of proposed remedies could have an immediate and harmful impact on the audited person's stock price or credit rating.[58] Williston Basin asks the Commission to clarify that the notice setting a schedule for the filing of memoranda be non-public.[59]

b. Commission Determination

37. All Commission issuances regarding the resolution of contested audit matters under the Final Rule will be public. A brief statement of the relevant processes under the Final Rule at this juncture will help inform this discussion. In instances in which the audited person and the audit staff are unable to agree upon the findings and proposed remedies contained in a draft audit report, the following steps occur:

- The audited person may provide in writing to the audit staff a response to the draft audit report indicating any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees.
- The audit staff communicates this response to the Commission along with the proposed final audit report. At this point, the Commission may direct the audit staff to undertake further analysis, obtain further information from the audited person, or take other action. The audited person's response indicating disputed findings or proposed remedies becomes public when the audit report becomes public, *i.e.*, at the time the Commission issues an order on the merits of the final audit report.
- The Commission may make determinations on the merits in a public order with respect to the findings and proposed remedies contained in the audit report that are not in dispute and will publicly notice the disputed items. The order will not constitute final agency action with respect to the disputed items and will provide the audited person the opportunity to elect in writing the shortened procedure (submission of briefs) or the trial-type hearing by a date certain.
- If the audited person does not respond within 30 days to the notice, the Commission may issue an order on the merits regarding the noticed items. Alternatively, the audited person may timely respond to the notice in a public filing by electing in writing the shortened procedure or the trial-type hearing.
- If the audited person makes a timely election, the Commission will honor the election (unless a trial-type proceeding is chosen and there are in the Commission's judgment no disputed issues of material fact requiring a trial-type hearing) and issue a public notice setting the schedule for submission of memoranda, in the case of the shortened procedure, or referring the matter to the Chief Administrative Law Judge, in the case of the trial-type hearing.

38. The Commission is aware that noticed findings or proposed remedies may have financial consequences for an audited person. The public has an appropriate interest, however, in seeing the Commission's resolution of disputed, jurisdictional matters before it. Regulated companies may need to be aware of Commission determinations regarding disputed audit matters to comply with Commission requirements. Further, the Commission must publicly notice the disputed audit findings or proposed remedies to provide potential interested parties an opportunity to determine whether to participate in the contested audit procedures. The audited person's response and the Commission's notice establishing a briefing schedule or beginning a trial-type hearing must also be public to enable potential interested parties to participate in the proceeding. Nevertheless, audited persons may seek to file proprietary materials with a request for confidential treatment under section 388.112 of the

[49] EEI initial comments at 12–14.

[50] EEI initial comments at 14; Ameren initial comments at 5.

[51] *Enforcement of Statutes, Orders, Rules, and Regulations,* 113 FERC ¶ 61,068 (2005).

[52] 113 FERC ¶ 61,068 at n.2.

[53] *Id.* at P 26.

[54] *Id.* at P 27.

[55] *Id.*

[56] *Id.* at P 26.

[57] *Id.* at P 26–27.

[58] Ameren initial comments at 5–6.

[59] Williston Basin initial comments at 6.

Commission's regulations.[60] Parties appearing before the Commission and its administrative law judges may also seek protective orders to protect the confidentiality of information. These methods of keeping information non-public are adequate for the purposes of the Final Rule.

4. Applicability of part 1b of the Commission's Regulations to Audits

a. Comments

39. Three commenters request clarification regarding the role that part 1b of the Commission's regulations plays in audits.[61] These commenters ask the Commission to clarify that any new rule will not modify existing protections regarding investigations that are provided in part 1b of the Commission's regulations.[62]

40. In addition, EEI states that audited persons are uncertain as to whether the operational audits constitute part 1b investigations or whether part 1b investigations are separate and apart from the operational audits and the proposed procedures. EEI asserts that if audits are not conducted pursuant to part 1b, the Commission must establish procedures that define the rights of an audited person. In particular, EEI claims that new procedures are needed to both ensure the confidentiality of the audited person's proprietary or otherwise sensitive information during an audit and when the audited person contests the findings or remedies proposed by the audit staff. EEI calls on the Commission to issue a policy statement, with an opportunity for public comment, to establish the appropriate relationship between the audit staff and the enforcement staff during an audit, consistent with separations of functions requirements.[63] EEI also seeks clarification regarding when audit staff may communicate with an audited person's employees without an attorney present and how the right to have an attorney present changes during the audit process, shortened and trial-type procedures, and part 1b investigations.[64]

41. INGAA also asks the Commission to clarify whether audits are conducted under part 1b of its regulations.[65] In addition, Ameren asks the Commission to confirm that any new rule resulting from the NOPR will not modify existing confidentiality protections that are provided in part 1b.[66]

b. Commission Determination

42. Although not directly related to this rulemaking proceeding, we address the concerns about the role of investigations with respect to audits as part of the Commission's recent efforts to clarify its enforcement program. Investigations and audits are distinct methods the Commission uses to determine and address compliance with its requirements. Part 1b applies to investigations and not to audits.[67] Audits are conducted pursuant to the authority conferred in FPA section 301,[68] NGA section 8,[69] NGPA section 504 [70] and ICA sections 20 and 204(a)(6).[71] The Commission's audit staff routinely informs the subject of an audit in an initial letter that an audit has commenced pursuant to specific statutory authority. Similarly, the Commission's enforcement staff routinely informs the subject of an investigation in an initial letter that an investigation has commenced pursuant to part 1b of the Commission's regulations. The Commission's practice is that audits begin with issuance of a public commencement letter and end with issuance of a public audit report. By contrast, investigations undertaken pursuant to part 1b begin and end without notice to the public, unless the Commission orders otherwise. The Final Rule will not affect investigations conducted under part 1b.

43. It is not necessary, as EEI asserts, for the Commission to establish new procedures that define the rights of audited persons to ensure the confidentiality of the audited person's sensitive information. Audited persons provide information to the audit staff on a non-public basis. In that regard, the FPA specifies that ''[n]o member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts, as hereinbefore provided, except insofar as he may be directed by the Commission or by a court.'' [72]

44. No new procedures are required to establish the relationship between audit staff and enforcement staff. Information obtained in an audit may be shared with Commission staff conducting a related investigation.[73] This sharing is appropriate to effectively enforce compliance with the Commission's rules and regulations. This sharing of information promotes efficiency; it would be pointless to require an audited person to produce the same information twice. Further, the knowledge that an audit may lead to an investigation should encourage entities subject to the Commission's jurisdiction to volunteer the existence of violations and to cooperate to the maximum extent practicable to expose and remedy misconduct promptly.[74]

45. The Commission has explained that the same person on its staff may perform more than one function ''provided (1) such combination enhances the Commission's understanding of energy markets and related issues; and (2) parties in individual proceedings appear to and actually receive a fair and impartial adjudication of their claims.'' [75] The Commission has further specified that ''[u]nless an investigator is assigned to serve as a litigator, she may freely speak to persons inside the Commission about an investigation * * *.'' [76] The same observation holds true for an auditor, or, indeed, for a person on Commission staff who works on audits and investigations. Prior to a matter becoming an on-the-record proceeding, *i.e.*, while it is still an audit or investigation, the separations of functions rule set forth in section 2202 of the Commission's Rules of Practice and Procedure [77] does not apply.[78] Of course, if the Commission permits an interested entity to intervene in the shortened procedure with respect to a disputed issue, the Commission's *ex parte* rule would apply.[79]

46. Finally, with respect to EEI's request for clarification regarding when an attorney may be present during employee interviews, the Commission

[60] 18 CFR 388.112 (2005).

[61] 18 CFR part 1b (2005).

[62] *See* Ameren initial comments at 7; EEI initial comments at 15; INGAA reply comments at 3–4, 7.

[63] EEI initial comments at 8–11.

[64] EEI initial comments at 11.

[65] INGAA reply comments at 3–4, 7.

[66] Ameren initial comments at 7.

[67] 18 CFR 1b.2 (2005).

[68] 16 U.S.C. 825 (2000).

[69] 15 U.S.C. 717g (2000).

[70] 15 U.S.C. 3415 (2000).

[71] 49 U.S.C. App. 20 and 204(a)(6) (2000).

[72] *See* FPA section 301(b), 16 U.S.C. 825(b) (2000). *See also* NGA section 8(b), 15 U.S.C. 717g(b) (2000). The Commission's regulations reiterate that requirement. 18 CFR 3c.2(a) (2005).

[73] *Trans Alaska Pipeline System*, 9 FERC ¶ 61,205 (1979). See also The House Committee Report on the Government in the Sunshine Act, Pub. L. 94–409 (1976), which amended the Administrative Procedure Act, 5 U.S.C. 500 *et seq.* (2000), discussing the scope of *ex parte* prohibitions, states in part that ''[t]he rule forbids *ex parte* communications between interested persons outside the agency and agency decisionmakers * * *. Communications solely between agency employees are excluded from the section's prohibitions.'' 1976 U.S.C.C.A.N. 2183, 2202.

[74] *Enforcement of Statutes, Orders, Rules, and Regulations*, 113 FERC ¶ 61,068 at P 26–27 (2005).

[75] *Separation of Functions*, 101 FERC ¶ 61,340 at P 1 (2002).

[76] *Id.* at P 26.

[77] 18 CFR 385.2202 (2005).

[78] 101 FERC ¶ 61,340 at P 26.

[79] 18 CFR 385.2201 (2005).

agrees that an audited person's employees may have counsel present at any time, during any part of an audit.

5. Best Practices

a. Comments

47. Several commenters express concern about the role of ''best practices'' in the audit process. EEI states that the audit staff has developed and utilized a non-public list of best practices in its audits for Standards of Conduct and Code of Conduct compliance. EEI further states that best practices are not necessarily regulatory requirements and that on a cost-benefits basis, best practices may not be warranted.[80] Ameren states that audit reports have recommended certain best practices for Standards of Conduct compliance even though the actual rules do not require that companies use these practices to comply with the Standards of Conduct.[81] PNM-TNMP states that the audit staff comments and previously issued audit reports should not be a basis for a best practices requirement.[82]

b. Commission Determination

48. The Commission acknowledges that because a practice was successfully implemented by one audited person does not necessarily mean that practice will be a good fit elsewhere. Practices that companies implement to improve compliance may serve as useful references, but they are not binding on others. For example, experience has shown that the taking of minutes at meetings in which transmission function and energy affiliate employees are present may be useful to address and prevent Standards of Conduct violations. However, taking minutes at such meetings is not a requirement. For some audited persons, the presence of a compliance officer may be sufficient, or other measures may be adopted that are equally effective. There is often not a one-size-fits-all response to help ensure compliance. The Commission does not intend to bind all companies to adhere to a remedy that one company may have adopted. A person need only comply with Commission requirements.

49. The staff does not have a non-public list of best practices as EEI suggests. The audit staff, however, has observed a broad array of company practices that address and prevent violations of Commission requirements with varying degrees of effectiveness. Some of these company practices are reflected in Frequently Answered Questions (FAQs) on the Commission's Web site.[83] There, the Commission staff has provided detailed responses to many FAQs about the process and substance of financial and operational audits. These responses include company practices that may be appropriate in some circumstances. They are not, however, intended to be new legal requirements.

6. Audit Cycles

a. Comments

50. LG&E encourages the Commission to consider promulgating audit cycles for most of what LG&E refers to as the Commission's ''standard'' audits. For example, LG&E suggests that compliance with wholesale fuel adjustment clauses might occur on a three-year cycle.[84]

b. Commission Determination

51. The Commission declines to adopt LG&E's suggestion. The audit staff does not necessarily commence audits based on a schedule. The audit staff selects companies and subjects to audit based on a variety of factors.

7. Auditing Standards

a. Comments

52. LG&E encourages the Commission to develop or adopt auditing standards for all audits.

b. Commission Determination

53. The audit staff adheres to auditing standards.[85] The audit staff follows Generally Accepted Government Auditing Standards as prescribed by the Comptroller General of the United States.[86]

IV. Information Collection Statement

54. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[87] The Final Rule does not contain any information collection requirements and compliance with the OMB regulations is thus not required.

V. Environmental Analysis

55. 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.[88] 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 are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[89] The Final Rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

VI. Regulatory Flexibility Act Certification

56. The Regulatory Flexibility Act of 1980[90] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. The Commission certifies that the Final Rule will not have such an impact on small entities. The Final Rule is procedural only, expands due process rights of certain audited persons and does not involve additional filing or recordkeeping requirements or any similar burden. By providing an additional due process opportunity, the Commission has enhanced benefits to small entities.

VII. Document Availability

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

58. From FERC'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.

59. User assistance is available for eLibrary and the FERC's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or

[80] EEI initial comments at 4–6.

[81] Ameren initial comments at 3.

[82] PNM-TNMP initial comments at 3.

[83] *http:/www.ferc.gov/legal/maj-ord-reg/land-docs/stand-cond/stand-cond-faqs.pdf.*

[84] LG&E initial comments at 3–4.

[85] Government Auditing Standards, 2003 Version issued by the Comptroller General of the United States, June 2003.

[86] *http://www.gao.gov/govaud/yb2003.pdf.*

[87] 5 CFR 11320.12 (2005).

[88] Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (Codified at 18 CFR part 380 (2005)).

[89] 18 CFR 380.4(a)(2)(ii) (2005).

[90] 5 U.S.C. 601–612 (2000).

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.reference@ferc.gov*).

VIII. Effective Date

60. These regulations are effective March 29, 2006.

61. The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules does not apply to the Final Rule because the rule concerns agency procedure and practice and will not substantively affect the rights of non-agency parties.

List of Subjects

18 CFR Part 41

Administrative practice and procedure, Electric utilities, Reporting and recordkeeping, Uniform System of Accounts.

18 CFR Part 158

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 286

Administrative practice and procedure, Natural gas, Price controls.

18 CFR Part 349

Administrative practice and procedure, Pipelines.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends parts 41, 158 and 286, and adds part 349, Chapter I, Title 18, of the *Code of Federal Regulations,* as follows:

PART 41—ACCOUNTS, RECORDS, MEMORANDA AND DISPOSITION OF CONTESTED AUDIT FINDINGS AND PROPOSED REMEDIES

■ 1. The authority citation for part 41 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. The heading of part 41 is revised to read as set forth above.

■ 3. Sections 41.1, 41.2 and 41.3 and the undesignated center heading preceding them are revised to read as follows:

Disposition of Contested Audit Findings and Proposed Remedies

§ 41.1 Notice to audited person.

(a) *Applicability.* This part applies to all audits conducted by the Commission or its staff under authority of the Federal Power Act except for Electric Reliability Organization audits conducted pursuant to the authority of part 39 of this chapter.

(b) *Notice.* An audit conducted by the Commission's staff under authority of the Federal Power Act may result in a notice of deficiency or audit report or similar document containing a finding or findings that the audited person has not complied with a requirement of the Commission with respect to, but not limited to, the following: A filed tariff or tariffs, contracts, data, records, accounts, books, communications or papers relevant to the audit of the audited person; matters under the Standards of Conduct or the Code of Conduct; and the activities or operations of the audited person. The notice of deficiency, audit report or similar document may also contain one or more proposed remedies that address findings of noncompliance. Where such findings, with or without proposed remedies, appear in a notice of deficiency, audit report or similar document, such document shall be provided to the audited person, and the finding or findings, and any proposed remedies, shall be noted and explained. The audited person shall timely indicate in a written response any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees. Any initial order that the Commission subsequently may issue with respect to the notice of deficiency, audit report or similar document shall note, but not address on the merits, the finding or findings, or the proposed remedy or remedies, or both, in any combination, with which the audited person disagreed. The Commission shall provide the audited person 30 days to respond with respect to the finding or findings or any proposed remedy or remedies, or both, in any combination, with which it disagreed.

§ 41.2 Response to notification.

Upon issuance of a Commission order that notes a finding or findings, or proposed remedy or remedies, or both, in any combination, with which the audited person has disagreed, the audited person may: Acquiesce in the findings and/or proposed remedies by not timely responding to the Commission order, in which case the Commission may issue an order approving them or taking other action; or challenge the finding or findings and/or any proposed remedies, with which it disagreed by timely notifying the Commission in writing that it requests Commission review by means of a shortened procedure or, if there are material facts in dispute which require cross-examination, a trial-type hearing.

§ 41.3 Shortened procedure.

If the audited person subject to a Commission order described in § 41.1 notifies the Commission that it seeks to challenge one or more audit findings, or proposed remedies, or both, in any combination, by the shortened procedure, the Commission shall thereupon issue a notice setting a schedule for the filing of memoranda. The person electing the use of the shortened procedure, and any other interested entities, including the Commission staff, shall file, within 45 days of the notice, an initial memorandum that addresses the relevant facts and applicable law that support the position or positions taken regarding the matters at issue. Reply memoranda shall be filed within 20 days of the date by which the initial memoranda are due to be filed. Only participants who filed initial memoranda may file reply memoranda. Subpart T of part 385 of this chapter shall apply to all filings. Within 20 days after the last date that reply memoranda under the shortened procedure may be timely filed, the audited person who elected the shortened procedure may file a motion with the Commission requesting a trial-type hearing if new issues are raised by a party. To prevail in such a motion, the audited person must show that a party to the shortened procedure raised one or more new issues of material fact relevant to resolution of a matter in the shortened procedure such that fundamental fairness requires a trial-type hearing to resolve the new issue or issues so raised. Parties to the shortened procedure and the Commission staff may file responses to the motion. In ruling upon the motion, the Commission may determine that some or all of the issues be litigated in a trial-type hearing.

PART 158—ACCOUNTS, RECORDS, MEMORANDA AND DISPOSITION OF CONTESTED AUDIT FINDINGS AND PROPOSED REMEDIES

■ 4. The authority citation for part 158 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7102–7352.

■ 5. The heading of part 158 is revised to read as set forth above.

■ 6. Sections 158.1, 158.2 and 158.3 and the undesignated center heading preceding them are revised to read as follows:

Disposition of Contested Audit Findings and Proposed Remedies

§ 158.1 Notice to audited person.

An audit conducted by the Commission's staff under authority of the Natural Gas Act may result in a notice of deficiency or audit report or similar document containing a finding or findings that the audited person has not complied with a requirement of the Commission with respect to, but not limited to, the following: A filed tariff or tariffs, contracts, data, records, accounts, books, communications or papers relevant to the audit of the audited person; matters under the Standards of Conduct or the Code of Conduct; and the activities or operations of the audited person. The notice of deficiency, audit report or similar document may also contain one or more proposed remedies that address findings of noncompliance. Where such findings, with or without proposed remedies, appear in a notice of deficiency, audit report or similar document, such document shall be provided to the audited person, and the finding or findings, and any proposed remedies, shall be noted and explained. The audited person shall timely indicate in a written response any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees. Any initial order that the Commission subsequently may issue with respect to the notice of deficiency, audit report or similar document shall note, but not address on the merits, the finding or findings, or the proposed remedy or remedies, or both, in any combination, with which the audited person disagreed. The Commission shall provide the audited person 30 days to respond with respect to the finding or findings or any proposed remedy or remedies, or both, in any combination, with which it disagreed.

§ 158.2 Response to notification.

Upon issuance of a Commission order that notes a finding or findings, or proposed remedy or remedies, or both, in any combination, with which the audited person has disagreed, the audited person may: Acquiesce in the findings and/or proposed remedies by not timely responding to the Commission order, in which case the Commission may issue an order approving them or taking other action; or challenge the finding or findings and/or any proposed remedies, with which it disagreed by timely notifying the Commission in writing that it requests Commission review by means of a shortened procedure or, if there are material facts in dispute which require cross-examination, a trial-type hearing.

§ 158.3 Shortened procedure.

If the audited person subject to a Commission order described in § 158.1 notifies the Commission that it seeks to challenge one or more audit findings, or proposed remedies, or both, in any combination, by the shortened procedure, the Commission shall thereupon issue a notice setting a schedule for the filing of memoranda. The person electing the use of the shortened procedure, and any other interested entities, including the Commission staff, shall file, within 45 days of the notice, an initial memorandum that addresses the relevant facts and applicable law that support the position or positions taken regarding the matters at issue. Reply memoranda shall be filed within 20 days of the date by which the initial memoranda are due to be filed. Only participants who filed initial memoranda may file reply memoranda. Subpart T of part 385 of this chapter shall apply to all filings. Within 20 days after the last date that reply memoranda under the shortened procedure may be timely filed, the audited person who elected the shortened procedure may file a motion with the Commission requesting a trial-type hearing if new issues are raised by a party. To prevail in such a motion, the audited person must show that a party to the shortened procedure raised one or more new issues of material fact relevant to resolution of a matter in the shortened procedure such that fundamental fairness requires a trial-type hearing to resolve the new issue or issues so raised. Parties to the shortened procedure and the Commission staff may file responses to the motion. In ruling upon the motion, the Commission may determine that some or all of the eissues be litigated in a trial-type hearing.

PART 286—ACCOUNTS, RECORDS, MEMORANDA AND DISPOSITION OF CONTESTED AUDIT FINDINGS AND PROPOSED REMEDIES

■ 7. The authority citation for part 286 is revised to read as follows:

Authority: 5 U.S.C. 551 *et seq.*; 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7102–7352.

■ 8. The heading of part 286 is revised to read as set forth above.

■ 9. Sections 286.103 through 286.109 and a new undesignated center heading preceding them are added to read as follows:

Disposition of Contested Audit Findings and Proposed Remedies

§ 286.103 Notice to audited person.

An audit conducted by the Commission's staff under authority of the Natural Gas Policy Act may result in a notice of deficiency or audit report or similar document containing a finding or findings that the audited person has not complied with a requirement of the Commission with respect to, but not limited to, the following: A filed tariff or tariffs, contracts, data, records, accounts, books, communications or papers relevant to the audit of the audited person; matters under the Standards of Conduct or the Code of Conduct; and the activities or operations of the audited person. The notice of deficiency, audit report or similar document may also contain one or more proposed remedies that address findings of noncompliance. Where such findings, with or without proposed remedies, appear in a notice of deficiency, audit report or similar document, such document shall be provided to the audited person, and the finding or findings, and any proposed remedies, shall be noted and explained. The audited person shall timely indicate in a written response any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees. Any initial order that the Commission subsequently may issue with respect to the notice of deficiency, audit report or similar document shall note, but not address on the merits, the finding or findings, or the proposed remedy or remedies, or both, in any combination, with which the audited person disagreed. The Commission shall provide the audited person 30 days to respond with respect to the finding or findings or any proposed remedy or remedies, or both, in any combination, with which it disagreed.

§ 286.104 Response to notification.

Upon issuance of a Commission order that notes a finding or findings, with or without proposed remedies, with which the audited person has disagreed, the audited person may: Acquiesce in the findings and proposed remedies by not timely responding to the Commission order, in which case the Commission may issue an order approving them or taking other action; or challenge the finding or findings and any proposed remedies with which it disagreed by timely notifying the Commission in writing that it requests Commission review by means of a shortened procedure, or, if there are material facts in dispute which require cross-examination, a trial-type hearing.

§ 286.105 Shortened procedure.

If the audited person subject to a Commission order described in § 286.103 notifies the Commission that it seeks to challenge one or more audit findings, or proposed remedies, or both, in any combination, by the shortened procedure, the Commission shall thereupon issue a notice setting a schedule for the filing of memoranda. The person electing the use of the shortened procedure, and any other interested entities, including the Commission staff, shall file, within 45 days of the notice, an initial memorandum that addresses the relevant facts and applicable law that support the position or positions taken regarding the matters at issue. Reply memoranda shall be filed within 20 days of the date by which the initial memoranda are due to be filed. Only participants who filed initial memoranda may file reply memoranda. Subpart T of part 385 of this chapter shall apply to all filings. Within 20 days after the last date that reply memoranda under the shortened procedure may be timely filed, the audited person who elected the shortened procedure may file a motion with the Commission requesting a trial-type hearing if new issues are raised by a party. To prevail in such a motion, the audited person must show that a party to the shortened procedure raised one or more new issues of material fact relevant to resolution of a matter in the shortened procedure such that fundamental fairness requires a trial-type hearing to resolve the new issue or issues so raised. Parties to the shortened procedure and the Commission staff may file responses to the motion. In ruling upon the motion, the Commission may determine that some or all of the issues be litigated in a trial-type hearing.

§ 286.106 Form and style.

Each copy of such memorandum must be complete in itself. All pertinent data should be set forth fully, and each memorandum should set out the facts and argument as prescribed for briefs in § 385.706 of this chapter.

§ 286.107 Verification.

The facts stated in the memorandum must be sworn to by persons having knowledge thereof, which latter fact must affirmatively appear in the affidavit. Except under unusual circumstances, such persons should be those who would appear as witnesses if hearing were had to testify as to the facts stated in the memorandum.

§ 286.108 Determination.

If no formal hearing is had the matter in issue will be determined by the Commission on the basis of the facts and arguments submitted.

§ 286.109 Assignment for oral hearing.

Except when there are no material facts in dispute, when a person does not consent to the shortened procedure, the Commission will assign the proceeding for hearing as provided by subpart E of part 385 of this chapter. Notwithstanding a person's not giving consent to the shortened procedure, and instead seeking assignment for hearing as provided for by subpart E of part 385 of this chapter, the Commission will not assign the proceeding for a hearing when no material facts are in dispute. The Commission may also, in its discretion, at any stage in the proceeding, set the proceeding for hearing.

■ 10. Part 349 is added to Subchapter P to read as follows:

PART 349—DISPOSITION OF CONTESTED AUDIT FINDINGS AND PROPOSED REMEDIES

Sec.
349.1 Notice to audited person.
349.2 Response to notification.
349.3 Shortened procedure.
349.4 Form and style.
349.5 Verification.
349.6 Determination.
349.7 Assignment for oral hearing.

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1, *et seq.*

§ 349.1 Notice to audited person.

An audit conducted by the Commission or its staff under authority of the Interstate Commerce Act may result in a notice of deficiency or audit report or similar document containing a finding or findings that the audited person has not complied with a requirement of the Commission with respect to, but not limited to, the following: A filed tariff or tariffs, contracts, data, records, accounts, books, communications or papers relevant to the audit of the audited person; and the activities or operations of the audited person. The notice of deficiency, audit report or similar document may also contain one or more proposed remedies that address findings of noncompliance. Where such findings, with or without proposed remedies, appear in a notice of deficiency, audit report or similar document, such document shall be provided to the audited person, and the finding or findings, and any proposed remedies, shall be noted and explained. The audited person shall timely indicate in a written response any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees. Any initial order that the Commission subsequently may issue with respect to the notice of deficiency, audit report or similar document shall note, but not address on the merits, the finding or findings, or the proposed remedy or remedies, or both, in any combination, with which the audited person disagreed. The Commission shall provide the audited person 30 days to respond with respect to the finding or findings or any proposed remedy or remedies, or both, in any combination, with which it disagreed.

§ 349.2 Response to notification.

Upon issuance of a Commission order that notes a finding or findings, or proposed remedy or remedies, or both, in any combination, with which the audited person has disagreed, the audited person may: Acquiesce in the findings and/or proposed remedies by not timely responding to the Commission order, in which case the Commission may issue an order approving them or taking other action; or challenge the finding or findings and/or any proposed remedies with which it disagreed by timely notifying the Commission in writing that it requests Commission review by means of a shortened procedure, or, if there are material facts in dispute which require cross-examination, a trial-type hearing.

§ 349.3 Shortened procedure.

If the audited person subject to a Commission order described in § 349.1 notifies the Commission that it seeks to challenge one or more audit findings, or proposed remedy or remedies, or both, in any combination, by the shortened procedure, the Commission shall thereupon issue a notice setting a schedule for the filing of memoranda. The person electing the use of the shortened procedure, and any other interested entities, including the Commission staff, shall file, within 45 days of the notice, an initial memorandum that addresses the relevant facts and applicable law that support the position or positions taken regarding the matters at issue. Reply memoranda shall be filed within 20 days of the date by which the initial memoranda are due to be filed. Only participants who filed initial memoranda may file reply memoranda. Subpart T of part 385 of this chapter shall apply to all filings. Within 20 days after the last date that reply memoranda under the shortened procedure may be timely filed, the audited person who elected the shortened procedure may

file a motion with the Commission requesting a trial-type hearing if new issues are raised by a party. To prevail in such a motion, the audited person must show that a party to the shortened procedure raised one or more new issues of material fact relevant to resolution of a matter in the shortened procedure such that fundamental fairness requires a trial-type hearing to resolve the new issue or issues so raised. Parties to the shortened procedure and the Commission staff may file responses to the motion. In ruling upon the motion, the Commission may determine that some or all of the issues be litigated in a trial-type hearing.

§ 349.4 Form and style.

Each copy of such memorandum must be complete in itself. All pertinent data should be set forth fully, and each memorandum should set out the facts and argument as prescribed for briefs in § 385.706 of this chapter.

§ 349.5 Verification.

The facts stated in the memorandum must be sworn to by persons having knowledge thereof, which latter fact must affirmatively appear in the affidavit. Except under unusual circumstances, such persons should be those who would appear as witnesses if hearing were had to testify as to the facts stated in the memorandum.

§ 349.6 Determination.

If no formal hearing is had the matter in issue will be determined by the Commission on the basis of the facts and arguments submitted.

§ 349.7 Assignment for oral hearing.

Except when there are no material facts in dispute, when a person does not consent to the shortened procedure, the Commission will assign the proceeding for hearing as provided by subpart E of part 385 of this chapter. Notwithstanding a person's not giving consent to the shortened procedure, and instead seeking assignment for hearing as provided for by subpart E of part 385 of this chapter, the Commission will not assign the proceeding for a hearing when no material facts are in dispute. The Commission may also, in its discretion, at any stage in the proceeding, set the proceeding for hearing.

[FR Doc. 06–1765 Filed 2–24–06; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM06–5–000; Order No. 673]

Amendments to Codes of Conduct for Unbundled Sales Service and for Persons Holding Blanket Marketing Certificates

Issued February 16, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: In this final rule, the Federal Energy Regulatory Commission (Commission) is amending its regulations regarding the blanket certificates for unbundled natural gas sales services held by interstate natural gas pipelines and the blanket marketing certificates held by persons making sales for resale of natural gas at negotiated rates in interstate commerce. Specifically, the Commission is rescinding sections of its regulations pertaining to codes of conduct with respect to certain sales of natural gas.

DATES: This final rule will become effective March 29, 2006.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly

1. The Commission has decided to rescind §§ 284.288(a), (d) and (e) and 284.403(a), (d) and (e) of its codes of conduct regulations,[1] as promulgated pursuant to Order No. 644.[2] The central purpose of Order No. 644 was to prohibit market manipulation by pipelines that provide unbundled natural gas sales service and by sellers of natural gas for resale at negotiated rates. This prohibition is set out in §§ 284.288(a) and 284.403(a) of the Commission's regulations. Sections 284.288(d)–(e) and 284.403(d)–(e) of the Commission's regulations are largely procedural in nature, dealing with remedies for violations of the codes of conduct requirements and time limits on complaints and Commission enforcement of the codes of conduct requirements. Subsequent to the issuance of Order No. 644, Congress provided the Commission with specific anti-manipulation authority in the Energy Policy Act of 2005 (EPAct 2005).[3] To implement this new authority, the Commission recently issued Order No. 670, adopting a final rule making it unlawful for any entity, including pipelines that provide unbundled natural gas sales service and all sellers of natural gas for resale, to engage in fraudulent or deceptive conduct in connection with the purchase or sale of electric energy, natural gas, or transmission or transportation services subject to the jurisdiction of the Commission.[4] In order to avoid regulatory uncertainty and confusion, to assure that all market participants are held to the same standard, and to provide clarity to entities subject to our rules and regulations, we rescind §§ 284.288(a), (d) and (e) and 284.403(a), (d) and (e) of the Commission's regulations effective 30 days after publication hereof in the **Federal Register**.[5]

2. Although Order No. 670 makes it unnecessary to retain §§ 284.288(a), (d) and (e) and 284.403(a), (d) and (e) of the Commission's regulations, there is benefit to retaining §§ 284.288(b)–(c) and 284.403(b)–(c) of the Commission's regulations. Sections 284.288(b) and 284.403(b) of the Commission's regulations deal with requirements for price index reporting that are not entirely provided for by the new anti-manipulation regulations under Order

[1] 18 CFR 284.288(a), (d) and (e) and 284.403(a), (d) and (e) (2005).

[2] *Amendments to Blanket Sales Certificates*, 105 FERC ¶ 61,217 (2003), reh'g denied 107 FERC ¶ 61,174; 68 FR 66323 (Nov. 26, 2003); 18 CFR 284.288 and 284.403 (2003) (Order No. 644). Order No. 644 is currently on appeal. *See Cinergy Marketing & Trading, L.P.* v. *FERC*, No. 04–1168 *et al.* (D.C. Cir. filed April 28, 2004).

[3] Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005). Congress prohibited the use or employment of ''any manipulative or deceptive device or contrivance'' in connection with the purchase or sale of natural gas or transportation services subject to the jurisdiction of the Commission. Congress directed the Commission to give these terms the same meaning as under the Securities Exchange Act of 1934, 15 U.S.C. 78j(b) (2000).

[4] *Prohibition of Energy Market Manipulation*, Order No. 670, 71 FR 4244 (Jan. 26, 2006), FERC Stats. & Regs. ¶ 31,202, 114 FERC ¶ 61,047 (Jan. 19, 2006) (Order No. 670).

[5] The Commission will redesignate existing sections 284.288(b)–(c) and 284.403(b)–(c) of the Commission's regulations as new sections 284.288(a)–(b) and 284.403(a)–(b), respectively. Unless otherwise specified, this NOPR will refer to these sections under their existing designation before the effectiveness of this Final Rule.

No. 670. Sections 284.288(c) and 284.403(c) of the codes of conduct regulations require sellers to maintain certain records for a period of three years to reconstruct prices charged for natural gas. This requirement is also not provided for by Order No. 670.[6]

I. Background

3. On November 17, 2003, acting pursuant to section 7 of the NGA, we issued a final rule, Order No. 644, amending blanket certificates for unbundled natural gas sales services held by interstate natural gas pipelines and blanket marketing certificates held by persons making sales for resale of natural gas at negotiated rates in interstate commerce. This rule requires that pipelines that provide unbundled natural gas sales service and all sellers of natural gas for resale adhere to a code of conduct with respect to certain natural gas sales. The Commission determined that in order to protect and maintain the competitive natural gas market and to continue its light-handed regulation of the gas sales within its jurisdiction, it was necessary to place additional conditions on blanket certificates for unbundled pipeline sales and sales for resale at negotiated rates. In formulating such conditions, the Commission was fulfilling its obligation to appropriately monitor markets and to ensure that natural gas prices remain within the zone of reasonableness required by the NGA.[7]

4. Under §§ 284.288(a) and 284.403(a) of the Commission's regulations, a pipeline providing unbundled natural gas sales service under § 284.284, or any person making natural gas sales for resale in interstate commerce pursuant to § 284.402, ''is prohibited from engaging in actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices, market conditions, or market rules for natural gas.'' Prohibited actions or transactions include wash trades and collusion for the purpose of market manipulation.[8]

5. Sections 284.288(b) and 284.403(b) deal with reporting of transaction information to price index publishers. They require that if a seller reports transaction data, the data be accurate and factual, and not knowingly false or misleading, and be reported in accordance with the Commission's Policy Statement on price indices.[9] Sections 284.288(b) and 284.403(b) also require that sellers notify the Commission of whether they report transaction data to price index publishers in accordance with the Price Index Policy Statement, and to update any changes in their reporting status.

6. Sections 284.288(c) and 284.403(c) require that sellers retain for a minimum three-year period all data and information upon which they billed the prices charged for natural gas sales made under §§ 284.284 or 284.402, or in transactions the prices of which were reported to price index publishers.

7. Sections 284.288(d)–(e) and 284.403(d)–(e) of the Commission's regulations are largely procedural in nature. Specifically, §§ 284.288(d) and 284.403(d) deal with remedies for violations of the codes of conduct requirements set forth in preceding §§ (a) through (c) of §§ 284.288 and 284.403. Sections 284.288(e) and 284.403(e) deal with time limits on complaints and Commission enforcement of the codes of conduct requirements.

8. At the same time that Order No. 644 was adopted for pipelines that provide unbundled natural gas sales service and holders of blanket certificate authority that make sales for resale of natural gas, the Commission also issued an order to require wholesale sellers of electricity at market-based rates to adhere to certain behavioral rules when making sales of electricity.[10]

9. Following enactment of EPAct 2005, the Commission issued a Notice of Proposed Rulemaking on October 20, 2005, in which we proposed rules to implement the new statutory anti-manipulation provisions.[11] In the Anti-Manipulation NOPR, we noted the overlap between §§ 284.288(a) and 284.403(a) of the Commission's regulations and the proposed EPAct 2005 regulations.[12] We said that we would retain §§ 284.288(a) and 284.403(a) of the Commission's regulations for the time being, but also indicated that we would seek comment on whether we should revise or rescind §§ 284.288(a) and 284.403(a) of the Commission's regulations. In the meantime, we assured market participants that we will not seek duplicative sanctions for the same conduct in the event that conduct violates both §§ 284.288(a) or 284.403(a) of the Commission's regulations and the proposed new anti-manipulation rule.[13]

10. In a Notice of Proposed Rulemaking dated November 21, 2005,[14] the Commission, acting pursuant to section 7 of the NGA, proposed to rescind §§ 284.288 or 284.403 of the Commission's regulations once we issued final regulations implementing the anti-manipulation provisions of EPAct 2005 and have had the opportunity to incorporate certain aspects of §§ 284.288 or 284.403 of the Commission's regulations into other rules of general applicability. The Commission also requested comment on whether ''any aspects'' of §§ 284.288 and 284.403 of the Commission's regulations should be retained, or could ''all substantive provisions'' of §§ 284.288 and 284.403 of the Commission's regulations be reflected in the final regulations implementing the anti-manipulation provisions of EPAct 2005.[15] We noted that rescission of §§ 284.288 and 284.403 of the Commission's regulations will simplify the Commission's rules and regulations, avoid confusion, and provide greater clarity and regulatory certainty to the industry. We emphasized our belief that rescinding §§ 284.288 and 284.403 of the Commission's regulations is consistent with Congressional intent in EPAct 2005, which provided the Commission with explicit anti-manipulation authority, and that rescission will simplify and streamline the rules and regulations sellers must follow, yet not eliminate beneficial rules governing market behavior.[16]

11. The Commission received 11 comments and one reply comment in

[6] In a notice of proposed rulemaking issued contemporaneously with this Final Rule, Docket No. RM06–14–000, the Commission is proposing to extend the record retention requirements from three to five years to be consistent with the statute of limitations that would apply to actions seeking civil penalties for alleged violations of the new anti-manipulation rule implemented in Order No. 670.

[7] Order No. 644, 105 FERC ¶ 61,217 at P 91 (2003).

[8] 18 CFR 284.288(a)(1)–(2) and 284.403(a)(1)–(2) (2005).

[9] *Price Discovery in Natural Gas and Electric Markets*, ''Policy Statement on Natural Gas and Electric Price Indices,'' 104 FERC ¶ 61,121 (2003) (Price Index Policy Statement).

[10] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, ''Order Amending Market-Based Rate Tariffs and Authorizations,'' 105 FERC ¶ 61,218 (2003), *reh'g denied*, 107 FERC ¶ 61,175 (2004).

[11] *Prohibition of Energy Market Manipulation*, 113 FERC ¶ 61,067 (2005) (Anti-Manipulation NOPR).

[12] *Id.* at P 15 and n.23.

[13] *Id. See also Enforcement of Statutes, Orders, Rules, and Regulations*, ''Policy Statement on Enforcement,'' 113 FERC ¶ 61,068 at P 14 (2005).

[14] *See Amendments to Codes of Conduct for Unbundled Sales Service and for Persons Holding Blanket Marketing Certificates*, 113 FERC ¶ 61,189 (2005) (November 21 NOPR).

[15] *Id.* at P 20.

[16] *Id.* at P 11. At the same time we issued an order in Docket No. EL06–16–000 proposing similar changes to the behavior rules applicable to wholesale sellers of electricity at market-based rates. *See Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, ''Order Proposing Revisions to Market-Based Rate Tariffs and Authorizations,'' 113 FERC ¶ 61,190 (2005).

response to the November 21 NOPR.[17] Many of the comments support the Commission's overall objectives in this proceeding, that is, to simplify the Commission's rules and regulations, avoid confusion, and provide greater clarity and regulatory certainty to the industry, while not eliminating beneficial rules governing market behavior by addressing them in other rules and regulations.

12. On January 19, 2006, the Commission issued Order No. 670, adopting regulations implementing the EPAct 2005 anti-manipulation provisions. In Order No. 670 the Commission adopted a new part 1c of our regulations under which it is ''unlawful for any entity, directly or indirectly, in connection with the purchase or sale of natural gas or the purchase or sale of transportation services subject to the jurisdiction of the Commission, (1) to use or employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (3) to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity.'' [18]

II. Discussion

A. Sections 284.288(a) and 284.403(a) of the Commission's Regulations

13. In the November 21 NOPR the Commission sought comment on whether there is a need or basis for retaining §§ 284.288(a) and 284.403(a) of the Commission's regulations in light of the then-proposed anti-manipulation rule, and whether the Commission should retain in any form the affirmative defense of ''legitimate business purpose'' in existing §§ 284.288(a) and 284.403(a) of the Commission's regulations.

1. Should the Commission Retain or Rescind Sections 284.288(a) and 284.403(a) of the Commission's Regulations?

a. Comments

14. Commenters were divided on the issue of whether §§ 284.288(a) and 284.403(a) of the Commission's regulations should be retained or rescinded in light of the anti-manipulation provisions. Those in favor of retaining §§ 284.288(a) and 284.403(a) of the Commission's regulations argue two principal points: First, the foreseeability standard of §§ 284.288(a) and 284.403(a) of the Commission's regulations reaches negligent conduct or other conduct that falls short of being ''provably'' intentional but nonetheless has a foreseeable impact on rates; and second, §§ 284.288(a) and 284.403(a) of the Commission's regulations have lasting utility because they provide a remedy for activities that may not be fraudulent, but could nevertheless function to manipulate prices for certain sales of natural gas.[19]

15. Several commenters argue that §§ 284.288(a) and 284.403(a) of the Commission's regulations should be retained because they prohibit conduct that ''foreseeably could manipulate market prices,'' and do not require the showing of scienter (intentional or reckless conduct), which means that §§ 284.288(a) and 284.403(a) of the Commission's regulations reach a broader range of conduct that may adversely affect consumers and energy markets than would the proposed anti-manipulation rule alone.[20] CPUC and others argue that nothing in EPAct 2005 dictates or justifies the repeal of §§ 284.288(a) and 284.403(a) of the Commission's regulations. They argue that, in determining whether rates are just and reasonable, the Commission should only focus on the effect of a seller's action and not on the seller's intent, and that relying solely on intent may result in rates becoming unjust and unreasonable because it would limit the Commission's ability to remedy conduct falling short of being intentional but whose rate-altering effect is foreseeable.[21] CPUC argues that there is no risk of confusion created by having both §§ 284.288(a) and 284.403(a) of the Commission's regulations and the anti-manipulation rule promulgated pursuant to EPAct 2005.[22]

16. Commenters advocating rescission of §§ 284.288(a) and 284.403(a) of the Commission's regulations argue three main points. First, commenters argue that the Commission should not retain the foreseeability standard of proof of §§ 284.288(a) and 284.403(a) of the Commission's regulations because of the clear Congressional intent in section 315 of EPAct 2005, which directs the Commission to adopt a standard of proof based upon scienter.[23] Second, commenters supporting rescission argue that there should be only one definition or standard to define what constitutes market manipulation. Retaining two sets of proscriptions, they argue, could lead to regulatory uncertainty and confusion,[24] and would be unduly discriminatory because of a dual standard applicable to jurisdictional sellers of natural gas while the remaining industry participants would be covered solely by the new standard of § 1c.1.[25] Third, the anti-manipulation regulations represent an improvement over §§ 284.288(a) and 284.403(a) of the Commission's regulations because, among other things, the language of new § 1c.1 provides stakeholders with clarity of language not present in §§ 284.288(a) and 284.403(a) of the Commission's regulations.[26]

17. Indicated Market Participants argue that the anti-manipulation final rule should implement the scienter standard to conform to Congressional intent under the new NGA section 4A.[27] However, Indicated Market Participants and CPUC recommend that the other language in §§ 284.288(a)(1)–(2) and 284.403(a)(1)–(2), prohibiting wash trades and collusion, should be incorporated into the anti-manipulation final rule to provide clearer guidance to market participants.[28] APGA and NJBPU state that it would be satisfactory if the Commission clarified in the preamble to the anti-manipulation rule that wash trades and collusive sales remain prohibited.[29]

b. Commission Determination

18. The Commission finds it unnecessary to retain §§ 284.288(a) and 284.403(a) of the Commission's regulations. Congress prohibited market manipulation by any entity and defined manipulation to include the requirement of scienter.[30] It would be

[17] Entities filing comments and reply comments are listed in the Appendix to this order, along with the acronyms for such commenters. The Commission has accepted and considered all comments filed, including late-filed comments.

[18] 18 CFR 1c.1, 71 FR 4244 (2006).

[19] CPUC at 2–8; NASUCA at 5–10; NJBPU at 5–7.

[20] CPUC at 2–8; NASUCA at 5; NJBPU at 5–6.

[21] CPUC at 5; NASUCA at 5, 8.

[22] CPUC at 8.

[23] Cinergy at 6.

[24] INGAA at 6; NGSA at 3; AGA at 4 (arguing that this uncertainty that will deter otherwise proper market conduct, thereby promoting market inefficiency and causing a dampening effect on a competitive market).

[25] Cinergy at 6–7.

[26] Cinergy at 5 (arguing that the generic provision of sections 284.288(a) and 284.403(a) of the Commission's regulations is unlawful in its vagueness and, as a certificate condition, is contrary to the statutory scheme of the NGA).

[27] Indicated Market Participants at 10.

[28] Indicated Market Participants at 13; CPUC at 3, 8.

[29] APGA at 5; NJBPU at 7–8.

[30] In new 4A of the NGA, Congress used the terms ''manipulative or deceptive device or contrivance'' and directed that they be given the same meaning as used in section 10b of the Securities Exchange Act of 1934. It is well settled that those terms require a showing of scienter, that is, an intent to deceive, manipulate or defraud. *Ernst & Ernst* v.

Continued

inconsistent with Congress' direction if foreseeability were retained as a lesser standard of proof for market manipulation perpetrated by pipelines that provide unbundled natural gas sales service and holders of blanket certificate authority that make sales for resale of natural gas. To avoid the potential for uneven application of regulatory requirements based on whether a seller is a pipeline providing unbundled natural gas sales service or a holder of blanket certificate authority making sales for resale of natural gas, or any other entity purchasing or selling natural gas or transportation services subject to the jurisdiction of the Commission, the same standard of proof should apply to all entities for purposes of determining whether market manipulation occurred. It is not appropriate, as some commenters suggest, for the Commission to maintain a lesser standard of proof for only certain sellers of natural gas.

19. With respect to the suggestion that the specific proscribed behaviors in §§ 284.288(a)(1)–(2) and 284.403(a)(1)–(2) of the Commission's regulations be retained, the Commission finds this unnecessary. As we stated in issuing the new anti-manipulation rule, the specifically prohibited actions in §§ 284.288(a)(1)–(2) and 284.403(a)(1)–(2) (*i.e.*, wash trades and collusion) are both prohibited activities under new § 1c.1 of our regulations and are subject to punitive and remedial action.[31] Furthermore, we recognize that fraud is a very fact-specific violation, the permutations of which are limited only by the imagination of the perpetrator. Therefore, no list of prohibited activities could be all-inclusive. The absence of a list of specific prohibited activities does not lessen the reach of the new anti-manipulation rule, nor are we foreclosing the possibility that we may need to amplify § 1c.1 as we gain experience with the new rule, just as the SEC has done.[32]

20. In short, rescission of §§ 284.288(a) and 284.403(a) of the Commission's regulations is consistent with Congressional direction and will not dilute customer protection. If conduct occurs that is not the result of fraud or deceit but nonetheless results in unjust and unreasonable rates, a person may file a complaint at the Commission under NGA section 5, or the Commission on its own motion may institute a proceeding under section 5, to modify the rates that have become unjust and unreasonable. In many respects customers are better protected by § 1c.1's breadth and purposeful design as a broad ''catch all'' anti-fraud provision.[33]

2. Legitimate Business Purpose

a. Comments

21. Commenters are divided on whether the Commission should retain the ''legitimate business purpose'' provision of §§ 284.288(a) and 284.403(a) of the Commission's regulations. Indicated Market Participants argue that a legitimate business purpose should be a complete defense to an allegation of market manipulation, and that this provision should be incorporated into the anti-manipulation final rule.[34]

22. AGA, on the other hand, argues that retention of the legitimate business purpose defense, as a matter of explicit language in the regulations, runs the risk of generating uncertainty.[35] AGA, NASUCA, and INGAA explain, however, that an action taken for a legitimate business purpose would be lacking in scienter or, alternatively, would provide an affirmative defense to allegations of market manipulation.[36] Nevertheless, AGA requests that the Commission clarify that, although the legitimate business purpose language is to be removed from §§ 284.288 and 284.403, the concept continues to have an integral place within the scope of section 315 of EPAct 2005 and the new anti-manipulation regulations.[37]

23. CPUC argues that the legitimate business purpose should not be permitted as a defense to the proposed anti-manipulation regulations as it is analogous to a good faith defense, which is not allowed as a defense to intentional or reckless conduct in the context of SEC section 10(b).[38]

b. Commission Determination

24. In promulgating § 1c.1, the Commission purposefully modeled its anti-manipulation rule after SEC Rule 10b–5 to provide stakeholders with as much regulatory certainty and clarity as possible, given the large body of precedent interpreting SEC Rule 10b–5.[39] SEC Rule 10b–5 does not include provisions for ''good faith'' defenses. However, in all cases, the intent behind and rationale for actions taken by an entity will be examined and taken into consideration as part of determining whether the actions were manipulative behavior. The reasons given by an entity for its actions are part of the overall facts and circumstances that will be weighed in deciding whether a violation of the new anti-manipulation regulation has occurred. Therefore, the Commission rejects calls for inclusion of a ''legitimate business purpose'' affirmative defense.

B. Sections 284.288(b) and 284.403(b) of the Commission's Regulations

25. The November 21 NOPR sought comment on whether it was necessary to retain §§ 284.288(b) and 284.403(b) of the Commission's regulations.[40] The Commission stated its view that the first part of §§ 284.288(b) and 284.403(b), requiring sellers to provide accurate data to price index publishers if the seller is reporting transactions to such publishers, calls for accurate and truthful representations, and a failure to do so would be a violation of the proposed anti-manipulation regulations.[41] The Commission stated that the second part of §§ 284.288(b) and 284.403(b) of the Commission's regulations, requiring that sellers notify the Commission of their price reporting status and any changes in that status, does not appear elsewhere in our current or proposed regulations. The Commission noted, however, that price transparency is also addressed by EPAct 2005, which adds new section 23 to the NGA, giving us authority to promulgate rules and regulations necessary to facilitate price transparency. Thus, the Commission stated that it intends to address market transparency issues in a separate proceeding, and anticipates that rules adopted in that proceeding will address the §§ 284.288(b) and 284.403(b) requirements for providing transaction information to price index publishers and informing the Commission of price reporting status.[42]

Hochfelder, 425 U.S. 185, 201 (1976). *See* Order No. 670, 114 FERC ¶ 61,047 at P 52–53.

[31] Order No. 670, 114 FERC ¶ 61,047 at P 59.

[32] After considerable experience with Rule 10b–5, upon which our new anti-manipulation rule is modeled, the SEC has expanded the original Rule 10b–5 to add a number of specific provisions describing prohibited conduct. *See* 17 CFR 240.10b–5–1 through 240.10b5–14.

[33] *Aaron* v. *SEC*, 446 U.S. 680, 690 (1980); *see also Schreiber* v. *Burlington Northern, Inc.*, 472 U.S. 1, 6–7 (1985) (describing section 10(b) as a ''general prohibition of practices * * * artificially affecting market activity in order to mislead investors * * *.''); *Affiliated Ute Citizens of Utah* v. *United States*, 406 U.S. 128, 151–53 (1972) (noting that the repeated use of the word ''any'' in section 10(b) and SEC Rule 10b–5 denotes a congressional intent to have the provisions apply to a wide range of practices).

[34] Indicated Market Participants at 10–11, 20.

[35] AGA at 6.

[36] AGA at 6; NASUCA at 20; INGAA at 6.

[37] AGA at 6. *See also* INGAA at 6 (urging the Commission not to disavow the legitimate business purpose defense, which is relevant to the question of scienter under the new anti-manipulation rule).

[38] CPUC at 8.

[39] Order No. 670, 114 FERC ¶ 61,047 at P 30–31.

[40] November 21 NOPR, 113 FERC ¶ 61,189 at 20.

[41] November 21 NOPR, 113 FERC ¶ 61,189 at 16.

[42] November 21 NOPR, 113 FERC ¶ 61,189 at 16.

1. Comments

26. Commenters agree that it is not necessary to retain the requirement of §§ 284.288(b) and 284.403(b) of the Commission's regulations to report transaction information accurately, *if* the obligation is incorporated elsewhere. APGA and NGSA state that it would be satisfactory if the Commission clarified in the preamble to the anti-manipulation rule that accurate and truthful representations of price data remain a requirement.[43] AGA asserts that it would be prudent for the Commission to explicitly reiterate its commitment to its Price Index Policy Statement.[44] Similarly, Indicated Market Participants argue that §§ 284.288(b) and 284.403(b) of the Commission's regulations need not be retained since these requirements will be adequately addressed by the new anti-manipulation regulations, to the extent market manipulation is involved, by the Commission's Price Index Policy Statement, and by any new proceeding initiated by the Commission to implement section 23 of the NGA.[45]

27. However, NJBPU strongly encourages the Commission to adopt new rules on pricing transparency (and the record retention requirement to reconstruct prices) before, or at a minimum, contemporaneous with the repeal of the existing marketing transparency rules.[46]

28. CPUC argues that §§ 284.288(b) and 284.403(b) of the Commission's regulations should be retained, because they identify known manipulative conduct, such as false reports to publishers of natural gas indices, which are not subsumed within the Commission's proposed or other existing regulations.[47]

2. Commission Determination

29. Sections 284.288(b) and 284.403(b) of the Commission's regulations require sellers to provide accurate data to price index publishers, if the seller is reporting transactions to such publishers, and includes a requirement that sellers notify the Commission of their price reporting status and of any changes in that status. Upon consideration of the comments, we have determined that there is benefit to retaining §§ 284.288(b) and 284.403(b) of the Commission's regulations. While a deliberate false report would be a violation of Order No. 670, there is no confusion in retaining this statement in our existing regulations and thereby reinforcing the importance of the Price Index Policy Statement. Moreover, the second aspect of §§ 284.288(b) and 284.403(b) of the Commission's regulations, notification to the Commission of the market participant's price reporting status and of any changes in that status, is not otherwise provided for. Thus, we will retain these regulatory requirements. This is a simple and non-burdensome way for the Commission to be informed of the prevalence of price reporting to price index developers.

C. Sections 284.288(c) and 284.403(c) of the Commission's Regulations

30. The November 21 NOPR also sought comment on the need to retain §§ 284.288(c) and 284.403(c) of the Commission's regulations, which requires sellers to maintain certain records for a period of three years. The Commission stated that while it is important that all pipelines providing unbundled natural gas sales service and all persons holding blanket certificates making natural gas sales for resale in interstate commerce retain the data and information described in §§ 284.288(c) and 284.403(c) of the Commission's regulations, we intend to address this retention requirement in the context of our rules under the NGA, such that there will be no gap in the retention requirement.

1. Comments

31. Commenters generally recommended that the record retention requirement be retained, although they suggested different ways in which this would be accomplished. CPUC states that §§ 284.288(c) and 284.403(c) of the Commission's regulations should be retained since these requirements are not subsumed within the Commission's proposed or other existing regulations.[48] APGA argues that it is premature to eliminate the existing procedural requirements, such as the record retention requirements under §§ 284.288(c) and 284.403(c) of the Commission's regulations (and the price reporting requirements), when it is unknown what requirements will be implemented under future regulations or when those requirements will be make effective.[49] Thus, APGA maintains that any proposed elimination of procedural requirements must be coordinated with and based on specific proposals for replacement procedural requirements.[50]

32. The Indicated Market Participants, however, state that the record retention requirement more appropriately belongs in the Commission's general regulations so that it will be applicable to more than just certain blanket certificate holders.[51]

2. Commission Determination

33. Sections 284.288(c) and 284.403(c) of the Commission's regulations requires sellers to maintain certain records for a period of three years to reconstruct prices charged for natural gas. This is different from the record retention requirements in part 225 of our regulations, which largely are related to cost-of-service rate requirements.[52] Upon consideration of the comments, we have determined that there is benefit to retaining §§ 284.288(c) and 284.403(c) of the Commission's regulations. Given the importance of records related to any investigation of possible wrongdoing, and in order to avoid confusion, we will retain §§ 284.288(c) and 284.403(c) of the Commission's regulations on the record retention requirements. We reject Indicated Market Participant's suggestion to expand the scope of the record retention requirement beyond pipeline unbundled sales and blanket certificate sales, as other jurisdictional sales are made under cost-based tariffs.[53]

D. Sections 284.288(d) and 284.403(d) of the Commission's Regulations

34. The November 21 NOPR also sought comment on the need to retain §§ 284.288(d) and 284.403(d) of the Commission's regulations. The Commission stated its view that if it decides to repeal §§ 284.288(a)–(c) and 284.403(a)–(c) of its regulations, §§ 284.288(d) and 284.403(d) of the Commissions' regulations, dealing with remedies, are largely procedural and would become superfluous without the underlying operative paragraphs and therefore should be deleted.

[43] APGA at 6; NGSA at 3–5.

[44] AGA at 5.

[45] Indicated Market Participants at 16–19 (noting the advantage of a new proceeding that will broaden the applicability of this policy beyond certain blanket certificate holders under the codes of conduct regulations).

[46] NJBPU at 7–8.

[47] CPUC at 3, 8.

[48] CPUC at 3, 7.

[49] APGA at 6.

[50] *Id. See also* NJBPU at 7–8 (encouraging the Commission to adopt new rules on the three-year record retention requirement before, or at a minimum, contemporaneous with the repeal of the existing requirements).

[51] Indicated Market Participants at 17–18.

[52] 18 CFR part 225 (2005).

[53] As noted above, in a notice of proposed rulemaking issued simultaneously with this Final Rule, Docket No. RM06–14–000, the Commission is proposing to extend the record retention requirements from three to five years to be consistent with the statute of limitations that would apply to actions seeking civil penalties for alleged violations of the new anti-manipulation rule implemented in Order No. 670.

1. Comments

35. As noted above, some commenters advocate rescission of the codes of conduct regulations in their entirety.[54] NASUCA, however, notes the pending judicial challenges to §§ 284.288 and 284.403 of the Commission's regulations, which claim that the disgorgement remedy is retroactive ratemaking in violation of section 7 of the NGA. NASUCA urges the Commission not to capitulate to these challenges by repealing these rules and the disgorgement remedy in §§ 284.288(d) and 284.403(d) of the Commission's regulations.[55] NASUCA argues that the Commission should not, in an effort to provide greater clarity and regulatory certainty to the industry, eliminate profit disgorgement as a deterrent to manipulation and a remedy for manipulation. If it is not the intent of the Commission to abandon the disgorgement remedy, then NASUCA argues that §§ 284.288(d) and 284.403(d) of the regulations authorizing disgorgement should be retained.[56]

36. APGA argues that the Commission must add to the anti-manipulation final rule the condition that a violation of the rule may trigger a disgorgement of profits from the time the violation occurred as well as suspension or revocation of the blanket certificate, since this condition was justified for §§ 284.288 and 284.403 of the Commission's regulations as fulfilling the Commission's obligation to appropriately monitor markets and to ensure that market-based rates remain within the zone of reasonableness required by the NGA.[57]

37. CPUC states that in the November 21 NOPR, the Commission does not address remedies for violation of the new anti-manipulation regulations, or whether the same remedies will apply as for §§ 284.288(d) and 284.403(d) of the Commission's regulations.[58]

2. Commission Determination

38. Concerns over the extent of the Commission's remedial powers are misplaced. Order No. 644 addressed a concern, stemming from the abuses in Western markets in 2000–2001, that there were not clear rules to deal with abusive market conduct. By fashioning regulations prohibiting manipulation, we established a clear basis for ordering disgorgement of unjust profits, along with other remedial actions, in the event of violations of such rules.[59] With the issuance of Order No. 670 and the availability of significant civil monetary penalties for violations, the Commission now has a more complete set of enforcement tools—both rules and remedies and/or sanctions—to deal with market manipulation. The Commission will use these authorities as the facts and circumstances of each case indicate, as our discretion is at its zenith in determining an appropriate remedy for violations.[60] Accordingly, if companies subject to our jurisdiction violate the statutes, orders, rules, or regulations administered by the Commission, the Commission can order, among other things, disgorgement of unjust profits.[61] The Commission also has the option of conditioning, suspending, or revoking market-based rate authority, certificate authority, or blanket certificate authority.[62] Moreover, while section 5 of the NGA does not permit the Commission to establish just and reasonable rates prior to the refund effective date established under section 5, the Commission clearly has authority to order disgorgement of profits associated with an illegally charged rate, *i.e.*, a rate other than the rate on file or in violation of a Commission rule, order, regulation, or tariff on file.[63] Therefore, the Commission may use disgorgement of unjust profits where appropriate, including to remedy a violation of the new anti-manipulation regulations.

39. EPAct 2005 has enhanced the Commission's civil penalty authority.[64] Civil penalties, however, serve a different purpose from disgorgement or other equitable remedies. As we have said, the purpose of civil penalties is to ''encourage compliance with the law.''[65] The purpose of disgorgement, on the other hand, is to remedy unjust enrichment. The Commission will choose from the full range of available remedies and penalties—revocation, suspension, or conditioning of authority, disgorgement, and civil penalties—according to the nature of the violation and all of the facts presented. The imposition of both remedies and civil penalties in tandem may be necessary under certain circumstances to reach a fair result.[66] These are separate powers available to the Commission, as they arise under different provisions of the NGA.[67]

40. We note that other agencies also impose civil penalties and equitable remedies in tandem. For example, the

[54] AGA at 5; Cinergy at 4; NGSA at 3.

[55] NASUCA at 12.

[56] NASUCA at 13.

[57] APGA at 5–6 (*citing* Order No. 644, 105 FERC ¶ 61,217 at P 91 (2003), *reh'g denied*, 107 FERC ¶ 61,174).

[58] CPUC at 9.

[59] Order No. 644, 105 FERC ¶ 61,217 at P 95 (2003), *reh'g denied* 107 FERC ¶ 61,174 (stating ''[i]n appropriate circumstances these remedies may include disgorgement of unjust profits, suspension or revocation of the blanket sales provision or other appropriate non-monetary remedies. Which of these remedies is appropriate will depend on the circumstances of the case before it and the Commission will not determine here which remedy or remedies it will utilize.'').

[60] *See Niagara Mohawk Power Corp.* v. *FERC*, 379 F.2d 153, 159 (D.C. Cir. 1967); *accord* 16 U.S.C. 825h (2000); *Mesa Petroleum Co.* v. *FERC*, 441 F.2d 182, 187–88 (D.C. Cir. 1971); *Gulf Oil Corporation* v. *FPC*, 563 F.2d 588, 608 (3rd Cir. 1977), *cert. denied* 434 U.S. 1062, *reh'g denied*, 435 U.S. 981 (1978); *Consolidated Gas Transmission Corp.* v. *FERC*, 771 F.2d 1536, 1549 (D.C. Cir. 1985).

[61] *See, e.g., Transcontinental Gas Pipe Line Corp.* v. *FERC*, 998 F.2d 1313, 1320 (5th Cir. 1993) (holding the remedy of disgorgement of ill-gotten profits for a violation of the Natural Gas Act ''well within [the Commission's] equitable powers''); *Coastal Oil & Gas Corp.* v. *FERC*, 782 F.2d 1249, 1253 (5th Cir. 1986) (profits from illegal intrastate sales of gas in excess of a just and reasonable rate may be subject to disgorgement).

[62] *See, e.g., Enron Power Marketing, Inc.*, 103 FERC ¶ 61,343 at P 52 (2003); *Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices*, 99 FERC ¶ 61,272 at 62,154 (2002); *San Diego Gas & Electric Company*, 95 FERC ¶ 61,418 at 62,548, 62,565, *order on reh'g*, 97 FERC ¶ 61,275 (2001), *order on reh'g*, 99 FERC ¶ 61,160 (2002); *accord Enron Power Marketing, Inc.*, ''Order Proposing Revocation of Market-Based Rate Authority and Termination of Blanket Marketing Certificates,'' 102 FERC ¶ 61,316 at P 8 and n.10 (2003), and cases cited therein.

[63] *Transcontinental Gas Pipe Line Corp.*, 998 F.2d 1313 at 1320; *see also Dominion Resources, Inc. et al.*, 108 FERC ¶ 61,110 (2004) (disgorgement for violations of the Commission's Standards of Conduct); *El Paso Electric Company*, 105 FERC ¶ 61,131 at P35 (2003) (finding disgorgement an ''appropriate and proportionate remedy'' for a violation of the Federal Power Act); *Kinder Morgan Interstate Gas Transmission LLC*, 90 FERC ¶ 61,310 (2000) (disgorgement ordered to remedy preferential discounts to affiliates); *Stowers Oil & Gas Company*, 44 FERC ¶ 61,128 (1988), *reh. denied in part and granted in part*, 48 FERC ¶ 61,230 at 61,817 (1989), *appeal dismissed sub nom. Northern Natural Gas Co.* v. *FERC*, Case Nos. 89–1512 *et al.*, (D.C. Cir. 1992) (Commission ''properly exercised its broad equitable power'' in requiring disgorgement of unjust enrichment resulting from illegal sales of gas).

[64] EPAct 2005 for the first time granted the Commission authority to assess civil penalties for violations of the NGA and rules, regulations, restrictions, conditions and orders thereunder (EPAct 2005 section 314(b)(1), inserting new NGA section 22), and established the maximum civil penalty the Commission could assess under the NGA and the NGPA as $1 million per day per violation. EPAct 2005 section 314(b)(1), inserting new NGA section 22(a); EPAct 2005 section 314(b)(2), amending NGPA section 504(b)(6)(A).

[65] *Procedures for the Assessment of Civil Penalties under section 31 of the Federal Power Act*, Order No. 502, 53 FR 32035 (Aug. 23, 1988), FERC Stats. & Regs. ¶ 30,828 (Aug. 17, 1988).

[66] *Policy Statement on Enforcement*, 113 FERC ¶ 61,068 at P 12 (2005) (stating, ''[o]ur enhanced civil penalty authority will operate in tandem with our existing authority to require disgorgement of unjust profits obtained through misconduct and/or to condition, suspend, or revoke certificate authority or other authorizations, such as market-based rate authority for sellers of electric energy'').

[67] The authority to order disgorgement and other equitable remedies arises under the ''necessary or appropriate'' powers of section 16 of the NGA. 15 U.S.C. 717o. The authority to impose civil penalties arises under section 22 of the NGA and section 504(b)(6)(A) of the NGPA, as amended by EPAct 2005.

SEC can require an accounting and disgorgement to investors for losses and also impose penalties for the misconduct, and the CFTC can order restitution or obtain disgorgement and also impose fines for violations.[68] Similarly, in the environmental context, the government is free to seek an equitable remedy in addition to, or independent of, civil penalties.[69] When we impose disgorgement as a remedy, we have broad discretion in allocating monies to those injured by the violations. As we noted in our *Policy Statement on Enforcement*, each case depends on the circumstances presented, and the Commission will not predetermine which remedy and/or sanction authorities it will use.[70]

41. In light of the Commission's new monetary civil penalty authority set forth in EPAct 2005, and in light of our explanation above regarding the Commission's intent to choose from the full range of available remedies and penalties—revocation, suspension, or conditioning of authority, disgorgement, and civil penalties—according to the nature of the violation and all of the facts presented, the Commission does not see the need to retain §§ 284.288(d) and 284.403(d) of the Commission's regulations, which explains that the Commission may subject violators of the codes of conduct regulations to disgorgement of unjust profits, suspension, revocation of its blanket certificate, or other appropriate non-monetary remedies. Having only one set of rules governing remedies will avoid confusion and provide greater clarity and regulatory certainty to the industry.

E. Sections 284.288(e) and 284.403(e) of the Commission's Regulations

42. In the November 21 NOPR, the Commission stated its view that if it decides to repeal §§ 284.288(a)–(c) and 284.403(a)–(c) of its regulations, §§ 284.288(e) and 284.404(e), dealing with time limits on complaints and Commission enforcement, are largely procedural and would become superfluous without the underlying operative paragraphs and therefore should be deleted.

1. Comments

43. Although some commenters advocated repeal of the codes of conduct regulations in their entirety, only two commenters address §§ 284.288(e) and 284.403(e) of the Commission's regulations dealing with time limits on complaints and Commission enforcement.

44. CPUC states that in the November 21 NOPR, the Commission does not address complaint procedures for violation of the new anti-manipulation regulations, or whether the same complaint procedures will apply as in §§ 284.288(e) and 284.403(e) of the Commission's regulations.[71]

45. INGAA argues that the Commission should preserve the time limits under §§ 284.288(e) and 284.403(e) of the Commission's regulations for filing a complaint under the new anti-manipulation regulations or for Commission action on a market manipulation allegation.[72] INGAA maintains that §§ 284.288(e) and 284.403(e) of the Commission's regulations require that an action must be filed within 90 days after the end of the calendar quarter in which the alleged violation occurred or, if later, 90 days after the complainant knew or should have known that the alleged violation occurred. Further, §§ 284.288(e) and 284.403(e) of the Commission's regulations also require that the Commission take action within 90 days from learning of an alleged violation of the code of conduct regulations. According to INGAA, whether this is accomplished through the existing codes of conduct regulations or by amending the proposed anti-manipulation regulations, such a statute of limitations will preserve a needed degree of certainty and stability in the transition to new rules.[73]

2. Commission Determination

46. In Order No. 670, we noted that when a statutory provision under which civil penalties may be imposed lacks its own statute of limitations (as is the case with respect to the Commission's anti-manipulation authority), a five-year statute of limitations applicable to the imposition of civil penalties applies, and specifically rejected requests to retain the 90-day period used for the Market Behavior Rules.[74] Consistent with the discussion of this issue in Order No. 670, we hereby reject requests to retain the 90-day requirement. Moreover, the Commission hereby rescinds §§ 284.288(e) and 284.404(e) of the Commission's regulations, dealing with time limits on complaints and Commission enforcement, as inconsistent with the more definitive statement on complaint procedures set forth in Order No. 670.

III. Regulatory Flexibility Act Certification

47. The Regulatory Flexibility Act of 1980[75] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[76] The Commission is not required to make such analyses if a rule would not have such an effect.

48. The Commission concludes that this Final Rule would not have such an impact on small entities. This Final Rule rescinds §§ 284.288(a), (d) and (e) and 284.403(a), (d) and (e) of the Commission's codes of conduct regulations, which have been supplanted by the recently issued Order No. 670, which implements EPAct 2005. Therefore, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

IV. Information Collection Statement

49. This Final Rule merely rescinds §§ 284.288(a), (d) and (e) and 284.403(a),

[68] *See* sections 21–21C of the Securities Exchange Act, 15 U.S.C. 78u–78u-3 (2000); *SEC* v. *Happ*, 392 F.3d 12, 31–33 (1st Cir. 2004) (upholding SEC's imposition of both disgorgement and a civil penalty equal to the amount of disgorgement; further, the court noted that the wrongdoer bears the risk of uncertainty in calculating the amount of disgorgement). The CFTC can revoke or suspend a registration, suspend or prohibit certain trading, issue cease and desist orders, order restitution, and seek equitable remedies (injunction, rescission, or disgorgement), all in addition to imposing a monetary fine. 7 U.S.C. 13a and 13b (2000); Comm. Fut. L. Rep. (CCH) ¶ 26,265 at 42,247 (1994).

[69] *See, e.g.*, *Tull* v. *United States*, 481 U.S. 412, 425 (1987) (holding that the Clean Water Act does not intertwine equitable relief with the imposition of civil penalties; instead, each kind of relief is separately authorized in distinct statutory provisions).

[70] *Policy Statement on Enforcement*, 113 FERC ¶ 61,068 at P 13 (2005) (''[W]e will not prescribe specific penalties or develop formulas for different violations. It is important that we retain the discretion and flexibility to address each case on its merits, and to fashion remedies appropriate to the facts presented, including any mitigating factors'').

[71] CPUC at 9.

[72] INGAA at 2, 5.

[73] *Id.*

[74] Order No. 670, 114 FERC ¶ 61,047 at P 62–63.

[75] 5 U.S.C. 601–612 (2000).

[76] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632 (2000). The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal years did not exceed 4 million MWh. 13 CFR 121.201 (section 22, Utilities, North American Industry Classification System, NAICS) (2004).

(d) and (e) of the Commission's regulations pertaining to codes of conduct with respect to certain sales of natural gas and does not include new information requirements under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Environmental Statement

50. 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.[77] 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 are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[78] Thus, we affirm the finding we made in the NOPR that this Final Rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration would be necessary.

VI. Document Availability

51. 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.

52. From the Commission's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available on eLibrary both 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.

53. User assistance is available for eLibrary and the Commission's website during normal business hours. For assistance, please contact 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*).

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

[78] 18 CFR 380.4(a)(2)(ii) (2005).

VII. Effective Date and Congressional Notification

54. This final rule will take effect on March 29, 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.[79] The Commission will submit the Final Rule to both houses of Congress and the Government Accountability Office.[80]

List of Subjects in 18 CFR Part 284

Natural Gas, Pipelines, Investigations, Penalties.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends part 284, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

§ 284.288 [Amended]

■ 2. In § 284.288, paragraphs (a), (d), and (e) are removed, and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively.

§ 284.403 [Amended]

■ 3. In § 284.403, paragraphs (a), (d), and (e) are removed, and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—List of Parties Filing Comments and Reply Comments and Acronyms

American Gas Association (AGA)
American Public Gas Association (APGA)
California Public Utilities Commission (CPUC) **
Cinergy Services, Inc. and Cinergy Marketing & Trading, LP (Cinergy)
Constellation Energy Group Inc., et al. (Indicated Market Participants)
Interstate Natural Gas Association of America (INGAA)
Missouri Public Service Commission (MoPSC)*
National Association of State Utility Consumer Advocates (NASUCA)
Natural Gas Supply Association (NGSA)
New Jersey Board of Public Utilities (NJBPU)
New York State Public Service Commission (NYPSC)

*Entities filing late comments.
**Entities filing reply comments in addition to initial comments.

[79] 5 U.S.C. 804(2) (2000).

[80] 5 U.S.C. 801(a)(1)(A) (2000).

[FR Doc. 06–1718 Filed 2–24–06; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 69

[EPA–R09–OAR–2005–0506; FRL–8030–3]

State Implementation Plan Revision and Alternate Permit Program; Territory of Guam

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to grant full approval for the Guam operating permit program and an associated State Implementation Plan (SIP) revision submitted by the Territory of Guam (Guam). These submittals correct deficiencies identified in EPA's direct final interim approval rulemaking of January 9, 2003 (68 FR 1162). Final approval of Guam's alternate permit program and associated SIP revision will allow sources to be permitted under an approved alternate permit program. This alternate program fulfills all of the requirements that Guam adopt and submit an alternate local permitting program as part of a conditional exemption under section 325 of the Clean Air Act (Act) from Title V of the Act.

DATES: This rule is effective on April 28, 2006 without further notice, unless EPA receives adverse comments by March 29, 2006. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR–2005–0506, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions.

2. Agency Web site: *http://docket.epa.gov/rmepub/*. EPA prefers receiving comments through this electronic public docket and comment

system. Follow the on-line instructions to submit comments.

3. E-mail: *pike.ed@epa.gov*.

4. Mail or deliver: Gerardo Rios (Air–3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal or e-mail. The agency Web site and eRulemaking portal are ''anonymous access'' systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ben Machol, EPA Region IX, at (415) 972–3770, (*Machol.Ben@epa.gov*), Pacific Islands Office, or Ed Pike, at (415) 972–3970, (*Pike.Ed@epa.gov*) Permits Office, Air Division, at the EPA-Region IX address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Action and Implications
A. Effect of Final Approval of Guam's Alternate Permit Program
B. How Guam's Alternate Permitting Program Meets the Requirements for Full Approval
III. Administrative Requirements

I. Background

Section 325(a) of the Act authorizes the Administrator of EPA, upon petition by the Governor, to exempt any person or source or class of persons in Guam, from any requirement of the Act except for requirements of section 110 and part D of subchapter I of the Act (where necessary to attain and maintain the National Ambient Air Quality Standards), and section 112. An exemption may be granted if the Administrator finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant.

The Governor of Guam previously submitted a petition pursuant to section 325(a) of the Act for an exemption from Title V of the Act. Title V requires states, including Guam, to adopt and submit to EPA a Title V operating permit program for major sources and certain other stationary sources. If any state does not adopt an operating permit program, Title V requires EPA to apply certain sanctions within that area and to promulgate, administer, and enforce a Federal operating permit program for such area. Title V requires that sources located in states that do not adopt a Title V permitting program obtain a Federal operating permit from the EPA. Guam requested an exemption from the Title V program, but committed to achieving key goals of Title V by developing an alternate operating permit program.

On November 13, 1996, EPA issued a direct final rule (61 FR 58289), codified at 40 CFR 69.13 (the conditional exemption) that granted the government of Guam an exemption from the requirement to adopt a Title V program on the condition that Guam adopt and implement a local alternate operating permit program. EPA also granted owners or operators of certain sources on Guam a conditional exemption from the requirement to apply for a Federal Title V operating permit under part 71. That rulemaking does not waive or exempt the government of Guam, or owners or operators of sources located in Guam, from complying with all other applicable Clean Air Act provisions.

On January 13, 1999, Guam submitted an alternate permit program, consisting of Guam's Air Pollution Control Standards and Regulations (Guam's Regulations), along with supporting documents and authorizing legislation. EPA granted interim approval to that program on January 9, 2003 and listed necessary corrections to qualify for full approval. Guam submitted program corrections on June 30, 2005 that EPA believes meet the requirements for full approval, as explained below in section II.B.

II. Final Action and Implications

A. Effect of Final Approval of Guam's Alternate Permit Program

EPA is granting full approval of the alternate permit program submitted by Guam. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to grant full approval to Guam's part 69 alternate permitting program if adverse comments are filed. This rule will be effective on April 28, 2006 without further notice unless we receive adverse comment by March 29, 2006. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action and any parties interested in commenting must do so at this time. This includes any comments regarding additional changes (see the Guam EPA Technical Support Document) that are not related to the requirements for full approval. The effect of this full approval is to provide Guam with approval to issue operating permits to all sources subject to their approved permit program, based on our determination that Guam has met the part 69 requirements for submitting an approvable part 69 alternate permitting program.

EPA is also now removing 40 CFR 69.13(f)(2) for several reasons. EPA's 2003 interim approval established a deadline of October 9, 2004 in § 69.13(f)(2) to submit a fully approvable program. While Guam did not submit a fully approvable program by that date, Guam has now met the substantive operating permit program requirements of part 69. In addition, Guam has implemented the program by processing permit applications and drafting operating permits. Thus, it would be administratively burdensome and duplicative to implement a Federal permitting program now that the alternative permitting program has met the substantive requirements of the part 69 conditional waiver. In addition, EPA has not yet begun the process of drafting Federal operating permits on Guam. Because Guam EPA expects to issue operating permits soon, it would be counterproductive to delay the air quality benefits of permitting sources on Guam by implementing a Federal part

71 permitting program at this time. We will instead remove § 69.13(f)(2) to allow Guam to finalize the part 69 permits that it has drafted. This action fully approving Guam's alternative operating permit program does not change any of the other conditions in 40 CFR 69.13.

EPA is granting full approval only to those portions of Guam's Regulations that are necessary to implement Guam's alternate permit program, as required by the part 69 conditional exemption as part of the exemptions from the Title V program. This approval does not constitute approval under any other provisions of the Act. Except as provided herein, all other terms and conditions of the conditional exemption continue unchanged. The scope of the exemptions set forth in the conditional exemption continues unchanged. EPA continues to reserve its authority to revoke or modify the exemptions in whole or in part.

B. How Guam's Revisions To Alternate Permitting Program Meet the Requirements for Full Approval

1. State Implementation Plan Revision Provides Program Enforceability

40 CFR 69.13(c) states that Guam shall submit a revision to its SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by Guam pursuant to the exemption authorized in 40 CFR 69.13. 40 CFR 69.13(f)(3) states that Guam must adopt this revision through the appropriate procedures, which we believe is inherently also required by 40 CFR 69.13(c). Guam has adopted this requirement in section 1104.26 of their Guam Air Pollution Control Standards and Regulations and submitted evidence of procedurally correct adoption. EPA is approving this section into the SIP through this rulemaking (Please note that Guam has only requested SIP approval of section 1104.26, and has not requested SIP-approval of other rules, as part of this action).

2. Guam Has Clarified EPA's Permit Reopening Authority

EPA believes that the rule revisions address EPA's permit reopening authority. The rule states that Guam EPA will address EPA reopening determinations within 180 days, and that if issues are not resolved within 180 days, then USEPA shall issue the permit under part 71. This is consistent with the requirements for full approval of the Guam program.

3. Guam Has Authority for Injunctive Relief

40 CFR 69.13(b)(6) requires that the alternate operating permit program provide Guam EPA with the authority to enjoin activities that are in violation of the permit, the program, or the Act without first revoking a permit. Guam has revised section 1104.25 of the permitting program to reference section 49115 of chapter 49, part 2, division 2, part 1 of title 10 of the Guam Code Annotated, which provide Guam EPA with the proper authority.

4. Guam Has Clarified the Scope of Program Submittal

Guam EPA has clarified in the program submittal letter dated June 30, 2005, that the program includes the following sections of the Guam Air Pollution Control Standards and Regulations in addition to the other relevant sections of these regulations:

Section 1102.3 Certification
Section 1102.7 Public Access to Information
Section 1102.9 Prompt Reporting of Deviations
Section 1106 Standards of Performance for Air Pollution Emission Sources

5. Guam Has Clarified Program Definitions and Section 1104.2(b)

Guam has adopted verbatim the language changes 1 through 4 and 6 required by EPA (see Section 5 of the ''Conditions for Full Approval'' September 24, 2002 Technical Support Document). The September 2004 Technical Support Document for Revisions to the Guam Air Pollution Control Standards and Regulations explains that these changes were adopted.

Guam has made additional changes in response to clarifications that we requested regarding insignificant activities. Guam has clarified that only specific activities, rather than ''sources,'' can qualify for treatment as insignificant. EPA believes that the rules now adequately explain that the basis for determining what is ''insignificant'' will be determined activity-by-activity. Section 1104.6(e) has been re-titled to ''Insignificant Activities at a federal oversight source'' because it explains how insignificant activities will be addressed in permit applications, and references to minor sources were removed.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission

that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 April 28, 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 69

Environmental protection, Air pollution control, Guam.

Dated: January 20, 2006.

Laura Yoshii,

Regional Administrator, Region 9.

■ Part 52, 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 AAA—Guam

■ 2. In § 52.2670, the table in paragraph (c) is amended by adding an entry for Section 1104.26 under ''Chapter 03.10, 3.11 and 03.13'' to read as follows:

§ 52.2670 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED TERRITORY OF GUAM REGULATIONS

State citation	Title/subject	Effective date	EPA approval date	Explanation
* *	*	*	* *	*
Section 1104.26	Permit Compliance	06/03/05	02/27/06 [Insert page number where document begins].	
* *	*	*	* *	*

■ Part 69, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 69—[AMENDED]

■ 1. The authority citation for part 69 continues to read as follows:

Authority: 42 U.S.C. 7545(c), (g) and (i), and 7625–1.

Subpart A—Guam

■ 2. Subpart A is amended by revising § 69.13(f) to read as follows:

§ 69.13 Title V conditional exemption.

* * * * *

(f) Final approval of alternate permit program.

(1) The following sections of Guam's Air Pollution Control Standards and Regulations are granted final approval as Guam's alternate permit program:

1101.1(a) Administrator
1101.1(d) Air pollutant
1101.1(e) Air pollution
1101.1(i) Air pollution emission source
1101.1(r) CFR
1101.1(s) Clean Air Act
1101.1(t) Commenced
1101.1(v) Compliance Plan
1101.1(aa) Emission
1101.1(cc) Emissions unit
1101.1(ii) Fugitive Emissions
1101.1(jj) GEPA
1101.1(kk) Hazardous air pollutant
1101.1(xx) Owner or operator
1101.1(zz) Permit
1101.1(bbb) Person
1101.1(eee) Potential to emit
1101.1(iii) Regulated air pollutant
1101.1(jjj) Responsible official
1101.1(ooo) Source
1101.1(uuu) USEPA
1101.1(vvv) USEPA Administrator
1102.3 Certification
1102.7 Public Access to Information
1102.9 Prompt Reporting of Deviations
1104.1 Definitions
(a) Administrative Permit Amendment
(b) AP–42
(c) Applicable requirement
(d) Federal oversight source
(e) Insignificant source
(f) Insignificant sources—Type I
(g) Insignificant sources—Type II
(h) Major source
(i) Minor source
(j) Modification
(k) Pollution prevention
(l) Significant modification
(m) Transition period
1104.2 Applicability
1104.3 General conditions for considering applications
1104.4 Holding and transfer of permit
1104.5(a) Cancellation of Air Pollution Control Permit
1104.6 Air Pollution Control Permit Application
1104.7 Duty to Supplement or Correct Permit Applications
1104.8 Compliance Plan
1104.9 Compliance Certification of Air Pollution Emission Sources
1104.10 Transition Period and Deadlines to Submit First Applications
1104.11 Permit Term

1104.12 Permit Content
1104.13 Inspections
1104.14 Federally-Enforceable Permit Terms and Conditions
1104.15 Transmission of Information to USEPA
1104.16 USEPA Oversight
1104.17 Emergency Provision
1104.18 Permit Termination, Suspension, Reopening, and Amendment
1104.19 Public Participation
1104.20 Administrative Permit Amendment
1104.21 General Fee Provisions
1104.22 Air Pollution Control Special Fund
1104.23 Application Fees for Air Pollution Emission Sources
1104.24 Annual Fees for Air Pollution Emission Sources
1104.25 Penalties and Remedies
1106 Standards of Performance for Air Pollution Emission Sources

(2) SIP Revision. Guam shall adopt, pursuant to required procedures, and submit to EPA a revision to Guam's SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by Guam pursuant the exemption authorized in this § 69.13.

[FR Doc. 06–1740 Filed 2–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[WI–118–2; FRL–8037–5]

Notice of Resolution of Notice of Deficiency for Clean Air Act Operating Permit Program; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of resolution.

SUMMARY: EPA issued a notice of deficiency (NOD) on March 4, 2004 (69 FR 10167), in which EPA identified problems with Wisconsin's Clean Air Act (Act) title V operating permit program and a timeframe for the State to correct these deficiencies. The Wisconsin Department of Natural Resources (WDNR) submitted corrections to its permit program on August 18, 2005, and revisions to a related rule on December 8, 2005. This document announces that based on information provided by the WDNR, EPA concludes that the State of Wisconsin has resolved all of the issues identified in the March 4, 2004, NOD. As a result, EPA will not impose sanctions set forth under the mandatory sanctions provisions of the Act. In addition, EPA will not promulgate, administer, and enforce a whole or partial operating permit program pursuant to the title V regulations of the Act within 2 years after the date of the finding of deficiency.

DATES: Effective February 16, 2006. Because this notice of resolution is an adjudication and not a final rule, the Administrative Procedure Act's 30 day deferral of the effective date of a rule does not apply.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Susan Siepkowski, Environmental Engineer, at (312) 353–2654 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Susan Siepkowski, Environmental Engineer, Air Permit Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–2654, *siepkowski.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Is the Background Information for This Action?
II. What Did Wisconsin Submit and What Did EPA Determine Regarding Each Deficiency?
A. Demonstration of Sufficient Fees to Cover Program Costs
B. Demonstration of Title V Fees Being Used Solely for the Title V Program
C. Issuance of Title V Permits
D. Program Implementation Issues
III. What Action Is EPA Taking and What Does This Mean?

I. What Is the Background Information for This Action?

On March 4, 2004, EPA published a NOD for the title V Operating Permit Program in Wisconsin. (69 FR 10167). The NOD was based upon EPA's findings that the State's title V program did not comply with the requirements of the Act or with the implementing regulations at 40 CFR part 70 in the following four respects: (1) Wisconsin had failed to demonstrate that its title V program required owners or operators of part 70 sources to pay fees sufficient to cover the costs of the State's title V program in contravention of the requirements of 40 CFR part 70 and the Act; (2) Wisconsin was not adequately ensuring that its title V program funds were used solely for title V permit program costs and, thus, was not conducting its title V program in accordance with the requirements of 40 CFR 70.9 and the Act; (3) Wisconsin had not issued initial title V permits to all of its part 70 sources within the time allowed by the Act and 40 CFR 70.4; and (4) Wisconsin had other deficiencies with the implementation of its permit program.

Wisconsin was required to address these deficiencies within 18 months of the date of the issuance of the March 4, 2004 NOD, or the state would be subject to the sanctions under 40 CFR 70.10(b)(3) and section 179(b) of the Act. In addition, 40 CFR 70.10(b)(4) provides that, if the state has not corrected the deficiency within 18 months of the date of the finding of deficiency, EPA will promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

II. What Did Wisconsin Submit and What Did EPA Determine Regarding Each Deficiency?

On August 18, 2005, WDNR submitted to EPA the ''Wisconsin DNR Response to USEPA Notice of Deficiency Related to the 'Title V Program' dated March 4, 2004'' (NOD Response). The NOD Response is available to view in the docket, Docket ID No. WI–118–2. In the NOD Response, and its accompanying attachments, WDNR explained and documented how each of the deficiencies identified in the NOD had been, or were being, addressed. The NOD Response contains documented internal operational changes within WDNR, a copy of the fee structure included in Wisconsin's 2005–07 biennial budget bill enacted into law as 2005 Wisconsin Act 25 (published July 26, 2005), and numerous attachments describing WDNR's permit program, program costs, fee structure, and workload. Additionally, on December 8, 2005, WDNR submitted to EPA for approval, a SIP revision related to one of the deficiencies, ''Request to the USEPA to Revise Wisconsin's SIP Pertaining to the Permanency of Construction Permit Conditions'' (Permanency Revision).

Based on the information in WDNR's NOD Response, and the Permanency Revision to Wisconsin's SIP, EPA has determined that Wisconsin has demonstrated that it has resolved each

of the issues listed in the March 4, 2004, NOD, as discussed below.

A. Demonstration of Sufficient Fees To Cover Program Costs

As discussed in the NOD, pursuant to 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(a), a state program must require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs. 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(b) provide that a state may collect fees that cover the actual permit program costs, or may use a presumptive fee schedule, adjusted for inflation.

In a 2001 title V program revision submittal, WDNR disclosed that it had removed the inflation adjustment factor from its title V fee schedule. Instead of providing for inflation adjustments, Wisconsin's fee schedule now required the state to bill sources for each 1,000 tons of emissions in excess of the 4,000 ton cap allowed for by the presumptive fee schedule provided by 40 CFR 70.9(b)(2)(ii)(B).

In light of this change, and, as provided by 70.9(b)(5), EPA requested from Wisconsin a detailed fee demonstration to show its collection of fees is sufficient to cover its permit program costs. However, the information subsequently provided by Wisconsin did not adequately demonstrate that the revised fee schedule resulted in the collection of fees in an amount sufficient to cover its actual program costs, as required by 40 CFR 70.9(b)(1). Additionally, Section 502(b) of the Act, 42 U.S.C. 7661a(b), and 40 CFR 70.4(b) provide that a state must have adequate personnel to ensure that the permitting authority can carry out implementation of its title V program. EPA also had serious questions regarding the adequacy of Wisconsin's ability to fully implement its title V program.

To address these issues, WDNR provided in its August 18, 2005, NOD Response, the required fee demonstration. The fee information includes a description of the State's title V fee structure, a description of the title V permit program activities and costs, a demonstration that its fee schedule results in the collection of revenues sufficient to cover the title V permit program costs, and a description of the activities funded by part 70 fees, including personnel.

In its NOD Response, WDNR elected to demonstrate that it collects fees that cover the actual permit program costs, rather than use a presumptive fee schedule, adjusted for inflation, as allowed by 40 CFR 70.9(b)(5). WDNR provided detailed information regarding its program costs, which included, among other things, a Workload Analysis and a Fee Analysis for Wisconsin fiscal years 2005–2008. These documents describe the actual costs of implementing Wisconsin's title V program, a breakdown of how the costs were calculated, and permit funds WDNR anticipates will be collected. Additionally, the documents establish WDNR staffing requirements, including full time employee (FTE) hours needed, and corresponding funding needs, that WDNR concludes are necessary to operate a complete stationary source program over its fiscal years 2005–2008. The analyses do not cover all aspects of Wisconsin's Air Program, but instead, focus on the activities related to the permit program. WDNR provided further information regarding its permit streamlining efforts, which, if implemented as planned, will, over time, continue to reduce the costs of running its title V program beyond fiscal year 2008, and will allow staff redeployment.

Upon review of the information submitted, EPA finds that WDNR has demonstrated that it has adequate staffing and funding levels to support a complete title V program through Wisconsin fiscal year 2008. Accordingly, WDNR has demonstrated that it collects fees that cover the actual title V program costs. Thus, the State's program complies with the requirements of the Act and 40 CFR 70.9. Also, based on the Workload Analysis and the information regarding its permit streamlining efforts, EPA determines that WDNR is adequately staffing its title V program. Accordingly, Wisconsin is also complying with the requirements of the Act and 40 CFR 70.4, and has resolved these issues raised in the NOD.

B. Demonstration of Title V Fees Being Used Solely for the Title V Program

One of the issues identified in the NOD was that the fee revenue information that WDNR provided to EPA in 2003 showed that the State was not distinguishing between fees collected from sources under different operating permit programs. Specifically, the information provided showed that WDNR did not account separately for or maintain separate accounts for fees collected under title V and fees collected from non-title V sources. Section 502(b) of the Act, 42 U.S.C. 7661a(b), and 40 CFR 70.9(a), which provide that a state's title V program must ensure that all title V fees are used solely for title V permit program costs.

Additionally, 40 CFR 70.10(b) provides that states must conduct approved state title V programs in accordance with the requirements of 40 CRF part 70 and any agreement between the state and EPA concerning operation of the program. Information provided to EPA by WDNR in 2003 also disclosed internal fee management deficiencies that demonstrated that WDNR was not conducting its title V program in accordance with the requirements of the Act and 40 CRF part 70 and, therefore, was not adequately administering its title V program.

In its NOD Response, WDNR provided documentation which demonstrates that it is using its title V fees only for title V permit program costs. The fee revenue information provided establishes that the State is now distinguishing between fees collected from sources operating under different Clean Air Act permit programs. Specifically, the information shows that WDNR now accounts separately for, and maintains separate accounts for, fees collected under title V and non-title V programs. This change is the result of legislative changes adopted as part of the Wisconsin 2005–07 biennial budget bill enacted into law as 2005 Wisconsin Act 25. (Published July 26, 2005.) In 2005 Wisconsin Act 25, Wisconsin created a new appropriation to separate title V from non-title V funding and expenditures. The expenditure authority for the title V program specifies that permit fees be collected from sources with operation permits required under the Act. The expenditure authority for the non-title V program is for sources with state operation permits not required by the Act. Thus, the State now provides for an accurate description and accounting of its title V fee collections.

The NOD Response and its attachments also demonstrate that WDNR is using title V funds only for title V work. EPA has evaluated the information WDNR provided regarding its accounting and timekeeping practices, including FTE Hours, Time Report Activities by Employees, Activity and Funding Codes, and changes to these activity codes to better account for tracking and billing employee time, and concludes that WDNR has demonstrated that it is not using title V funds to subsidize the work of employees performing non-title V work. Further, Wisconsin Act 2005 also created a new fee structure for the non-title V program to ensure that the non-title V program work was self funded. Accordingly, WDNR is ensuring that all title V fees that it collects are used solely for permit program costs as required by 42 U.S.C. 7661a(b) and 40

CFR 70.9(a). Thus, WDNR is conducting its title V program in accordance with the requirements of the Act and 40 CRF part 70 and adequately administering its title V program.

Regarding the potential grant matching issue raised in the NOD, WDNR has demonstrated it is not using title V funds for grant matching. Specifically, WDNR included in its NOD Response, ''FY05 Air Management Activity Codes, Funding Source and Air Pollution Control Grant Match Eligibility,'' which provides for each air program activity the funding source and whether it is eligible to use for 105 grant match. As discussed above, by separating the non-title V and title V accounts, WDNR is able to specifically track where the matching funds came from to ensure title V funds are not being used. Thus, EPA concludes that WDNR has ensured that all title V fees that it collects are used solely for permit program costs, consistent with 42 U.S.C. 7661a(b) and 40 CFR 70.9(a).

C. Issuance of Title V Permits

The NOD cited Wisconsin for failure to comply with section 503(c) of the Act, 42 U.S.C. 7661b(c), and 40 CFR 70.4, which require that a permitting authority must act on all initial title V permit applications within three years of the effective date of the program. Pursuant to section 503 of the Act, Wisconsin was to have completed issuance of initial title V operating permits to all of its part 70 sources by April 5, 1998.

In an October 23, 2003 letter to EPA, ''Schedule for Completing Review of Title V Operation Permits,'' WDNR provided a schedule for completing issuance of its initial title V permits by December 31, 2004. WDNR met this commitment and finished issuing its title V permits on December 30, 2004. WDNR notified EPA of its completion in a January 14, 2005, letter to EPA, ''Update of Wisconsin Response to EPA Notice of Deficiency.'' Accordingly, EPA concludes that WDNR has resolved the NOD issue of failure to issue all of its initial title V permits.

Additionally, WDNR has committed to issuing all remaining initial Federally Enforceable State Operating Permits (FESOP) prior to March 4, 2006, with the majority of these permits to be issued by December 31, 2005. WDNR provided in its NOD Response, ''FESOP Issuance and Other 2005 Operation Permit Priorities,'' which includes its FESOP issuance strategy and deadlines. On January 17, 2006, WDNR also indicated to EPA that it completed issuance of these FESOP permits.

D. Program Implementation Issues

1. Expiration of Construction Permits

40 CFR 70.1 requires that each title V source has a permit to operate that assures compliance with all applicable requirements. The definition of applicable requirement includes any term or condition of any preconstruction permit issued pursuant to programs approved or promulgated under title I, including parts C or D of the Act. These permits must remain in effect because they are the legal mechanism through which underlying preconstruction requirements become applicable, and remain applicable, to individual sources. If the construction permit expired, then the construction permit terms no longer would be applicable requirements and the permitting authority would not have the authority to incorporate them into title V permits. (*See* EPA's May 20, 1999 letter from John Seitz to Robert Hodanbosi and Charles Lagges.)

Wisconsin statutes, Wis. Stat 285.66(1), provided that construction permits expired after 18 months. (WDNR had also interpreted NR 406.12 to provide that construction permits expired.) Because Wisconsin's construction permits expired, resulting in terms in its title V permits that did not have underlying applicable requirements, Wisconsin's title V program did not meet the minimum requirements of part 70.

In response to the NOD, Wisconsin has revised Statute 285.66(1) to make permanent all conditions in construction permits. WDNR submitted a SIP request, ''Wisconsin SIP Revision Pertaining to the Permanency of Construction Permit Conditions'' on December 8, 2005. Statute 285.66(1) was revised to provide that, ''Notwithstanding the fact that authorization to construct, reconstruct, replace, or modify a source expires under this subsection, all conditions in a construction permit are permanent unless the conditions are revised through a revision of the construction permit or through the issuance of a new construction permit.'' This statutory revision was adopted as part of the Wisconsin 2005–07 biennial budget bill enacted into law as 2005 Wisconsin Act 25. (Published July 26, 2005.)

EPA reviewed Wisconsin's December 8, 2005, SIP revision submittal and determined it was approvable because it makes Wisconsin's construction permit program consistent with Federal program requirements for state permit programs. This revision also resolves the deficiency identified in the NOD. EPA published its proposed approval of Wisconsin's Permanency Revision on January 12, 2006 (71 FR 1994), and no comments were received. EPA signed the final approval for this revision on February 16, 2006, and has submitted it to the Office of the **Federal Register** for publication.

Unlike Wisconsin's statute, its rule governing the expiration of construction permits, NR 406.12, provides that ''[a]pproval to construct or modify a stationary source shall become invalid 18 months after the date when a construction permit was issued by the Department unless the permit specifies otherwise.'' Therefore, no revision is necessary to NR 406.12, since the rule itself does not provide that the permits expire.

Based on our final approval of Wisconsin's statutory change to make all conditions in construction permits permanent, EPA concludes that WDNR has resolved this deficiency identified in the NOD.

2. Combined Construction and Operating Permits

The NOD discussed that states have the option of integrating their pre-construction and title V programs as described at 57 FR 32250, 32279 (July 21, 1992). Part 70 requires that, to implement an integrated permit program, the state permitting authority must, among other things, comply with the permit content requirements in 40 CFR 70.6, including the requirement to specify the origin of and authority for each term or condition in a title V permit, and, ensure that the construction permit conditions do not expire, whether previously established in a separate pre-construction permit, or in the combined title V/pre-construction permit.

Wisconsin has been issuing a version of a combined construction and title V permit for several years. However, Wisconsin was not complying with the requirements above in that it was not identifying the construction permit conditions or specifying the origin and authority of these conditions in the title V or combined permit. Furthermore, Wisconsin did not have any provisions to ensure that the construction permit conditions were permanent.

In its NOD Resolution, WDNR included an internal guidance memorandum, ''Interface Between Construction and Operation Permits,'' dated June 3, 2004. This memorandum directs permit writers to identify conditions from the construction permit and specify the origin and authority of these conditions in the title V permit. In addition, the SIP revision discussed in the previous section ensures that all

construction permit conditions are permanent. Thus, WDNR has resolved this deficiency identified in the NOD.

3. Federal Enforceability

The NOD cited Wisconsin for failure to comply with 40 CFR 70.6(b), which provides that all terms and conditions in a title V permit are federally enforceable, that is, enforceable by EPA or citizens. However, the permitting authority can designate as not federally enforceable any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. 40 CFR 70.6(b)(2). In contrast, EPA has determined that all conditions of a permit issued pursuant to a program approved into a state's SIP are federally enforceable. 40 CFR 52.23. (See the May 20, 1999 letter from John Seitz to Robert Hodanbosi and Charles Lagges.)

Wisconsin had identified all permit requirements in title V permits originating from Wisconsin's air toxics program (Wis. Admin. Code NR 445) as enforceable by the State only, even when the requirements were established in a permit issued pursuant to a SIP-approved program, such as a construction permit. Wisconsin's failure to include the terms established in a permit issued pursuant to a SIP-approved program into the federally enforceable side of its title V permits was contrary to 40 CFR 70.6.

In its NOD Resolution, WDNR included the internal guidance memorandum, ''Interface Between Construction and Operation Permits'', cited above. This memorandum directs the permit writers to make federally enforceable any requirement in the title V permit that was included in the source's construction permit issued pursuant to a SIP-approved program. EPA has determined that WDNR has addressed this program implementation issue identified in the NOD.

4. Insignificant Emission Unit Requirements

40 CFR 70.5(c) authorizes EPA to approve as part of a state program a list of insignificant activities and emission levels (IEUs) which need not be included in the permit application, provided that the application may not omit information needed to determine the applicability of, or to impose, any applicable requirement. Nothing in part 70, however, authorizes a state to exempt IEUs from the permit content requirements of 40 CFR 70.6.

Wisconsin's regulations, at NR 407, contain criteria for sources to identify IEUs in their applications, and require that permit applications contain information necessary to determine the applicability of, or to impose, any applicable requirement. However, WDNR did not include in its title V permits federally enforceable applicable requirements to which IEUs are subject. Therefore, Wisconsin's interpretation and implementation of its regulations was inconsistent with part 70.

WDNR included in its NOD Resolution an example of a revised title V permit template establishing the changes it has implemented in order to address this issue. WDNR has revised its title V permits to include the source's IEU's under the federally enforceable portion of the permit. WDNR has also included the requirements applicable to the IEU's as part of the general terms and conditions for each permit. Thus, EPA has determined that WDNR has adequately addressed this program implementation issue identified in the NOD.

III. What Action Is EPA Taking and What Does This Mean?

EPA is notifying the public that based on the information provided by WDNR; internal operational changes within WDNR; and EPA's approval of statutory changes requested by Wisconsin, that EPA has determined that Wisconsin has resolved each of deficiencies identified by EPA in the NOD for Wisconsin's Operating Permit Program, 69 FR 10167 (March 4, 2004). Therefore, based on the rationale set forth above, EPA is not invoking sanctions pursuant to section 179(b) of the Act, nor administering any portion of the State's operation permit program, pursuant to 40 CFR 70.10(b)(4).

List of Subjects in 40 CFR Part 70

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

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

Dated: February 16, 2006.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 06–1797 Filed 2–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–8037–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Amendment

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA, also the Agency or we in this preamble) today is granting a petition to modify an exclusion (or delisting) from the lists of hazardous waste previously granted to Nissan North America, Inc. (Nissan) in Smyrna, Tennessee. This action responds to a petition for amendment submitted by Nissan to increase the maximum annual volume of waste and to eliminate the total concentration limits in its wastewater treatment sludge covered by its current exclusion. After careful analysis, we have concluded the petitioned waste does not present an unacceptable risk when disposed of in a Subtitle D (nonhazardous waste) landfill. This exclusion applies to F019 wastewater treatment sludge generated by Nissan at its facility in Smyrna, Tennessee. Accordingly, this final amendment conditionally excludes a specific yearly volume of the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when the petitioned waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

DATES: *Effective Date:* February 27, 2006.

ADDRESSES: The RCRA regulatory docket for this final amendment is located at the EPA Library, U.S. Environmental Protection Agency Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, and is available for you to view from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general and technical information concerning this final rule, please contact Kris Lippert, RCRA Enforcement and Compliance Branch (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW.,

Atlanta, Georgia 30303, (404) 562–8605, or call, toll free (800) 241–1754. Questions may also be e-mailed to Ms. Lippert at *lippert.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Overview Information

A. What Action Is EPA Finalizing?

After evaluating Nissan's petition, we are amending the current Nissan's delisting published in the **Federal Register** on June 21, 2002 (67 FR 42187) to increase the maximum annual waste volume that is covered by its exclusion from 2,400 cubic yards to 3,500 cubic yards and to eliminate the total concentration limits for barium, cadmium, chromium, cyanide, lead, and nickel for its F019 wastewater treatment sludge from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA). The waste will still be subject to local, State, and Federal regulations for nonhazardous solid wastes.

B. Why Is EPA Approving This Petition for Amendment?

Nissan petitioned EPA to exclude the increased volume of its F019 wastewater treatment sludge because it does not believe, even at the increased volume, that the petitioned waste meets the criteria for which it was listed. EPA is also eliminating the total concentration limits for barium, cadmium, chromium, cyanide, lead, and nickel from its F019 wastewater treatment sludge.

Nissan believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as factors (including additional constituents) other than those for which the waste was listed, as required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See, section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(a)(1) and (2).

For reasons stated in both the proposed amendment and this document, we believe that Nissan's F019 wastewater treatment sludge should continue to be excluded from hazardous waste control at the increased volume. EPA also believes that eliminating all total concentration limits will not harm human health and the environment when disposed in a nonhazardous waste landfill, if the required delisting levels are met. Therefore, we are granting the final amendment to Nissan, located in Smyrna, Tennessee, for its F019 wastewater treatment sludge, generated at a maximum annual volume of 3,500 cubic yards.

C. What Are the Terms of This Exclusion?

This amended exclusion applies to the waste described in the petition only if the requirements described above as well as in Table 1 of Appendix IX to part 261 of Title 40 of the Code of Federal Regulations are satisfied. The maximum annual volume of the wastewater treatment sludge is 3,500 cubic yards.

D. When Is the Final Amendment Effective?

This rule is effective February 27, 2006. HSWA amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. For these same reasons, this rule can become effective immediately (that is, upon publication in the **Federal Register**) under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

E. How Does This Action Affect States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be directly affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received EPA's authorization to make their own delisting decisions. We describe these two situations below.

We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State, or that prohibits a Federally issued exclusion from taking effect in the State until the State approves the exclusion through a separate State administrative action. Because a dual system (that is, both Federal and State programs) may regulate a petitioner's waste, we urge petitioners to contact the applicable State regulatory authorities or agencies to establish the status of their waste under that State's program.

We have also authorized some States to administer a delisting program in place of the Federal program; that is, to make State delisting decisions. Therefore, this exclusion does not necessarily apply within those authorized States. If Nissan transports the petitioned waste to, or manages the waste in, any State with delisting authorization, Nissan must obtain delisting approval from that State before it can manage the waste as nonhazardous in that State.

In order for this amendment to be effective in an authorized State, that State must adopt this amendment through its State administrative process.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a formal request from a generator to EPA or another agency with jurisdiction to exclude from the lists of hazardous waste regulated by RCRA, a waste that the generator believes should not be considered hazardous.

B. What Regulations Allow Hazardous Waste Generators to Delist Waste?

Under 40 CFR 260.20 and 260.22, a generator may petition EPA to remove its waste from hazardous waste control by excluding it from the lists of hazardous wastes contained in 40 CFR 261.31, 261.32 and 261.33. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273 of Title 40 of the Code of Federal Regulations. 40 CFR 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists. A generator can petition EPA for an amendment to an existing exclusion under these same provisions of the Code of Federal Regulations.

C. What Information Must the Generator Supply?

A petitioner must provide sufficient information to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine that the waste is not hazardous for any other reason.

III. EPA's Evaluation of the Waste Data

A. What Waste Is the Subject of This Amendment?

Nissan operates a light-duty vehicle manufacturing facility in Smyrna, Tennessee. As a result of Nissan's use of aluminum as a component in its automobile bodies, Nissan generates a sludge meeting the listing definition of F019 at 40 CFR 261.31. Nissan was granted its current Federal delisting exclusion for this F019 wastewater treatment sludge at a maximum annual volume of 2,400 cubic yards on June 21, 2002 (67 FR 42187).

A full description of this waste and the Agency's evaluation of the original Nissan's petition are contained in the ''Proposed Rule and Request for Comments'' published in the **Federal Register** on November 19, 2001 (66 FR 57918). After evaluating public comment on the proposed rule, we published a final decision in the **Federal Register** on June 21, 2002 (67 FR 42187), to exclude Nissan's wastewater treatment sludge derived from the treatment of EPA Hazardous Waste No. F019 from the list of hazardous wastes found in 40 CFR 261.31. The hazardous constituents of concern for which F019 was listed are hexavalent chromium and cyanide (complexed). Nissan petitioned the EPA to exclude its F019 waste because Nissan does not use either of these constituents in the manufacturing process. Therefore, Nissan did not believe that the waste meets the criteria of the listing. EPA's final decision to grant the delisting exclusion on June 21, 2002, was conditioned on the following delisting levels: (1) Delisting Levels: All leachable concentrations for these metals, cyanide, and organic constituents must not exceed the following levels (ppm): Barium-100.0; Cadmium-0.422; Chromium-5.0; Cyanide-7.73, Lead-5.0; and Nickel-60.7; Bis-(2-ethylhexyl) phthalate-0.601; Di-n-octyl phthalate-0.0752; and 4-Methylphenol-7.66; (2) the total concentration of cyanide (total, not amenable) in the waste, not the waste leachate, must not exceed 200 mg/kg; and (3) the total concentrations, in mg/kg, of the metals in the waste, not the waste leachate, must not exceed the following levels: Barium-20,000; Cadmium-500; Chromium-1,000; Lead-2,000; and Nickel-20,000. If the waste exceeded any of the delisting limits, then the waste has to be managed as hazardous waste.

B. How Did EPA Evaluate This Petition?

In support of its original petition, Nissan submitted: (1) Descriptions of its manufacturing and wastewater treatment processes, the generation point of the petitioned waste, and the manufacturing steps that will contribute to its generation; (2) Material Safety Data Sheets (MSDSs) for materials used to manufacture vehicles; (3) the minimum and maximum annual amounts of wastewater treatment sludge typically generated, and an estimate of the maximum annual amount expected to be generated in the future; (4) results of analysis of the currently generated waste at the Nissan plant in Smyrna, Tennessee for chemicals in Appendix IX of 40 CFR part 264: 17 metals; cyanide; 58 volatile organic compounds and 124 semi-volatile organic compounds; and, in addition to the Appendix IX list, hexavalent chromium; (5) results of the analysis for those chemicals (i.e., Appendix IX list, hexavalent chromium) and fluoride in the leachate obtained from this waste by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311); (6) results of the determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity, in these wastes; (7) results of determinations percent solids; and (8) results of a dye tracer study and source inventory of Nissan's industrial wastewater system.

EPA reviewed the allowable total concentrations in the waste, as calculated by DRAS for the waste, to determine if increasing the maximum annual waste volume from 2,400 cubic yards to 3,500 cubic yards would be still protective to human health and the environment. The allowable total concentrations, according to the DRAS, were all at least 1,000 times greater than the actual maximum total concentrations found in the waste. Based on the DRAS results, EPA grants Nissan's petition for amendment to increase the maximum annual waste volume to 3,500 cubic yards and to eliminate all total concentration limits.

IV. Public Comments on the Proposed Amendment

A. Who Submitted Comments on the Proposed Rule?

We received no public comments on Nissan's Proposed Amendment and Request for Comments published in the **Federal Register** on June 24, 2005 (70 FR 36547).

V. Administrative Assessments

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a ''regulatory action'' subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule 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 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) 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. Section 804 exempts from section 801 the following types of rules (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: December 1, 2005.

Beverly H. Banister,

Acting Director, Waste Management Division.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 2. In Table 1 of Appendix IX, part 261 revise the entry for Nissan North America, Inc., to read as follows:

Appendix IX to Part 261—Wastes Excluded Under Secs. 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	* *	* * * *
Nissan North America, Inc.	Smyrna, Tennessee	Wastewater treatment sludge (EPA Hazardous Waste No. F019) that Nissan North American, Inc. (Nissan) generates by treating wastewater from automobile assembly plant located on 983 Nissan Drive in Smyrna, Tennessee. This is a conditional exclusion for up to 3,500 cubic yards of waste (hereinafter referred to as ''Nissan Sludge'') that will be generated each year and disposed in a Subtitle D landfill after February 27, 2006. Nissan must continue to demonstrate that the following conditions are met for the exclusion to be valid. (1) *Delisting Levels:* All leachable concentrations for these metals, cyanide, and organic constituents must not exceed the following levels (ppm): Barium-100.0; Cadmium-0.422; Chromium-5.0; Cyanide-7.73, Lead-5.0; and Nickel-60.7; Bis-(2-ethylhexyl) phthalate-0.601; Di-n-octyl phthalate-0.0752; and 4–Methylphenol-7.66. These concentrations must be measured in the waste leachate obtained by the method specified in 40 CFR 261.24, except that for cyanide, deionized water must be the leaching medium. Cyanide concentrations in waste or leachate must be measured by the method specified in 40 CFR 268.40, Note 7. (2) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A, (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Nissan Sludge meet the delisting levels in Condition (1). Nissan must perform an annual testing program to demonstrate that constituent concentrations measured in the TCLP extract do not exceed the delisting levels established in Condition (1). (3) *Waste Holding and Handling:* Nissan must hold sludge containers utilized for verification sampling until composite sample results are obtained. If the levels of constituents measured in Nissan's annual testing program do not exceed the levels set forth in Condition (1), then the Nissan Sludge is non-hazardous and must be managed in accordance with all applicable solid waste regulations. If constituent levels in a composite sample exceed any of the delisting levels set forth in Condition (1), the batch of Nissan Sludge generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA. (4) *Changes in Operating Conditions:* Nissan must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are implemented. EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify Nissan in writing that the Nissan Sludge must be managed as hazardous waste F019 until Nissan has demonstrated that the wastes meet the delisting levels set forth in Condition (1) and any levels established by EPA for the additional constituents of concern, and Nissan has received written approval from EPA. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify Nissan, in writing, that Nissan must verify that the Nissan Sludge continues to meet Condition (1) delisting levels.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) *Data Submittals:* Data obtained in accordance with Condition (2) must be submitted to Narindar M. Kumar, Chief, RCRA Enforcement and Compliance Branch, Mail Code: 4WD–RCRA, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. The submission is due no later than 60 days after taking each annual verification samples in accordance with delisting Conditions (1) through (7). Records of analytical data from Condition (2) must be compiled, summarized, and maintained by Nissan for a minimum of three years, and must be furnished upon request by EPA or the State of Tennessee, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). (6) *Reopener Language:* (A) If, at any time after disposal of the delisted waste, Nissan possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, Nissan must report the data, in writing, to EPA and Tennessee within 10 days of first possessing or being made aware of that data. (B) If the testing of the waste, as required by Condition (2), does not meet the delisting requirements of Condition (1), Nissan must report the data, in writing, to EPA and Tennessee within 10 days of first possessing or being made aware of that data. (C) Based on the information described in paragraphs (6)(A) or (6)(B) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information does require Agency action, EPA will notify the facility in writing of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Nissan with an opportunity to present information as to why the proposed action is not necessary. Nissan shall have 10 days from the date of EPA's notice to present such information. (E) Following the receipt of information from Nissan, as described in paragraph (6)(D), or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (6)(A) or (6)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (7) *Notification Requirements:* Nissan must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.
*	*	* * * * *

[FR Doc. 06–1790 Filed 2–24–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R01–RCRA–2006–0062; FRL–8038–3]

New Hampshire: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of New Hampshire has applied to EPA for Final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this immediate final action.

DATES: This Final authorization will become effective on April 28, 2006 unless EPA receives adverse written comment by March 29, 2006. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R01–RCRA–2006–0062. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information might not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard

copy at the following two locations: (i) EPA Region 1 Library, One Congress Street—11th Floor, Boston, MA 02114–2023; Business Hours: 10 a.m.–3 p.m., Monday through Thursday; tel: (617) 918–1990; and (ii) New Hampshire Department of Environmental Services, Public Information Center, 29 Hazen Drive, PO Box 95, Concord, New Hampshire 03302–0095; Business Hours: 8 a.m. to 4 p.m., Monday through Friday; tel: (603) 271–2919 or 271–2975.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2006–0062, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *yee.steve@epa.gov.*
- Fax: (617) 918–0197, to the attention of Stephen Yee.
- Mail: Stephen Yee, Hazardous Waste Unit, EPA Region 1, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023.
- Hand Delivery or Courier: Deliver your comments to: Stephen Yee, Hazardous Waste Unit, Office of Ecosystem Protection, EPA Region 1, One Congress Street, 11th Floor, (CHW), Boston, MA 02114–2023. Such deliveries are only accepted during the Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Identify your comments as relating to Docket ID No. EPA–R01–RCRA–2006–0062. 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 claimed to be other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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: Stephen Yee, Hazardous Waste Unit, EPA Region 1, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023, telephone number: (617) 918–1197; fax number: (617) 918–0197, e-mail address: *yee.steve@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

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

B. What Decisions Have We Made in This Rule?

We have concluded that New Hampshire's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant New Hampshire Final authorization to operate its hazardous waste program with the changes described in the authorization application. New Hampshire has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement any such requirements and prohibitions in New Hampshire, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in New Hampshire subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. New Hampshire has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA also retains its full authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports.
- Enforce RCRA requirements and suspend or revoke permits.
- Take enforcement actions.

This action does not impose additional requirements on the regulated community because the regulations for which New Hampshire is being authorized by today's action are already effective under state law, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect adverse comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule based upon this proposed rule that also appears in today's **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you should do so at this time.

If we receive adverse comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that

part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has New Hampshire Previously Been Authorized for?

The State of New Hampshire initially received Final authorization on December 18, 1984, with an effective date of January 3, 1985 (49 FR 49093) to implement the RCRA hazardous waste management program. Subsequent statutory changes and significant revisions to the New Hampshire Hazardous Waste Management Regulations resulted in New Hampshire's submission of a program revision application for certain changes. The Region published an immediate final rule for these changes and revisions on November 14, 1994 (59 FR 56397) with an effective date of January 13, 1995.

G. What Changes Are We Authorizing With Today's Action?

On August 31, 2005, New Hampshire submitted a final complete program revision application, seeking authorization for their changes in accordance with 40 CFR 271.21. In particular, New Hampshire is seeking authorization for updated state regulations addressing most federal requirements through June 30, 2002 and also for changes to New Hampshire's base program for which they had been previously authorized. Significant program revisions in this package include the Universal Waste and the Toxicity Characteristic (TC) Rules.

We are now making an immediate final decision, subject to reconsideration only if we receive written comments that oppose this action, that New Hampshire's hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final authorization. Therefore, we grant New Hampshire Final authorization for the following program changes:

Description of Federal requirement and checklist reference No.	Analogous State authority [1]
Updated State Regulations	
Non-HSWA Cluster VI (July 1, 1989–June 30, 1990)	
(64) Delay of Closure Period for Hazardous Waste Management Facilities (54 *FR* 33376–33398, 8/14/89):	
264.13(a) & (b)	Env-Wm 708.02(a)(2).
264.112(d) & 113	Env-Wm 708.02(a)(12).
264.142	Env-Wm 708.02(a)(13).
265.13	Env-Wm 707.02(a)(2).
265.112(d) & 113	Env-Wm 707.02(a)(11).
265.142	Env-Wm 707.02(a)(12).
270.42, Appendix I	Env-Wm 353.25(b).
(67) Testing and Monitoring Activities (54 *FR* 40260–40269, 9/29/89):	
260.11(a)	Env-Wm 401.06.
261, Appendix III	Env-Wm 401.04.
(70) Changes to part 124 Not Accounted for by Present Checklists (48 *FR* 14146–14295, 4/1/83, 48 *FR* 30113–30115, 6/30/83, 53 *FR* 28118–28157, 7/26/88, 53 *FR* 37396–37414, 9/26/88, 54 *FR* 246–258, 1/4/89):	
124.3(a) & (a)(1)	N/A—see Env-Wm 351.02 & 353.03.
124.3(a)(2)	Env-Wm 353.12 & 353.13.
124.3(a)(3)	Env-Wm 353.10(e).
124.5(a)	N/A—see Env-Wm 353.26 & 353.27.
124.5(c) (1) & (3)	N/A—see Env-Wm 353.25(b) & 353.26(h)—NH does not have an exemption for minor modifications.
124.5(d)	N/A—see Env-Wm 353.27.
124.6(d)(1)–(3)	N/A—see Env-Wm 353.19(b)(1)–(3).
124.6(d)(4)	N/A—see Env-Wm 353.19(b)(4).
124.10(c)(1)	N/A—see Env-Wm 353.21(a)(5)c & d.
124.12(a)(2)	N/A—see Env-Wm 353.21(d)(2).
(72) Modification of F019 Listing (55 *FR* 5340–5342, 2/14/90):	
261.32	Env-Wm 402.06(a).
(73) Testing and Monitoring Activities; Technical Corrections (55 *FR* 8948–8950, 3/9/90):	
260.11	Env-Wm 401.06.
261, Appendix III, Tables 2 & 3	Env-Wm 401.04.
(76) Criteria for Listing Toxic Wastes; Technical Amendment (55 *FR* 18726, 5/4/90):	
260.11	Env-Wm 405.02(b).
HSWA Cluster I (July 1, 1984–June 30, 1987):	
(14) Dioxin Waste Listing and Management Standards (50 *FR* 1978–2006, 1/14/85):	
261.5(e)	Env-Wm 503.01(b) & 508.01—SQG acute HW not exempt.
261.7(b)	Env-WM 401.03(h).
261.31	Env-Wm 402.06—NH lists Used Oil as an F Waste.
261.33(f)	Env-Wm 402.05.
261, Appendix III, Tables 1 & 3	Env-Wm 401.04.
261, Appendix VII	Env-Wm 402.01(c).
261, Appendix VIII	Env-Wm 405.02(b) & 803.03(b)(5)a.
261, Appendix VIII—Hazardous Constituents	Env-Wm 406.02(b)(5) & 406.02(e)(1)–(3).
261, Appendix X	N/A—Appendix X removed in 1993.
264.175(c) & (d)	Env-Wm 708.03(d)(1).
264.194(c)(2) & 200(a)	Env-Wm 708.03(d)(2).

Description of Federal requirement and checklist reference No.	Analogous State authority [1]
264.231	Env-Wm 708.03(d)(3).
264.259	Env-Wm 708.03(d)(4).
264.283	Env-Wm 708.03(d)(5).
264.317	Env-Wm 708.03(d)(6).
264.343(a)	Env-Wm 708.03(d)(7).
265.1(d)(1)	Env-Wm 701.03(b).
265.352	Env-Wm 707.03(g).
265.383	Env-Wm 707.03(h).
270.14(b)(7), 16(g), 17(j), 18(j), 20(j), & 21(j)	Env-Wm 353.11(a)(9).
(17R) Hazardous Waste Exports (HSWA Codification Rule (50 *FR* 28702–28755, 1/14/85)—This checklist has been superseded by Revision Checklist 31:	
262.50(d)	N/A.
(17S) Exposure Information (HSWA Codification Rule (50 *FR* 28702–28755, 1/14/85):	
270.16(a)	Env-Wm 353.16(a)—NH would consider an application incomplete if it is missing the information required by 270.10(j) incorporated by reference at 353.11(a)(9) provided this information is pertinent to the application.
270.10(j)	Env-Wm 353.11(a)(9).
(30) Biennial Report Correction (51 *FR* 28556, 8/8/86):	
264.75(h), (i), & (j) & 265.75(h), (i), & (j)	N/A—EPA no longer requires this in this report.
(31) Exports of Hazardous Waste (51 *FR* 28664–28686, 8/8/86):	
261.5(f)(3) & (g)(3)	N/A—NH Does not exempt generators of less than 100 kgs/mo.
261.6(a)(3)(i)	Env-Wm 802.02(a)(1)—NH has not adopted the reference to 40 CFR 262.58. NH thus is more stringent.
262.41(a)	Env-Wm 512.02—NH requires a quarterly report—more stringent.
262.41(a)(3), (4), & (5)	Env-Wm 510.03(a) & 512.02(g)(3).
262.41(b)	Env-Wm 512.03.
262, Subparts E & F	Env-Wm 510.06 incorporates 262, Subparts E & F by reference.
262.70	Env-Wm 501.02(a).
262, Appendix	Env-Wm 510.03(a).
263.20(a)	Env-Wm 604.01(b) & 604.04(a)—40 CFR 262 Subpart H has not yet adopted which is an optional requirement.
263.20(c)	Env-Wm 604.04(a).
263.20(e)(2) & (f)(2)	Env-Wm 604.03(b) & (c).
263.20(g)(3)	Env-Wm 604.04(b)(3).
263.20(g)(4)	Env-Wm 604.04(b)(4).
HSWA Cluster II (July 1, 1987–June 30, 1990):	
(48) Farmer Exemptions; Technical Corrections (53 *FR* 27164–27165, 7/19/88):	
262.10(b)	N/A—NH does not exempt generators of less than 100 kgs/mo.
264.1(g)(4)	Env-Wm 701.02(a)(7).
265.1(c)(8)	Env-Wm 701.02(a)(7).
268.1(c)(5)	N/A—NH has not yet adopted 40 CFR 268 (LDR).
270.1(c)(2)(ii)	Env-Wm 351.03(d).
(68) Reportable Quantity Adjustment Methyl Bromide Production Wastes (54 *FR* 41402–41408, 10/6/89):	
261.32	Env-Wm 402.07.
261, Appendix III	Env-Wm 401.04.
261, Appendix VII	Env-Wm 402.01(c).
(69) Reportable Quantity Adjustment (54 *FR* 50968–50979, 12/11/89):	
261.31	Env-Wm 402.06.
261, Appendix VII	Env-Wm 402.01(c).
261, Appendix VIII	Env-Wm 803.03(b)(4)(a), 405.02(b), 406.02(b)(5), & 406.02(e)(1)—(3).
(74) Toxicity Characteristic Revisions (55 *FR* 11798–11877, 3/29/90 as amended on 6/29/90, at 55 *FR* 26986–26998):	
See SPECIAL CONSOLIDATED CHECKLIST for the Toxicity Characteristic Revisions as of 12/31/02, below:	
(75) Listing of 1,1-Dimethylhydrazine Production Wastes (55 *FR* 18496–18506, 5/2/90):	
261.32	Env-Wm 402.07.
261, Appendix III	Env-Wm 401.04.
261, Appendix VII	Env-Wm 402.01(c).
(77) HSWA Codification Rule, Double Liners; Correction (55 *FR* 19262–19264, 5/9/90):	
264.221(c)	Env-Wm 708.03(d)(3).
264.301(c)	Env-Wm 708.03(d)(6).
RCRA Cluster I (July 1, 1990–June 30, 1991):	
(84) Toxicity Characteristic; Chlorofluorocarbon Refrigerants (56 *FR* 5910–5915, 2/13/91):	
See SPECIAL CONSOLIDATED CHECKLIST for the Toxicity Characteristic Revisions as of 12/31/02, below:	
RCRA Cluster II (July 1, 1991–June 30, 1992):	

Description of Federal requirement and checklist reference No.	Analogous State authority [1]
(97) Exports of Hazardous Waste; Technical Correction (56 *FR* 43704–43705, 9/4/91):	
262.53(b) & 56(b)	Env-Wm 510.06 incorporates 262 Subpart E by reference.
(99) Amendments to Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations (56 *FR* 66365–66369, 12/23/91):	
260.10	Env-Wm 110.01(a).
265.91(a)(3)	Env-Wm 707.02(a)(10).
(100) Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units (57 *FR* 3462–3497, 1/29/92):	
260.10	Env-Wm 110.01(a).
264.15(b)(4)	Env-Wm 708.02(a)(4).
264.19(a)–(d)	Env-Wm 708.02(a)(8).
264.73(b)(6)	Env-Wm 705.01(b)(6) & (8).
264.221(c), (d), (f), & (g)–(i), 222(a) & (b), 223(a), (b), & (c), 226(d), 228(b)(2)–(4), 251(c), (d), (e), (f), & (g)–(k), 252(a) & (b), 253(a), (b), & (c), 254(c), 301(c), (d), (f), & (g)–(l), 302(a) & (b), 303(c), 304(a), (b), & (c), & 310(b)(3)–(6).	Env-Wm 708.03(d)(3) incorporates 264 Subpart K by reference.
265.15(b)(4) & 19(a)–(d)	Env-Wm 707.02(a)(4) incorporates 265.15 by reference.
265.73(b)(6)	Env-Wm 705.01(b)(6) & (13).
265.221(a), (c), (f), & (g), 222(a), (b), & (c), 223(a) & (b), 226(b), 228(b)(2)–(4), 254, 255(a)–(c), 259(a)–(c), 269, 301(a), (c), & (f)–(i), 302(a)–(d), 303(a)–(c), 304(a)–(c), & 310(b)(3)–(6).	Env-Wm 707.03(c) incorporates 265 Subpart K by reference.
270.4(a)	Env-Wm 353.06(a).
270.17(a)–(c), & 18(c) & (d)	Env-Wm 353.11(a)(9)
271.21(b) & (d)	Env-Wm 353.11(a)(9).
270.42, Appendix I	Env-Wm 353.25(b).
(104) Used Oil Filter Exclusion (57 *FR* 21524–21534, 5/20/92):	
264.4(b)(15)	Env-Wm 401.03(b)(10).
RCRA Cluster III (July 1, 1992–June 30, 1993):	
(107) Used Oil Filter Exclusion; Technical Corrections (57 *FR* 29220, 7/1/92):	
264.4(b)(15)	Env-Wm 401.03(b)(10).
(108) Toxicity Characteristic Revisions; Technical Corrections (57 *FR* 30657–30658, 7/10/92):	
See SPECIAL CONSOLIDATED CHECKLIST for the Toxicity Characteristic Revisions as of 12/31/02, below:	
(110) Coke By-Products Listings (57 *FR* 37284–37306, 8/18/92):	
261.4(a)(10)	N/A—NH has not adopted this exclusion.
261.32	Env-Wm 402.07(a) Table 4.7.
261, Appendix VII	Env-Wm 401.04.
(113) Consolidated Liability Requirements (53 *FR* 33938–33960, 9/1/88; 56 *FR* 30200, 7/1/91, 57 *FR* 42832–42844, 9/16/92):	
264.141(h), 143(f)(10) & (11), 147(a), (b), (f)(6), & (g)–(k), & 151(b), (f), (g), (h), (i), (j), (k), (l), (m), & (n).	Env-Wm 708.02(a)(13) incorporates 264 Subpart H by reference.
265.141(h), 143(f)(10), 145(f)(11), & 147(a), (b), (f)(6), & (g)–(k)	Env-Wm 707.02(a)(12) incorporates 265 Subpart H by reference.
(115) Chlorinated Toluenes Production Waste Listing (57 *FR* 47376–47386, 10/15/92):	
261.32	Env-Wm 402.07.
261, Appendix VII	Env-Wm 402.01(c).
(117B) Toxicity Characteristic Amendment (57 *FR* 23062–23063, 6/1/92):	
See SPECIAL CONSOLIDATED CHECKLIST for the Toxicity Characteristic Revisions as of 12/31/02, below:	
(118) Liquids in Landfills II (57 *FR* 54452–54461, 11/18/92):	
260.10	Env-Wm 110.01(a).
264.13(c)(3)	Env-Wm 708.02(a) incorporates 264.13 by reference.
264.314 & 316(b) & (c)	Env-Wm 708.03(d)(6) incorporates 264 Subpart N by reference.
265.13(c)(3)	Env-Wm 707.02(a) incorporates 265.13 by reference.
265.314(a), (b), (c), (f), & (g) & 316(b) & (c)	Env-Wm 707.03(f) incorporates 265 Subpart N by reference.
(119) Toxicity Characteristic Revision; TCLP Correction (57 *FR* 55114–55117, 11/24/92, as amended on 2/2/93 at 58 *FR* 6854):	
See SPECIAL CONSOLIDATED CHECKLIST for the Toxicity Characteristic Revisions as of 12/31/02., below:	
RCRA Cluster IV (July 1, 1993–June 30, 1994):	
(126) Testing and Monitoring Activities (58 *FR* 46040–46051, 8/31/93 as amended 9/19/94, at 59 *FR* 47980–47982):	
260.11(a)	Env-Wm 401.06.
260.22(d)(1)(i)	Env-Wm 406.01(a)(2)—NH will only consider delisting petitions for federally regulated waste if it is already delisted by EPA.
261.22(a)(1) & (2)	Env-Wm 403.04(b)(1) & (2).
261.24(a)	Env-Wm 403.06(a) & (b).
261, Appendix II & III	Env-Wm 401.04.
261, Appendix X—remove	

Description of Federal requirement and checklist reference No.	Analogous State authority [1]
264.190(a)	Env-Wm 708.03(d)(2).
264.314(c)	Env-Wm 708.03(d)(6).
265.190(a)	Env-Wm 707.03(b).
265.314(d)	Env-Wm 707.03(f).
268.7(a), 40(a), 41(a), & Appendix I & IX	N/A—NH has not yet adopted 40 CFR 268 (LDR).
270.6(a)	Env-Wm 401.06.
270.19(c)(1)(iii) & (iv)	Env-Wm 353.11(a)(9).
270.62(b)(2)(i)(C) & (D)	Env-Wm 353.05(b).
270.66(c)(2)	N/A—NH has not yet adopted rules relating to Boilers and Industrial (BIF) Rules.
(128) Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection (59 *FR* 458–469, 1/4/94):	
260.11(a)	Env-Wm 401.06.
261, Appendix VIII	Env-Wm 803.03(b)(5)a, 405.02(b), 406.02(b)(5), 406.02(e)(1)–(3).
(131) Recordkeeping Instructions; Technical Amendment (59 *FR* 13891–13893, 3/24/94).	
264 & 265, Appendix I/Tables 1 & 2	Env-Wm 705.01(b)(2)e & f.
(132) Wood Surface Protection; Correction (59 *FR* 28484, 6/2/94):	
260.11(a)	Env-Wm 110.01(c)(124), 401.06.
(133) Letter of Credit Revision (59 *FR* 29958–29960, 6/10/94):	
264.151(d) & (k)	Env-Wm 708.02(a)(13).
(134) Correction of Beryllium Powder (P015) Listing (59 *FR* 31551–31552, 6/20/94):	
261.33(e)	Env-Wm 402.04(b).
261, Appendix VIII	Env-Wm 803.03(b)(5)a, 405.02(b), 406.02(b)(5), 406.02(e)(1)—(3).
268.42(a)/Table 2	N/A—NH has not yet adopted 40 C*FR* 268 (LDR).
RCRA Cluster V (July 1, 1994–June 30, 1995):	
(139) Testing and Monitoring Activities Amendment I (60 *FR* 3089–3095, 1/13/95):	
260.11(a)	Env-Wm 401.06.
(141) Testing and Monitoring Activities Amendment II (60 *FR* 17001–17004, 4/4/95):	
260.11(a)	Env-Wm 401.06.
(142 A) Universal Waste: General Provisions, (142 B) Universal Waste Rule: Specific Provisions for Batteries, (142 C) Universal Waste: Specific Provisions for Pesticides, (142 D) Universal Waste Rule: Specific Provisions for Thermostats, (142 E) Universal Waste Rule: Petition Provisions to Add a New Universal Waste, (60 *FR* 25492–25551, 5/11/95):	
See SPECIAL CONSOLIDATED CHECKLIST for the Universal Waste Rule as of 12/31/02, below:	
RCRA Cluster VI (July 1, 1995–June 30, 1996):	
(145) Liquids in Landfills III (60 *FR* 35703–35706, 7/11/95):	
264.314(e)(2)(ii) & (iii)	Env-Wm 708.03(d)(6).
265.314(f)(2)(ii) & (iii)	Env-Wm 707.03(f).
RCRA Cluster VII (July 1, 1996–June 30, 1997):	
(153) Conditionally Exempt Small Quantity Generator Disposal Options under Subtitle D (61 *FR* 34252–34278, 7/1/96):	
261.5(f)(3) & (g)(3)	N/A—NH does not exempt generators of less than 100 kgs/mo.
RCRA Cluster IX (July 1, 1998–June 30, 1999):	
(176) Universal Wate Rule—Technical Amendments (63 *FR* 71225–71230, 12/24/98):	
See SPECIAL CONSOLIDATED CHECKLIST for the Universal Waste Rule as of 12/31/02, below:	
RCRA Cluster X (July 1, 1999–June 30, 2000):	
(181) Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps (64 *FR* 36466–36490, 7/6/99):	
See SPECIAL CONSOLIDATED CHECKLIST for the Universal Waste Rule as of 12/31/02, below:	
(184) Accumulation Time for Waste Water Treatment Sludges (65 *FR* 12378–12398, 3/8/00):	
262.34(a)(4)	Env-Wm 509.02(2), (4), & (5); reference to 40 CFR 268.7(a)(5) is not applicable since NH has not yet adopted 40 CFR 268 (LDR).
262.34(g)	Env-Wm 507.02(c).
262.34(h)	N/A—NH does not allow generators who generate 1000 kgs or greater of HW/mo to accumulate waste on-site for up to 270 days without a permit—NH thus is more stringent.
262.34(i)	Env-Wm 507.02(d)–(g).
RCRA Cluster XII (July 1, 2001–June 30, 2002):	
(199) Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste (67 *FR* 11251–11254, 3/13/02):	
261.2(c)(3) & 261.4(a)(17)	N/A—NH has not adopted an exemption equivalent to 40 CFR 261.4(a)(17).

Description of Federal requirement and checklist reference No.	Analogous State authority [1]
261.24(a)	Env-Wm 401.03(b)(22)—NH is partially broader in scope in that it regulates some MGP wastes.
SPECIAL CONSOLIDATED CHECKLIST for the Universal Waste Rule as of December 31, 2002:	
260.10—(RCLs 142A–D & 181)	Env-Wm 110.01(a) & (c)(9), (37), (62), (74), (98), (130), (142), (143) & (145)—NH has added additional wastes to the definition of ''universal waste''.
260.20(a) & 23—(RCL 142E)	Env-Wm 210.01.
261.5(c), (f), & (g)—(RCLs 142A & 153)	N/A—NH does not exempt very small quantity generators (generators of less than 100 kgs/mo).
261.6(a)(3)(ii)–(iv)—(RCL 142B)	NH has not deleted its exemption from its hazardous waste rules for batteries at Env-Wm 802.02(a)(2), which is comparable to the prior but now deleted federal exemption. This is acceptable because NH currently nevertheless regulates batteries under its universal waste rule. At present, NH defines ''hazardous waste rules'' as those covering its hazardous waste through Env-Wm 1000 which does not include the Env-Wm 1100 universal waste rule regulations. For clarity, NH plans to remove the Env-Wm 802.02(a)(2) exemption in a future State rulemaking, while simultaneously adding Env-1100 to its definition of ''hazardous waste rules.''
261.9—(RCLs 142A–D, & 181)	Env-Wm 110.01(c)(142), 351.03(i), 501.02(e), 601.02(d), 701.02(a)(13), 1101.01, 1101.02(a) & (c)—NH has added other waste to the definition of ''universal waste''.
262.10(b) & (c)—(RCL 142A)	NA—NH does not exempt very small quantity generators.
262.10(d)–(h)—(RCLs 142A & 152)	NH has not yet adopted the changes required by RCL 152 which are optional requirements.
262.11(d)—(RCL 142A)	Env-Wm 502.01 & 1102.01—NH did not adopt an analog to 40 CFR 262.11(d) since that section contains a cross reference to other requirements and NH has those other requirements.
264.1(g)(11)—(RCLs 142A–D & 181)	Env-Wm 110.01(c)(142) & 701.02(a)(13).
265.1(c)(14)—(RCLs 142A–D & 181)	Env-Wm 110.01(c)(142) & 701.02(a)(13)—NH includes all mercury containing devices, not just thermostats, in the definition of ''universal waste''.
266.80(a)—(RCLs 142B & 176)	Env-Wm 809.01.
266.80(a)/Table—(RCL 176)	Instead of table, NH has applicability statements in Env-Wm 804.02(f), 809.01–04, and 1109.01.
266.80(b)—(RCLs 142B & 176)	Env-Wm 351.02, 351.02(b), 701.01(a) & (c), 804.02(f), 809.01 & 04, and 1109.01.
268.1(f)—(RCLs 142A–D, 181)	N/A—NH has not yet adopted 40 CFR 268 (LDR).
270.1(c)(2)—(RCLs 142A–D, 181)	Env-Wm 110.01(c)(142) & 351.03(i)).
273.1(a) & (b)—(RCLs 142A–D, 181)	Env-Wm 110.01(c)(142), 1101.01, & 1101.02.
273.2—(RCLs 142B & 181)	Env-Wm 110.01(c)(142), 401.01, 403.01(a), 1101.01, 1101.02(a), 1109.01 & 02—NH did not adopt an analog to 40 CFR 273.2(b)(2) because that section's statement when hazardous materials becomes hazardous wastes is also covered in 40 CFR 261.2 & 3. NH is equivalent to 40 CFR 261.2 & 3 in Env-Wm 400 & 800.
273.3(a)–(d)—(RCLs 142C & 181)	Env-Wm 110.01(c)(142), 401.01, 1101.01(a), 1101.02, & 1110.01–03—NH did not adopt an analog to 40 CFR 273.3(b)(2)–(4) & 273.3(d) because that section's statement when hazardous materials becomes hazardous wastes is also covered in 40 CFR 261.2 & 3. NH is equivalent to 40 CFR 261.2 & 3 in Env-Wm 400 & 800.
273.4(a)–(c)—(RCLs 142D & 181)	Env-Wm 110.01(c)(142), 401.01, 403.01(a), 1101.01 & .02, & 1111.01 & 02.—NH did not adopt an analog to 40 CFR 273.4(b) & (b)(2) because that section's statement when hazardous materials becomes hazardous wastes is also covered in 40 CFR 261.2 & 3. NH is equivalent to 40 CFR 261.2 & 3 in Env-Wm 400 & 800.
273.5(a)–(c)—(RCL 181)	Env-Wm 110.01(c)(142), 401.01, 403.01(a), 1101.01 & 02, & 1112.01 & 02—NH did not adopt an analog to 40 CFR 273.5(b) because that section's statement when hazardous materials become hazardous wastes is also covered in 40 CFR 261.2 & 3. NH is equivalent to 40 CFR 261.2 & 3 in Env-Wm 400 & 800.
273.6 & 7—(RCL 181)	N/A—40 CFR 273.6 & 7 are reserved in the federal regulations.
261.8—(RCLs 142A & 181)	N/A—NH does not exempt household hazardous waste once it is collected or exempt very small quantity generators.
273.9—(RCLs 142A–D & 181)	Env-Wm 110.01(c)(9), (57), (74), (83), (91), (98), (130), (142)–(145), 1110.01(a)(1)(a), 1110.03(a)–(d). Env-Wm 1101.03(d)—a universal handler who accumulates 20,000 kgs or more is defined as a very large quantity handler and must meet the additional requirements in Env-Wm 1105. NH includes all mercury containing devices, not just thermostats, as well as additional wastes in its definition of universal waste.
273.10—(RCLs 142A & 181)	Env-Wm 1102.01 & 1103.01.
273.12—(RCL 142A)	Env-Wm 1102.02(a).
273.12—(RCL 142A)	Env-Wm 1103.02.

Description of Federal requirement and checklist reference No.	Analogous State authority [1]
273.13—(RCLs 142A–D & 181)	Env-Wm 1102.03(b) & (c), 1102.06, 1109.03(a)–(d), 1110.04, 1111.03, & 1112.03(a). Env-Wm 1102.06 requires a universal waste handler to report a release to NHDES if it poses a threat to human health or the environment. Non-hazardous waste is regulated under NH Solid Waste Rules (Env-Wm 101, 201–205, 301–345, & 2100–3700).—40 CFR 273.13(a)(3)(ii) and (c)(3)(iii) were not adopted because the state's solid waste rules already apply to any non-hazardous waste.
273.14—(RCLs 142A–D & 181)	Env-Wm 1109.04, 1110.05(a), 1111.04, & 1112.04.
273.15—(RCL 142A)	Env-Wm 1102.04.
273.16—(RCL 142A)	Env-Wm 1103.03.
273.17(a) & (b)—(RCL 142A)	Env-Wm 1102.06 NH requires a universal waste handler to report a release to DES if it poses a threat to human health or the environment.
273.18—(RCL 142A)	Env-Wm 1102.07—Non-hazardous waste is regulated under NH Solid Waste Rules (Env-Wm 101, 201–205, 301–345, & 2100–3700)—40 CFR 273.18(h) was not adopted because the state's solid waste rules already apply to any non-hazardous waste.
273.19—(RCL 142A)	Env-Wm 1103.04.
273.20—(RCL 142A)	Env-Wm 1102.08—NH has not yet adopted RCL 152 which is an optional requirement.
273.30—(RCLs 142A & 181)	Env-Wm 1104.01 & 1105.01.
273.31—(RCL 142A)	Env-Wm 1102.02.
273.32(a)—(RCLs 142A & 142C)	Env-Wm 1104.03(a) & (b), 1105.03—NH requires that a universal waste handler notifies as a very large quantity handler if 20,000 kgs or more is accumulated and meet the additional requirements in Env-Wm 1105 and does not exempt handlers who have already notified EPA of hazardous waste—40 CFR 273.32(a)(3) was not adopted. NH is more stringent in requiring notifications.
273.32(b)—(RCLs 142A & 181)	Env-Wm 1104.03(b).
273.33(a)—(RCL 142B)	Env-Wm 1102.03(b) & (c) & 1109.03—Non-hazardous waste is regulated under NH Solid Waste Rules (Env-Wm 101, 201–205, 301–345, & 2100–3700)—40 CFR 273.33(a)(3)(ii) was not adopted because the state's solid waste rules already apply to any non-hazardous waste.
273.33(b)—(RCL 142C)	Env-Wm 1102.03(b) & (c), 1110.04, & 1110.06—NH has additional storage requirements for pesticides.
273.33(c)—(RCL 142D)	Env-Wm 1102.03(b) & (c), 1111.03—Non-hazardous waste is regulated under NH Solid Waste Rules (Env-Wm 101, 201–205, 301–345, & 2100–3700)—40 CFR 273.33(c)(3)(iii) was not adopted because the state's solid waste rules already apply to any non-hazardous waste.
273.33(d)—(RCLs 142A–D & 181)	Env-Wm 1102.03(b) & (c), 1102.06, & 1112.03(a)—NH requires a universal waste handler to report a release to DES if it poses a threat to human health or the environment.
273.34(d)—(RCLs 142A–D)	Env-Wm 1109.04, 1110.05, 1111.04, 1112.04, 1113.04 & 1114.04.
273.34(e)—(RCL 181)	Env-Wm 1112.04.
273.35(a), (b), & (c)—(RCL 142A)	Env-Wm 1102.04.
273.36—(RCL 142A)	Env-Wm 1104.4 & 1105.05.
273.37—(RCL 142A)	Env-Wm 1102.06—NH requires a universal waste handler to report a release to DES if it poses a threat to human health or the environment.
273.38—(RCL 142A)	Env-Wm 1102.07—Non-hazardous waste is regulated under NH Solid Waste Rules (Env-Wm 101, 201–205, 301–345, & 2100–3700)—40 CFR 273.38(h) was not adopted because the state's solid waste rules already apply to any non-hazardous waste.
273.39—(RCL 142A)	Env-Wm 1104.05, 1105.06, & 1105.07.
273.40—(RCL 142A)	Env-Wm 1102.08.
273.50—(RCLs 142 & 181)	Env-Wm 1106.01.
273.51—(RCL 142A)	Env-Wm 1106.02.
273.52—(RCL 142A)	Env-Wm 1106.03—40 CFR 273.52(b) was not adopted because the state's solid waste rules already apply to any non-hazardous waste.
273.53—(RCL 142A)	Env-Wm 1106.04.
273.54—(RCL 142A)	Env-Wm 1106.05—NH requires a universal waste handler to report a release to DES if it poses a threat to human health or the environment.
273.55—(RCL 142A)	Env-Wm 1106.06.
273.56—(RCLs 142A & 152)	Env-Wm 1106.07—NH has not adopted RCL 152.
273.61—(RCL 142A)	Env-Wm 1107.02—Non-hazardous waste is regulated under NH Solid Waste Rules (Env-Wm 101, 201–205, 301–345, & 2100–3700)—40 CFR 273.61(d) was not adopted because the state's solid waste rules already apply to any non-hazardous waste.
273.62—(RCL 142A)	Env-Wm 1107.03.
273.70—(RCLs 142A & 152)	Env-Wm 1101.02(b).
273.80 & 81—(RCL 142E)	Env-Wm 216.01 & 1108.01 & 02.
SPECIAL CONSOLIDATED CHECKLIST for the Toxicity Characteristic Revisions as of December 31, 2002.	

Description of Federal requirement and checklist reference No.	Analogous State authority [1]
261.3(a)(2)—(RCLs IA, 65, 109, 117A & 192A)	N/A—NH does not exempt these mining waste mixtures (see Env-Wm 401.02(a)(3) & 404.01(a)(2)) and has not adopted RCLs 65, 109, 117A, & 192A, the noted mixture exemption, or delisting for federal wastes.
261.3(c)(2)(i)—(RCLs IA, 8, 13, 117A, & 192A)	N/A—NH had not adopted RCLs 117A & 192A.
261.3(g) & (h)—(RCL 192A)	N/A—NH had not adopted RCL 192A.
261.4(b)(6), (9), & (10)—(RCL 74 & 108)	Env-Wm 401.03(b)(5)—See Program Description for explanation, 401.03(b)(8) & (21).
261.4(b)(11)—(RCL 80)	N/A—extension has expired.
261.4(b)(12)—(RCL 84)	Env-Wm 401.03(b)(9).
261.24—(RCL 74)	Env-Wm 403.06 & Table 49.
261.30(b)—(RCL 74)	Env-Wm 402.01(b) & (c).
261, Appendix II—(RCLs 74 & 119)	Env-Wm 401.04.
264.301(d)(6) & (e)(1)—(RCL 74)	Env-Wm 708.03(d)(6).
265.221(d)(1)—(RCL 74)	Env-Wm 707.03(c).
265.273(a)—(RCL 74)	Env-Wm 707.03(e).
265.301(d)(1)—(RCL 74)	Env-Wm 707.03(f).
268, Appendix I—(RCLs 74, 126, & 157)	N/A—NH has not yet adopted 40 CFR 268 (LDR).

[1] State of New Hampshire's Hazardous Waste Rules, effective August 1, 2000 as amended on October 13, 2001.

Note: In addition to the regulations listed in the tables above, there are various previously authorized state base program regulations to which the state has made minor changes and additions. The EPA is also proposing to authorize these minor changes. The final authorization of new state regulations and regulation changes is in addition to the previous authorization of state regulations, which remain part of the authorized program.

The New Hampshire Base Program regulations previously authorized were scheduled to sunset in June 1991 as mandated by State Statute RSA 541–A:17 and were readopted in January 24, 1991. The New Hampshire Hazardous Waste Rules were readopted August 24, 1996 and were amended, effective November 26, 1996, January 7, 2000, February 26, 2000, and July 7, 2000, then re-adopted with amendments, effective August 1, 2000. Subsequent to the 2000 rule re-adoption, the rules were amended, effective October 13, 2001, including the adoption of a new rule chapter, Env-Wm 1100, Requirements for Universal Waste Management. The base program regulations have remained federally authorized notwithstanding their readoptions. The federally authorized program will be those readopted state regulations along with the changes authorized in 1994 and the changes being authorized today.

H. Where Are the Revised State Rules Different From the Federal Rules?

The most significant differences between the proposed State rules and the Federal rules are summarized below. It should be noted that this summary does not describe every difference, or every detail regarding the differences that are described. Members of the regulated community are advised to read the complete regulations to ensure that they understand all of the requirements with which they will need to comply.

1. More Stringent Provisions

There are aspects of the New Hampshire program which are more stringent than the Federal program. All of these more stringent requirements are, or will become, part of the federally enforceable RCRA program when authorized by the EPA and must be complied with in addition to the State requirements which track the minimum Federal requirements. These more stringent requirements include the following, which are more fully described in the Program Description:

a. New Hampshire requires that a universal waste handler notifies as a very large quantity handler if 20,000 kgs or more is accumulated and that they meet the additional requirements in Env-Wm 1105. This category is in addition to the Federal large quantity generator and small quantity generator categories.

b. New Hampshire's universal waste rule has additional storage requirements for pesticides.

c. New Hampshire allows Full Quantity Generators to accumulate F006 waste that meets certain conditions for more than 90 days (see Env-Wm 507.02(c)). However, New Hampshire's exemption is more stringent than the analogous federal one in that even generators of between 100 and 1000 kgs may only accumulate this waste for up to 180 days instead of 270 days. (New Hampshire has not adopted rules equivalent to 40 CFR 262.34(h) and (i).)

2. Different but Equivalent Provisions

New Hampshire also has some regulations which differ from, but have been determined to be equivalent to, the Federal regulations. These State regulations will become part of the Federally enforceable RCRA program when authorized by the EPA. These different but equivalent requirements include the following:

a. New Hampshire's definition of ''universal waste'' includes all the federal universal wastes, and also includes: all mercury containing devices (not just thermostats); motor vehicle antifreeze; and cathode ray tubes.

3. Broader in Scope

There are also aspects of the New Hampshire program which are broader in scope than the Federal program. The State requirements which are broader in scope are not considered to be part of the federally enforceable RCRA program. However, they are fully enforceable under State law and must be complied with by sources in New Hampshire. These broader in scope requirements include the following:

a. New Hampshire has adopted a manufactured gas plant waste exemption that is narrower than the Federal exemption to the toxicity characteristic at 40 CFR 261.24(a) and thus has a program that is partially broader in scope by including some wastes that the Federal government would exempt. The New Hampshire exemption is limited to manufactured gas plant contaminated media and debris that are characteristic for benzene only and are treated in an incinerator or thermal desorption unit.

I. Who Handles Permits After the Authorization Takes Effect?

New Hampshire will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer and enforce any RCRA and

HSWA (Hazardous and Solid Waste Act) permits or portions of permits which it has issued in New Hampshire prior to the effective date of this authorization until the State incorporates the terms and conditions of the Federal permits into the State RCRA permits. EPA will not issue any more new permits, or new portions of permits, for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for any HSWA requirements for which New Hampshire is not yet authorized.

J. What Is Codification and Is EPA Codifying New Hampshire's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart EE for this authorization of New Hampshire's program until a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993); therefore, this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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 action authorizes 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). For the same reason, this action also does not significantly or uniquely affect the communities or Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. 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 actions under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. 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 document 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 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). This action nevertheless will be effective 60 days after it is published, because it is an immediate final rule.

List of Subjects in 40 CFR Part 271

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

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

Dated: February 9, 2006.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 06–1792 Filed 2–24–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–P–7650]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Division Director reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive

Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism

This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform

This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and record keeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Michigan: Lapeer; Case No.: 04–05–2877P.	City of Lapeer	January 4, 2006; January 11, 2006; *The County Press*.	The Honorable Chuck Treece, Mayor, City of Lapeer, 576 Liberty Park, Lapeer, Michigan 48446.	January 19, 2006	260112
Michigan: Lapeer; Case No.: 04–05–2877P.	Township of Lapeer.	January 4, 2006; January 11, 2006; *The County Press*.	Mr. Scott A. Jarvis, Supervisor, Township of Lapeer, 1500 Morris Road, Lapeer, Michigan 48446–9420.	January 19, 2006	260435

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: February 2, 2006.

David I. Maurstad,

Acting Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 06–1773 Filed 2–24–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–D–7581]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any

person has ninety (90) days in which to request through the community that the Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism

This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform

This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as shown below:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Georgia: Bulloch	Unincorporated Areas.	December 1, 2005; December 8, 2005; *Statesboro Herald*.	Mr. Garrett Nevzils, Chairman of the Bulloch, County Commission, 115 North Main Street, P.O. Box 347, Statesboro, Georgia 30459.	January 8, 2006	130019 B
Georgia: Bulloch	City of Statesboro.	December 1, 2005; December 8, 2005; *Statesboro Herald*.	The Honorable William Hatcher, Mayor of the City of Statesboro, City Hall, P.O. Box 348, Statesboro, Georgia 30459–0348.	March 9, 2006	130021 C
Illinois: Cook	Village of Streamwood.	June 16, 2005; June 23, 2005; *The Daily Herald*.	Ms. Billie D. Roth, President of the Village of Streamwood, Village Hall, 301 East Irving Park Road, Streamwood, Illinois 60107–3096.	September 22, 2005 ..	170166 F
Mississippi: Panola.	City of Batesville	November 23, 2005; November 30, 2005; *The Panolian*.	The Honorable Jerry Autrey, Mayor of the City of Batesville, City Hall, P.O. Box 689, 103 College Street, Batesville, Mississippi 38606.	March 1, 2006	280126 C
Mississippi: Hinds	City of Clinton	May 26, 2005; June 2, 2005; *The Clinton News*.	The Honorable Rosemary G. Aultman, Mayor of the City of Clinton, P.O. Box 156, Clinton, Mississippi 39060.	May 16, 2005	280071 C

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: February 3, 2006.

David I. Maurstad,

Acting Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 06–1772 Filed 2–24–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020718172–2303–02; I.D. 022206A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 ft (18.3 m) LOA Using Jig or Hook-and-Line Gear in the Bogoslof Pacific Cod Exemption Area in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 ft (18.3 meters (m)) length overall (LOA) using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the limit of Pacific cod for catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 22, 2006, through 2400 hrs, A.l.t., December 31, 2006.

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

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

In accordance with § 679.22(a)(7)(i)(C)(1) and (2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that 113 metric tons of Pacific cod have been caught by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof exemption area described at § 679.22(a)(7)(i)(C)(1). Consequently, the Regional Administrator is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area.

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

This action is required by section 679.22 and is exempt from review under Executive Order 12866.

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

Dated: February 22, 2006.

William D. Chappell,

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

[FR Doc. 06–1794 Filed 2–22–06; 1:29 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 38
Monday, February 27, 2006

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 05–23361; Airspace Docket 05–ANM–17]

Proposed Revision to Class E Airspace; Pinedale, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would revise Class E airspace at Pinedale, WY. Additional controlled airspace is necessary to accommodate aircraft executing new Area Navigation (RNAV) Global Positioning System (GPS) approach procedures at Pinedale/Ralph Wenz Field. This action would improve the safety of Instrument Flight Rules (IFR) aircraft executing these new procedures at Pinedale/Ralph Wenz Field, Pinedale, WY.

DATES: Comments must be received on or before April 13, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA 05–23361; Airspace Docket 05–ANM–17, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker at the Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Service Area Office, 1601 Lind Avenue, SW., Renton, WA 98055; telephone 425–227–2527.

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 decision on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposals.

Communications should identify Docket FAA 05–23361; Airspace Docket 05–ANM–17, and be submitted in triplicate to the Docket Management System at the address listed above. You may also submit comments through the Internet at *http://dms.dot.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket FAA 05–23361; Airspace Docket 05–ANM–17''. 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 action is taken on the proposed rule. The proposal contained in this action 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 NPRM

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 **Federal Register**'s Web page at *http://gpoaccess.gov/fr/index.html*.

You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number 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 Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Service Area Office, Airspace Branch, 1601 Lind Avenue, SW., Renton, WA 98055.

Persons interested in being placed on a mailing list for future NPRMs 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 procedures.

The Proposal

This action would amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Pinedale, WY. Additional controlled airspace is necessary to accommodate aircraft executing new RNAV GPS approach procedures at Pinedale/Ralph Wenz Field. Controlled airspace is necessary where there is a requirement for IFR services, which include arrival, departure, and transitioning to/from the terminal or en route environment. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9N dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in this 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. Therefore, this proposed regulation: (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 proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, 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 the 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 areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY E5 Pinedale, WY [Revised]

Pinedale/Ralph Wenz Field, WY
(Lat. 42°47′44″ N., long. 109°48′26″ W.)
Big Piney VOR/DME
(Lat. 42°34′46″ N., long. 110°06′33″ W.)
Wenz NDB
(Lat. 42°47′50″ N., long. 109°48′13″ W.)

The airspace extending upward from 700 feet above the surface within 4.3 miles each side of a direct line between the Big Piney VOR/DME and the Wenz NDB extending from the VOR/DME to a point 4.3 miles northeast of the NDB, and within 3.1 miles each side of the 323° bearing and 4.0 miles each side of the 303° bearing to the Wenz NDB extending to 13 miles southeast of the NDB, and 4.0 miles either side of the 123° bearing to the Wenz NDB extending to 10 miles northwest of the NDB; that airspace extending upward from 1,200 feet above the surface beginning at lat. 43°00′00″ N., long. 110°30′00″ W., thence east to lat. 43°00′00″ N., long. 109°45′00″ W., thence southeast to lat. 42°30′00″ N., long. 109°11′00″ W., thence southwest to lat. 42°00′00″ N., long. 109°50′00″ W., thence west to lat. 42°00′00″ N., long. 110°00′00″ W., thence northwest to point of beginning.

* * * * *

Issued in Seattle, Washington, on February 3, 2006.

Clark Desing,

Acting Area Director, Western En Route and Oceanic Operations.

[FR Doc. 06–1761 Filed 2–24–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 284

[Docket No. RM06–14–000]

Revisions to Record Retention Requirements for Unbundled Sales Service, Persons Holding Blanket Marketing Certificates, and Public Utility Market-Based Rate Authorization Holders

Issued February 16, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations regarding the blanket certificates for unbundled natural gas sales services held by interstate natural gas pipelines, the blanket marketing certificates held by persons making sales for resale of natural gas at negotiated rates in interstate commerce and the market-based rate authorizations held by certain sellers of electricity and related products. Specifically, the Commission is proposing to extend the record retention requirement in the sections of the Commission's regulations that apply to such sellers from three to five years.

DATES: Comments are due March 29, 2006.

ADDRESSES: You may submit comments, identified by docket number, by any of the following methods:

- Agency Web site: *http://www.ferc.gov*. Follow the instructions for submitting comments electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*.
- Mail: Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT:

Frank Karabetsos, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8133. *Frank.Karabetsos@ferc.gov.*

Mark Higgins, Office of Market Oversight and Investigations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8273. *Mark.Higgins@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly

1. The Federal Energy Regulatory Commission is proposing to revise §§ 284.288(b) and 284.403(b) of its codes of conduct regulations,[1] as promulgated pursuant to Order No. 644.[2] Sections 284.288(b) and 284.403(b) of the codes of conduct regulations require sellers to maintain certain records for a period of three years to reconstruct prices charged for natural gas. Similarly, the Commission is proposing to revise new § 35.37(d) of the Commission's regulations. Section 35.37(d) is the codification of former Market Behavior Rule 5.[3] Section 35.37(d) requires that sellers retain for a minimum three-year period all data and information upon which they billed the prices charged for electricity and related products in sales made under their market-based rate tariffs and authorizations or in transactions the prices of which were reported to price index publishers.[4] Subsequent to the issuance of Order No. 644 and the Market Behavior Rules Order, Congress provided the Commission with specific anti-manipulation authority in the Energy

[1] 18 CFR 284.288(b) and 284.403(b) (2005). In a Final Rule in Docket No. RM06–5–000 issued simultaneously with this notice of proposed rulemaking (NOPR), the Commission is redesignating sections 284.288(c) and 284.403(c) of the Commission's regulations as sections 284.288(b) and 284.403(b), respectively. Unless otherwise specified, this NOPR will refer to these sections on record retention under their new designations, sections 284.288(b) and 284.403(b).

[2] *Amendments to Blanket Sales Certificates*, 105 FERC ¶ 61,217 (2003), *reh'g denied* 107 FERC ¶ 61,174; 68 FR 66323 (Nov. 26, 2003); 18 CFR 284.288 and 284.403 (2003) (Order No. 644). Order No. 644 is currently on appeal. *See Cinergy Marketing & Trading, L.P.* v. *FERC*, No. 04–1168 *et al.* (DC Cir. April 28, 2004).

[3] Concurrently herewith, the Commission is codifying certain Market Behavior Rules, including Market Behavior Rule 5, which are currently tariff conditions for market-based rate sellers of electricity and related products. *Conditions for Public Utility Market-Based Rate Authorization Holders*, Docket No. RM06–13–000 (February 16, 2006) (Market Behavior Rules Codification Order). The Commission had promulgated Market Behavior Rule 5 along with the other Market Behavior Rules in the Market Behavior Rules Order. *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, ''Order Amending Market-Based Rate Tariffs and Authorizations,'' 105 FERC ¶ 61,218 (2003), *reh'g denied*, 107 FERC ¶ 61,175 (2004) (Market Behavior Rules Order). The Market Behavior Rules are currently on appeal. *Cinergy Marketing & Trading, L.P.* v. *FERC*, Nos. 04–1168 *et al.* (DC Cir. April 28, 2004). Unless otherwise specified, this NOPR will refer to this rule on record retention under its new designation, section 35.37(d).

[4] 18 CFR 35.37(d).

Policy Act of 2005 (EPAct 2005).[5] To implement this new authority, the Commission recently issued Order No. 670, where we said we would adhere to a five-year statute of limitations where we seek civil penalties for violations of the new anti-manipulation rules.[6] This NOPR proposes to amend these regulations to extend the record retention requirement of §§ 284.288(b), 284.403(b) and 35.37(d) of the Commission's regulations from three to five years, in order to be consistent with the recently issued Order No. 670.

I. Background

2. On November 17, 2003, we issued Order No. 644, amending blanket certificates for unbundled natural gas sales services held by interstate natural gas pipelines and blanket marketing certificates held by persons making sales for resale of natural gas at negotiated rates in interstate commerce. This rule requires that pipelines that provide unbundled natural gas sales service and all sellers of natural gas for resale adhere to a code of conduct with respect to certain natural gas sales. Sections 284.288(b) and 284.403(b) of the codes of conduct regulations require that sellers retain for a minimum three-year period all data and information upon which they billed the prices charged for natural gas sales made under §§ 284.284 or 284.402, or in transactions the prices of which were reported to price index publishers.

3. At the same time that Order No. 644 was adopted for pipelines that provide unbundled natural gas sales service and holders of blanket certificate authority that make sales for resale of natural gas, the Commission also issued the Market Behavior Rules Order to require wholesale sellers of electricity at market-based rates to adhere to certain behavioral rules when making sales of electricity. The record retention rule, now § 35.37(d) of the Commission's regulations, requires that sellers retain for a minimum three-year period all data and information upon which they billed the prices charged for electricity and related products in sales made under their market-based rate tariffs and authorizations or in transactions the prices of which were reported to price index publishers.

4. In a Notice of Proposed Rulemaking dated November 21, 2005,[7] the Commission proposed to rescind §§ 284.288 or 284.403 of the Commission's regulations once we issued final regulations implementing the anti-manipulation provisions of EPAct 2005 and have had the opportunity to incorporate the non-duplicative aspects of §§ 284.288 or 284.403 of the Commission's regulations into other rules of general applicability. At the same time, we issued an order in Docket No. EL06–16–000 proposing similar changes to the behavior rules applicable to wholesale sellers of electricity at market-based rates.[8] On January 19, 2006, the Commission issued Order No. 670, adopting regulations implementing the EPAct 2005 anti-manipulation provisions.[9] In Order No. 670, the Commission stated that it will adhere to a five-year statute of limitations where we seek civil penalties for violations of the new anti-manipulation rules.[10]

5. In a final rule and order issued simultaneously with this NOPR, we decided to rescind §§ 284.288(a), (d) and (e) and 284.403(a), (d) and (e) of the Commission's regulations,[11] and to rescind Market Behavior Rules 2 and 6.[12] The Commission stated that, although Order No. 670 made it unnecessary to retain §§ 284.288(a), (d) and (e) and 284.403(a), (d) and (e) of the Commission's regulations or to retain Market Behavior Rules 2 and 6, there is benefit to retaining §§ 284.288(b)–(c) and 284.403(b)–(c) (redesigated as §§ 284.288(a)–(b) and 284.403(a)–(b)) of the Commission's regulations, and to retaining Market Behavior Rules 1, 3, 4, and 5 (new §§ 35.37(a)–(d) of the Commission's regulations).

II. Discussion

6. Sections 284.288(b), 284.403(b) and 35.37(d) of the Commission's regulations require sellers to maintain certain records for a period of three years to reconstruct prices charged for natural gas and electricity, respectively. This is different from the record retention requirements in parts 125 and 225 of our regulations, which largely are related to cost-of-service rate requirements.[13] Given the importance of records related to any investigation of possible wrongdoing and related to assuring compliance, and in order to avoid confusion, the Commission decided to retain §§ 284.288(b), 284.403(b) and 35.37(d) of the Commission's regulations.

7. In this NOPR, we propose increasing the record retention requirement from three years to five years. In Order No. 670, we did not adopt a specific statute of limitations on complaints or enforcement actions that may be brought pursuant to the Commission's anti-manipulation authority.[14] However, we did note that, when a statutory provision under which civil penalties may be imposed lacks its own statute of limitations (as is the case with respect to the Commission's anti-manipulation authority), a five-year limitation period applies.[15] It would be inconsistent to allow complaints or enforcement actions seeking civil penalties for alleged violations to our anti-manipulation authority to be commenced more than three years after the transactions giving rise to such actions were carried out, but not to require that the data and information related to such transactions be retained for at least that long. Accordingly, we propose, and seek comment on, an increase of the record retention requirement to five years.

III. Regulatory Flexibility Act Certification

8. The Regulatory Flexibility Act of 1980[16] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities.[17]

[5] Energy Policy Act of 2005, Public Law No. 109–58, 119 Stat. 594 (2005). Congress prohibited the use or employment of ''any manipulative or deceptive device or contrivance'' in connection with the purchase or sale of natural gas or electric energy or transportation or transmission services subject to the jurisdiction of the Commission. Congress directed the Commission to give these terms the same meaning as under the Securities Exchange Act of 1934, 15 U.S.C. 78j(b) (2000).

[6] *Prohibition of Energy Market Manipulation*, Order No. 670, 71 FR 4244 (Jan. 26, 2006), FERC Stats. & Regs. ¶ 31,202, 114 FERC ¶ 61,047 (Jan. 19, 2006) (Order No. 670).

[7] *Amendments to Codes of Conduct for Unbundled Sales Service and for Persons Holding Blanket Marketing Certificates*, 113 FERC ¶ 61,189 (2005).

[8] *See Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, ''Order Proposing Revisions to Market-Based Rate Tariffs and Authorizations,'' 113 FERC ¶ 61,190 (2005).

[9] 18 CFR 1c.1 and 1c.2, 71 FR 4,244 (2006).

[10] Order No. 670, 114 FERC ¶ 61,047 at P 63.

[11] *Amendments to Codes of Conduct for Unbundled Sales Service and for Persons Holding Blanket Marketing Certificates*, Docket No. RM06–5–000 (February 16, 2006).

[12] *Order Revising Market-Based Rate Tariffs and Authorizations*, Docket No. EL06–16–000 (February 16, 2006).

[13] 18 CFR parts 125, 225 (2005).

[14] Order No. 670, 114 FERC ¶ 61,047 at P 62.

[15] *Id.*

[16] 5 U.S.C. 601–612 (2000).

[17] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632 (2000). The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal years did not exceed 4 million MWh. 13 CFR 121.201 (Section 22, Utilities, North American Industry Classification System, NAICS) (2004).

The Commission is not required to make such analyses if a rule would not have such an effect. The proposed rule merely extends an already existing record retention requirement from three to five years. Therefore, the Commission certifies that this proposed rule, if finalized, will not have a significant economic impact on a substantial number of small entities.

IV. Information Collection Statement

9. As discussed herein, the Commission is proposing to extend the existing record retention period of §§ 284.288(b), 284.403(b) and 35.37(d) of the Commission's regulations from three years to five years consistent with the statute of limitations that applies to actions seeking civil penalties for violations of the Commission's new anti-manipulation rules that could be related to such data and information. The increased duration of information retention contained in this proposed revised rule has been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[18] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[19]

10. The Commission's regulations, in §§ 284.288(b), 284.403(b) and 35.37(d), specify the existing record retention requirements applicable to certain sellers of natural gas and electricity. The information provided to the Commission under part 284 for record retention purposes remains identified as FERC–549. The Commission identifies the information provided for under part 35 as FERC–516. As discussed above, the Commission proposes to extend the records retention requirements in parts 35 and 284 of its regulations for an additional two years consistent with Order No. 670.

11. Comments are solicited on the need for this increased records retention period, whether it will have practical utility, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The burden estimates for complying with this proposed rule are as follows:

Data collection FERC–516 & FERC–549	Number of respondents	Number of responses	Hours per response	Total annual hours
Records Retention:				
FERC–516	1,150	1	2	2300
FERC–549	222	1	2	444
Totals	1,372	1	2	2,744

Total Annual Hours for Record Retention: Recordkeeping, 2,744 hours.

Information Retention Costs: The Commission projects an annualized average cost of all respondents as 2,744 hours @ $17 an hour = $46,648 (staffing) + $2,538,200 (1,372 entities @ $925 per year × 2 (storage)). This cost is based on 120 cubic feet (20 four-drawer file cabinets transferred off site to a storage facility). The costs include cubic feet of storage plus the cost of floor space plus the costs for records storage cartons. The Commission is requiring that entities retain records for an additional two years. Total costs = $2,584,848. Greater savings can be accomplished if documents are stored electronically, *i.e.*, one file cabinet (four-drawer) (10,000 pages on average) = 500 MegaBytes (MByte) = one CD–ROM. The Commission seeks comments on the costs to comply with this requirement.

Title: FERC–549, Gas Pipeline Rates: Natural Gas Policy Act, Section 311; FERC–516, Electric Rate Schedule Filings.

Action: Proposed Collection.

OMB Control No: 1902–0086 and 1902–0096.

Respondents: Businesses or other for profit.

Frequency of Responses: Records of market-based rate transactions shall be retained for five years instead of three.

Necessity of the Information: It would be very difficult (if possible at all) for the Commission to monitor and prosecute violations of pipeline and blanket certificate sales of natural gas and market-based rate sales of electricity unless the underlying sales information were retained. This data retention requirement is consistent with the information and data retention requirements applicable to sellers having cost-based rates.[20] Requiring pipeline and blanket certificate sellers of natural gas, and market-based rate sellers of electricity, to retain records is also consistent with the Commissions past practices as set forth in §§ 284.288(b), 284.403(b) and 35.37(d) of the Commission's regulations, and, although the Commission proposes a retention period of five years (as opposed to the existing three-year requirement), such longer period is now required to ensure the information and data will remain available to support complaints and enforcement actions involving civil penalties for violations that occurred more than three years earlier.

Internal review: The Commission has conducted an internal review of the public reporting burden associated with the record retention of information and assured itself, by means of internal review, that there is specific, objective support for this information burden estimate. Moreover, the Commission has reviewed the increased duration of information retention proposed herein and has determined that these retentions of information are necessary and conform to the Commission's plans, as described in this order, for the use of the required information.[21]

12. Interested persons may obtain information on the proposed increased duration of information retention by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov.* Comments on the requirements of the proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Energy Regulatory Commission.

13. For submitting comments concerning the proposed increased duration of information retention and the associated burden estimate(s), please send comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the

[18] 44 U.S.C. 3507(d).

[19] 5 CFR 1320.11.

[20] *See* 18 CFR parts 125, 225.

[21] *See* 44 U.S.C. 3506(c) (2000).

Federal Energy Regulatory Commission, phone: (202) 395–7856, fax: (202) 395–7285.

V. Environmental Statement

14. 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.[22] 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 are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[23] The actions proposed herein for the increased duration of information retention fall within categorical exclusions in the Commission's regulations for rules that are procedural in nature. Therefore, an environmental assessment is unnecessary and has not been prepared in this proposed rulemaking.

VI. Comment Procedures

15. The Commission invites interested persons to submit comments on the increased duration of record retention from three to five years proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due March 29, 2006. Reply comments are due fifteen days thereafter. Comments must refer to Docket No. RM06–14–000 and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

16. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC, 20426.

17. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

18. 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.

19. From the Commission's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available on eLibrary both 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.

20. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact 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*).

List of Subjects

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental Shelf, Natural Gas, Reporting and Recordkeeping Requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 35 and 284 Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 35.37 [Amended]

2. In § 35.37, paragraph (d), the word ''three'' is removed and the word ''five'' is added in its place.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

§ 284.288 [Amended]

2. In § 284.288, paragraph (b), the word ''three'' is removed and the word ''five'' is added in its place.

§ 284.403 [Amended]

3. In § 284.403, paragraph (b), the word ''three'' is removed and the word ''five'' is added in its place.

[FR Doc. 06–1721 Filed 2–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–06–003]

RIN 1625–AA87

Security Zone; Chesapeake Bay, Between Sandy Point and Kent Island, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary security zone on the waters of the Chesapeake Bay. This action is necessary to provide for the security of a large number of participants during the 2006 Bay Bridge Walk across the William P. Lane, Jr. Memorial Bridge between Sandy Point and Kent Island, Maryland. The security zone will allow for control of a designated area of the Chesapeake Bay and safeguard the public at large.

DATES: Comments and related material must reach the Coast Guard on or before March 29, 2006.

ADDRESSES: You may mail comments and related material to Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland 21226–1791. Coast Guard Sector Baltimore, Waterways

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

[23] 18 CFR 380.4(a)(2)(ii) (2005).

Management Division, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Sector Baltimore, Waterways Management Division, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576–2674 or (410) 576–2693.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–06–003), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Sector Baltimore, Waterways Management Division, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–06 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard as lead federal agency for maritime homeland security, has determined that the Captain of the Port Baltimore must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

In this particular rulemaking, to address the aforementioned security concerns during the highly-publicized public event, and to take steps to prevent the catastrophic impact that a terrorist attack against a large number of participants during the 2006 Bay Bridge Walk would have on the public interest, the Captain of the Port, Baltimore, Maryland proposes to establish a security zone upon all waters of the Chesapeake Bay, from the surface to the bottom, within 250 yards north of the north (westbound) span of the William P. Lane Jr. Memorial Bridge, and 250 yards south of the south (eastbound) span of the William P. Lane Jr. Memorial Bridge, from the western shore at Sandy Point to the eastern shore at Kent Island, Maryland. This security zone will help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against a large number of participants during the event. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on the William P. Lane Jr. Memorial Bridge during the 2006 Bay Bridge Walk would have on the large number of participants, and the surrounding area and communities, a security zone is prudent for this type of event.

Discussion of Proposed Rule

On Sunday, May 7, 2006, the Maryland Transportation Authority will sponsor the 4.3-mile Bay Bridge Walk, to take place from Sandy Point State Park, Maryland at 9 a.m. local time. The event will consist of an estimated 50,000 participants walking across the William P. Lane Jr. Memorial Bridge (Chesapeake Bay Bridge) to Kent Island, Maryland. Vessels underway at the time this security zone is implemented will immediately proceed out of the zone. We will issue Broadcast Notices to Mariners to further publicize the security zone. This security zone is necessary to prevent vessels or persons on designated waters of the Chesapeake Bay from approaching the bridge and thereby bypassing the security measures for the event established by the Maryland Transit Authority Police. Vessels transiting through the security zone without loitering will be permitted to do so, and those with compelling interests that outweigh the port's security needs may be granted waivers from the requirements of the security zone.

Regulatory Evaluation

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

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

The operational restrictions of the security zone are tailored to provide the minimal disruption of vessel operations necessary to provide immediate, improved security for persons, vessels, and the waters of the Chesapeake Bay, within 250 yards of the William P. Lane Jr. Memorial Bridge (Chesapeake Bay Bridge), located between Sandy Point and Kent Island, Maryland. Additionally, this security zone is temporary in nature and any hardships experienced by persons or vessels are outweighed by the national interest in protecting the public at large from the devastating consequences of acts of terrorism, and from sabotage or other subversive acts, accidents, or other causes of a similar nature.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities: the owners or operators of vessels intending to operate, remain or anchor within 250 yards of the William P. Lane Jr. Memorial Bridge (Chesapeake Bay Bridge), located between Sandy Point and Kent Island, Maryland. This security zone will not have a significant economic impact on a substantial number of small entities because vessels transiting through the security zone without loitering may be permitted to do so, and those with compelling interests that outweigh the port's security needs may be granted waivers from the requirements of the security zone. Before the effective period, we would issue maritime advisories widely available to users of the Chesapeake Bay.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Ronald L. Houck, at Coast Guard Sector Baltimore, Waterways Management Branch, at telephone number (410) 576–2674. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rulemaking is a security zone less than one week in duration. A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' (CED) are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T05–003 to read as follows:

§ 165.T05–003 Security Zone; Chesapeake Bay, between Sandy Point and Kent Island, MD.

(a) *Definitions.* (1) The Captain of the Port, Baltimore, Maryland means the Commander, Coast Guard Sector Baltimore, Maryland or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his or her behalf.

(b) *Location.* The following area is a security zone: All waters of the Chesapeake Bay, from the surface to the bottom, within 250 yards north of the north (westbound) span of the William P. Lane Jr. Memorial Bridge, and 250 yards south of the south (eastbound) span of the William P. Lane Jr. Memorial Bridge, from the western shore at Sandy Point to the eastern shore at Kent Island, Maryland.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones found in § 165.33 of this part.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the security zone must first request authorization from the Captain of the Port, Baltimore to seek permission to transit the area. The Captain of the Port, Baltimore, Maryland can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, VHF channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Baltimore, Maryland and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) *Effective period.* This section will be effective from 7 a.m. to 5 p.m. local time on May 7, 2006.

Dated: February 13, 2006.

Curtis A. Springer,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. E6–2714 Filed 2–24–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2005–0499; FRL–8036–9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Pennsylvania State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for five major sources of nitrogen oxides (NO_X) pursuant to the Commonwealth of Pennsylvania's (Pennsylvania or the Commonwealth) SIP-approved generic RACT regulations. EPA is proposing to approve these revisions in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before March 29, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2005–0499 by one of the following methods:

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

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

C. Mail: EPA–R03–OAR–2005–0499, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2005–0499. 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,* is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: LaKeshia N. Robertson, (215) 814–2113, or by e-mail at *robertson.lakeshia@epa.gov.*

SUPPLEMENTARY INFORMATION: On November 21, 2005, PADEP submitted revisions to the Pennsylvania SIP. These

SIP revisions consist of source-specific operating permits and/or plan approvals issued by PADEP to establish and require RACT for five sources pursuant to Pennsylvania's SIP-approved generic RACT regulations.

I. Background

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

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

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

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

(3) All major non-CTG sources.

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

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

II. Summary of the SIP Revisions

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

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source's name	County	Plan approval (PA #)/ Operating permit (OP #)	Source type	''Major source'' pollutant
Pennsylvania Electric Company.	Indiana	32–000–059	Two boilers and four diesel generators.	NO_X
The Harrisburg Authority	Dauphin	22–2007	Two identical independent mass burn refuse combustion/steam generation units.	NO_X
Texas Eastern Transmission Corp.	Perry	50–02001	IC engine and two hp gas turbines.	NO_X
Graybec Lime, Inc	Centre	OP–14–0004	Three rotary lime kilns and two waste oil furnaces.	NO_X
Techneglas, Inc.	Luzerne	40–0009A	Three glass melting furnaces	NO_X

Interested parties are advised that copies of Pennsylvania's SIP submittals for these sources, including the actual PAs and OPs imposing RACT, PADEP's evaluation memoranda and the sources' RACT proposals (referenced in PADEP's evaluation memoranda) are included and may be viewed in their entirety in both the electronic and hard copy versions of the docket for this final rule.

As previously stated, all documents in the electronic docket are listed in the *http://www.regulations.gov* index. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

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

III. Proposed Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP on November 21, 2005 to establish and require NO_X RACT for five sources pursuant to the Commonwealth's SIP-approved generic RACT regulations. EPA is soliciting public comments on this proposed rule to approve these source-specific RACT determinations established and imposed by PADEP in accordance with the criteria set forth in its SIP-approved generic RACT regulations applicable to these sources. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This proposed rule, to approve five source-specific RACT determinations, established and imposed by the Commonwealth of Pennsylvania pursuant to its SIP-approved generic RACT regulations does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: February 15, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E6–2736 Filed 2–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 69

[EPA–R09–OAR–2005–0506; FRL–8030–4]

State Implementation Plan Revision and Alternate Permit Program; Territory of Guam

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant full approval for the Guam operating permit program regulations and an associated State Implementation Plan (SIP) revision submitted by the Territory of Guam (Guam). These submittals correct deficiencies identified in EPA's direct final interim approval rulemaking of January 9, 2003 (68 FR 1162). Full approval of Guam's alternate permit program and associated SIP revision will allow sources to be permitted under Guam's approved alternate operating permit program.

DATES: Any comments on this proposal must arrive by March 29, 2006.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2005–0506, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions.
2. Agency Web site: *http://docket.epa.gov/rmepub/.* EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.
3. E-mail: *pike.ed@epa.gov.*
4. Mail or deliver: Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal or e-mail. The agency Web site and eRulemaking portal are ''anonymous access'' systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ben Machol, EPA Region IX, at (415) 972–3770, (*Machol.Ben@epa.gov*), Pacific Islands Office, or Ed Pike, at (415) 972–3970, (*Pike.Ed@epa.gov*), Permits Office, Air Division, at the EPA—Region IX address listed above.

SUPPLEMENTARY INFORMATION: In the Rules and Regulations section of this **Federal Register**, we are granting full approval of these local rules as Guam's alternate permit program in a direct final action without prior proposal because we believe this action is not controversial and do not anticipate adverse comment. A detailed rationale for this approval is set forth in the direct final rule. If we do not receive adverse comments, no further activity is planned. If EPA receives adverse comments, however, we will publish a timely withdrawal of the direct final action and address the comments in a subsequent final action based on this proposed rule. We will not open a second comment period, so anyone interested in commenting should do so at this time. For more information on this action, please see the information provided in the direct final rule of the same title located under the Rules and Regulations section of this **Federal Register**.

Dated: January 20, 2006.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 06–1741 Filed 2–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R01–RCRA–2006–0062; FRL–8038–2]

New Hampshire: Proposed Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: New Hampshire has applied to EPA for Final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to New Hampshire. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through the immediate final action.

DATES: Comments must be received on or before March 29, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2006–0062, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *yee.steve@epa.gov.*
- Fax: (617) 918–0197, to the attention of Stephen Yee.
- Mail: Stephen Yee, Hazardous Waste Unit, EPA Region 1, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023.
- Hand Delivery or Courier: Deliver your comments to: Stephen Yee, Hazardous Waste Unit, Office of Ecosystem Protection, EPA Region 1, One Congress Street, 11th Floor, (CHW), Boston, MA 02114–2023. Such deliveries are only accepted during the Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

For further information on how to submit comments, please see today's immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stephen Yee, Hazardous Waste Unit, U.S. EPA Region 1, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023, telephone number: (617) 918–1197; fax number: (617) 918–0197, e-mail address: *yee.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing these changes by an intermediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect adverse comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written adverse comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you should do so at this time.

Dated: February 9, 2006.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 06–1791 Filed 2–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA–HQ–OPPT–2005–0049; FRL–7764–2]

Lead; Renovation, Repair, and Painting Program; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public meetings.

SUMMARY: EPA is planning to hold five half-day public meetings in March and April of 2006. The purpose of these meetings is to receive comments from the public regarding proposed requirements to reduce exposure to lead hazards created by renovation, repair, and painting activities that disturb lead-based paint. This document announces the locations and times for the meetings, and explains meeting procedures. To assist the public, EPA has prepared a paper, *Renovation, Repair, and Painting Proposal; Points to Consider*, which lists the major issues on which the Agency is seeking public input. The paper is available in the docket for the proposed rule, and is also available at *http://www.epa.gov/lead/pubs/renovation.htm.*

DATES: See Unit III. of the **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: See Unit III. of the **SUPPLEMENTARY INFORMATION** section for meeting locations.

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

For technical information contact: Mike Wilson, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0521; e-mail address:*wilson.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who performs renovations of target housing

for compensation or dust sampling. Target housing is defined in section 401 of the Toxic Substances Control Act (TSCA) as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling. Potentially affected entities may include, but are not limited to:

- Building construction (NAICS 236), e.g., single family housing construction, multi-family housing construction, residential remodelers.
- Specialty trade contractors (NAICS 238), e.g., plumbing, heating, and air-conditioning contractors, painting and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass and glazing contractors.
- Real estate (NAICS 531), e.g., lessors of residential buildings and dwellings, residential property managers.
- Other technical and trade schools (NAICS 611519), e.g., training providers.
- Engineering services (NAICS 541330) and building inspection services (NAICS 541350), e.g., dust sampling technicians.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the regulatory text at § 745.82 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2005–0049. Publicly available docket materials are available electronically at *http://www.regulations.gov* or in hard copy at the OPPT Docket, 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 Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

II. Background

In the **Federal Register** of January 10, 2006 (71 FR 1588) (FRL–7755–5), EPA proposed new requirements to reduce exposure to lead hazards created by renovation, repair, and painting activities that disturb lead-based paint. The proposal supports the attainment of the Federal government's goal of eliminating childhood lead poisoning by 2010. The proposal would establish requirements for training renovators and dust sampling technicians; certifying renovators, dust sampling technicians, and renovation firms; accrediting providers of renovation and dust sampling technician training; and renovation work practices. These requirements would apply in ''target housing,'' defined in TSCA section 401 as any housing constructed before 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling.

Initially the rule would apply to all renovations for compensation performed in target housing where a child with an increased blood lead level resides; rental target housing built before 1960; and owner-occupied target housing built before 1960, unless the person performing the renovation obtains a statement signed by the owner-occupant that the renovation will occur in the owner's residence and that no child under age 6 resides there. EPA is proposing to phase in the applicability of this proposal to all rental target housing andowner-occupied target housing built in the years 1960 through 1977 where a child under age 6 resides. This proposal was issued under the authority of TSCA section 402(c)(3). EPA also proposed to allow interested States, Territories, and Indian Tribes the opportunity to apply for, and receive authorization to administer and enforce all of the elements of the new renovation provisions.

III. Meeting Dates and Locations

1. *Dates*. The meetings are scheduled to be held on the following dates:

a. In Chicago, IL on March 27, 2006, from 12:30 p.m. to 4:30 p.m.

b. In Washington, DC on March 29, 2006, from 1 p.m. to 5 p.m.

c. In New York, NY on March 30, 2006, from 1 p.m. to 5 p.m.

d. In Atlanta, GA on April 4, 2006, from 1 p.m. to 5 p.m.

e. In San Francisco, CA on April 6, 2006, from 1 p.m. to 5 p.m.

2. *Locations*. The meetings are scheduled to be held at the following locations:

a. In Chicago, IL at the Ralph Metcalfe Federal Building, Room 331, 77 West Jackson Blvd., Chicago, Il 60604.

b. In Washington, DC at the Environmental Protection Agency, EPA East, Room 1153, 1201 Constitution Ave., Washington, DC 20460.

c. In New York, NY at the Alexander Hamilton U.S. Custom House, Auditorium, 1 Bowling Green, New York, NY 10004.

d. In Atlanta, GA at the Atlanta Tradeport, Suite 104, 4244 International Parkway, Atlanta, GA 30354.

e. In San Francisco, CA at the Phillip Burton Federal Building & U.S. Courthouse, Nevada/California Conference Rooms, 450 Golden Gate Ave., San Francisco, CA 94102.

IV. Meeting Procedures

For additional information on the scheduled meetings contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**. The meetings will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the technical person to schedule presentations. Since seating for outside observers may be limited, those wishing to attend the meetings as observers are also encouraged to contact the technical person at the earliest possible date to ensure adequate seating arrangements.

Individuals wishing to provide comments to EPA, but who cannot attend one of the public meetings, may submit written comments to EPA as indicated in the **ADDRESSES** section of the proposed regulation (71 FR 1588). EPA welcomes comments on all aspects of the proposal.

To assist the public to provide comments, EPA has prepared a paper, *Renovation, Repair, and Painting Proposal; Points to Consider*. This paper lists the major issues on which the Agency is seeking public input. The paper is available in the docket of the proposed rule (see Unit I.B.1. of this document for instructions on accessing the docket), and is also available at

http://www.epa.gov/lead/pubs/renovation.htm.

List of Subjects in 40 CFR Part 745

Environmental protection, Housing renovation, Lead, Lead-based paint, Reporting and recordkeeping requirements.

Dated: February 20, 2006.

Wendy Cleland-Hamnett,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 06–1784 Filed 2–24–06; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7646]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood elevations and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	# Depth in feet above ground * Elevation in feet (NGVD) • (Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
NORTH CAROLINA Alamance County				
Back Creek	At the confluence with West Black Creek and Michaels Branch.	None	•576	Alamance County (Unincorporated Areas).
	At the Guilford County/Town of Gibsonville jurisdictional boundary.	None	•616	City of Burlington, Town of Gibsonville.
Back Creek Tributary 2	At the confluence with Back Creek	None	•589	Alamance County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the Alamance/Guilford County boundary.	None	•667	City of Burlington, Town of Gibsonville.
Buttermilk Creek Tributary 1.	At the confluence with Buttermilk Creek	None	•601	Alamance County (Unincorporated Areas).

Source of flooding	Location	# Depth in feet above ground * Elevation in feet (NGVD) • (Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1.1 miles upstream of the confluence with Buttermilk Creek.	None	•713	
Buttermilk Creek Tributary 2.	At the confluence with Buttermilk Creek	None	•621	Alamance County (Unincorporated Areas).
	Approximately 1,000 feet upstream of the confluence with Buttermilk Creek Tributary 3.	None	•708	
Buttermilk Creek Tributary 3.	At the confluence with Buttermilk Creek Tributary 2	None	•694	Alamance County (Unincorporated Areas).
	Approximately 1,500 feet upstream of the confluence with Buttermilk Creek Tributary 2.	None	•709	
Cane Creek (South) Tributary 2.	At the confluence with Cane Creek (South) Tributary 1	None	•586	Alamance County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Old Dam Road	None	•595	
Cane Creek (North) Tributary 4.	At the confluence with Cane Creek (North)	None	429	Alamance County (Unincorporated Areas).
	Approximately 3,000 feet upstream from the confluence with Cane Creek (North).	None	•456	
Deep Creek	At the confluence with Stony Creek	•542	•543	Alamance County (Unincorporated Areas).
	Approximately 2,800 feet upstream of Jefferies Cross Road.	None	•698	
Dry Creek	Approximately 320 feet upstream of Power Line Road	None	•630	Alamance County (Unincorporated Areas), Town of Elon.
	Approximately 0.7 mile upstream of Power Line Road	None	•656	
Gunn Creek	Approximately 150 feet downstream of Mill Pointe Way	None	•638	Alamance County (Unincorporated Areas), City of Burlington.
	Approximately 0.8 mile upstream of Mill Pointe Way	None	•684	
Haw River Tributary 3	Approximately 1,600 feet upstream of the confluence with Haw River.	None	•437	Alamance County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Austin Quarter Road.	None	•609	
Haw River Tributary 5	At the confluence with Haw River Tributary 4	None	•472	Alamance County (Unincorporated Areas).
	Approximately 400 feet upstream from John Thompson Road.	None	•553	
Haw River Tributary 8	At the confluence with Haw River	•557	•558	Alamance County (Unincorporated Areas).
	Approximately 2,250 feet upstream of Atwater Road	None	•649	
Haw River Tributary 14	Approximately 0.4 mile upstream with the confluence of Haw River.	None	•620	Alamance County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Gilliam Church Road.	None	•696	
Little Creek Tributary 1	At the confluence with Little Creek	None	•552	Alamance County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Little Creek.	None	•591	
Little Creek Tributary 2	At the confluence with Little Creek	None	•570	Alamance County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Vernon Lane	None	•652	
Motes Creek	Approximately 500 feet upstream of the confluence with Haw River.	None	•441	Alamance County (Unincorporated Areas).
	Approximately 100 feet upstream of NC Highway 54	None	•569	
Poppaw Creek Tributary 1	At the confluence with Poppaw Creek	None	•612	Alamance County (Unincorporated Areas).
	Approximately 100 feet upstream of Timber Ridge Lake Road.	None	•647	
Quaker Creek Tributary 2	At the confluence with Quaker Creek	None	•612	Alamance County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Tangle Ridge Trail	None	•673	
Rock Creek Tributary	At the confluence with Rick Creek	None	•560	Alamance County (Unincorporated Areas).
	Approximately 1.3 miles upstream of NC Highway 49	None	•594	
Servis Creek	Approximately 1,600 feet downstream of Burch Bridge Road.	None	•611	Alamance County (Unincorporated Areas), City of Burlington.
	Approximately 500 feet upstream of Cadiz Street	None	•665	

Source of flooding	Location	# Depth in feet above ground * Elevation in feet (NGVD) • (Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Staley Creek	Approximately 100 feet upstream of Rauhut Street	None	•594	Alamance County (Unincorporated Areas), City of Burlington.
	Approximately 200 feet upstream of Chestnut Street	None	•664	
Travis Creek	Approximately 1,100 feet upstream of the confluence with Tributary A to Travis Creek.	None	•618	Alamance County (Unincorporated Areas), Town of Gibsonville.
	At the Alamance/Guilford County boundary	None	•618	

Alamance County (Unincorporated Areas)
Maps available for inspection at the Alamance County Annex Building, Planning Department, 124 West Elm Street, Graham, North Carolina.
Send comments to Mr. David I. Smith, Alamance County Manager, 124 West Elm Street, Graham, North Carolina 27253.

Burlington (City of)
Maps are available for inspection at the Burlington City Hall, Engineering Department, 425 South Lexington Avenue, Burlington, North Carolina.
Send comments to Mr. Harold Owen, Burlington City Manager, P.O. Box 1358, Burlington, North Carolina 27216.

Elon (Town of)
Maps available for inspection at the Elon Town Hall, 104 South Williamson Avenue, Elon, North Carolina.
Send comments to Mr. Michael Dula, Elon Town Manager, P.O. Box 595, Elon, North Carolina 27244.

Gibsonville (Town of)
Maps are available for inspection at the Town of Gibsonville Planning Department, 129 West Main Street, Gibsonville, North Carolina.
Send comments to Mr. Deleno Flynn, Gibsonville Town Manager, 129 West Main Street, Gibsonville, North Carolina 27249.

NORTH CAROLINA
Chatham County

Brooks Creek	Approximately 2.2 miles upstream of the confluence with Haw River.	None	•383	Chatham County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Old Graham Road	None	•444	
Crooked Creek	At the confluence with B. Everett Jordan Lake	None	•238	Chatham County (Unincorporated Areas).
	At the Chatham and Durham County boundary	None	•239	
Harlands Creek	At the confluence with Rocky River	None	•331	Chatham County (Unincorporated Areas), Town of Pittsboro.
	Approximately 800 feet upstream of U.S. 64	None	•428	
Harris Reservoir	For its entire shoreline	None	•232	Chatham County (Unincorporated Areas).
Little Brush Creek	At the Chatham and Randolph County boundary	None	•454	Chatham County (Unincorporated Areas), Town of Siler City.
	Approximately 1.6 miles upstream of Jim Paige Road	None	•543	
Nancy Branch	At the confluence with Panther Creek	None	•238	Chatham County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Panther Creek.	None	•239	
Panther Creek	At the confluence with Northeast Creek	None	•238	Chatham County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Morris Branch.	None	•244	

Chatham County (Unincorporated Areas)
Maps available for inspection at the Chatham County Planning Department, 80–A East Street, Pittsboro, North Carolina.
Send comments to Mr. Charlie Horne, Chatham County Manager, P.O. Box 87, Pittsboro, North Carolina 27312.

Town of Pittsboro
Maps available for inspection at the Pittsboro Town Planning Office, Town Hall, 635 East Street, Pittsboro, North Carolina.
Send comments to The Honorable Nancy May, Mayor of the Town of Pittsboro, P.O. Box 759, Pittsboro, North Carolina 27312.

Town of Siler City
Maps available for inspection at the Siler City Zoning Office, Town Hall, 311 North Second Avenue, Room 301, Siler City, North Carolina.
Send comments to Mr. Joel Brower, Town of Siler City Town Manager, P.O. Box 769, Siler City, North Carolina 27344.

NORTH CAROLINA
Lee County

Big Branch	At the Lee/Moore County boundary	None	•296	Lee County (Unincorporated Areas).

Source of flooding	Location	# Depth in feet above ground * Elevation in feet (NGVD) • (Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 0.6 mile upstream of the Lee/Moore County boundary.	None	•304	
Big Buffalo Creek Tributary 1.	At the confluence with Big Buffalo Creek	•252	•253	Lee County (Unincorporated Areas), City of Sanford.
	Approximately 0.5 mile upstream of Valley Road	None	•297	
Big Governors Creek	At the confluence with Deep River	None	•257	Lee County (Unincorporated Areas).
	At the confluence of Little Governors Creek	None	•257	
Bush Creek Tributary 1	At the confluence with Bush Creek	None	•170	Lee County (Unincorporated Areas).
	Approximately 1,000 feet upstream of Poplar Springs Church Road.	None	•239	
Deep River Tributary 1	At the confluence with Deep River	None	•227	Lee County (Unincorporated Areas), City of Sanford.
	Approximately 1.4 miles upstream of the confluence of Deep River Tributary 3.	None	•237	
Gasters Creek West	At the confluence with Upper Little River	None	•312	Lee County (Unincorporated Areas), City of Sanford.
	Approximately 0.4 mile upstream of Minter School Road.	None	•401	
Kendale Creek	Approximately 1,400 feet upstream of Hiawatha Trail	None	•352	Lee County (Unincorporated Areas), City of Sanford.
	Approximately 2,000 feet upstream of Hiawatha Trail	None	•353	
Lick Creek Tributary 2	At the confluence with Lick Creek	None	•239	Lee County (Unincorporated Areas), City of Sanford.
	Approximately 1.6 miles upstream of the confluence with Lick Creek.	None	•325	
Patterson Creek	At the confluence with Deep River	None	•236	Lee County (Unincorporated Areas), City of Sanford.
	Approximately 1,600 feet upstream of Wicker Street	None	•391	

Lee County (Unincorporated Areas)

Maps available for inspection at the Lee County Planning Department, 900 Woodland Avenue, Sanford, North Carolina.

Send comments to Mr. David Smitherman, Lee County Manager, P.O. Box 1968, Sanford, North Carolina 27331.

Sanford (City of)

Maps are available for inspection at the City of Sanford Planning Department, 900 Woodland Avenue, Sanford, North Carolina.

Send comments to the Honorable Cornelia Olive, Mayor of the City of Sanford, P.O. Box 3729, Sanford, North Carolina 27331–3729.

NORTH CAROLINA
Moore County

Aberdeen Creek Tributary 1	At Plantation Drive	None	•385	Moore County (Unincorporated Areas), Town of Southern Pines.
	Approximately 0.7 mile upstream of Plantation Drive	None	•470	
Aberdeen Creek Tributary 4	At the confluence with Aberdeen Creek	None	•418	Town of Southern Pines.
	Approximately 1,175 feet upstream of the confluence with Aberdeen Creek.	None	•436	
Bear Creek	At the confluence with Deep River	None	•320	Moore County (Unincorporated Areas), Town of Robbins.
	Approximately 100 feet downstream of Adams Road	None	•461	
Big Governors Creek	At the confluence with Deep Creek	None	•257	Moore County (Unincorporated Areas).
	At the confluence with Big Governors Creek Tributary	None	•304	
Crane Creek	At the confluence with Little River	•203	•194	Moore County (Unincorporated Areas), Town of Carthage, Town of Vass.
	Approximately 500 feet upstream of State Highway 24	None	•369	
Crawley Creek	At the confluence with Big Governors Creek	None	•257	Moore County (Unincorporated Areas).
	Approximately 800 feet upstream of Old River Road	None	•318	

Source of flooding	Location	# Depth in feet above ground * Elevation in feet (NGVD) • (Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Deep River	At the Moore/Chatham County boundary	None	•250	Moore County (Unincorporated Areas).
	At the Moore/Randolph County boundary	None	•352	
Drowning Creek	At the Moore/Hoke County boundary	None	•268	Moore County (Unincorporated Areas), Village of Foxfire.
	Approximately 400 feet downstream of Purdue Road	None	•672	
Horse Creek	At the confluence Pinehurst Lake	None	•413	Village of Pinehurst.
	Approximately 2,000 feet upstream of Burningtree Road.	None	•448	
Horse Creek Tributary 3	At the confluence with Horse Creek	None	•345	Village of Pinehurst, Moore County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence with Horse Creek.	None	•395	
Horse Creek Tributary 5	At the confluence with Pinehurst Lake	None	•413	Village of Pinehurst.
	Approximately 2,000 feet upstream from the confluence with Pinehurst Lake.	None	•436	
Jackson Creek	At the confluence with Drowning Creek	None	•369	Moore County (Unincorporated Areas).
	Approximately 1,975 feet upstream of Currie Mill Road	None	•437	
Jackson Creek Tributary 1	At the confluence with Jackson Creek	None	•372	Moore County (Unincorporated Areas), Village of Foxfire.
	Approximately 0.6 mile upstream of the confluence of Tributary to Jackson Creek Tributary 1.	None	•394	
Juniper Branch Tributary	At the confluence with Juniper Branch	None	•344	Moore County (Unincorporated Areas), Town of Southern Pines.
	Approximately 1.0 mile upstream of the confluence with Juniper Branch.	None	•401	
Line Creek	At the confluence with Deep River	None	•250	Moore County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Alston House Road.	None	•250	
Little Crane Creek Tributary	At the confluence with Little Crane Creek	None	•304	Moore County (Unincorporated Areas), Town of Cameron.
	At the Moore/Lee County boundary	None	•317	
Little Governors Creek	At the confluence with Big Governors Creek	None	•257	Moore County (Unincorporated Areas).
	Approximately 8.3 miles upstream of the confluence with Big Governors Creek.	None	•360	
McCallum Branch	At the confluence with Aberdeen Creek	None	•340	Moore County (Unincorporated Areas), Town of Aberdeen, Village of Pinehurst.
	Approximately 0.4 mile upstream of the confluence with Aberdeen Creek.	None	•340	
McDeeds Creek	At the confluence with Mill Creek (into Little River)	None	•276	Moore County (Unincorporated Areas), Town of Southern Pines.
	Approximately 100 feet upstream of West New Hampshire Avenue.	None	•394	
McIntosh Creek	At the confluence with Big Governors Creek	None	•265	Moore County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Old River Road	None	•376	
Mill Creek (into James Creek).	At the confluence with James Creek	None	•314	Moore County (Unincorporated Areas), Town of Southern Pines.
	Approximately 1.5 miles upstream of the confluence with James Creek.	None	•364	
Nicks Creek	Approximately 1,250 feet upstream of the confluence with Little River.	•302	•303	Moore County (Unincorporated Areas), Towns of Carthage and Southern Pines, Villages of Pinehurst, and Whispering Pines.

Source of flooding	Location	# Depth in feet above ground * Elevation in feet (NGVD) • (Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 2.3 miles upstream of Beulah Hill Church Road.	None	•420	
Tributary 1 to Horse Creek Tributary 5.	At the confluence with Horse Creek Tributary 5	None	•424	Village of Pinehurst.
	Approximately 0.5 mile upstream of the confluence with Horse Creek Tributary 5.	None	•450	
Wads Creek	Approximately 0.4 mile upstream of Little River Farm Boulevard.	None	•325	Moore County (Unincorporated Areas), Town of Carthage.
	Approximately 0.6 mile upstream of Murdocksville Road.	None	•404	

Town of Aberdeen
Maps available for inspection at the Aberdeen Planning Department, 115 North Poplar Street, Aberdeen, North Carolina.
Send comments to The Honorable Betsy Mofield, Mayor of the Town of Aberdeen, P.O. Box 785, 115 North Poplar Street, Aberdeen, North Carolina 28315.

Town of Cameron
Maps available for inspection at the Cameron Town Clerk's Office, 247 Carter Street, Cameron, North Carolina.
Send Comments to The Honorable George Womble, Mayor of the Town of Cameron, P.O. Box 248, Cameron, North Carolina 28326.

Town of Carthage
Maps available for inspection at the Carthage Town Clerk's Office, 4396 Highway 15–501, Carthage, North Carolina.
Send Comments to Ms. Carol Cleetwood, Carthage Town Manager, 4396 Highway 15–501, Carthage, North Carolina 28327.

Village of Foxfire
Maps available for inspection at the Foxfire Village Zoning Department, 1 Town Hall Drive, Foxfire Village, North Carolina.
Send comments to the Honorable Samuel Brandes, Mayor of the Village of Foxfire, 1 Town Hall Drive, Foxfire Village, North Carolina 27281.

Moore County (Unincorporated Areas)
Maps available for inspection at the Moore County Planning Office, 101A Monroe Street, Courthouse Square, Carthage, North Carolina.
Send comments to Mr. Steve Wyatt, Moore County Manager, Courthouse Square, P.O. Box 905, Carthage, North Carolina 28327.

Village of Pinehurst
Maps available for inspection at the Village of Pinehurst Planning Office, 395 Magnolia Road, Pinehurst, North Carolina.
Send comments to Mr. Andrew Wilkison, Pinehurst Village Manager, 395 Magnolia Road, Pinehurst, North Carolina 28374.

Town of Robbins
Maps available for inspection at the Robbins Town Hall, 101 North Middleton Street, Robbins, North Carolina.
Send comments to Mr. Mickey Brown, Robbins Town Manager, 101 North Middleton Street, Robbins, North Carolina 27325.

Town of Southern Pines
Maps available for inspection at the Southern Pines Planning Department, 180 Southwest Broad Street, Southern Pines, North Carolina.
Send comments to Ms. Reagan Parsons, Southern Pines Town Manager, 125 SE Broad Street, Southern Pines, North Carolina 28387.

Town of Vass
Maps available for inspection at the Vass Town Clerk's Office, 140 South Alma Street, Vass, North Carolina 28394.
Send comments to The Honorable Henry Callahan, Jr., Mayor of the Town of Vass, P.O. Box 487, Vass, North Carolina 28394.

Village of Whispering Pines
Maps available for inspection at the Whispering Pines Village Hall, 10 Pine Ridge Drive, Whispering Pines, North Carolina.
Send comments to The Honorable Giles Hopkins, Mayor of the Village of Whispering Pines, 10 Pine Ridge Drive, Whispering Pines, North Carolina 28327.

NORTH CAROLINA
Orange County

Battle Branch	At the confluence with Bolin Creek	•260	•263	Town of Chapel Hill.
	Approximately 1.5 miles upstream of the confluence with Bolin Creek.	None	•387	
Cedar Fork	At North Lakeshore Drive	•307	•309	Town of Chapel Hill.
	Approximately 600 feet upstream of Kingston Drive	None	•554	
Crow Branch	At the confluence with Booker Creek	None	•400	Town of Chapel Hill.
	Approximately 0.5 mile upstream of dam	None	•500	
Jones Creek	Approximately 0.4 mile upstream of the confluence with Bolin Creek.	None	•482	Town of Carrboro, Orange County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Old NC 86	None	•571	
Little Creek	At the Orange County/Durham County boundary	•250	•249	Town of Chapel Hill.
	Approximately 1,000 feet downstream of the confluence with Booker Creek and Bolin Creek.	•254	•253	
McGowan Creek	Approximately 1,600 feet upstream of the confluence with Eno River.	•548	•549	Orange County (Unincorporated Areas).
	Approximately 300 feet upstream of Frazier Road	None	•690	

Source of flooding	Location	# Depth in feet above ground * Elevation in feet (NGVD) • (Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Morgan Creek	Approximately 2.7 miles downstream of the Orange County/Chatham County boundary.	None	•238	Orange County (Unincorporated Areas), Town of Carrboro, Town of Chapel Hill.
	Approximately 50 feet downstream of Dairyland Road	•560	•559	
Mountain Creek	Approximately 1,100 feet upstream of the confluence with New Hope Creek.	None	•474	Orange County (Unincorporated Areas).
	Approximately 1.8 miles upstream of the confluence with New Hope Creek.	None	•506	
New Hope Creek	Approximately 200 feet upstream of Old NC 86	None	•497	Orange County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Arthur Minnis Road.	None	•529	
Price Creek	At the confluence with University Lake	None	•358	Orange County (Unincorporated Areas).
	Approximately 350 feet upstream of Damascus Church Road.	None	•359	
Rhodes Creek	Approximately 850 feet upstream of Cornwallis Road	None	•449	Orange County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Cornwallis Road	None	•507	
Toms Creek	Approximately 50 feet upstream of NC 54	None	•418	Town of Carrboro.
	Approximately 700 feet upstream of Rainbow Drive	None	•468	
Turkey Hill Creek	At the confluence with Cane Creek	None	•511	Orange County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Private Road	None	•610	
University Lake (Price Creek).	Entire shoreline within communities	None	•358	Orange County (Unincorporated Areas), Town of Carrboro.

Town of Carrboro

Maps available for inspection at the Town of Carrboro Planning Department, 301 West Main Street, Carrboro, North Carolina.

Send comments to Mr. Steve Stewart, Carrboro Town Manager, 301 West Main Street, Carrboro, North Carolina 27510.

Town of Chapel Hill

Maps available for inspection at the Town of Chapel Hill Stormwater Management Program Office, 209 North Columbia Street, Chapel Hill, North Carolina.

Send comments to The Honorable Kevin C. Foy, Mayor of the Town of Chapel Hill, Chapel Hill Town Hall, 405 Martin Luther King Jr. Boulevard, Chapel Hill, North Carolina 27514.

Orange County (Unincorporated Areas)

Maps available for inspection at the Orange County Planning and Inspections Department, 306F Revere Road, Hillsborough, North Carolina.

Send comments to Mr. John M. Link, Jr., Orange County Manager, 200 South Cameron Street, Hillsborough, North Carolina 27278.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: February 1, 2006.

David I. Maurstad,

Acting Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–2692 Filed 2–24–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7907]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Federal

Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
OH	Madison County (Unincorporated Areas).	Big Darby Creek	Approximately 300 feet downstream of Conrail.	*None	*917
			Approximately 100 feet upstream of Plain City-Dublin Road/State Route 161.	*None	*919
		Sugar Run	At confluence with Big Darby Creek	*None	*911
			Approximately 300 feet downstream of Plain City-Dublin Road/State Route 161.	*None	*918
Maps are available for inspection at 1 North Main Street, Room 208, London, Ohio.					
Send comments to The Honorable David Dhume, Madison County Commissioner, 1 North Main Street, Post Office Box 618, London, Ohio 43140–0618.					
OH	Plain City (Village) Madison and Union Counties.	Big Darby Creek	Approximately 1,000 feet downstream of Conrail.	*921	*917
			Approximately 300 feet downstream of Noteman Road/State Route 23.	*926	*921
		Sugar Run	At the northern Corporate Limit	*None	*920
			Approximately 350 feet downstream of southern Corporate Limit.	*None	*919
Maps are available for inspection at 213 South Chillicothe Street, Plain City, Ohio.					
Send comments to Mr. John Jordan, Jr., Public Works Supervisor, Village of Plain City, 213 South Chillicothe Street, Plain City, Ohio 43064.					
OH	Union County (Unincorporated Areas)..	Big Darby Creek (Near the Village of Plain City).	Approximately 3,250 feet downstream of Noteman Road.	*None	*919
			Approximately 7,250 feet upstream of U.S. 42.	*None	*930
Maps are available for inspection at 233 West Sixth, Marysville, Ohio.					
Send comments to The Honorable Gary Lee, Chairman, Union County Board of Commissioners, 233 West Sixth, Marysville, Ohio 43040.					
WI	Pleasant Prairie (Village) Kenosha County.	Des Plaines River	At Wisconsin/Illinois State Line	*674	*676
			Just upstream of 120th Avenue	*None	*679

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Unnamed Tributary No. 1 to Des Plaines River.	At Wisconsin/Illinois State Line.	*None	*676
			Approximately 11,000 feet upstream of Wisconsin/Illinois State Line.	*None	*713
		Unnamed Tributary No. 1A to Des Plaines River.	At confluence with Unnamed Tributary No. 1 to Des Plaines River.	*None	*677
			At Wisconsin/Illinois State Line	*None	*717
		Unamed Tributary No. 1B to Des Plaines River.	At confluence with Unnamed Tributary No. 1 to Des Plaines River.	*None	*684
			Just downstream of confluence of Unnamed Tributary No. 1C to Des Plaines River.	*None	*699
		Unnamed Tributary No. 1C to Des Plaines River.	At confluence with Unnamed Tributary 1B to Des Plaines River.	*None	*699
			Approximately 1.5 miles upstream of confluence with Unnamed Tributary 1B to Des Plaines River.	*None	*737
		Unnamed Tributary No. 1E to Des Plaines River.	Approximately 6,850 feet upstream of the confluence with Des Plaines River.	*None	*677
			Approximately 2,757 feet upstream of U.S. Interstate 94.	*None	*725
		Unnamed Tributary No. 1F to Des Plaines River.	Approximately 400 feet upstream of the confluence with Unnamed Tributary No. 1E to Des Plaines River.	*None	*692
		Unnamed Tributary No. 1F to Des Plaines River.	Approximately 1,600 feet upstream of the confluence with Unnamed Tributary No. 1E to Des Plaines River.	*None	*707
		Unnamed Tributary No. 2 to Des Plaines River.	At the confluence with Unnamed Tributary No. 1E to Des Plaines River.	*None	*676
			Approximately 5,100 feet upstream of U.S. Interstate 94.	*None	*749

*National Geodetic Vertical Datum.

Maps are available for inspection at the Village Office, 9915 39th Avenue, Pleasant Prairie, Wisconsin.

Send comments to The Honorable John P. Steinbrink, Village President, Village Office, 9915 39th Avenue, Pleasant Prairie, Wisconsin 53158.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 4, 2006.

David I. Maurstad,

Acting Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–2693 Filed 2–24–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7644]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, FEMA, 500 C

Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood elevations and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) •Elevation in feet (NAVD)	
				Existing	Modified
California	Rohnert Park (City), Sonoma County.	Laguna de Santa Rosa Creek.	At downstream side of Redwood Highway South (US Route 101).	*95	*94
			Approximately 0.80 mile upstream of Redwood Highway South.	*105	*94
Maps available for inspection at the Rohnert Park City Public Works Department, 6750 Commerce Boulevard, Rohnert Park, California. Send comments to Mr. Steve Donley, Rohnert Park City Manager, 6750 Commerce Boulevard, Rohnert Park, California 94928.					
California	Tulare County (Unincorporated Areas).	Sheet Flow west of Sand Creek.	Approximately 0.47 mile downstream of Avenue 440.	#2	#1
			Approximately 0.56 mile upstream of Avenue 440.	#2	#1
Maps available for inspection at Tulare County Resource Management Agency, 5961 South Mooney Boulevard, Visalia, California. Send comments to Mr. Brian Haddix, Tulare County Administrative Officer, 2800 West Burrel Avenue, Visalia, California 93291.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: February 3, 2006.

David I. Maurstad,

Acting Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–2691 Filed 2–24–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

49 CFR Parts 27, 37, and 38

[Docket OST–2006–23985]

RIN 2105–AD54

Transportation for Individuals With Disabilities

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to amend its Americans with Disabilities Act (ADA) and section 504 regulations to update requirements concerning rail station platforms, clarify that public transit providers are required to make modifications to policies and practices to ensure that their programs are accessible to individuals with disabilities, and codify the Department's practice concerning the issuance of guidance on disability matters.

Comment Closing Date: Comments should be submitted by April 28, 2006 for the proposed regulatory changes in this notice. Comments should be submitted by May 30, 2006 for responses to the seven items under the heading ''Request for Comment on Other Issues.'' Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number [OST–

2006–23985] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 1–202–493–2251.
- Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: To the Docket Management System; 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.

Instructions: You must include the agency name and docket number [OST–2006–23985] or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act section of this document.

Docket: You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD), *bob.ashby@dot.gov* (e-mail). You may also contact Bonnie Graves, in the Office of Chief Counsel for the Federal Transit Administration, same mailing address, Room 9316 (202–366–4011), e-mail *bonnie.graves@fta.dot.gov*; and Richard Cogswell, of the Office of Railroad Development in the Federal Railroad Administration, VFRA Stop 20, 1120 Vermont Avenue, NW., Washington, DC 20005 (202–493–6388), e-mail *richard.cogswell@fra.dot.gov*.

SUPPLEMENTARY INFORMATION: This proposed rule concerns two main substantive subjects, reasonable modifications to policies and practices of transportation providers and platform accessibility in commuter and intercity rail systems.

Reasonable Modifications of Policies and Practices

In proposed amendments to 49 CFR 37.5 and 37.169, the NPRM would clarify that transportation providers, including, but not limited to, public transportation entities required to provide complementary paratransit service, must make reasonable modifications to their policies and practices to ensure program accessibility. Making reasonable modifications to policies and practices is a fundamental tenet of disability nondiscrimination law, reflected in a number of Department of Transportation (DOT) and Department of Justice (DOJ) regulations (*e.g.*, 49 CFR 27.11(c) (3), 14 CFR 382.7(c); 28 CFR 35.130(b)(7)).

However, the DOT ADA regulations do not include language specifically requiring regulated parties to make reasonable modifications to policies and practices. The Department, when drafting 49 CFR part 37, assumed that § 37.21(c) would incorporate the DOJ provisions on this subject, by saying the following:

> Entities to which this part applies also may be subject to ADA regulations of the Department of Justice (28 CFR parts 35 or 36, as applicable). The provisions of this part shall be interpreted in a manner that will make them consistent with applicable Department of Justice regulations.

Under this language, provisions of the DOJ regulations concerning reasonable modifications of policies and practices applicable to public entities, such as 28 CFR 35.130(b)(7), could apply to public entities regulated by DOT, while provisions of DOJ regulations on this subject applicable to private entities (*e.g.*, 28 CFR 36.302) could apply to private entities regulated by DOT. The one court decision that, until recently, had addressed the issue appeared to share the Department's assumption about the relationship between DOT and DOJ requirements (see *Burkhart* v. *Washington Area Metropolitan Transit Authority*, 112 F.3d 1207; DC Cir., 1997).

However *Melton* v. *Dallas Area Rapid Transit (DART)*, 391 F. 3d 691; 5th Cir., 2004; cert. denied 125 S. Ct. 2273 (2005) took a contrary approach. In this case, the court upheld DART's refusal to pick up a disabled paratransit passenger in a public alley in back of his house, rather than in front of his house (where a steep slope allegedly precluded access by the passenger to DART vehicles). DART argued in the case that paratransit operations are not covered by DOJ regulations. ''Instead,'' as the court summarized DART's argument, ''paratransit services are subject only to Department of Transportation regulations found in 49 CFR part 37. The Department of Transportation regulations contain no analogous provision requiring reasonable modification to be made to paratransit services to avoid discrimination.'' (391 F.3d at 673).

The court essentially adopted DART's argument, noting that the permissive language of § 37.21(c) (''may be subject'') did not impose coverage under provisions of DOJ regulations which, by their own terms, said that public transportation programs were ''not subject to the requirements of [28 CFR part 35].'' See 391 F.3d at 675. ''It is undisputed,'' the court concluded

> That the Secretary of Transportation has been directed by statute to issue regulations relating specifically to paratransit transportation. Furthermore, even if the Secretary only has the authority to promulgate regulations relating directly to transportation, the reasonable modification requested by the Meltons relates specifically to the operation of DART's service and is, therefore, exempt from [DOJ] regulations in 28 CFR part 35 (Id.)

When a public entity like DART is operating under a plan approved by the Federal Transit Administration (FTA) under part 37, in the court's view, it is not required to make any further modifications in its service to meet ADA nondiscrimination requirements (Id.)

While the *Melton* decision is the controlling precedent only in the states covered by the 5th Circuit, the Department believes that it would be useful to amend its rules to clarify, nationwide, that public entities that provide designated public transportation, including but not limited to complementary paratransit, have the obligation to make reasonable modifications in the provisions of their services when doing so is necessary to avoid discrimination or provide program accessibility to services. The Department will do so by proposing to add language to a number of provisions of its ADA and 504 regulations.

First, in § 37.5, the general nondiscrimination section of the ADA rule, the Department would add a paragraph requiring all public entities providing designated public transportation to make reasonable modifications to policies and practices where needed to avoid discrimination on the basis of disability or to provide program accessibility to services. The language is based on DOJ's requirements and, like the DOJ regulation, does not require a modification if it would create an undue burden or fundamentally alter the nature of the entity's service.

Parallel language would be placed in revised § 37.169, replacing an obsolete provision pertaining to over-the-road buses. Under the proposed language, the head of an entity would have to make a written determination that a needed

reasonable modification created an undue burden or fundamental alteration. The entity would not be required to seek DOT approval for the determination, but DOT could review the entity's action (e.g., in the context of a complaint investigation or compliance review) as part of a determination about whether the entity had discriminated against persons with disabilities. In the case where the entity determined that a requested modification created an undue burden or fundamental alteration, the entity would be obligated to seek an alternative solution that would not create such an undue burden or fundamental alteration.

The Department wants to make sure that transit providers understand that the proposed new language concerning modification of policies, as well as other new provisions of the rule, are incorporated in the obligations that transit providers assume through their financial assistance relationships with FTA. In this connection, we would point out standard language in the FTA Master Agreement:

> The Recipient acknowledges that Federal laws, regulations, policies, and related administrative practices applicable to the Project on the date FTA's authorized official signs the Grant Agreement or Cooperative Agreement may be modified from time to time. In particular, new Federal laws, regulations, policies, and administrative practices may be promulgated after the date when the Recipient executes the Grant Agreement or Cooperative Agreement, and might apply to that Grant Agreement or Cooperative Agreement. The Recipient agrees that the most recent of such Federal requirements will govern the administration of the Project at any particular time, unless FTA issues a written determination otherwise. Master Agreement at Section 2(c), Application of Federal, State, and Local Laws and Regulations

While it appears to the Department that this language is sufficient, we seek comment on whether any additional regulatory text language is needed on this point.

We would point out that language in the existing paratransit requirements of part 37 has an effect on paratransit providers very similar to that of the proposed reasonable modification language. 49 CFR 37.129(a) provides that, with the exception of certain situations in which on-call bus service or feeder paratransit service is appropriate, ''complementary paratransit service for ADA paratransit eligible persons shall be origin-to-destination service.'' This language was the subject of a recent guidance document posted on the Department's Web sites.

This guidance notes that the term ''origin to destination'' was deliberately chosen to avoid using either the term ''curb-to-curb'' service or the term ''door-to-door'' service and to emphasize the obligation of transit providers to ensure that eligible passengers are actually able to use paratransit service to get from their point of origin to their point of destination.

> The preamble discussion of this provision made the following points: Several comments asked for clarification of whether [origin-to-destination] service was meant to be door-to-door or curb-to-curb, and some recommended one or the other, or a combination of the two. The Department declines to characterize the service as either. *The main point, we think, is that the service must go from the user's point of origin to his or her destination point.* It is reasonable to think that service *for some individuals or locations* might be better if it is door-to-door, while curb-to-curb might be better in other instances. This is exactly the sort of detailed operational decision best left to the development of paratransit plans at the local level. (56 FR 45604; September 6, 1991; emphasis added.)

In the local paratransit planning process, it would be consistent with this provision for a transit provider to establish either door-to-door or curb-to-curb service as the basic mode of paratransit service. Where the local planning process establishes curb-to-curb service as the basic paratransit service mode, however, provision should still be made to ensure that the service available to each passenger actually gets the passenger from his or her point of origin to his or her destination point. To meet this origin to destination requirement, service may need to be provided to some individuals, or at some locations, in a way that goes beyond curb-to-curb service.

For instance, the nature of a particular individual's disability, adverse weather conditions, or terrain obstacles may prevent him or her from negotiating the distance from the door of his or her home to the curb. A physical barrier (*e.g.*, sidewalk construction) may prevent a passenger from traveling between the curb and the door of his or her destination point. In these and similar situations, to ensure that service is actually provided ''from the user's point of origin to his or her destination point,'' the service provider may need to offer assistance beyond the curb, even though the basic service mode for the transit provider remains curb-to-curb.

Meeting this ''origin to destination'' requirement may well involve what is, in effect, a modification of an otherwise reasonable general policy provided for in an entity's paratransit plan. Like any reasonable modification, such assistance would not need to be provided if it created an undue burden or fundamental alteration. For example, the Department does not view transit providers' functions as extending to the provision of personal services. Drivers would not have to provide services that exceed ''door-to-door'' service (*e.g.*, go beyond the doorway into a building to assist a passenger). Nor would drivers, for lengthy periods of time, have to leave their vehicles unattended or lose the ability to keep their vehicles under visual observation, or take actions that would present a direct threat to safety. These activities would come under the heading of ''fundamental alteration'' or ''undue burden.''

In the interest of clarifying the Department's section 504 regulation, as well as its ADA regulation, on the issue of reasonable modifications of policies and practices, the Department is also proposing an amendment to 49 CFR part 27. This regulation, in § 27.11(c)(2)(iii), already requires recipients of DOT financial assistance to ''begin to modify * * * any policies or practices that do not meet the requirements of this part.'' To avoid any possibility of misunderstanding with respect to the obligation to make reasonable modifications, however, we propose to add a new paragraph (e) to the general nondiscrimination section. The language of this section is similar to that of proposed § 37.5(g) in the ADA regulation.

Consistent with the addition of the ''modifications of policies and practices'' language, we are also adding a definition of ''direct threat,'' using the language of the DOJ regulations (see 36 CFR 207(b)). It is important to note that, in order to be a basis for placing restrictions on access to individuals with disabilities, a transit provider would have to determine that a direct threat exists to the health or safety *of others*. The direct threat provision is not intended to permit restrictions that are aimed solely at protecting people with disabilities themselves. Moreover, a finding of direct threat must be based on evidence, not merely on speculation or apprehension about the possibility of a safety problem. In three different rulemakings (concerning use of three-wheeled scooters on transit vehicles, the accessibility of bus stops, and requirements for over-the-road buses), the Department has consistently emphasized that placing restrictions on access is not permissible in the absence of meeting a stringent direct threat standard. Transportation providers would not be required to seek the

Department's approval before applying the direct threat standard in a particular case. However, they should document such applications for possible FTA review in the context of compliance reviews or complaint investigations.

In considering the effect of the ''reasonable modification'' language on paratransit operators, the Department wants to emphasize, in the strongest possible terms, that operators are not required to change their basic mode of service provision. An operator that has chosen ''curb-to-curb'' service is not required to change its system to be a ''door-to-door'' system for everyone. However, a ''curb-to-curb'' operator, in individual situations where it was genuinely necessary to take additional steps to ensure that a passenger can actually use the service, would have an obligation to make exceptions to its normal policy subject, as always, to the ''direct threat'' and ''undue burden/fundamental alteration'' limitations. Because of the limited, case-by-case nature of these exceptions, the Department believes that the proposed amendment would not have significant cost implications, but we seek comments on all the implications of the proposal.

We would also note that the effect of this proposal is not limited to paratransit. For example, fixed route bus systems often have a policy of stopping only at designated bus stops. However, there may be instances where there is a barrier at a particular bus stop to its use by passengers with disabilities (*e.g.*, construction, snowdrifts). In such a case, where it would not be unduly burdensome or pose a direct threat, it would be appropriate for the bus to move a short distance from the stop to pick up a passenger using a wheelchair at a place where the passenger could readily board the vehicle.

In addition to the ''modification of policies'' language from the DOJ ADA rules, there are other features of those rules that are not presently incorporated in the DOT ADA rules (e.g., pertaining to auxiliary aids and services). The Department seeks comment on whether it would be useful to incorporate any additional provisions from the DOJ rules into part 37.

Commuter and Intercity Rail Station Platform Accessibility

The second substantive change to the Department's ADA rules concerns rail station platforms in commuter and intercity rail modes. The revised § 37.41 would replace, for purposes of these modes, material presently found in §10.3.1(9) of Appendix A to Part 37. One of the purposes of this amendment is to maintain the status quo with respect to this requirement, given the adoption by DOT of the new ADAAG standards, which do not include this language. The NPRM would also make conforming amendments to provisions in 49 CFR part 38 concerning commuter rail and intercity rail cars.

Under the present § 10.3.1(9), level entry boarding is defined, in effect, as involving a vertical gap between car entrances and platform of no more than ⅝ inch, with a horizontal gap of no more than 3 inches. Exception 2 to § 10.3.1(9) provides that, ''where it is not operationally or structurally feasible to meet the horizontal gap or vertical difference requirement, mini-high platforms, car-borne or platform-mounted lifts, ramps or bridge plates, or similar manually deployed devices * * * shall suffice.'' Consistent with a recent guidance/interpretation document issued by the Department, this language should not be viewed as providing an unconstrained choice among various alternatives.

The Department strongly believes that, in choosing accessibility solutions, it is important—as the Department's 504 regulation has long stated (see 49 CFR 27.7(b)(2))—that service be provided ''in the most integrated setting that is reasonably achievable.'' In proposed §§ 37.5(h) and 37.169(c), the Department proposes to specifically include this principle in its ADA regulation as well. The implication of this principle in the rail station context is that the accessibility solution that provides service the most integrated setting should be chosen.

In the course of recent discussions with one rail system about its proposed platform design, a serious problem with the existing provisions of § 10.3.1(9) came to light. Because of physical and operational characteristics of intercity and commuter rail systems—as distinct from light and rapid rail systems—Federal Railroad Administration (FRA) staff advised that the 3 inch and ⅝ inch gap requirements were unrealistic: *i.e.*, it is very unlikely that any commuter or intercity rail system could ever meet these requirements. An FRA staff paper discussing this issue in greater detail has been placed in the docket for this rulemaking. The Department seeks comment on whether any other matters raised in this paper should be added to the ADA regulation, or whether a version of this paper should be made an appendix to the final rule.

To address both the technical feasibility and integrated, accessible service issues, the Department is proposing to revise platform design requirements. It should be noted that these requirements are intended to apply to *new* commuter and intercity rail facilities and systems. The Department seeks comment on whether the same approach should be followed with respect to alterations to existing stations and to commuter rail key stations and intercity rail stations that have not yet been modified for accessibility as required by the ADA, and on cost, feasibility, or other issues that may arise in that context.

Under the proposed § 37.41, level-entry boarding is the basic requirement. If the original 3 inch and ⅝ inch gap requirements can be met, then nothing further need be done. Otherwise, platforms (in coordination with cars) must meet a maximum 10–13 inch horizontal gap requirement. With respect to the vertical gap, the requirement would be that the vertical gap between the car floor and the boarding platform would be able to be mitigated by a bridge plate or ramp with a 1:8 slope or less, under a 50% passenger load consistent with 49 CFR 38.95(c). Such gaps are typical of longstanding passenger rail systems and do not present a hazard to boarding for the majority of passengers.

Bridge plates would be used to connect the platform with each accessible car to facilitate independent boarding by wheelchair users and other passengers who cannot step across the platform gaps. This means that it is not adequate to provide access to some cars but not others, which is contrary to the principle of providing service in an integrated setting. The only exception would be for an old, inaccessible car being used on the system (*e.g.*, certain 1950s-era two-level cars still being used on some systems, which cannot readily be entered and used by most persons with disabilities even if platform and door heights are coordinated). The Department seeks comment on whether a ramp slope of 1:8 provides an appropriate opportunity for independent access to cars by wheelchair users. If not, what sort of assistance, if any, would be appropriate to require? We note that, in some systems, requiring a slope less steep than 1:8 might require bridge plates or ramps to be impractically long.

The Department seeks comment on any operational issues that could arise in the context of level-entry boarding to all cars in a train (*e.g.*, dwell time or headway issues resulting from deployment—particularly manual deployment—of bridge plates or ramps). As with any proposal, we seek comment on any cost or feasibility issues that could be involved.

Only if the rail system determines—with the concurrence of the FRA or Federal Transit Administration (FTA) Administrator—that meeting these requirements is operationally or structurally infeasible could the rail system use an approach not involving level-entry boarding, such as mini-high platforms or lifts. Even in such a case, the rail system would have to ensure that access was provided to each accessible car on a train. The concept we have of infeasibility is twofold. On one hand, there could be some situations in which, from a design or engineering point of view, meeting these requirements simply cannot be done. On the other hand, there could be situations in which meeting the requirements creates an undue burden. We believe from our experience that situations falling into either of these categories are likely to be extremely rare, but we think it would be useful to have a mechanism in the regulation for assessing any situations that may arguably fall into one of them. We also seek comment on whether there are any ''bright line'' criteria that the Department might usefully add to this section to assist transit providers in determining whether meeting the proposed requirements is infeasible in a given situation.

The Department is aware that, on a range of issues, there can be disagreements between commuter rail authorities and freight railroads whose track the commuter railroads use. Where any such disagreements pertain to the accessibility of a commuter rail station, we believe that 49 CFR 37.57 (based on a statutory provision in the ADA, 42 U.S.C. 12162(e)(2)(C)) is relevant. This section provides that ''An owner or person in control of an intercity or commuter rail station shall provide reasonable cooperation to the responsible person(s) for that station with respect to the efforts of the responsible person to comply with the requirements of this subpart.'' We seek comment on whether any additions to this provision are necessary in order to ensure that disagreements between freight railroads and commuter rail authorities or Amtrak do not thwart the efforts of passenger railroads to ensure accessibility to passenger stations.

In some existing and proposed systems using mini-high platforms set back from the platform edge, the platform design has had the effect of channeling passengers into a narrow space between the face of the higher-level platform and the edge of the lower platform. The FRA regards such an arrangement as a hazard to passenger safety, since it may place passengers uncomfortably close to moving trains. Consequently the proposed rule would prohibit such designs. In addition, following FRA safety advice, the proposed rule would require that any obstructions on a platform (stairwells, elevator shafts, seats, etc.) must be set at least 6 feet back from the edge of a platform.

To ensure coordination of these requirements for platform accessibility with rail cars, a proposed amendment to § 37.85 would require new cars purchased for commuter rail systems to have floor heights identical to those of Amtrak cars serving the area in which the commuter system will be operated. This means that cars in the eastern part of the U.S. would have floor heights of 48 inches above top of rail, while those in the western part of the U.S. would have floor heights of 15 inches above top of rail. The purpose of this proposal is to prevent situations—some of which the Department has encountered—in which Amtrak and commuter rail cars with different floor heights use the same station platforms, complicating the provision of level entry boarding.

The Department assumes that the interior car floor will remain level with the car entrance for a sufficient distance to permit level entry to wheelchair positions in the car. The Department seeks comment on whether it is necessary to make this point part of the regulatory text.

Disability Law Coordinating Council

In addition to these two main topics, the proposal would codify an existing internal administrative mechanism used to coordinate DOT guidance and interpretations on disability-related matters. Under a March 2003 memorandum signed by Secretary of Transportation Norman Mineta, the Department uses an internal working group known as the Disability Law Coordinating Council (DLCC) to review written guidance and interpretations before they are issued by any of the Department's offices. The purpose of the DLCC is to ensure that guidance and interpretations are consistent among DOT offices and consistent with the Office of the Secretary regulations that carry out the Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act, and the Air Carrier Access Act (49 CFR part 37 and 38, 49 CFR part 27, and 14 CFR part 382, respectively). Under the Secretary's memorandum, written guidance and interpretations on these matters must be approved by the Department's General Counsel.

The DLCC mechanism is in place and functioning effectively. The proposed regulatory change will codify this procedure and provide better notice to the public and greater certainty over time about this feature of the Department's implementation of its disability nondiscrimination responsibilities. This codified provision would revise 49 CFR 37.15 to parallel existing provisions of other Department-wide regulations, namely the disadvantaged business enterprise regulation (49 CFR 26.9(b)) and drug testing procedures regulation (49 CFR 40.5). The proposed language would replace existing § 37.15, an obsolete provision concerning a now-lapsed suspension of certain requirements pertaining to detectable warnings.

Clarification of § 37.23

The NPRM would also clarify § 37.23. This section provides that when a public entity enters into a contract or other arrangement or relationship with a private entity to provide service, the public entity must ensure that the private entity meets the requirements that would apply if the public entity provided the service itself. The NPRM would add a parenthetical making explicit what the Department has always intended: That an ''arrangement or relationship'' other than a contract includes arrangements and relationships such as grants, subgrants, and cooperative agreements. The additional words, which are consistent with an interpretation of the existing language that the Department recently posted on its Web sites, ensures that a passenger with a disability will be provided the appropriate level of service, whether a private entity providing the service does so through a contract with a public entity or otherwise receives funding through the public entity.

Deletion of Obsolete Provisions

Finally, the NPRM would delete certain obsolete provisions, including §§ 37.71 (b)–(g), 37.77, 37.103 (b) and (c) (language referring to over-the-road buses), and 37.193 (a) (2) and (c). The first two deletions concern a waiver procedure for situations in which accessible buses were not available from manufacturers. This waiver provision was included in response to concerns that, when the ADA rule went into effect in 1991, there would be a shortage of accessible buses available to transit authorities. That is no longer a reasonable apprehension, and the waiver provision has never been used. The latter two provisions concern over-the-road bus service, and have been overtaken by events, notably the 1998 issuance of an over-the-road bus

regulation (codified at Part 37, Subpart H).

Request for Comment on Other Issues

We also seek comment on several issues that the current regulation does not explicitly address.

1. One of the current issues of interest to the transit community concerns ''bus rapid transit'' (BRT). FTA recently held a conference on accessibility of BRT systems. Generally, FTA has expressed the view that BRT vehicles should be treated as buses for ADA purposes and that ramp slopes (e.g., for a ramp or bridge plate between a vehicle and a platform) should be measured from the height of the surface of the boarding platform. Other issues that have been raised concern where, if at all, detectable warnings should be required; whether interior circulation requirements should differ from those for buses; what requirements should pertain to vehicles that are boarded from the left as well as the right side at some stations/stops; how to handle vehicle and stop accessible requirements in systems that have both platform and street-level boarding; and whether mobility aid securement systems are necessary. The Department seeks comment on these or other issues concerning BRT accessibility, and on what, if any, specific provisions should be added to parts 37 and 38 concerning BRT.

2. On occasion, the Department receives questions about rail stations that were not originally identified as key stations, because they did not meet the criteria for key stations. However, circumstances have changed (e.g., when a station becomes a major destination due to new development, such as a stadium, convention center, etc.), placing the station within one or more of the criteria. In this situation, should transit authorities have any responsibility for identifying the station as an addition to their list of key stations and making accessibility modifications? What, if any, procedures should the regulation provide in such instances?

3. ''Heritage fleets'' are fleets of vintage streetcars acquired in the global marketplace for use in regular revenue service (the Market Street line in San Francisco is a well-known example). In some cases, an entire fleet used on a system or line will consist of restored ''vintage'' streetcars operated over newly-laid tracks. Many provisions of the Department's rules may not readily apply in such situations (e.g., the exception for historical systems, the ''one car per train'' rule, the ''good faith efforts'' provision for used vehicles). If the heritage streetcars cannot be made accessible without compromising their structural integrity, there might be no way of ensuring accessibility to such systems under the present rule. Is it acceptable to have completely inaccessible heritage trolley systems? If not, what, if any changes in the regulation should be made to address accessibility issues in these systems?

4. The existing intercity rail section of the ADA itself and DOT regulations speak specifically to Amtrak. The Department recognizes that other rail projects (e.g., for high-speed rail) or changes in the way that rail service between cities is provided could result in service not provided by Amtrak. What, if any, changes to the regulation should the Department contemplate in order to require appropriate accessibility in rail service between cities provided by someone other than Amtrak?

5. The Department seeks comment on an issue concerning vehicle acquisition by public entities operating demand responsive systems for the general public. Unlike public fixed route operators (see § 37.73), operators of demand responsive systems for the general public are not required, under § 37.77, to make good faith efforts to find accessible vehicles when acquiring used vehicles. We request comment on whether the absence of such a provision has been a problem, and on whether we should add a used vehicle provision of this kind to § 37.77.

6. From time to time, there are changes in mobility devices used by individuals with disabilities. For example, the Department recently issued guidance concerning the use of ''Segways'' on transit vehicles. Another example concerns wheelchairs that do not fit the Department's existing definition of a ''common wheelchair'' (a three-or four-wheeled mobility device that, together with its user, does not exceed 600 pounds and fits a specific dimensional envelope. Some newer wheelchair designs have six wheels, rather than three or four; others may be longer, wider, or heavier than contemplated by the current definition. The Department seeks comment on how best to accommodate such change, while still providing certainty to designers and manufacturers of vehicles.

7. 49 CFR part 38 contains requirements for the designation and signage of priority seating for individuals with disabilities in several modes: § 38.27 for buses, § 38.55 for light rail, § 38.75 for rapid rail, and, § 38.105 for commuter rail. There are no parallel requirements for intercity rail and over-the-road bus. We seek comment on whether it would be useful to add priority seating requirements in these other modes. We also seek comment on whether any provisions of § 37.167, concerning the implementation of priority seating provisions, should be modified.

8. Finally, the Department seeks comment on the matter of how providers of ADA paratransit should count trips. The Department's ADA implementing regulations prohibit ''substantial numbers of trip denials or missed trips'' for purposes of providing complementary paratransit service that is comparable to the fixed-route system. This issue concerns how missed or denied trips should be counted, in order to provide a consistently applied measure to all FTA-assisted transit systems.

The key objective of the ADA is to ensure the nondiscriminatory provision of transportation service to individuals with disabilities. Denied or missed trip statistics are a useful performance measure of the degree to which paratransit providers meet their passenger service obligations.[1] From this passenger service perspective, a missed or denied trip should be viewed as any trip that an eligible passenger seeks to take that, as a practical matter, he or she is unable to take because of the action of the transit provider.

In our view, the simplest and clearest approach is to think of each individual leg of a journey as a trip. If a passenger's journey goes from Point A to Point B, and then back from Point B to Point A, the passenger has taken two trips. If a passenger's journey goes from Point A to Point B, then from Point B to Point C, and finally from Point C back to Point A, the passenger has taken three trips.

For example, suppose an eligible passenger calls a paratransit operator in a timely manner and asks to schedule a trip the next day from Point A to Point B at 9 a.m. and a return trip from Point B to Point A at 1 p.m. The transit operator tells the individual that it can provide the return trip from B to A, but that a vehicle to provide the initial trip from A to B is unavailable. From the point of view of the passenger—which we believe to be the most relevant point of view in evaluating ADA-mandated services—the action of the paratransit

[1] A ''denied'' trip involves a situation where an eligible passenger attempts to schedule a trip in a timely fashion but is told by the transit provider that the trip cannot be scheduled as the Department's ADA rules require. A ''missed'' trip is one that has been scheduled, but then is not completed successfully because of an action of the transit provider (e.g., the vehicle does not show up). The discussion of counting trips applies equally to missed and denied trips.

provider in denying the initial trip has made it impossible for him or her to take the return trip as well. Because the paratransit provider will not take the passenger from Point A to Point B, the passenger will never arrive at Point B. The action of the provider precludes the passenger from traveling from Point B to Point A just as effectively as if the provider had told the passenger that no vehicle was available for the trip.[2]

If the passenger was successfully provided both the initial and return trips, it would be reasonable to count two trips made. Since the passenger in this hypothetical case was, by action of the paratransit provider, precluded from taking both trips, it is reasonable to count two trips denied. We do not believe it would be reasonable to treat as a ''refusal'' of a trip by a passenger a situation in which the passenger's journey is precluded by the paratransit provider's own actions. In this situation, there is not a real offer to the passenger of the transportation he or she has requested, and it is reasonable to count both legs of the trip as having been denied.

Of course, if a passenger is able to compensate for the unavailable trip (e.g., by taking a taxi or getting a ride with a family member) and is then able to accept the return trip, one trip has been taken and only one trip has been denied.

This approach recognizes that a shortage of capacity at one time of the day can have a ripple effect that affects the true availability of passenger service at other times. In addition, treating paratransit trips in this way will enable all providers to count successes and failures in service provision in a consistent manner. It should also create greater comparability across transit systems and improve the Federal Transit Administration's ability to monitor grantees' program performance.

We recognize, however, that information on the actual availability of vehicles to make trips at particular times of day can be very helpful to transit properties for planning purposes (e.g., in determining future acquisition needs). The set of statistics discussed above, while very important for determining transit providers' success in meeting ADA passenger service requirements, may not be ideally suited to this separate purpose. Consequently, transit operators might want to keep a second, separate set of statistics on vehicle availability for their own planning purposes. The Department seeks comment on the Department's approach to this issue.

For all the issues discussed in this section, the Department seeks comment on whether it is advisable to add regulatory text language or whether it would be sufficient to provide guidance to recipients.

[2] This point applies equally if the transit provider was able to supply the initial trip from Point A to Point B, but not the return. In this case, the passenger would be precluded from taking the initial trip because he or she would be stranded at Point B.

Regulatory Analyses and Notices

This NPRM is nonsignificant for purposes of Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. The NPRM clarifies the Department's existing requirements concerning new commuter and intercity rail platforms and the obligation of paratransit providers and other regulated entities to make reasonable modifications of policies and practices to accommodate the needs of persons with disabilities in individual cases. These proposals do not represent significant departures from existing regulations and policy and are not expected to have noteworthy cost impacts on regulated parties. As with all rulemakings, however, the Department will consider comments related to costs (e.g., with respect to operations) that could be involved. The NPRM also codifies existing internal administrative practices concerning disability law guidance. This proposal would have no cost impacts on regulated parties. The rule does not have Federalism impacts sufficient to warrant the preparation of a Federalism Assessment.

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities. The rule may affect actions of some small entities (e.g., small paratransit operations). The proposed amendment to § 37.23 is merely a clarification reflecting the Department's interpretation of its current language, and in any case is unlikely to affect a substantial number of operators (i.e., because the number of small subgrantees that operate fixed-route systems is not expected to be large). Since operators can provide service in a demand-responsive mode (e.g., route deviation) that does not require the provision of complementary paratransit, and because the undue burden waiver provision of § 37.151–37.155, significant financial impacts on any given operator are unlikely. As with all rulemakings, however, the Department will consider comments related to costs that could be involved. As a general matter, compared to the existing rule, the matters discussed in the NPRM should not have noticeable incremental economic effects on small entities.

There are a number of other statutes and Executive Orders that apply to the rulemaking process that the Department considers in all rulemakings. However, none of them is relevant to this NPRM. These include the Unfunded Mandates Reform Act (which does not apply to nondiscrimination/civil rights requirements), the National Environmental Policy Act, E.O. 12630 (concerning property rights), E.O. 12988 (concerning civil justice reform), and E.O. 13045 (protection of children from environmental risks).

List of Subjects

49 CFR Part 27

Administrative Practice and Procedure, Airports, Civil Rights, Handicapped, Individuals with Disabilities, Highways and Roads, Reporting and Recordkeeping Requirements, Transportation

49 CFR Part 37

Buildings, Buses, Civil Rights, Handicapped, Individuals with Disabilities, Mass Transportation, Railroads, Reporting and Recordkeeping Requirements, Transportation

49 CFR Part 38

Buses, Civil Rights, Handicapped, Individuals with Disabilities, Mass Transportation, Railroads, Reporting and Recordkeeping Requirements, Transportation

Issued this 15th Day of February, 2006, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation proposes to amend 49 CFR parts 27, 37, and 38 as follows:

PART 27—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The authority citation for 49 CFR part 27 continues to read as follows:

Authority: Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16 (a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 5310(a) and (f)); sec. 165(b) of the Federal-aid Highway Act of 1973, as amended (23 U.S.C. 142 nt.).

2. In 49 CFR part 27, amend § 27.7 by adding a new paragraph (e), to read as follows:

§ 27.7 Discrimination prohibited

* * * * *

(e) Recipients shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to its services, unless the recipient can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity, or would result in undue administrative or financial burdens.

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

3. The authority citation for part 37 continues to read as follows:

Authority: 42 U.S.C. 12101–12213; 49 U.S.C. 322.

§ 37.3 [Amended]

4. In § 37.3, add a definition of ''direct threat'' following the definition of ''designated public transportation,'' to read as follows:

''*Direct threat*'' means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, procedures, or by the provision of auxiliary aids or services.

5. Amend § 37.5 by redesignating paragraphs (g) and (h) as paragraphs (i) and (j), respectively, and adding new paragraphs (g) and (h), to read as follows:

§ 37.5 Nondiscrimination.

* * * * *

(g) Public entities providing designated public transportation services shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to its services, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity, or would result in undue administrative or financial burdens.

(h) In choosing among alternatives for meeting nondiscrimination and accessibility requirements with respect to new, altered, or existing facilities, or designated or specified public transportation services, public and private entities shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting that is reasonably achievable.

6. Revise § 37.15 to read as follows:

§ 37.15 Interpretations and Guidance

The Secretary of Transportation, Office of the Secretary of Transportation, and Operating Administrations may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance shall be developed through the Department's coordinating mechanism for disability matters, the Disability Law Coordinating Council. Written interpretations and guidance are valid and binding, and constitute the official position of the Department of Transportation, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR parts 27, 37, 38 and 14 CFR part 382, as applicable.

§ 37.23 [Amended]

7. In § 37.23, in paragraphs (a), (c), and (d), add the words ''(including, but not limited to, a grant, subgrant, or cooperative agreement)'' after the word ''arrangement.''

8. Revise § 37.41 to read as follows:

§ 37.41 Construction of transportation facilities by public entities

(a) A public entity shall construct any new facility to be used in providing designated public transportation services so that the facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. This requirement also applies to the construction of a new station for use in intercity or commuter rail transportation. For purposes of this section, a facility (including a station) is ''new'' if its construction began (*i.e.*, issuance of a notice to proceed) after January 25, 1992, or, in the case of intercity or commuter rail stations, after October 7, 1991.

(b)(1) Full compliance with the requirements of this section is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

(2) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.

(3) If providing accessibility in conformance with this section to individuals with certain disabilities (*e.g.*, those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities (*e.g.*, those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

(c) Except as otherwise provided in this section, new commuter and intercity rail stations shall provide level-entry boarding to all accessible cars in each train using the station. In order to permit level-entry boarding over the full length of the platform, stations and cars shall be designed to minimize the vertical difference between (1) the distance from top of rail to platform surface and (2) the distance between top of rail and car entrance.

(d) Where it is feasible to coordinate the floor height of rail vehicles with the platform height such that the horizontal gap is no more than 3 inches and the vertical gap is no more than 5/8 inch, measured when the vehicle is at rest, the station shall provide level-entry boarding meeting these specifications to all accessible cars on each train using the platform. In stations meeting these specifications, no additional method of assisting boarding (*e.g.*, use of bridge plates) is necessary.

(e) In stations where it is not feasible to meet the 3 inch horizontal gap and ⅝ inch vertical gap specifications of paragraph (c) of this section, the platform design shall be coordinated with rail cars so that the horizontal gap between the floor of a car at rest and the platform shall be no greater than 10 inches on tangent track and 13 inches on curves. The vertical gap between the car floor and the boarding platform must be able to be mitigated by a bridge plate or ramp with a 1:8 slope or less, under 50% passenger load consistent with 49 CFR 38.95(c). In such a station, level entry boarding shall be provided to all accessible cars on each train using the platform by using a bridge plate connecting each car and the platform.

(f) Where necessary to allow for freight movements (including overdimensional loads) while still providing level-entry boarding as required by paragraphs (c) through (e) of this section, commuter and intercity stations shall use such means as gauntlet tracks, bypass tracks, and retractable edges.

(g) Only if it is technically or operationally infeasible to provide level-entry boarding as required by paragraphs (c) through (e) of this section may the commuter or intercity rail

operator use a different means to provide accessibility. To demonstrate infeasibility, a commuter or intercity railroad operator would have to demonstrate that providing level entry boarding is physically impossible or would impose an undue burden.

(1) Any such means must serve all accessible cars of the train (*e.g.*, if mini-high platforms are used, there must be a platform that serves each accessible car; if car-borne or station-based lifts are used; a lift must serve each accessible car). Such a means shall also ensure that accessible means of entry to each car align with the stopping point of the train.

(2) In any situation using a combination of high and low platforms, a commuter or intercity rail operator shall not employ a solution that has the effect of channeling passengers into a narrow space between the face of the higher-level platform and the edge of the lower platform. Any obstructions on a platform (stairwells, elevator shafts, seats, etc.) shall be set at least 6 feet back from the edge of a platform.

(3) Any determination of the infeasibility of level entry boarding under this paragraph, as well as the means chosen to provide accessibility in the absence of level-entry boarding, must be approved by the Federal Transit Administration (for commuter rail systems) or the Federal Railroad Administration (for intercity rail systems). The Federal Transit Administration and Federal Railroad Administration shall make this determination jointly in any situation in which both a commuter rail system and an intercity or freight railroad use the tracks serving the platform.

(h) In the event of any inconsistency between this section and Appendix A to this part or provisions of 49 CFR part 38, this section shall prevail with respect to new intercity and commuter rail stations and systems.

§ 37.71 [Amended]

9. In § 37.71, remove paragraphs (b) through (g).

§ 37.77 [Amended]

10. In § 37.77, remove paragraph (e).

11. Amend § 37.85 by designating the existing language as paragraph (a) and adding a new paragraph (b), to read as follows:

§ 37.85 Purchase or lease of new commuter rail cars.

* * * * *

(b) A new commuter rail system, in ordering cars for the system, shall ensure that the floor height of the cars is the same as that used in intercity rail in the part of the country in which the commuter system is located (*e.g.*, 48 inches above of top of rail in eastern systems; 15–17 inches above top of rail in western systems).

§ 37.103 [Amended]

12. In § 37.103 (b) and (c), remove the words ''or an over-the-road bus,''.

13. Revise § 37.169 to read as follows:

§ 37.169 Program accessibility obligation of public entities providing designated public transportation.

(a) A public entity providing designated public transportation shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This obligation includes making reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to the entity's services.

(b) Paragraph (a) of this section does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or undue financial or administrative burdens. In circumstances where personnel of the public entity believe that an action necessary to comply with paragraph (a) of this section would fundamentally alter the service, program, or activity or would result in undue financial or administrative burdens, the entity has the burden of proving that compliance with paragraph (a) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

(c) In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting that is reasonably achievable.

§ 37.193 [Amended]

14. Remove and reserve § 37.193(a)(2) and (c).

PART 38—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY SPECIFICATIONS FOR TRANSPORTATION VEHICLES

15. The authority citation for 49 CFR part 38 continues to read as follows:

Authority: 42 U.S.C. 12101–12213; 49 U.S.C. 322

§ 38.91 [Amended]

16. Amend § 38.91(c)(1) by removing the words ''wherever structurally and operationally practicable'' and adding in their place the words ''unless structurally or operationally infeasible.''

17. Amend § 38.91(c)(2) by removing the words ''not structurally or operationally practicable'' and adding, in their place, the words ''is structurally or operationally infeasible''.

18. Revise § 38.93(d) to read as follows:

§ 38.93 Doorways.

* * * * *

(d) *Coordination with boarding platform.* Cars shall be coordinated with platforms to provide level-entry boarding as provided in 49 CFR 37.41 (c) through (h).

* * * * *

§ 38.95 [Amended]

19. Amend § 38.95(a)(2) by removing the words ''If portable or platform lifts, ramps, or bridge plates meeting the applicable requirements of this section are provided on station platforms or other stops required to be accessible, or mini-high platforms complying with § 38.93(d) are provided,'' and adding, in their place, the words ''If level-entry boarding is provided, consistent with 49 CFR 37.41 (c) through (h),''.

§ 38.111 [Amended]

20. Amend § 38.111(b)(1) by removing the words ''If physically and operationally practicable'' and adding, in their place, the words ''Unless technically or operationally infeasible.''

21. Amend § 38.111(b)(2) by removing the words ''not structurally or operationally practicable'' and adding, in their place, the words ''is technically or operationally infeasible''.

22. Revise § 38.113(d) to read as follows:

§ 38.113 Doorways.

* * * * *

(d) Coordination with boarding platform. Cars shall be coordinated with platforms to provide level-entry

boarding as provided in 49 CFR 37.41 (c) through (h).

* * * * *

§ 38.125 [Amended]

23. Amend § 38.125(a)(2) by removing the words ''If portable or platform lifts, ramps, or bridge plates meeting the applicable requirements of this section are provided on station platforms or other stops required to be accessible, or mini-high platforms complying with § 38.113(d) are provided,'' and adding, in their place, the words ''If level-entry boarding is provided, consistent with 49 CFR 37.41 (c) through (h),''.

[FR Doc. 06–1658 Filed 2–22–06; 11:30 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. I.D. 021606B]

RIN 0648–AU06

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

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to require the Secretary of Commerce (Secretary) to approve the Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program (Program). The Program allocates BSAI crab resources among harvesters, processors, and coastal communities. The Program was implemented by Amendments 18 and 19 to the Fishery Management Plan for BSAI King and Tanner Crabs (FMP). Amendment 20 would modify the FMP and the Program to increase resource conservation and improve economic efficiency in the Chionoecetes bairdi crab (Tanner crab) fisheries that are subject to the Program. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws.

DATES: Comments on the amendment must be submitted on or before April 28, 2006.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Records Office. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.
- Facsimile: 907–586–7557.
- E-mail: *0648–AU06–KTC20–NOA@noaa.gov*. Include in the subject line of the e-mail the following document identifier: Crab Rationalization RIN 0648–AU06. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of Amendment 20 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region Web site at *http://www.fakr.noaa.gov/sustainablefisheries.htm*.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

The king and Tanner crab fisheries in the exclusive economic zone of the BSAI are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act as amended by the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801). Amendments 18 and 19 to the FMP amended the FMP to include the Program. A final rule implementing these amendments was published on March 2, 2005 (70 FR 10174). NMFS also published three corrections to the final rule (70 FR 13097; March 18, 2005), (70 FR 33390; June 8, 2005), and (70 FR 75419; December 20, 2005).

The Council submitted Amendment 20 to the FMP for Secretarial review, which would make minor changes to the FMP necessary for the management of the Tanner crab fisheries under the Program. If approved, Amendment 20 to the FMP would modify the allocation of harvesting shares and processing shares for Bering Sea Tanner crab. Under authority deferred to the State of Alaska (State) by the FMP, the State has determined that the Bering Sea District Tanner crabs are in two geographically separate stocks, and should be managed as two separate stocks; one east of 166° W longitude, the other west of 166° W longitude. Currently, under the Program, harvester quota share (QS), processor quota share (PQS), individual fishing quota (IFQ), and individual processing quota (IPQ) are issued for one Tanner crab fishery. Amendment 20 would modify the FMP to allocate QS and PQS and the resulting IFQ and IPQ for two Tanner crab fisheries one east of 166° W longitude, the other west of 166° W longitude.

The current allocations are not consistent with management of the species as two stocks. Revision of the QS and PQS allocations would resolve this inconsistency, reduce administrative costs for managers and reduce potential operational costs and increase flexibility for harvesters and processors.

Public comments are being solicited on proposed Amendment 20 through the end of the comment period (see **DATES**). NMFS intends to publish a proposed rule that would implement Amendment 20 in the **Federal Register** for public comment, following NMFS' evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on Amendment 20 to be considered in the approval/disapproval decision on Amendment 20. All comments received by the end of the comment period on Amendment 20, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendments. To be considered, comments must be received not just postmarked or otherwise transmitted by the close of business on the last day of the comment period.

Dated: February 22, 2006.

William D. Chappell,

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

[FR Doc. E6–2733 Filed 2–24–06; 8:45 am]

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Notices

Federal Register
Vol. 71, No. 38
Monday, February 27, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 04–026N]

Salmonella Verification Sample Result Reporting: Agency Policy and Use in Public Health Protection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and response to comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing changes in how it uses the results from its *Salmonella* verification sampling program for meat and poultry establishments to enhance public health protection. The Agency is also changing how it reports these results. These actions follow an April 2003 FSIS **Federal Register** Notice asking for public comment on whether and how Agency policy could be improved. This Notice responds to the comments received and presents the Agency's views on the issues raised in the 2003 Notice.

FSIS will begin adding results from individual *Salmonella* verification sample tests to reports the Agency regularly makes to meat and poultry establishments that have asked to be informed of various test results. These *Salmonella* sample results will be sent to establishments as soon as they become available. FSIS will begin posting quarterly nationwide data for *Salmonella*, presented by product class, on the Agency Web site.

Moreover, the Agency will assess each completed *Salmonella* sample set in light of either existing regulatory standards or recently-published baseline study results, as appropriate. FSIS expects to take follow-up action, which may include scheduling of another sample set or assessing the design and execution of the food safety system, based on how a plant's performance compares to the existing regulatory standard or nationwide baseline results and to the presence of serotypes of *Salmonella* that are common causes of human illness.

To further encourage industry process control efforts, the Agency is providing a new compliance guideline containing information that FSIS has found to be relevant to control of *Salmonella,* particularly for poultry.

FSIS intends to monitor closely the percent positive in verification samples month-by-month over the course of a full calendar year, beginning in 2006. After one year FSIS will evaluate these data, reassess how it reports *Salmonella* results for each class of products, and consider making additional changes in how it reports and publishes results.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. FSIS prefers to receive comments through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select the FDMS Docket Number to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.
- Mail, including floppy disks or CD–ROMs, and hand-or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.
- Electronic mail: *fsis.regulationscomments@fsis.usda.gov.*

All submissions received must include the Agency name and docket number 04–026N.

All comments submitted in response to this Notice, as well as research and background information used by FSIS in developing this document, will be posted to the regulations.gov Web site. The background information and comments also will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

DATES: *Effective Date:* May 30, 2006.

FOR FURTHER INFORMATION: For further information contact Daniel Engeljohn, Ph.D., Deputy Assistant Administrator for Office of Policy, Program and Employee Development, FSIS, U.S. Department of Agriculture, Room 3147, South Building, 14th and Independence SW., Washington DC 20250–3700; telephone (202) 205–0495, fax (202) 401–1760, e-mail: *daniel.engeljohn@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1996, FSIS published ''Pathogen Reduction; Hazard Analysis and Critical Control Point (PR/HACCP) Systems'' (61 FR 38806). This final rule established, among other measures, pathogen reduction performance standards for *Salmonella* bacteria for certain slaughter establishments and for establishments producing certain raw ground products. The performance standards are codified at 9 CFR 310.25(b)(1) and 381.94(b)(1). These performance standards are based on the prevalence of *Salmonella* found by the Agency's nationwide microbiological baseline studies, which were conducted before the PR/HACCP rule was adopted *(http://www.fsis.usda.gov/Science/Baseline_Data/)*. The performance standards set a maximum number of *Salmonella*-positive samples allowable per sample set. Raw product classes covered by performance standards are carcasses of cows/bulls, steers/heifers, market hogs, broilers (young chickens), and ground beef, ground chicken, and ground turkey.

FSIS selected *Salmonella* as the target organism because it is one of the most common causes of foodborne illness associated with meat and poultry products; it is present to varying degrees in all major species; and interventions targeted at reducing the presence of this pathogen may be beneficial in reducing contamination by other enteric pathogens.

The sampling and testing of carcasses and raw products for *Salmonella* is conducted by FSIS. The Agency verifies that establishments are meeting the *Salmonella* standards by having federal

inspection personnel collect product samples from individual establishments over the course of a defined number of sequential days of production to complete a sample set. The product samples are sent to FSIS laboratories for analysis. The number of samples in a sample set varies by product class. The maximum number of positive samples allowed in a set is based on data from the nationwide baseline studies. The standards were defined on a product class basis so that an establishment operating at the baseline level would have an 80% chance of meeting the standard.

An initial sample set or a set that follows a passed set is termed an ''A'' set; other codes (such as ''B'', ''C'', and ''D'') represent sample sets collected from establishments in follow-up testing after a failed set. All code ''A'' sample sets are collected at randomly selected establishments, while code ''B,'' ''C,'' and ''D'' sets are collected at establishments that failed a previous set. Generally, all establishments within a product class are tested by FSIS once annually for the ''A'' set. However, establishments that fail the performance standard are scheduled for a follow-up sample set after the establishment takes corrective action (i.e, the ''B,'' ''C,'' and ''D'' sets) resulting in one or more additional sample sets annually.

The overall percentage of positive results for *Salmonella* in ''A'' samples has been used to track progress in addressing control of *Salmonella.* These aggregate data are based on large numbers of test results. Although they provide a useful estimate of *Salmonella* control, FSIS verification sampling is not designed to estimate national prevalence of *Salmonella* by class of products. A ''true'' prevalence can only be derived from randomly selected samples in a nationwide baseline study designed within the boundaries of a specified statistical confidence level.

To date, with a few exceptions, the Agency has reported *Salmonella* test results to an establishment only when a sample set is completed. The Agency has also published aggregate yearly data from ''A'' sets, by product class (e.g., steers/heifers, broilers, ground beef) and plant size as defined in the PR/HACCP final rule (large, small, and very small).

FSIS has initiated an evaluation of how it uses and reports test results from its *Salmonella* sampling program. In a **Federal Register** Notice of April 16, 2003, we asked for comments on our established policy for reporting sample results (68 FR 18593–18596; *http://www.fsis.usda.gov/Regulations_&_Policies/2005_Notices_Index/index.asp*). In evaluating its policy, the Agency had concluded that there would be value in making public more information about *Salmonella* sampling results than just the annual reports. Additionally, in response to that notice, several establishments stated that there would be significant value in receiving the results of individual samples.

As the Agency considered the comments on the 2003 Notice and how best to proceed, FSIS was influenced by recent epidemiological data from the Centers for Disease Control and Prevention (CDC) that have raised concern. In recent years, overall human infections from *Salmonella* serotypes have decreased only slightly, from an incidence of approximately 16 cases per 100,000 persons in the reference period 1996–98 to 14.7 cases per 100,000 persons in 2004. To put this information in context, USDA and FSIS recognize the U.S. Department of Health and Human Services National Food Safety Objectives—''Healthy People 2010''—(*http://www.healthypeople.gov/document/tableofcontents.htm* as appropriate for guiding strategic planning for public health. Healthy People 2010 set a goal for 2010 of 6.8 cases/100,000 persons, which is less than half the rate of current incidence. FSIS recognizes that raw meat and poultry are not the only contributors to the disease burden associated with *Salmonella.* However, when the serotypes of *Salmonella* present on raw meat and poultry are considered, particularly in comparison to those commonly associated with human illness, FSIS believes that *Salmonella*-contaminated raw meat and poultry are important sources of this pathogen.

Furthermore, while CDC data show the incidence of human *Salmonella* Typhimurium (*S.* Typhimurium) infection as decreasing by 41% between the 1996–98 baseline and 2004, the incidence of two other leading serotypes, *S.* Enteritidis and *S.* Heidelberg, did not change significantly. Human infection incidence from *S.* Newport increased by 41%. Moreover, microbial resistance to antibiotics associated with serotypes of *Salmonella* may be increasing. This change has been particularly noted with *S.* Newport, which has emerged in recent years. (See ''Preliminary FoodNet Data on the Incidence of Infection with Pathogens Transmitted Commonly Through Food—10 Sites, United States, 2004'' from Morbidity and Mortality Weekly Review, CDC, April 15, 2005, 352–356; available at *http://www.medscape.com/viewarticle/503230.*) Importantly, these same *Salmonella* serotypes and others also commonly associated with human illness have been found in samples of raw meat and poultry collected by FSIS.

Recent Agency data have shown the percentage positive in *Salmonella* ''A'' sets of broilers (young chickens) from establishments of all sizes increasing from 11.5% in 2002 to 12.8% in 2003 to 13.5% in 2004. Although the overall percentage of positive samples in verification testing is still below the nationwide baseline prevalence figures, this persistent upward trend in positive verification samples provides reason for concern, particularly because of the associated increased exposure of the public to serotypes of *Salmonella* that are commonly associated with human illness. [See *http://www.fsis.usda.gov/ophs/haccp/salm6year.htm.*] Other product classes have not shown such a persistent upward trend, and the percentage of positive verification samples has declined for all three beef product classes.

FSIS has found through assessments of food safety systems, in establishments that failed to meet the performance standard that these establishments have flaws in the design and execution of their control procedures. Establishments with an elevated percentage of samples positive for *Salmonella* in verification testing have not adequately addressed the following specific issues: design flaws in HACCP plans and Sanitation Standard Operating Procedures, failure to execute the food safety system as designed, failure to ensure that corrective actions are effective, and failure to reassess the food safety system once changes are made.

FSIS has evidence, based on its experience with establishments that failed one or more *Salmonella* sets that then implemented corrective actions and came into compliance, that, when properly addressed in the establishment's food safety system, *Salmonella* levels in regulatory samples can be controlled. For example, Agency data show that those establishments performing well—e.g., with percent positive *Salmonella* samples at or less than 50% of a relevant standard or baseline for at least five consecutive sets—do so with remarkable consistency and predictability. Conversely, establishments with higher percent positive results show much greater variability and inconsistency in their sample results. Not only do establishments that have had at least one sample set in which the percent of positive samples was greater than 50% of the *Salmonella* standard have a higher average of percent positive *Salmonella* samples, but, as a group, such establishments also repeatedly exceed 50% of the standard. Most of

these establishments maintain an elevated average percentage of positive *Salmonella* samples until FSIS conducts a food safety assessment and identifies food safety system design and execution weaknesses to the establishments. Based on experience, FSIS has found that once these establishments implement effective control measures as part of their HACCP system, they demonstrated an ability to maintain good control of *Salmonella.* These patterns show that *Salmonella* in regulatory sample results can be controlled consistently through efforts by establishments to maintain process control. These HACCP-related efforts, particularly in broiler operations, mirror the outcomes realized by the beef industry for control of *Escherichia coli* O157:H7 (*E. coli* O157:H7) when the beef industry began implementing better process control for this pathogen.

For all these reasons, the Agency has concluded that it needs to re-direct its *Salmonella* verification sampling program to ensure that it is useful in providing enhanced public health protection.

Agency Decisions

FSIS is announcing several steps to increase public health protection. First, the Agency will add results from individual *Salmonella* verification sample tests to reports the Agency regularly makes to meat and poultry establishments that have asked to be informed of various test results. These *Salmonella* sample results will be sent to establishments as soon as they become available. The National Advisory Committee on Microbiological Criteria for Foods has noted that *Salmonella* test results are useful measures of process control, and establishments using Statistical Process Control (SPC) may find this timely information to be particularly helpful in gauging the effectiveness of their process control measures.

The Agency will also begin posting quarterly, rather than annually, nationwide *Salmonella* data by product class on the Agency Web site.

As soon as possible in 2006, FSIS will issue instructions to inspection program personnel and begin conducting sampling in establishments slaughtering young turkeys, the subject of a recently-published baseline study (see 70 FR 8058, February 17, 2005; *http://www.fsis.usda.gov/Regulations_&_Policies/2005_Notices_Index/index.asp*). These baseline data will provide a useful guide for FSIS *Salmonella* verification testing of turkey carcasses and evaluation of process control by turkey slaughter establishments, which the Agency has expected to control *Salmonella* levels on carcasses even in the absence of a performance standard. FSIS will use the baseline results to guide its testing of turkey carcasses in the same manner that it will use the existing regulatory standards to guide its testing of broilers and other classes of raw products.

Tables A and B show existing *Salmonella* performance standards and recently-developed microbiological baseline guidance results for young turkeys and geese.

TABLE A.—SALMONELLA PERFORMANCE STANDARDS

[See 9 CFR 310.25 and 381.94]

Product class	Performance standard (percent positive for *Salmonella*)	Number of samples tested (n)	Maximum number of positives to achieve standard
Steers/heifers	1.0%	82	1
Cows/bulls	2.7%	58	2
Ground beef	7.5%	53	5
Market hogs	8.7%	55	6
Fresh pork sausages	NA	NA	NA
Broilers	20.0%	51	12
Ground chicken	44.6%	53	26
Ground turkey	49.9%	53	29
Turkeys	NA	NA	NA

TABLE B.—SALMONELLA BASELINE GUIDANCE RESULTS FOR YOUNG TURKEYS AND GEESE

Product class/method	Baseline prevalence (percent positive for *Salmonella*)	Number of samples in set	Maximum number of positives
Young turkey carcasses/sponge	19.6%	56	13
Goose carcasses/sponge	13.7%	54	9

Each completed sample set result will be recorded in one of three categories in relation to the standard or baseline guideline:

Category 1. Consistent Process Control for *Salmonella Reduction*. 50% or less of the performance standard or baseline guidance, demonstrating the best control for this pathogen.

Category 2. Variable Process Control for *Salmonella Reduction*. From 51% of the performance standard or regulatory guideline to the performance standard or baseline guidance, demonstrating intermediate control for this pathogen.

Category 3. Highly Variable Process Control for *Salmonella Reduction.* Greater than the performance standard or baseline guidance, demonstrating the least control for this pathogen.

Selection of the Category 1 versus Category 2 criteria was based, in part, on the long-term evidence from regulatory samples collected between 1998 and 2004 that there is a statistically significant difference in the likelihood, calculated as an odds ratio, of serotypes of *Salmonella* that are common causes

of human illness in the U.S., based on the high frequency of these serotypes in products from establishments in Category 2 compared to those in Category 1. FSIS has identified many of the most common serotypes of human illness in broiler samples. These serotypes include *Salmonella* Heidelberg, Typhimurium, Enteritidis, I 4,[5],12:i:-, Montevideo, Newport, and Infantis.

FSIS believes that targeting its *Salmonella* sampling according to these categories will enable it to maximize the effective use of its resources. Since establishments that have not implemented effective process controls for *Salmonella* may fluctuate between categories until process control is assured, FSIS expects to consider the results of at least two consecutive sample sets before categorizing the establishment. By using more than one sample set to make this categorization, FSIS will have a good basis on which to assess process control. Furthermore, FSIS expects to use the most recent sample set result, regardless of whether the sample set was an ''A,'' ''B,'' or other set result, plus its next result in effecting this approach. FSIS expects to assess the utility of this decision criterion at least annually.

An individual establishment with results in Category 1 for at least its last two sets will be considered by the Agency to have demonstrated sustained good control of *Salmonella* presence in its product over time. Thus, barring special circumstances (for example, eliminating an antimicrobial treatment during the production process), such an establishment will be tested no more than once a year, but at least once every two years, unless it gets a result that puts it in Category 2 or 3. As stated earlier, until now, an establishment not exceeding the performance standard generally was not scheduled for more than one sample set annually.

Once any establishment receives a result from FSIS testing for *Salmonella* that puts it in either Category 2 or 3, FSIS likely will subject the establishment to retesting at any time. However, establishments in Category 3 should expect that the retesting will be sooner and more frequent within a calendar year than that for establishments in Category 2. Moreover, the Agency will evaluate Category 2 and 3 establishments on a case-by-case basis and determine any further actions to take, which may include increased sampling (*e.g.*, at rehang, at pre-chill, and at post-chill to gather information about changes in the microbiological profile during the same production process), expedited serotyping, enhanced verification of the establishment's food safety programs (*e.g.*, intensified focus on sanitation procedures and record keeping), and assessment of the establishment's food safety system. Importantly, establishments in Category 2 and 3 that demonstrate an inability to control for the on-going presence of serotypes of *Salmonella* known to be associated with common human illness will receive greater attention by FSIS regarding the verification of the establishment's food safety programs.

FSIS data indicate that increased Agency scrutiny through food safety assessments and verification testing leads to improved plant performance in controlling *Salmonella*. (See Fulfilling the Vision: Initiatives in Protecting Public Health, USDA/FSIS, July 2004; *http://www.fsis.usda.gov/PDF/Fulfilling_the_Vision.pdf*). Less frequent sampling of those establishments that have a relatively low percent positive of *Salmonella* samples will free Agency resources for application to establishments that are not performing as well.

In addition, FSIS is providing a new compliance guideline particularly related to the broiler industry containing information that FSIS has found to be relevant to the control of *Salmonella.* This compliance guideline will be available on the Agency Web site and as a document in the FSIS docket room. The document will present information on control measures that can help reduce the prevalence of *Salmonella*.

FSIS will also be obtaining more timely *Salmonella* serotype information for each positive test result from its verification program and may intensify testing or scrutiny via a food safety assessment of establishments that produce product with serotypes of epidemiological concern. Serotype identification requires additional analysis and thus is not likely to be available when establishments receive their initial sample results, but serotype information will be made available by FSIS to establishments as soon as possible. FSIS will also publish annual aggregate results for serotypes.

As soon as possible, FSIS will pursue sub-typing, including pulsed-field gel electrophoresis of *Salmonella* found in the FSIS testing program. In addition, FSIS expects to further assess the current procedures in place for phage-typing pathogens found in regulatory samples. The Agency expects to pursue mechanisms to further share this important public health-related information with public health partners such as CDC, the Food and Drug Administration, and the States in order to find timely ways to compare subtypes of *Salmonella* with strains from other public health surveillance systems.

Furthermore, the Agency will be conducting baseline studies for *Salmonella* and other pathogens and indicator organisms among specific product classes. These baseline studies will be statistically designed to measure the national prevalence of microorganisms on regulated raw products and to ascertain whether continuous improvement for pathogen reduction is evident, as intended by the PR/HACCP final rule. New baseline studies will be used to inform risk management policies, and could provide support for new performance standards or baseline guidance. Isolates from positive samples, particularly for pathogens, are expected to be serotyped and analyzed for patterns of resistance to antibiotic drugs.

FSIS is exploring the information systems enhancements needed to implement fully these risk-based policies for *Salmonella* sampling.

The main Agency focus will be on control of *Salmonella* in slaughter and combined slaughter/processing establishments because these operations have direct control over this pathogen during sanitary dressing and further processing. While grinders are certainly of interest to FSIS, the best way to control *Salmonella* levels in ground product is through control over the *Salmonella* levels in the source materials. Thus, the slaughter and slaughter/processing combination plants are the Agency's first concern, but policy for grinders will be assessed during that year as well.

Further Agency Considerations

FSIS intends to monitor the *Salmonella* percent positive in verification samples by product class over the course of a full year beginning in July 2006. The Agency's current thinking is that if the percent positive of *Salmonella* in verification samples over that one-year period for the great majority of establishments (*e.g.*, 90%) in a specific product class is not at or below half the performance standard/baseline guidance level (*i.e.*, Category 1), FSIS will consider whether there are further actions that should be taken to ensure that establishments improve their control of *Salmonella* and further enhance public health protection.

For example, FSIS would consider actions that would provide an incentive to industry to improve controls for *Salmonella*. One approach that FSIS has considered and favors is posting on the Agency Web site the ''A'' set results

from the completed *Salmonella* sample sets for each establishment producing that product class, identified by establishment name and number. Publishing the results of these FSIS *Salmonella* analyses, which have been used by the Agency as one component for assessing establishment performance, could serve as a valuable support to an establishment's process control efforts.

A study by USDA's Economics Research Service (ERS) has shown that increased public information on food safety performance measures can offer incentives to establishments to invest in process control by helping them realize benefits from their investments, and thus spur industry innovation in food safety (see Food Safety Innovations in the United States: Evidence from the Meat Industry by Elise Golan, Tanya Roberts, Elisabete Salay, Julie Caswell, Michael Ollinger, and Danna Moore, AER–831, USDA/ERS, April 2004; *http://www.ers.usda.gov/publications/aer831/)*. FSIS believes that this study has relevance regarding the *Salmonella* strategy articulated above relative to publishing establishment-specific information associated with *Salmonella* control. For example, a further processor of ground product who purchased carcasses from a slaughter operation would not know whether the carcass was produced with the best or worst safety procedures, even though the procedures were in compliance with the minimum regulatory requirements. This situation reduces incentives by manufacturers of the source material (e.g., carcasses) to invest in food safety innovation. By addressing this asymmetry, that is, providing more information about the process control performance of establishments related to *Salmonella*, FSIS believes it would be providing the appropriate incentive for the meat and poultry slaughter industry to attain consistent, good control for *Salmonella*. FSIS is especially interested in receiving comment on this approach to ensuring pathogen reduction in all raw products regulated by FSIS.

The Agency will also consider other actions, such as modifying its approach to inspection, if widespread industry performance provides a basis for reducing Agency concern about control for pathogens in classes of raw product. For example, the Agency is aware that limits on linespeeds are a concern to both the young poultry slaughter and the hog slaughter industries. If widespread action within these industries controlled *Salmonella* contamination such that the Agency, in its testing of carcasses, consistently found industry-wide results at half or below half the current standard/baseline guidance, FSIS would be prepared to consider allowing the industries to study whether linespeeds could be increased above the current regulatory limits. FSIS also would be interested in any impact that such changes may have on other regulatory obligations of the establishments and the Agency, as well as other pathogens of public health concern (e.g., *Campylobacter*), particularly as the industries seek to demonstrate continuous improvement in their performance over time. Such studies could be conducted through existing regulatory provisions for a waiver of the meat and poultry regulations (9 CFR 303.2 and 381.3).

Although FSIS has an establishment-specific approach for inspection, FSIS believes that, ultimately, it will take an industry-wide effort to ensure that there is effective *Salmonella* control in raw classes of product. FSIS experience with the beef industry regarding control for *E. coli* O157:H7 ultimately resulted in an industry-wide approach to reassess their HACCP plans in order to ensure that each establishment had effective food safety systems. FSIS requests comment on these potential actions and any other incentives that would be useful in encouraging control of *Salmonella*.

Response to Comments on the Federal Register Notice of April 16, 2003

In deciding how to proceed, the Agency considered the nine comments that it received on the April 2003 Notice.

Reporting to Establishments

Four comments supported reporting individual sample results to establishments as they become available. Two comments suggested that establishments should receive individual sample results if they request them.

FSIS response: The Agency agrees with these comments. Receiving individual sample results soon after the samples are taken will help establishments in their assessment of why a production lot of product resulted in a positive sample. An establishment will be able to determine whether it had a problem on the day in question, or whether positives are associated with a particular supplier. On balance, therefore, it now seems clear that making the information available to establishments will be of value to the establishments in determining a prompt and appropriate response. Accordingly, FSIS will add results from individual *Salmonella* verification sample tests to reports that the Agency regularly makes to meat and poultry establishments that have asked to be informed of various test results.

Posting Individual Sample Results on the Agency Web Site

Three comments opposed posting individual sample results to the Web, and one comment opposed posting results in general.

FSIS response: The Agency agrees that posting individual sample results (as opposed to completed sample set results) to the Web would be of little value to consumers, industry, or public health officials. Moreover, it would impose a significant burden on the Agency.

Posting Completed Sample Set Results on the Agency Web Site

Two comments specifically supported posting completed sample set results on the Agency Web site, identified by establishment. Two comments suggested publishing aggregate data only, either monthly or quarterly, and one of these comments asked that data be presented by FSIS Inspection District.

FSIS response: The Agency has concluded that posting quarterly nationwide data for *Salmonella,* presented by product class, on the Agency Web site is most appropriate at this time. Doing so will provide consumers with more timely, meaningful information about overall industry performance in protecting public health. FSIS believes that posting completed sets, in aggregate, would be appropriate because sample sets, as a measure of controlling and reducing harmful bacteria on raw meat and poultry, are intended to enable FSIS and the establishment to verify the effectiveness of an establishment's HACCP controls in reducing harmful bacteria as measured by the presence of *Salmonella*.

Freedom of Information Act (FOIA) Exemption

One comment supported the Agency's long-standing position that *Salmonella* sample results should be exempt from disclosure under the FOIA. One comment stated that FOIA exemptions do not apply to *Salmonella* sample results.

FSIS response: The Agency agrees that it has treated *Salmonella* sample results as pre-decisional and has exempted such results from disclosure under FOIA. FOIA exemptions are generally permissive and are left to the appropriate discretion of the Agency involved. When FSIS makes individual sample results available to

establishments, as described herein, the results can no longer be considered pre-decisional. Given the potential value in making sample-by-sample test results available, as described above, FSIS has decided that it is reasonable to include individual *Salmonella* verification sample results in reports to those establishments that request various sample results and to make completed set results, in aggregate and quarterly, available on the Agency Web site.

Salmonella as Basis for Performance Standard

Two comments questioned the appropriateness of *Salmonella* as an indicator organism or as the basis for a performance standard, noting that *Salmonella* occurs in food products other than the meat, poultry, and eggs regulated by FSIS.

FSIS response: FSIS notes that the National Advisory Committee on Microbiological Criteria for Foods in its report of August 8, 2002 (Final—Response to the Questions Posed by FSIS Regarding Performance Standards with Particular Reference to Ground Beef Products; *http://www.fsis.usda.gov/OPHS/NACMCF/2002/rep_stand2.pdf*) concluded that *Salmonella* test results are useful measures of process control. The Agency also notes its concern regarding recent increases in *Salmonella* positives in some raw product classes and in human infections from certain *Salmonella* serotypes that are associated with meat and poultry. FSIS, furthermore, will be obtaining *Salmonella* serotype information for each positive test result from its verification program in a more timely manner and will consider intensifying testing and scrutiny of establishments that produce products with serotypes of epidemiological concern.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and, in particular, minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2006_Notices_Index/index.asp*. The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov/*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS web page. Through Listserv and the web page, FSIS is able to provide information to a much broader, more diverse audience.

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Done at Washington, DC, on February 21, 2006.

Barbara J. Masters,

Administrator.

[FR Doc. 06–1783 Filed 2–22–06; 1:15 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2006–0001]

Codex Alimentarius Commission: Meeting of the Codex Committee on General Principles

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA) is sponsoring a public meeting on March 21, 2006. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the 23rd Session of the Codex Committee on General Principles (CCGP) of the Codex Alimentarius Commission (Codex), which will be held in Paris, France, April 10–14, 2006. The Under Secretary for Food Safety recognizes the importance of providing interested parties the opportunity to obtain background information on the 23rd Session of CCGP and to address items on the agenda.

DATES: The public meeting is scheduled for Tuesday, March 21, 2006 from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in Room 107–A, Jamie Lee Whitten Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250. Documents related to the 23rd Session of the CCGP will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/web/current.*

FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. FSIS prefers to receive comments through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select the FDMS Docket Number FSIS–2006–0001 to submit or view public comments and to view supporting and related materials available electronically.
- Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex Building, Washington, DC 20250.
- Electronic mail: *fsis.regulationscomments@fsis.usda.gov*. All submissions received must include the Agency name and docket number FSIS–2006–0001. All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be posted to the

regulations.gov Web site. The background information and comments also will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

• In addition to submitting comments by mail to the above address, the U.S. Codex Office invites U.S. interested parties to submit their comments electronically to the following e-mail address (*uscodex@fsis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, U.S. Manager for Codex, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157. E-mail: *escarbrough@fsis.usda,gov*

For Further Information About the Public Meeting Contact: Jasmine Matthews, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The Codex Committee on General Principles (CCGP) deals with rules and procedures referred to it by the Codex Alimentarius Commission including the establishment of principles which define the purpose and scope of the Codex Alimentarius and the nature of Codex standards. The development of mechanisms to address any economic impact statements is also the responsibility of the CCGP. The committee is hosted by the Government of the French Republic.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 23rd Session of the Committee will be discussed during the public meeting:

• Matters Referred to the Committee:

• Matters Referred by the Codex Alimentarius Commission and other Codex Committees.

• Matters arising from the last Session of the Committee on General Principles: Management of the Work of the Codex Committee on Food Hygiene.

• Proposed Draft Working Principles for Risk Analysis for Food Safety.

• Proposed Draft Revised Code of Ethics for International Trade in Foods.

• Proposed Amendments to the Rules of Procedure:

• Duration of the term of office of the Members of the Executive Committee.

• Respective roles of the Regional Coordinators and the Members of the Executive Committee elected on a geographic basis.

• Review of the Procedures for the Elaboration of Codex Standards and Related Texts:

• Proposed amendments to the Procedures (proposal from India).

• Review of the Guide to the Consideration of Standards at Step 8 of the Procedure for the Elaboration of Codex Standards and Related Texts, including consideration of any Statement Relating to Economic Impact; Guide to the Procedure for the Revision and arrangements for the Amendment of Codex Standards Elaborated by Codex Committees which have adjourned sine die.

• Review of the General Principles of the Codex Alimentarius.

• Consideration of the term ''interim'' as relates to the adoption of Codex standards and related texts.

• Proposed new definitions of risk analysis terms related to food safety (proposal from New Zealand).

• Consideration of the Structure and Presentation of the Procedural Manual.

Each issue listed will be fully described in documents distributed, or to be distributed, by the French Secretariat prior to the Meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the March 21st public meeting, draft U.S. positions on these agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Codex Office (see **ADDRESSES**). Written comments should state that they relate to activities of the 23rd Session of the CCGP.

Additional Information

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2006_Notices_Index/index.asp.*

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Done at Washington, DC, on February 14, 2006.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. E6–2683 Filed 2–24–06; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Idaho Resource Advisory Committee; Caribou-Targhee National Forest, Idaho Falls, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–

393) the Caribou-Targhee National Forests' Eastern Idaho Resource Advisory Committee will meet Thursday, April 6, 2006 in Idaho Falls for a business meeting. The meeting is open to the public.

DATES: The business meeting will be held on April 6, 2006 from 10 a.m. to 1 p.m.

ADDRESSES: The meeting location is the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Larry Timchak, Caribou-Targhee National Forest Supervisor and Designated Federal Officer, at (208) 524–7500.

SUPPLEMENTARY INFORMATION: The business meeting on April 6, 2006, begins at 10 a.m., at the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho. Agenda topics will include listening to short presentations by project proposals who were invited for the second meeting and then voting on projects to be funded for 2006.

Dated: February 17, 2006.

Lawrence A. Timchak,

Caribou-Targhee Forest Supervisor.

[FR Doc. 06–1776 Filed 2–24–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Madison-Beaverhead Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Beaverhead-Deerlodge National Forest's Madison-Beaverhead Resource Advisory Committee will meet on Wednesday, March 8, 2006, from 10 a.m. until 4 p.m. in Twin Bridges, Montana, for a business meeting. The meeting is open to the public.

DATES: Wednesday, March 8, 2006.

ADDRESSES: The meeting will be held at the Fire Hall in Twin Bridges, MT 59754.

FOR FURTHER INFORMATION CONTACT: Bruce Ramsey, Designated Forest Official (DFO), Forest Supervisor, Beaverhead-Deerlodge National Forest, at (406) 683–3973.

SUPPLEMENTARY INFORMATION: Agenda topics for this meeting includes making decisions on projects to fund under Title II of Pub. L. 106–393, hearing public comments, and other business. If the meeting location changes, notice will be posted in local newspapers, including the Dillon Tribune and The Montana Standard.

Dated: February 21, 2006.

Bruce Ramsey,

Forest Supervisor.

[FR Doc. 06–1777 Filed 2–24–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–867]

Notice of Preliminary Negative Determination of Critical Circumstances: Metal Calendar Slides From Japan.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) has preliminarily determined that critical circumstances do not exist with respect to imports of metal calendar slides (MCS) from Japan.

EFFECTIVE DATE: February 27, 2006.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, Dara Iserson, or Kimberley Hunt, 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) 482–0780, (202) 482–4052, or (202) 482–1272, respectively.

SUPPLEMENTARY INFORMATION:

Period of Investigation

The POI is April 1, 2004 through March 31, 2005. This period corresponds to the four most recent fiscal quarters prior to the month of filing of the *Petition for Imposition of Antidumping Duties on Metal Calendar Slides from Japan*, (June 29, 2005) (*Petition*) involving imports from a market economy, and is in accordance with the Department's regulations. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

For the purpose of this investigation, the products covered are MCS. The products covered in this investigation are ''V'' and/or ''U'' shaped MCS manufactured from cold–rolled steel sheets, whether or not left in black form, tin plated or finished as tin free steel (TFS), typically with a thickness from 0.19 mm to 0.23 mm, typically in lengths from 152 mm to 915 mm, typically in widths from 12 mm to 29 mm when the slide is lying flat and before the angle is pressed into the slide (although they are not typically shipped in this ''flat'' form), that are typically either primed to protect the outside of the slide against oxidization or coated with a colored enamel or lacquer for decorative purposes, whether or not stacked, and excluding paper and plastic slides. MCS are typically provided with either a plastic attached hanger or eyelet to hang and bind calendars, posters, maps or charts, or the hanger can be stamped from the metal body of the slide itself. These MCS are believed to be classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 7326.90.1000 (Other articles of iron and steel: Forged or stamped; but not further worked: Other: Of tinplate). This HTSUS number is provided for convenience and U.S. Customs and Border Protection purposes. The written description of the scope of this investigation is dispositive.

Case History

This investigation was initiated on July 19, 2005. *See Notice of Initiation of Antidumping Duty Investigation: Metal Calendar Slides from Japan*, 70 FR 43122 (July 26, 2005) (Initiation Notice). The preliminary determination was published on February 1, 2006. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Metal Calendar Slides from Japan*, 71 FR 5244 (February 1, 2006).

Although critical circumstances were not alleged in *Petition*, Stuebing Automatic Machine Co. (Petitioner) has maintained since the inception of this investigation that there is a reasonable basis to believe or suspect that critical circumstances exist with regard to imports of MCS from Japan. *See Petition* at 35. In *Petition*, Petitioner requested that the Department monitor imports of MCS pursuant to section 351.206(g) of the Department's regulations. *Id.* In the initiation, the Department stated that it would monitor imports of MCS from Japan and would request that the U.S. Customs and Border Protection (CBP) compile information on an expedited basis regarding entries of the subject merchandise. *See Initiation Notice*.

Respondent, Nishiyama Kinzoku Co., Ltd. (Nishiyama), in its response to the Department's December 7, 2005, supplemental questionnaire, submitted the volume and value of its monthly shipments to the United States for calendar years 2003 through 2005. *See* Nishyama's Supplemental Questionnaire Response (December 27,

2005) at Exhibit 25. On January 10, 2006, the Department placed CBP IM 115 data covering the period of January 1, 2003 through October 31, 2005 on the record of this investigation. *See Memorandum from Dara Iserson, Case Analyst, through Thomas Gulgunn, Program Manager, to the File: Antidumping Duty Investigation of Metal Calendar Slides from Japan: The Placing of U.S. Bureau of Customs and Border Protection IM–115 Data on the Record*, (January 10, 2006) (*IM 115 Memo*). On January 19, 2006, petitioner alleged that critical circumstances exist with respect to imports of MCS from Japan. *See* Petitioners' Comments on Calculation Issues (January 19, 2006) at 17.

Comments of the Parties

Petitioner states that the record clearly demonstrates that shipments and imports surged during the post-Petition period (*i.e.*, June–December 2005) when compared to the pre-Petition period (*i.e.*, January–June 2005). *See* Petitioner's Comments on Calculation Issues (January 19, 2006) at 17. Petitioner claims that the *IM 115 Memo* demonstrates that imports were more than 25 percent greater in the post-Petition period in comparison to the pre-Petition period based on CBP's IM115 data. *Id.* Additionally, petitioner states that Nishiyama's shipment data shows an increase of more than 25 percent based on pieces and value. *Id.* (citing Nishiyama's Supplemental Questionnaire Response (December 27, 2005) at Exhibit 25). Petitioner states that these increases clearly meet the Department's standards for determining that imports were massive within a relatively short period.

Analysis

Section 733(e)(1) of the Tariff Act of 1930, as amended (''the Act''), provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and, (B) there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the ''relatively short period'' of time may be considered ''massive.'' Section 351.206(i) of the Department's regulations defines ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The Department's regulations also provide, however, that if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the relevant statutory criteria have been satisfied, we considered: (i) Exporter-specific shipment data submitted in Nishiyama's December 27, 2005, response; (ii) the CBP IM 115 data the Department placed on the record on January 10, 2006, and (iii) the ITC preliminary injury determination.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. *See Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (November 27, 2000). With regard to imports of MCS from Japan, the petitioners make no specific mention of a history of dumping for Japan. We are not aware of any antidumping duty order in the United States or in any other country on MCS from Japan. For this reason, the Department does not find a history of injurious dumping of the subject merchandise from Japan pursuant to section 733(e)(1)(A)(i) of the Act.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales in accordance with Section 733(e)(1)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for EP sales, or 15 percent or more for CEP transactions, sufficient to impute knowledge of dumping. *See e.g., Preliminary Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (October 19, 2001).

For Nishiyama, we determine that there is not a sufficient basis to find that the importer should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales pursuant to section 733(e)(1)(A)(ii) of the Act because the calculated preliminary margin for Nishiyama's EP sales, 7.68 percent, was less than 25 percent. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Metal Calendar Slides from Japan*, 71 FR 5244 (February 1, 2006). Nishayama did not have any CEP sales during this period. Because the knowledge criterion has not been met, we will not address the second criterion of whether imports were massive in the comparison period when compared to the base period.

Regarding the companies subject to the ''all others'' rate, it is the Department's normal practice to conduct its critical circumstances analysis for these companies based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey*, 62 FR 9737, 9741 (March 4, 1997). However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the ''all others'' rate. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 30574 and accompanying Issues and Decision Memorandum, at Comment 14 (June 8, 1999) (*Stainless Steel from Japan*). Instead, the Department considers the traditional critical circumstances criteria with respect to the companies covered by the ''all others'' rate. Consistent with *Stainless Steel from Japan*, the Department has, in this case, applied the traditional critical circumstances criteria to the ''all others'' category for the antidumping investigation of MCS from Japan.

The dumping margin for the ''all others'' category in the instant case, 7.68 percent, does not exceed the 25 percent threshold necessary to impute knowledge of dumping. Therefore, we find that there is no reasonable basis to

determine that importer knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales.

Conclusion

Given the analysis discussed above, we preliminarily determine critical circumstances do not exist for imports of MCS from Japan. We will make a final determination concerning critical circumstances for MCS from Japan when we make our final dumping determination in this investigation, on April 10, 2006 (unless extended).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we will notify the International Trade Commission of our determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: February 21, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–2732 Filed 2–24–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–879]

Notice of Extension of Time Limit for the Antidumping Administrative Review of Polyvinyl Alcohol From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 2006.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6412.

Background

On November 7, 2005, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on polyvinyl alcohol (''PVA'') from the People's Republic of China (''PRC''), covering the period August 11, 2003, through September 30, 2004. *See Polyvinyl Alcohol from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 67434 (November 7, 2005) (''*Preliminary Results*''). In the *Preliminary Results* we stated that we would make our final determination for the antidumping duty review no later than 120 days after the date of publication of the preliminary results (*i.e.*, March 7, 2006).

Extension of Time Limit of Preliminary Results

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 publication date of the preliminary results. However, if it is not practicable to complete the review within this time period, the Department may extend the time limit for the final results to 180 days. Completion of the final results within the 120-day period is not practicable because this review involves certain complex issues, including the revision of an allocation methodology of co-products, application of by-products and self-produced inputs, and valuation of certain factors.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by 30 days until April 6, 2006.

Dated: February 21, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–2731 Filed 2–24–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

I.D. [081905B]

Notice of Decision to Expand Scope of the Environmental Impact Statement Analyzing the Makah Tribe's Proposed Gray Whale Hunting and Reopening of Comment Period

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

ACTION: Notice; request for comments.

SUMMARY: NMFS announces our decision to expand the scope of the Makah Whale Hunt Environmental Impact Statement (EIS) to include analysis of the proposed action on the affected environment under both the Marine Mammal Protection Act (MMPA) and the Whaling Convention Act (WCA). Our previous notices of intent to prepare an EIS for the Makah Whale Hunt under the MMPA were published on August 25, 2005 and October 4, 2005. We are reopening the comment period for 30 days.

DATES: Written or electronic comments from all interested parties are encouraged and must be received no later than 5 p.m. Pacific Standard Time March 29, 2006.

ADDRESSES: All comments concerning the preparation of the EIS and NEPA process should be addressed to: Kassandra Brown, NMFS Northwest Region, Building 1, 7600 Sand Point Way NE., Seattle, WA 98115. Comments may also be submitted via fax (206)526-6426 Attn: Makah Whale Hunt EIS, or by electronic mail to *MakahEIS.nwr@noaa.gov* with a subject line containing the document identifier:''Makah Whale Hunt EIS.''

FOR FURTHER INFORMATION CONTACT: Kassandra Brown, NMFS Northwest Region, (206) 526–4348.

SUPPLEMENTARY INFORMATION:

Background

On August 25, 2005 (70 FR 49911) and October 4, 2005 (70 FR 57860), NMFS announced our intent to prepare an EIS pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. *et seq.*) and conduct public scoping meetings related to the Makah Indian Tribe's request that NMFS allow for limited treaty right hunting of eastern North Pacific gray whales by waiving the MMPA's (16 U.S.C. 1361 *et seq.*) moratorium on take of marine mammals under section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A)), and issuing regulations and any necessary permit(s). We opened a 60-day public comment period from August 25, 2005 to October 24, 2005, and held public scoping meetings at four locations in October 2005, including Neah Bay, Port Angeles, and Seattle, WA, and the Washington, DC area (Silver Spring, MD). We sought public input on the scope of the required NEPA analysis at that time, in addition to seeking comment for a range of reasonable alternatives and impacts to resources. Due in part to our examination of public comments related to the International Whaling Commission (IWC) and WCA (16 U.S.C. 916 *et seq.*) quota granting and issuance processes, we are expanding the scope of this EIS to include analysis of the WCA quota issuance. The MMPA waiver determination and the WCA quota issuance are best treated as connected actions (50 CFR 1508.25(a)(1)) for NEPA review because

the Makah's proposed action of hunting whales cannot occur without NMFS' approvals under both statutory regimes.

Request for Comments

NMFS solicits written comments from the public. We request that the comments be as specific as possible with regard to our expansion of the scope of the EIS to include the WCA quota issuance. All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public. The environmental review of this project will be conducted in accordance with the requirements of the NEPA of 1969 as amended, Council on the Environmental Quality Regulations (40 CFR parts 1500 - 15080), other applicable Federal laws and regulations, and applicable policies and procedures. This notice is being furnished in accordance with 40 CFR 1501.7 of NEPA to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS.

Dated: February 17, 2006.

D. Robert Lohn,

Regional Administrator, Northwest Region, National Marine Fisheries Service.

[FR Doc. E6–2735 Filed 2–24–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011806H]

Taking of Marine Mammals Incidental to Specified Activities; On-ice Seismic Operations in the Beaufort Sea

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

ACTION: Notice of receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from ASRC Energy Services, Lynx Enterprises, Inc. (AES Lynx) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting on-ice vibroseis seismic operations in the Harrison Bay portion of the western U.S. Beaufort Sea in late winter/early spring (March through May 20, 2006). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to AES Lynx to incidentally take, by harassment, small numbers of two species of pinnipeds for a limited period of time this year.

DATES: Comments and information must be received no later than March 29, 2006.

ADDRESSES: Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning one of the contacts listed here. The mailbox address for providing email comments is *PR1.011806H@noaa.gov*. Please include in the subject line of the e-mail comment the following document identifier: 011806H. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the first contact person listed here and is also available at:*http://www.nmfs.noaa.gov/pr/permits/incidental.htm*

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137 or Brad Smith, Alaska Region, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined ≥negligible impact≥ in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except for certain categories of activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On October 24, 2005, NMFS received an application from AES Lynx for the taking, by harassment, of two species of marine mammals incidental to conducting an on-ice seismic survey program. The seismic operations will be conducted in the Harrison Bay portion of the western U.S. Beaufort Sea. The proposed survey would be conducted from March through about May 20, 2006. The operation would consist of laying seismic cables with geophones on the frozen sea ice, employing the vibroseis method of energy (sound source) production, and recording the seismic signals. Water depths in the majority of the planned survey area are less than 3 m (10 ft).

The purpose of the project is to gather information about the subsurface of the earth by measuring acoustic waves, which are generated on or near the surface. The acoustic waves reflect at boundaries in the earth that are characterized by acoustic impedance contrasts.

Description of the Activity

The seismic surveys use the ''reflection'' method of data acquisition. Seismic exploration uses a controlled energy source to generate acoustic waves that travel through the earth, including sea ice and water, as well as sub-sea geologic formations, and then uses ground sensors to record the reflected energy transmitted back to the surface. When acoustic energy is generated, compression and shear waves

form and travel in and on the earth. The compression and shear waves are affected by the geological formations of the earth as they travel in it and may be reflected, refracted, diffracted or transmitted when they reach a boundary represented by an acoustic impedance contrast. Vibroseis seismic operations use large trucks with vibrators that systematically put variable frequency energy into the earth. Sea ice thickness of at least 1.2 m (4 ft) is required to support the various equipment and vehicles used to transport seismic equipment offshore for exploration activities. These ice conditions generally exist from 1 January until 31 May in the Beaufort Sea. Several vehicles are normally associated with a typical vibroseis operation. One or two vehicles with survey crews move ahead of the operation and mark the energy input points. Crews with wheeled vehicles often require trail clearance with bulldozers for adequate access to and within the site. Crews with tracked vehicles are typically limited by heavy snow cover and may require trail clearance beforehand.

With the vibroseis technique, activity on the surveyed seismic line begins with the placement of sensors. All sensors are connected to the recording vehicle by multi-pair cable sections. The vibrators move to the beginning of the line and begin recording data. The vibrators begin vibrating in synchrony via a simultaneous radio signal to all vehicles. In a typical survey, each vibrator will vibrate four times at each location. The entire formation of vibrators subsequently moves forward to the next energy input point (e.g. 67 m, or 220 ft, in most applications) and repeats the process. In a typical 16– to 18–hour day, surveys will complete 6–16 km (4 to 10 linear miles) in 2-dimensional seismic operations and 24 to 64 km (15 to 40 linear miles) in a 3-dimensional seismic operation.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Beaufort Sea ecosystem can be found in several documents (Corps of Engineers, 1999; NMFS, 1999; Minerals Management Service (MMS), 1992, 1996, 2001). A more detailed description of the seismic survey activities and affected marine mammals can be found in the AES Lynx application (see **ADDRESSES**). Four marine mammal species are known to occur within the proposed study area: ringed seal (*Phoca hispida*), bearded seal (*Erignathus barbatus*), spotted seal (*Phoca larghs*), and polar bear (*Ursus maritimus*). The applicant will seek a take Authorization from the U.S. Fish and Wildlife Service (USFWS) for the incidental taking of polar bears because USFWS has management authority for this species. Spotted seals are not known winter users of the project area, therefore, no incidental take is expected for this species.

Ringed seals are widely distributed throughout the Arctic basin, Hudson Bay and Strait, and the Bering and Baltic seas. There is no reliable worldwide population assessment for ringed seals, however, it is estimated to be in the millions (Reeves *et al.*, 1992). Ringed seals inhabiting northern Alaska belong to the subspecies *P. h. hispida*, and they are year-round residents in the Beaufort Sea. The Alaska stock of ringed seals in the Bering-Chukchi-Beaufort area is estimated at 1 to 1.5 (Frost, 1985) or 3.3 to 3.6 million seals (Frost *et al.*, 1988). Although there are no recent population estimates in the Beaufort Sea, Bengston *et al.* (2000) estimated ringed seal abundance from Barrow south to Shismaref in a portion of the Chukchi Sea to be 245,048 animals from aerial surveys flown in 1999. The NMFS 2003 Stock Assessment Report (Angliss and Lodge, 2004) states that there are at least that many ringed seals in the Beaufort Sea. Frost *et al.* (1999) reported that observed densities within the area of industrial activity along the Beaufort Sea coast were generally similar between 1985-87 and 1996-98, suggesting that the regional population has been relatively stable during this 13-year period of industrial activity.

During winter and spring, ringed seals inhabit landfast ice and offshore pack ice. Seal densities are highest on stable landfast ice but significant numbers of ringed seals also occur in pack ice (Wiig *et al.*, 1999). Seals congregate at holes and along cracks or deformations in the ice (Frost *et al.*, 1999). Breathing holes are established in landfast ice as the ice forms in autumn and are maintained by seals throughout winter. Adult ringed seals maintain an average of 3.4 holes per seal (Hammill and Smith, 1989). Some holes may be abandoned as winter advances, probably in order for seals to conserve energy by maintaining fewer holes (Brueggeman and Grialou, 2001). As snow accumulates, ringed seals excavate lairs in snowdrifts surrounding their breathing holes, which they use for resting and for the birth and nursing of their single pups in late March to May (McLaren, 1958; Smith and Stirling, 1975; Kelly and Quakenbush, 1990). Pups have been observed to enter the water, dive to over 10 m (33 ft), and return to the lair as early as 10 days after birth (Brendan Kelly, pers comm to CPA, June 2002), suggesting pups can survive the cold water temperatures at a very early age. Mating occurs in late April and May. From mid-May through July, ringed seals haul out in the open air at holes and along cracks to bask in the sun and molt. Most on-ice seismic activity occurs from late January through May.

The seasonal distribution of ringed seals in the Beaufort Sea is affected by a number of factors but a consistent pattern of seal use has been documented since aerial survey monitoring began over 20 years ago. Seal densities have historically been substantially lower in the western than the eastern part of the Beaufort Sea (Burns and Kelly, 1982; Kelly, 1988). Frost *et al.* (1999) reported consistently lower ringed seal densities in the western versus eastern sectors they surveyed in the Beaufort Sea during 1996, 1997, and 1998. The relatively low densities appear to be related to shallow water depths in much of the area occurring between the shore and the barrier islands. This area of historically low ringed seal density is the focus of much of the recent on-ice seismic surveys.

The bearded seal has a circumpolar distribution in the Arctic, and it is found in the Bering, Chukchi, and Beaufort seas (Jefferson *et al.*, 1993). There are no reliable population estimates for bearded seals in the Beaufort Sea or in the activity area (Angliss and Lodge, 2004), but numbers are considerably higher in the Bering and Chukchi seas, particularly during winter and early spring. Early estimates of bearded seals in the Bering and Chukchi seas range from 250,000 to 300,000 (Popov, 1976; Burns, 1981). Based on the available data there is no evidence of a decline in the bearded seal population. Bearded seals are generally associated with pack ice and only rarely use shorefast ice (Jefferson *et al.*, 1993). Bearded seals occasionally have been observed maintaining breathing holes in annual ice and even hauling out from holes used by ringed seals (Mansfield, 1967; Stirling and Smith, 1977). However, since bearded seals are normally found in broken ice that is unstable for on-ice seismic operation, bearded seals will be rarely encountered during seismic operations.

Additional information on these species is also available at: *http://www.nmfs.noaa.gov/pr/readingrm/MMSARS/sar2003akfinal.pdf* with updated information available at:*http://www.nmfs.noaa.gov/pr/readingrm/MMSARS/2005alaskasummarySARs.pdf*

Potential Effects on Marine Mammals

Incidental take may result from short-term disturbances by noise and physical activity associated with on-ice seismic

operations. These operations have the potential to disturb and temporarily displace some seals. Pup mortality could occur if any of these animals were nursing and displacement were protracted. However, it is unlikely that a nursing female would abandon her pup given the normal levels of disturbance from the proposed activities, potential predators, and the typical movement patterns of ringed seal pups among different holes. Seals also use as many as four lairs spaced as far as 3,437 m (11,276 ft) apart. In addition, seals have multiple breathing holes. Pups may use more holes than adults, but the holes are generally closer together than those used by adults. This indicates that adult seals and pups can move away from seismic activities, particularly since the seismic equipment does not remain in any specific area for a prolonged time. Given those considerations, combined with the small proportion of the population potentially disturbed by the proposed activity, impacts are expected to be negligible for the ringed and bearded seal populations.

Not taking into account water depth (i.e., the activity area is marginal seal habitat, with a majority of the water in the area less than 3 m (10 ft) deep), the estimated number of ringed seals potentially within the vibroseis activity area is expected to be very low. Frost and Lowry (1999) reported an observed density of 0.61 ringed seals per km^2 on the fast ice from aerial surveys conducted in spring 1997 of an area (Sector B2) overlapping the activity area, which is in the range of densities (0.28–0.66) reported for the Northstar development from 1997 to 2001 (Moulton *et al.*, 2001). This value (0.61) was adjusted to account for seals hauled out but not sighted by observers (x 1.22, based on Frost *et al.* (1988)) and seals not hauled out during the surveys (x 2.33, based on Kelly and Quakenbush (1990)) to obtain the 1.73 seal per km^2. This estimate covered an area from the coast to about 2–20 miles beyond the activity area; and it assumed that habitat conditions were uniform and, therefore, it was not adjusted for water depth. Since most of the activity area is within water less than 3 m (10 ft) deep, which Moulton *et al.* (2001) reported for Northstar supported about five times fewer seals (0.12–0.13 seals/km^2) than was reported by Frost and Lowry (i.e., 0.61), the actually seal density is expected to be much lower in the proposed project area.

In the winter, bearded seals are restricted to cracks, broken ice, and other openings in the ice. On-ice seismic operations avoid those areas for safety reasons. Therefore, any exposure of bearded seals to on-ice seismic operations would be limited to distant and transient exposure. Bearded seals exposed to a distant on-ice seismic operation might dive into the water. An indication of their low numbers is provided by the results of aerial surveys conducted east of the activity area near the Northstar and Liberty project sites. Three to 18 bearded seals were observed in these areas compared to 1,911 to 2,251 ringed seals in the spring (May/June) of 1999 through 2001 (Moulton *et al.*, 2001; Moulton and Elliott, 2000; and Moulton *et al.*, 2000). Similarly only small numbers of bearded seals would be expected to occur in the activity area, where habitat is even less favorable because of the shallow water area. Consequently, no significant effects on individual bearded seals or their population are expected, and the number of individuals that might be temporarily disturbed would be very low.

In addition, the area affected by seismic operations represents only a small fraction of the Beaufort Sea pinniped habitat, any impacts would be localized and temporary. Sea-ice surface rehabilitation is often immediate, occurring during the first episode of snow and wind that follows passage of the equipment over the ice.

Potential Effects on Subsistence

Residents of the village of Nuiqsut are the primary subsistence users in the activity area. The subsistence harvest during winter and spring is primarily ringed seals, but during the open-water period both ringed and bearded seals are taken. Nuiqsut hunters may hunt year round; however, most of the harvest has been in open water instead of the more difficult hunting of seals at holes and lairs (McLaren, 1958; Nelson, 1969). Subsistence patterns may be reflected through the harvest data collected in 1992, when Nuiqsut hunters harvested 22 of 24 ringed seals and all 16 bearded seals during the open water season from July to October (Fuller and George, 1997). Harvest data for 1994 and 1995 show 17 of 23 ringed seals were taken from June to August, while there was no record of bearded seals being harvested during these years (Brower and Opie, 1997). Only a small number of ringed seals was harvested during the winter to early spring period, which corresponds to the time of the proposed on-ice seismic operations.

Based on harvest patterns and other factors, on-ice seismic operations in the activity area are not expected to have an unmitigable adverse impact on subsistence uses of ringed and bearded seals because:

(1) Operations would end before the spring ice breakup, after which subsistence hunters harvest most of their seals.

(2) Operations would temporarily displace relatively few seals, since most of the habitat in the activity area is marginal to poor and supports relatively low densities of seals during winter. Displaced seals would likely move a short distance and remain in the area for potential harvest by native hunters (Frost and Lowry, 1988; Kelly *et al.*, 1988).

(3) The area where seismic operations would be conducted is small compared to the large Beaufort Sea subsistence hunting area associated with the extremely wide distribution of ringed seals.

In order to ensure the least practicable adverse impact on the species and the subsistence use of ringed seals, all activities will be conducted as far as practicable from any observed ringed seal structure. Finally, the applicant will consult with subsistence hunters of Nuiqsut and provide the community, the North Slope Borough, and the Inupiat Community of the North Slope with information about its planned activities (timing and extent) before initiating any on-ice seismic activities.

Mitigation and Monitoring

The following mitigation measures are proposed for the subject surveys. All activities will be conducted as far as practicable from any observed ringed or bearded seal lair and no energy source will be placed over a ringed or bearded seal lair. Only vibrator-type energy-source equipment shown to have similar or lesser effects than proposed will be used. AES Lynx will provide training for the seismic crews so they can recognize potential areas of ringed seal lairs and adjust the seismic operations accordingly.

Ringed seal pupping occurs in ice lairs from late March to mid-to-late April (Smith and Hammill, 1981). Prior to commencing on-ice seismic surveys in mid-March, experienced Inupiat subsistence hunters would be hired to screen for lairs along the planned on-ice seismic transmission routes in areas where water depths exceed 3 m (10 ft) to identify and determine the status of potential seal structures along the planned on-ice transit routes. The seal structure survey will be conducted before selection of precise transit routes to ensure that seals, particularly pups, are not injured by equipment. The locations of all seal structures will be recorded by Global Positioning System

(GPS), staked, and flagged with surveyor's tape. Surveys will be conducted 150 m (492 ft) to each side of the transit routes. Actual width of route may vary depending on wind speed and direction, which strongly influence the efficiency and effectiveness of dogs at locating seal structures. Few, if any, seals inhabit ice-covered waters shallower than 3 m (10 ft) due to water freezing to the bottom or poor prey availability caused by the limited amount of ice-free water.

AES Lynx will also continue to work with NMFS, other Federal agencies, the State of Alaska, Native communities of Barrow and Nuiqsut, and the Inupiat Community of the Arctic Slope (ICAS) to assess measures to further minimize any impact from seismic activity. A Plan of Cooperation will be developed between AES Lynx and Nuiqsut to ensure that seismic activities do not interfere with subsistence harvest of ringed or bearded seals.

The level of impacts, while anticipated to be negligible, will be assessed by conducting a second seal structure survey shortly after the end of the seismic surveys. A single on-ice survey will be conducted by biologists on snow machines using a GPS to relocate and determine the status of seal structures located during the initial survey. The status (active vs. inactive) of each structure will be determined to assess the level of incidental take by seismic operations. The number of active seal structures abandoned between the initial survey and the final survey will be the basis for enumerating possible harassment takes. If dogs are not available for the initial survey, takings will be estimated by using observed densities of seals on ice reported by Moulton *et al.* (2001) for the Northstar development, which is approximately 24 nm (46 km) from the eastern edge of the proposed activity area.

In the event that seismic surveys can be completed in that portion of the activity area with water depths greater than or equal to 3 m (10 ft) before mid-March, no field surveys would be conducted of seal structures. Under this scenario, seismic surveys would be completed before pups are born and disturbance would be negligible. Therefore, take estimates would be determined for only that portion of the activity area exposed to seismic surveys after mid-March, which would be in water depths of 3 m (10 ft) or less. Take for this area would be estimated by using the observed density (13/100 km^2) reported by Moulton *et al.* (2001) for water depths between 0 to 3 m (0 to 10 ft) in the Northstar project area, which is the only source of a density estimate stratified by water depth for the Beaufort Sea. This would be an overestimation requiring a substantial downward adjustment to better reflect the likely take of seals using lairs, since few if any of the structures in these water depths would be used for birthing, and the Moulton et al. (2001) estimate includes all seals.

Reporting

An annual report must be submitted to NMFS within 90 days of completing the year's activities.

Endangered Species Act (ESA)

NMFS has determined that no species listed as threatened or endangered under the ESA will be affected by issuing an incidental harassment authorization under section 101(a)(5)(D) of the MMPA to AES Lynx for this on-ice seismic survey.

National Environmental Policy Act (NEPA)

The information provided in Environmental Assessments (EAs) prepared in 1993 and 1998 for winter seismic activities led NOAA to conclude that implementation of either the preferred alternative or other alternatives identified in the EA would not have a significant impact on the human environment. Therefore, an Environmental Impact Statement was not prepared. The proposed action discussed in this document is not substantially different from the 1993 and 1998 actions, and a reference search has indicated that no significant new scientific information or analyses have been developed in the past several years that would warrant new NEPA documentation.

Preliminary Conclusions

The anticipated impact of winter seismic activities on the species or stock of ringed and bearded seals is expected to be negligible for the following reasons:

(1) The activity area supports a small proportion (<1 percent) of the ringed and bearded seal populations in the Beaufort Sea.

(2) Most of the winter-run seismic lines will be on ice over shallow water where ringed seals are absent or present in very low abundance. Most of the activity area is near shore and/or in water less than 3 m (10 ft) deep, which is generally considered poor seal habitat. Moulton *et al.* (2001) reported that only 6 percent of 660 ringed seals observed on ice in the Northstar project area were in water between 0 to 3 m (0 to 10 ft) deep.

(3) For reasons of safety and because of normal operational constraints, seismic operators will avoid moderate and large pressure ridges, where seal and pupping lairs are likely to be most numerous.

(4) The sounds from energy produced by vibrators used during on-ice seismic programs typically are at frequencies well below those used by ringed seals to communicate (1000 Hz). Thus, ringed seal hearing is not likely to be very good at those frequencies and seismic sounds are not likely to have strong masking effects on ringed seal calls. This effect is further moderated by the quiet intervals between seismic energy transmissions.

(5) There has been no major displacement of seals away from on-ice seismic operations (Frost and Lowry, 1988). Further confirmation of this lack of major response to industrial activity is illustrated by the fact that there has been no major displacement of seals near the Northstar Project. Studies at Northstar have shown a continued presence of ringed seals throughout winter and creation of new seal structures (Williams *et al.*, 2001).

(6) Although seals may abandon structures near seismic activity, studies have not demonstrated a cause and effect relationship between abandonment and seismic activity or biologically significant impact on ringed seals. Studies by Williams *et al.* (2001), Kelley *et al.* (1986, 1988) and Kelly and Quakenbush (1990) have shown that abandonment of holes and lairs and establishment or re-occupancy of new ones is an ongoing natural occurrence, with or without human presence. Link *et al.* (1999) compared ringed seal densities between areas with and without vibroseis activity and found densities were highly variable within each area and inconsistent between areas (densities were lower for 5 days, equal for 1 day, and higher for 1 day in vibroseis area), suggesting other factors beyond the seismic activity likely influenced seal use patterns. Consequently, a wide variety of natural factors influence patterns of seal use including time of day, weather, season, ice deformation, ice thickness, accumulation of snow, food availability and predators as well as ring seal behavior and population dynamics.

In winter, bearded seals are restricted to cracks, broken ice, and other openings in the ice. On-ice seismic operations avoid those areas for safety reasons. Therefore, any exposure of bearded seals to on-ice seismic operations would be limited to distant and transient exposure. Bearded seals exposed to a distant on-ice seismic

operation might dive into the water. Consequently, no significant effects on individual bearded seals or their population are expected, and the number of individuals that might be temporarily disturbed would be very low.

As a result, AES Lynx believes the effects of on-ice seismic are expected to be limited to short-term and localized behavioral changes involving relatively small numbers of seals. NMFS has preliminarily determined, based on information in the application and supporting documents, that these changes in behavior will have no more than a negligible impact on the affected species or stocks of ringed and bearded seals. Also, the potential effects of the proposed on-ice seismic operations during 2006 are unlikely to result in more than small numbers of seals being affected and will not have an unmitigable adverse impact on subsistence uses of these two species.

Proposed Authorization

NMFS proposes to issue an IHA to AES Lynx for conducting seismic surveys in the Harrison Bay area of the western U.S. Beaufort Sea, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: February 21, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–2740 Filed 2–24–06; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:30 p.m., Wednesday, March 8, 2006.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Registered Futures Association Review.

FOR MORE INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 06–1874 Filed 2–23–06; 2:54 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense; Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0830, Tuesday, February 28, 2006.

ADDRESSES: The meeting will be held at Noesis, Inc., 4100 No. Fairfax Drive, Suite 800, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Schneider, Noesis, Inc., 4100 N. Fairfax Drive, Suite 800, Arlington, VA 22203, 703–741–0300.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition, Technology and Logistics to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development efforts in electronics and photonics with a focus on benefits to national defense. These reviews may form the basis for research and development programs initiated by the Military Departments and Defense Agencies to be conducted by industry, universities or in government laboratories. The agenda for this meeting will include programs on rf technology, microelectronics, electro-optics, and electronic materials.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 2), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: February 21, 2006.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–1780 Filed 2–24–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of 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 April 28, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of 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: February 17, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Safe and Drug Free Schools

Type of Review: Extension.

Title: Unsafe School Choice Option.

Frequency: Annually.

Affected Public:

State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 1,120.

Abstract: Regulation will establish an implementation deadline for states for the Unsafe School Choice Option, Section 9532 of the No Child Left Behind Act of 2001.

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 2993. 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 IC *DocketMgr@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 the e-mail address IC *DocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–2689 Filed 2–24–06; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** material changes to the HAVA State plans previously submitted by Maryland and Puerto Rico.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual State at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254 (a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates. EAC published the first update to Puerto Rico's State plan in the **Federal Register** on January 24, 2005. 70 FR 3464. EAC has not previously published an update to the Maryland State plan.

The submissions from Maryland and Puerto Rico address material changes in the State budgets and State plan committees of their previously submitted State plans and, in accordance with HAVA section 254(a)(12), provide information on how the States succeeded in carrying out their previous State plans. The current submission from Maryland addresses a material change to its budget to account for funds that were appropriated instead of funds that were authorized. The amendment also includes an estimate of how much Maryland's recently implemented statewide HAVA compliant voting system will cost to maintain through 2014. The current submission from Puerto Rico addresses material changes to the budget and timelines for the procurement and testing of new voting systems. The revised plan addresses the differences between the funding that was authorized for Puerto Rico and used for initial planning and the amount that was actually received. Puerto Rico also emphasizes its work in meeting accessibility requirements for polling places and voting systems.

Upon the expiration of thirty days from February 27, 2006, Maryland and Puerto Rico will be eligible to implement the material changes addressed in the plans that are published herein, in accordance with HAVA section 254(a)(11)(C).

EAC notes that the plans published herein have already met the notice and comment requirements of HAVA section 256, as required by HAVA section 254(a)(11)(B). EAC wishes to acknowledge the effort that went into revising these State plans and encourages further public comment, in writing, to the State election officials listed below.

Chief State Election Officials

Maryland

Ms. Linda Lamone, Administrator, State Board of Elections, 151 West Street, Suite 200, Annapolis, MD 21401–0486, Phone: (800) 222–8683, Fax: (410) 974–2019, E-mail: *ntrella@elections.state.md.us.*

Puerto Rico

Lcdo. Aurelio Gracia Morales, Presidente, State Elections Commission, P.O. Box 195552, San Juan, PR 00919–5552, Phone: 787–777–8675, Fax: 787–296–0173, E-mail: *comentarios@cee.gobierno.pr.*

Thank you for your interest in improving the voting process in America.

Dated: February 17, 2006.

Paul S. DeGregorio,

Chairman, U.S. Election Assistance Commission.

BILLING CODE 6820–KF–P

MARYLAND

STATE BOARD OF ELECTIONS

P.O. BOX 6486, ANNAPOLIS, MD 21401-0486 PHONE (410) 269-2840

Gilles W. Burger, Chairman
Thomas Fleckenstein, Vice Chairman
Joan Beck
Bobbie S. Mack
A. Susan Widerman

Linda H. Lamone
Administrator

Ross Goldstein
Deputy Administrator

January 26, 2006

The Honorable Paul DeGregorio, Chairman
U.S. Election Assistance Commission
1225 New York Ave, N.W., Suite 1100
Washington, DC 20005

Dear Chairman DeGregorio:

In accordance with section 255 of the Help America Vote Act of 2002, I am pleased to file with the U.S. Election Assistance Commission this letter and the recently revised Sections 6, 10, and 12 –13 of the Maryland State Plan. These revised sections and the remaining unchanged sections constitute the Maryland State Plan.

As required by section 254(a)(12) of the Act, the revised sections include a description of how Maryland succeeded in carrying out the State Plan and the material changes that were made to the State Plan filed with the Federal Election Commission on May 13, 2003. Specifically, Section 12 describes the State's successes in complying with the State Plan and the Act, and Section 13 includes a description of the material changes made during this revision process.

Pursuant to sections 255 and 256 of the Act, these revisions to the Maryland State Plan were developed by the HAVA State Planning Committee and notice of the revisions were published in the *Maryland Register* on December 9, 2005. The public comment period ended on January 9, 2006, and after reviewing the public comments received, the HAVA State Planning Committee determined that no changes to the revised sections were necessary.

Thank you for accepting these revisions and for facilitating the publication of the revised sections of the Maryland State Plan. I look forward to our continued collaboration to improve the administration of elections in Maryland.

Sincerely,

Linda H. Lamone
State Administrator

Enclosures

LHL/nbt

FAX (410) 974- 2019
MD Relay Service (800) 735-2258

Toll Free Phone Number (800) 222-8683
http://www.elections.state.md.us

151 West Street Suite 200
Annapolis, Maryland 21401

6. Maryland's HAVA Budget

The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on –

(A) the costs of the activities required to be carried out to meet the requirements of title III;

(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) *the portion of the requirements payment, which will be used to carry out other activities. -- HAVA §254 (a)(6)*

The following table outlines the federal funds received by the State for HAVA activities. These figures are the basis for the HAVA budget.

Table 6.1: Federal Funding Received by Maryland

in millions

Federal Fiscal Year	Total Federal Funds	Maryland Share	5% State Match Requirement*
Early Payments	$650	$7.25	n/a
2003	$830	$15.20	$0.8
2004	$1,489	$27.27	$1.44
2005	$0	$0	$0
Total	**$2,969**	**$49.75**	**$2.24**

*5% State Match Requirement is calculated as 5% of the total of the State Match portion plus the federal requirements payment portion of cost. To determine the 5% State Match based on federal requirements payment amount, use .0526 as the multiplier (i.e., 5/95 ~ 0.0526). Example from Maryland FY 2003: $15.20M x 0.0526 = $0.8M

Based on the amount of federal funds received, the State HAVA budget represents the activities to implement and conduct operations and maintenance for the HAVA Title III requirements and other activities to improve the administration of elections in Maryland. The budget will continue to be monitored and revised, when necessary, to reflect any material changes.

The State is concerned that the ongoing costs of operating and maintaining the new voting system and statewide voter registration list are considerably higher than the State's maintenance of effort level (see Section 7 of the State Plan). With respect to the voting system, the increased scrutiny about voting system security and the need to upgrade the system to reflect the latest security measures has resulted in costs higher than anticipated in the previous budget in the State Plan. The operation and maintenance of both systems will be the financial burden of the State when HAVA funding is no longer available.

The State's budget to carry out activities to meet HAVA requirements is provided in table 6.2.

Table 6.2: Maryland's Budget for HAVA Activities

HAVA Requirements	Funding Source (note 1)					Estimated Costs (note 3)
	HAVA § 101	HAVA § 102	HAVA § 252 & § 257	State 5% Match	Unfunded (note 2)	
TITLE III Requirements						
§ 301 Voting Systems (note 4)	$1,000,000	$1,637,609	$29,000,000	$2,152,206	$78,047,152	$111,835,626
§ 302 Provisional Voting & Voting Info Req'ments	$0	-	$120,000	$83,500	-	$203,500
§ 303 Statewide Voter Registration List	$0	-	$13,358,430	$0	$2,000,000	$15,358,430
Other Election Reform Activities						
§ 254(3) Education: Voter, Election Officials, Pollworkers	$800,000	-	$0	$0	$0	$800,000
§ 402 Administrative Complaint Procedures	$5,000	-	$0	$0	$0	$5,000
Election Reform Program	$3,831,731	-	$0	$0	$0	$3,831,731
GRAND TOTAL HAVA	**$5,636,731**	**$1,637,609**	**$42,478,430**	**$2,235,706**	**$80,047,152**	**$132,034,287**

Notes:

1. Based on the amount of federal funding received. The distribution of federal funds received by fiscal year is provided in table 6.1.
2. Funding source options: State funding other than 5% match and/or local jurisdiction funding.
3. Voting system costs are estimated through State fiscal year 2014 , and voter registration system costs are estimated through State fiscal year 2011.
4. In 2001, Maryland implemented a HAVA-compliant statewide voting system in four counties. Included in the cost of the voting systems is $13.8 M that the State already expended in those four counties for implementation and operation of the compliant voting system.

10. Effect of Title I Payments

If the State received any payment under title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities. -- HAVA §254 (a)(10)

To date, the State of Maryland has received $7,274,340 of Title I funds.

§101. Payments to States for activities to improve administration of elections.

Maryland received $5,636,731 under §101. These funds will be used for activities to meet the following requirements:

§301 Voting systems	$1,000,000
§254 (3) Education	$ 800,000
HAVA program management	$3,831,731
Administrative complaint process	$ 5,000
Total	$5,636,731

§102. Replacement of punch card or lever voting machines.

Maryland received $1,637,609 under §102.

Locality	Number of Precincts	Maximum Payment Amount ($3,192.22 per precinct)
Allegany County	37	$118,112
Dorchester County	38	$121,304
Montgomery County	234	$746,979
Prince George's County	204	$651,213
Total	**513**	**$1,637,609**

12. Changes to State Plan from Previous Fiscal Year

In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year. -- HAVA §254 (a) (12)

The inaugural State Plan was amended in 2005 to reflect the actual amount of funds received to implement the requirements of HAVA and the actual costs of major contracts to comply with the Act. Amendments to the State Plan were made in Sections 6, 10, 12, and 13.

Since the submission of the inaugural State Plan, the State of Maryland has:

1. Implemented a HAVA-compliant voting system in 19 of its 24 jurisdictions for the 2004 elections. Four jurisdictions implemented the system in 2002, and the remaining jurisdiction - Baltimore City - will have implemented the compliant voting system by January 1, 2006.

2. Adopted State regulations that define what constitutes a vote and what will be counted as a vote for each voting system used in Maryland. *See* Code of Maryland Regulations 33.08.02.

3. Implemented provisional voting based on the standards required by HAVA and provided a "free access system" for each statewide election. In the 2004 General Election, almost 49,000 individuals voted by provisional ballot, and over 31,800 voters had their provisional ballots counted.

4. Designed, distributed, and mandated posting of voting information in every precinct in Maryland. This information included instructions on how to vote, identification requirements for certain voters, and general information about voting rights and federal and State laws prohibiting acts of fraud and misrepresentation.

5. Completed testing and will have completed by January 1, 2006, the statewide implementation of the single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level.

6. Adopted regulations requiring first-time voters who registered to vote by mail to satisfy the identification requirement established by HAVA. *See* Code of Maryland Regulations 33.07.06.

7. Using a professional graphic design firm, redesigned the State's pollworkers' manual. The redesigned manual incorporates graphic design principles that foster learning by adults. The new manual will be used in the 2006 elections. Other forms will also be redesigned, using the same principles.

8. Begun developing a statewide pollworkers' training curriculum and instructor's guide for use in all jurisdictions for the 2006 elections. The State will be conducting train-the-trainer sessions for the individuals who conduct pollworkers' training for the local boards of elections.

9. Adopted regulations establishing a State-based administrative complaint procedure. *See* Code of Maryland Regulations 33.01.05. In 2004, the State conducted 4 hearings and received two additional complaints, one of which was resolved without a hearing and one that was not timely.

13. State Plan Development and Committee

A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section 255 and section 256. -- HAVA §254 (a)(13)

The State's committee consists of individuals representing a cross-section of election stakeholders. The State Plan Committee was selected by the chief State election official, Linda Lamone, State Administrator for SBE.

Members of the State Plan Committee, and the primary qualification of each for being a committee member, are as follows:

- Linda Lamone, State Administrator, State Board of Elections;
- William E. Anderson, Department of Aging ADA Coordinator, Anne Arundel County;
- Jacqueline McDaniel, Baltimore County Election Director;
- Margaret Jurgensen, Montgomery County Election Director;
- Robin Downs Colbert, Prince George's County Election Director;
- Linda Pierson, League of Women Voters;
- Michael Sanderson, representative of Maryland Association of Counties (MACo);
- James McCarthy, representative of National Federation of the Blind; and
- Kibbe Turner, Registered Voter.

In creating the State Plan, the State Plan Committee worked with Accenture, a project management vendor. The vendor was contracted to facilitate working sessions and to offer a fair and balanced assessment regarding the impact of HAVA requirements and proposed compliance steps. Based on an objective analysis of the State's current status, this State Plan highlights necessary adjustments and potential next steps in Maryland's election reform process.

The State Plan Committee will comply with the requirements of §255 and §256 of HAVA.

The Preliminary State Plan was published on the Maryland State Board of Elections' website, following a public notice in the Maryland Register. The Preliminary Plan was available for 30 days of public comment, as required by HAVA. The State Plan submitted to the Election Assistance Commission for publication in the Federal Register incorporated the feedback from the 30-day period. The State Plan was published in the Federal Register on March 24, 2004, for a 45-day public comment period.

The State Plan Committee reconvened in October 2005 to review the State's HAVA activities and revise the HAVA budget to reflect the federal funds received and the known costs of implementing HAVA activities.

COMISION ESTATAL DE ELECCIONES
ESTADO LIBRE ASOCIADO DE PUERTO RICO

February 6, 2006

Paul DeGregorio, Chairman
U.S. Election Assistance Commission
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

Dear Chairman DeGregorio:

Enclosed please find a copy of the Puerto Rico Elections Commission's most recent changes to the "State Plan." We hope the EAC will publish the new changes in the Federal Register as soon as possible.

These changes were made available for public inspection and comment December 9, 2005, and notice of the preliminary plan changes was published at that time. The only comments received in response were supportive in nature and required no additional changes to the preliminary version.

Thank you for your prompt assistance in getting this published.

Sincerest regards,

Néstor Colón Berlingeri
First Vice President

COMISION ESTATAL DE ELECCIONES
ESTADO LIBRE ASOCIADO DE PUERTO RICO

Help America Vote Act of 2002

2005 Revisions to the 2003 Implementation Plan & 2005-2006 Planned Activities

December 2005

Dear Puerto Rico Voters:

The Comisión Estatal Electoral de Puerto Rico (Commission) issued an initial implementation plan on August 14, 2003 (2003 Implementation Plan) as required under the Help America Vote Act of 2002 (HAVA). In December 2004, the Commission issued revisions to that initial plan (2004 Revisions), as required by HAVA. Most of the changes in the 2004 Revisions were changes in the amounts being spent for different improvements to elections, and updates on elections improvements contemplated, but not yet enacted at the time of the 2003 Implementation Plan.

Most of the changes in the 2005 Revisions are, again, changes in the amounts being spent for different improvements to elections. As actual costs were spent, in many cases the Commission found that its estimates were different than actual costs turned out to be. Moreover, the Commission exceeded its originally ambitious plans for a number of improvements of accessibility for disabled voters. Additionally, more federal funds were made available to the Commission in 2005, so this revised state plan directs where those additional funds will be spent. The 2005 Revisions also review the improvements for disabled voters that the Commission has implemented. These 2005 proposed revisions will be available for thirty days to solicit public review and commentary on the Commission disseminated copies of the plan.

Puerto Rico continues to have one very significant challenge in complying with the HAVA mandates: unlike every other state and territory, Puerto Rico was specifically negatively impacted during the federal appropriations process by language that had the sole effect of reducing dramatically the funding available to Puerto Rico, specifically, to implement HAVA mandates. Though Puerto Rico is still required to fulfill the HAVA mandates, including the very expensive voting equipment mandates, Puerto Rico did not get the money originally promised, nor sufficient money necessary to meet the federal mandates.

The Commission appreciates the time and suggestions given by the members of the Puerto Rico HAVA Advisory Committee. This diverse group represents the diverse constituencies that are a part of Puerto Rico's electorate.

We are fortunate that our farsighted government officials, elected, appointed, and hardworking staff, have already put in place many of the requirements of HAVA prior to HAVA's enactment. As a result, Puerto Rico has proven to be far ahead many states of the American Union in meeting the requirements under HAVA. Yet, there are still improvements to be made. The 2005 Revisions set out the plan the Commission follow to continue working assiduously to improve and make elections accessible to each voter in Puerto Rico.

Sincerely,

Aurelio Gracia Morales
President

Comisión Estatal de Elecciones
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Background on Elections in Puerto Rico

Puerto Rico is in a unique situation. According to the 2000 census, Puerto Rico's voting age population is 3.8 million, a population larger than in 25 states. Moreover, Puerto Rico's turnout for elections is significantly higher than virtually all of the 50 states. Turnout for the 2004 elections was 82%, of over 2.4 million voters.

Yet, after establishing authorized amounts in the Help America Vote Act (HAVA), an artificially set cap that was specific only to Puerto Rico was imposed in the federal budget. Puerto Rico will receive just $ 2,319,361 in Title II federal funds! This means Puerto Rico will receive only approximately 6% of the estimated amount needed to minimally meet the federally mandated requirements!

According to a calculation by the Congressional Research Service using the formula based on voting age population established in HAVA, Puerto Rico was authorized to receive approximately $37,362, 313 in Title II funds under the Help America Vote Act (HAVA)! While there has been some reduction between the originally authorized funds and those received by the states, the two states nearest in size, Oklahoma and South Carolina, have received over $27.5 million and $32.4 million, respectively. The smallest 12 states and the District of Columbia, which range in size from approximately a half million voters to approximately 1.3 million voters are all receiving a guaranteed minimum that so far is over $11.5 million dollars. These jurisdictions will get five times the money, with, at best, half the population.

Puerto Rico is receiving less than $1 per voter. By comparison, DC, which also has non-voting representation in Congress will receive approximately $20.5 per voter, and the other territories are receiving something over $14 per voter! In fact, the smallest state will receive approximately $23 per voter to help pay for the HAVA mandates. The largest state is still to receive approximately $7.5 per voter.

The challenge for Puerto Rico, then, is to meet the mandatory requirements without even receiving a fraction of the congressionally estimated amount needed to make the mandatory changes. The options available are accordingly severely restricted. The loser will be the voters, particularly the disabled voters, of Puerto Rico, as the only significant cost item needed in Puerto Rico is a voting system that will allow the disabled to vote privately and independently. With electronic voting machines serving approximately 750 voters in a day, and over 2.4 million voters in Puerto Rico, and an average cost in excess of $5000 per voting machine, Puerto Rico is being expected to spend almost $16 million, just on voting equipment, while being reimbursed less than $2.5 million!!!

This funding issue continues to be the biggest challenge for the Commission.

CHANGES TO STATE PLAN:

SECTION I - §301 Voting Systems Standards

While the deadline set by HAVA for meeting voting system requirements is 2006, Puerto Rico will not be conducting a federal election in that year (the term for Puerto Rico's Resident Commissioner to the US Congress is for four years coinciding with the US Presidential elections), which effectively means that Puerto Rico will first be using a compliant system in place in 2008. With the funding challenge unique to Puerto Rico, and given the fact that the Commission believes that its voting system, is in strict technical & legal compliance, already, with the HAVA requirements, Puerto Rico decided to tackle an improved voting system to better address the needs of all voters after the November 2004 elections. It intends to have an improved system in place prior to the primary elections for Resident Commissioner, its only federal office. The primary elections will probably be in early 2008, but will be no earlier than late 2007.

In addition to funding constraints, Puerto Rico has some political challenges to changing the voting system. Currently, the island's political consensus is to preserve the paper ballot system. The Commission must, therefore, either make sure they choose a uniform, paper ballot system that affords voters with disabilities the right to vote privately and independently, or get political agreement to change.

For the 2004 election, consistent with HAVA §301(a)(1), the Commission revised its instructions to voters. Instructions included specific instructions directing voters to review their ballot choices, as well as instructions about the effect of voting for more than one candidate. Also, as has been true for many years, the Commission provided tactile ballot sleeves for blind voters to vote independently and unassisted, if they choose. New in 2004 was Braille instructional voting material for blind voters, along with graphic voting instructions, and an instruction voting poster for the deaf that used sign language explaining how to vote. The training and education department made special presentations for disabled voters over the fall, so they could be prepared for their special voting needs. Also new in 2004, the Commission initiated absentee voting in hospitals and for those who are bedridden at home. In addition, the Commission conducted a special multi-media education outreach on the voting process. In 2004 all voter information advertisements included closed captioning; in one case, the ad done made closed captioning the focus of the ad and voiceover was provided for the blind. In all training and education efforts on behalf of disabled voters, disabled activists and their advocates were involved in preparing the materials.

With the changes in 2004, the Commission believes its paper ballot system is allowed and compliant under HAVA. The Commission also believes, however, that though in legal compliance, the current system could be improved, particularly to address the needs of disabled voters using more current technology. Therefore, Puerto Rico remains committed to finding a way to improve the current voting system prior to the 2008 Primary and General Elections by adding voting equipment that would address even better the needs of disabled voters.

§303 Computerized Statewide Voter Registration List Requirements and Requirements for Voters Who Register by Mail

Puerto Rico's Current Voter Registration System
The Commission believes that upon the finalization of the paperwork and procedures, which are imminently anticipated, and will result in agreements between the Commission and the Department of Transportation and Public Works (DTOP), and between DTOP and the US Social Security Administration, that Puerto Rico is in compliance with the §303 requirement for a centralized, statewide computerized voter registration list, and all the list maintenance requirements of this section of HAVA. One additional improvement to the system, which will be finished in mid-February, will build upon and improve the list maintenance and registration procedures. Estimated costs for this improvement, which are being shifted from uncommitted funds, are $750,000.

Planned Activities for Achieving Compliance with Title III and Election Administration Improvements

Activities to meet the requirements of title III (§252 funds)

Pilot project for new voting system
The Commission did not have an appropriate opportunity to do a pilot project since the November 2004 elections. The Commission has since determined that its paper ballot system, in conjunction with the voter education and voter instructions it has put in place, is compliant with the Title III requirements for voting systems. The Commission still intends to use this money for a pilot project on voting equipment, but it will also partially use the funds to move directly ahead to the purchase of one more accessible piece of voting equipment per *unidad* (polling place), which may be a direct record electronic machine. The Commission's intent is to provide an investment with the purchase of this equipment to ensure persons with disabilities cast their vote privately and independently in each polling place in the federal election in 2008. Estimated total available funds to put toward this pilot project and purchase are $1 million. The Commission hopes to identify additional funding for this, as the projected cost for merely one unit per polling place is in excess of $7,000,000, a sum significantly in excess of the $2.3 million provided in Title III requirements payments.

Verification of Data Assignments ("Mapificatión")
Estimated costs for this project were reduced in 2004 to $1 million. The Commission still expects this to be the total cost of this project.

Mobile Units for Voter Registration
Due to costs, only three mobile units could be added this year, and one unit renovated, for a total of $ 112,000. The Commission still desires within the next two years to purchase four additional units for an additional $138,000, if additional funds can be made available. Total estimated cost is $ 245,000.

Projects to improve election administration (§101 funds)

Transferring paper files to microfilm

Estimated costs for this project were reduced in 2004 to $ 200,000. The Commission still expects this to be the total cost of this project.

Mechanized distribution controls
Estimated costs for this project have been reduced by $15,000. Total cost to implement for general elections was $106,000. The Commission hopes that before the 2008 primaries that it will be able to find additional funding of $ 100,000 to extend this mechanized distribution process to the primaries.

Equipment upgrade for local election offices
Estimated costs for this project were reduced to $ 200,000 in the 2004 Revisions. Since 2004, the Commission has decided that it would be a better used of the funding to substitute upgraded computer machinery for the originally specified fax/printer/copiers/scanners in order to best upgrade the local office technology.

HAVA administration and planning
As the Commission determined in 2004, it intends to use some §251 funding for education and training of Commission officials in the requirements of HAVA. In addition, the Commission will invest in a planning process to facilitate effective implementation of the new law in a way that both complies with the law and is appropriate to Puerto Rico. (New estimated total cost: $872,000)

Planned Activities to Improve Accessibility (§261 funds)

Puerto Rico has a long history of working to make the electoral process accessible to voters with disabilities, including ballot templates for the blind and other efforts at accessibility that even pre-date the passage of the Americans with Disabilities Act. These efforts are ongoing and improving. HAVA provided two different funding streams for addressing these problems; the requirements payments under §257, and the Department of Health and Human Services (HHS) grants under §261 of HAVA. Puerto Rico received $151,345 in 2003 from HHS, $104,364 in 2004, and an additional $102,963 in 2005.

The Commission has continued its efforts to make polling stations – and the voting process as a whole – more accessible, continuing regular meetings of the HAVA committee, which includes significant participation by the disabled advocates and representatives, to advise the Commission on its continued activities in this area. While the HHS grants were for a number of discrete projects, generally, the Commissions efforts have focused on three key areas, described below.

Eliminating barriers to polling stations
The Commission used some of the funding to conduct an extensive survey of all existing and alternative polling stations to determine what barriers still existed and how barriers might be eliminated. The Commission then built or purchased ramps, purchased temporary ramps, and made other improvements to remove physical barriers, and to make any temporary polling places accessible. For the November 2004 elections, the Commission's goal was to make accessible in each polling place at least the "fácil acceso colegio" (that is, the room in each polling place to which disabled voters are assigned), either by permanent or temporary fixes to the polling places.

Training and accessibility manuals for Election Officials and Pollworkers

The Commission believes better education and training of local election officials and polling place workers is an important component in eliminating barriers. The Commission used a portion of the funds to produce special training and manuals for local election officials and polling place workers on accessibility, and how to accommodate the needs of all voters with disabilities. The materials produced were done with active involvement of members of the disability community.

Opening up the voting process, and voter education

In addition to purchasing aids for voters with disabilities for Election Day, such as magnifiers, the Commission made a number of other improvements, including improvements in 2004 to the Commission library, for disabled voters, including a Braille printer and special software that translates information into Braille and audio, along with audio headphones and keyboards in order to allow disabled voters to have access to the same library information as non-disabled voters. The Commission also deployed in 2004 four mobile units to bring the Commission to voters for whom getting to the local offices is difficult. The Commission improved its Braille ballot templates for Election Day, and added Braille instructions material for blind voters. There were new posters for Election Day 2004, including one for deaf voters that describes the voting process visually, and using sign language. And all television advertisement included sign language as a secondary medium within the screen, with one exception: one advertisement used sign language as the primary method of communication and voiceover as the secondary method of communication in the advertisement! The materials produced were done with active involvement of members of the disability community. In addition, the Commission developed a voice-activated telephone system, which will include TTY, and was the first in Puerto Rico's government to have a website that complied with new Puerto Rico law making government websites accessible for the disabled. The Commission continues to work with the HAVA committee and other disabled advocates to further improve in voting accessibility.

SECTION 6 – Budget for Title III Requirements

Funding Assumptions

HAVA Title I (101) Funds: $3,151,144 (all in FY 2003)

HAVA Title II (252) Funds: $830,000 (in FY 2003)
$1,489,361 (in FY 2004)

HAVA Title II (261) Funds: $151,345 (in FY 2003)
$104,364 (in FY 2004)
$102,963 (in FY 2005)

Puerto Rico Matching Funds: $43,658 (in FY 2003)
$78,340 (in FY 2004)

No assumptions are made for additional funding, as the current status is so unclear.

Please note that the following charts, taken together show spending based on expected receipts.

Estimated Expenditures on Title III Requirements (FY2003 – FY2005)					
	HAVA 101	HAVA 252	HAVA 261	5%match	other costs
Sec. 301 – Voting System Requirements					
Pilot projects and purchases related to HAVA compliant voting system	$421,144	$1,139,361	$46,463		
Voting aids and commodities for voters with disabilities			$ 80,000		
Sec. 302 – Provisional Voting and Voter Information					
Voice activated information and other available and/or posted voter information		$90,000	$87,709		
Sec. 303 – Computerized voter registration and verification requirements					
Upgrade of identification system					$3,000,000*
Reengineering of the voter registration system	$750,000			$121,998	$750,000*
Verification of data assignments		$1,000,000			
Computers for mobile units		$90,000			
DTOP/SSA VR project	$70,000				
HAVA administration					
Implementation planning, training & execution, and oversight and management	$ $1065,000				
Fund for Warranties, Repairs and other needs for HAVA projects	$250,000				
Subtotal for Title III	$2,556,144	$2,319,361	$214,172	$121,998	

Some figures are rounded.

*This expenditure is noted for information purposes only.

Expenditures for Improving Election Administration (FY 03 – FY 05)					
	HAVA 101	**HAVA 252**	**HAVA 261**	**5% match**	**Other costs**
Voter Education and Training					
Outreach to voters with disabilities			$33,000		
Training of election officials			15,000		
Improving Accessibility					
Accessibility study and manual & improvements to polling places			$28,000		
Voter Registration					
Mobile units for voter registration	$90,000		$68,500		
Election Administration					
Transfer of files to microfilm	$200,000				
Mechanized controls for election materials	$105,000				
Upgrade and multi-functional equipment for JIPs	$200,000				
Subtotal this chart	$595,000		$144,500		
Subtotals from previous chart on Title III	$2,556,144	$2,319,361	$214,172	$121,998	
Remaining Funds expected to be spent in 2006 or later	$0	$ 0	$ 0	$ 0	Undetermined millions**
Total	$3,151,144	$2,319,361	$358,672	$121,998	

** In order to comply with HAVA, Puerto Rico, uniquely, is being expected to come up with substantial additional funding not being required by any other state or territory to meet the same requirements. CEE has not yet determined how to meet requirements and costs, given the circumstances.

SECTION 12 – Changes from Previous Year's Plan

Only changes are described in this "State Plan" revision document for 2005, as suggested by the Election Assistance Commission, in order to save federal funds needed to print "State Plans" in the Federal Register, therefore they are not repeated in this section. Most changes are funding related, or describe accessibility revisions.

SECTION 13 – *Changes to HAVA Committee*

Puerto Rico's HAVA Advisory Committee is a diverse group of citizens including members of the Commission, representatives from the three political parties, disabled representation, student groups, and representation of various constituency groups. The First Vice President of the Commission chairs the committee.

As required by HAVA, the Committee included representatives from the Commission's local offices serving the two largest jurisdictions in Puerto Rico. In the past this included San Juan and Toa Baja; based on new population estimates Toa Baja is being replaced by a representative from Caguas. In addition, a new local elections office representative, from Cidra, is being added to represent smaller jurisdictions. This is the only significant change in membership of the HAVA Committee this year. All other members from 2003 are the same. In addition, the Committee includes a representative from the Office of the Ombudsman for Persons with Disabilities.

The committee has met regularly since last year, focusing on the accessibility requirements.

[FR Doc. 06–1707 Filed 2–24–06; 8:45 am]
BILLING CODE 6820–KF–C

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Representative Average Unit Costs of Energy

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

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy (DOE or Department) is forecasting the representative average unit costs of five residential energy sources for the year 2006 pursuant to the Energy Policy and Conservation Act. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene.

DATES: *Effective Date:* The representative average unit costs of energy contained in this notice will become effective March 29, 2006 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. (202) 586–0371, *bryan.berringer@ee.doe.gov.*

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103. (202) 586–7432, *Francine.pinto@hq.doe.gov.*

Thomas DePriest, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103. (202) 586–2946, *thomas.depriest@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Section 323 of the Energy Policy and Conservation Act (Act) (42 U.S.C. 6291–6309) requires that DOE prescribe test procedures for the determination of the estimated annual operating costs or other measures of energy consumption for certain consumer products specified in the Act. (42 U.S.C. 6293) These test procedures are found in Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be calculated from measurements of energy use in a representative average use cycle or period of use and from representative average unit costs of the energy needed to operate such product during such cycle. (42 U.S.C. 6293(b)) The section further requires that DOE provide information to manufacturers regarding the representative average unit costs of energy. (42 U.S.C. 6293(b)(4)) This cost information should be used by manufacturers to meet their obligations under section 323(c) of the Act. Most notably, these costs are used to comply with Federal Trade Commission (FTC) requirements for labeling. Manufacturers are required to use the revised DOE representative average unit costs when the FTC publishes new ranges of comparability for specific covered products, 16 CFR part 305. Interested parties can also find information covering the FTC labeling requirements at *http://www.ftc.gov/appliances.*

The Department last published representative average unit costs of residential energy for use in the Energy Conservation Program for Consumer Products Other Than Automobiles on March 11, 2005. (70 FR 12209) Effective March 29, 2006, the cost figures published on March 11, 2005, will be superseded by the cost figures set forth in this notice.

The Department's Energy Information Administration (EIA) has developed the 2006 representative average unit after-tax costs found in this notice. The representative average unit after-tax costs for electricity, natural gas, No. 2 heating oil, and propane are based on simulations used to produce the January, 2006, EIA *Short-Term Energy Outlook,* and reflect the mid-price scenario. The representative average unit after-tax costs for kerosene are derived from their prices relative to that of heating oil, based on 2000–2004 averages for these two fuels. The source for these price data is the December 2005, *Monthly Energy Review* DOE/EIA–0035(2005/12). The *Short-Term Energy Outlook* and the *Monthly Energy Review* are available at the National Energy Information Center, Forrestal Building, Room 1F–048, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8800. These publications can also be found on the EIA Web site at *http://www.eia.doe.gov.*

The 2006 representative average unit costs under section 323(b)(4) of the Act are set forth in Table 1, and will become effective March 29, 2006. They will remain in effect until further notice.

Issued in Washington, DC, on February 17, 2006.

Douglas L. Faulkner,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES

[2006]

Type of energy	Per million Btu [1]	In commonly used terms	As required by test procedure (in dollars)
Electricity	$28.75	9.81¢/kWh [2,3]	.0981/kWh.
Natural Gas	14.15	$1.415/therm [4] or $14.57/MCF [5,6]	.00001415/Btu
No. 2 Heating Oil	16.37	$2.27/gallon [7]	.00001637/Btu.
Propane	21.35	$1.95/gallon [8]	.00002135/Btu.
Kerosene	20.30	$2.74/gallon [9]	.00002030/Btu.

[1] Btu stands for British thermal units.
[2] kWh stands for kilowatt hour.
[3] 1 kWh = 3,412 Btu.
[4] 1 therm = 100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,031 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. E6–2741 Filed 2–24–06; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–31–001]

ANR Pipeline Company; Notice of Compliance Filing

February 17, 2006.

Take notice that on February 13, 2006, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, and Second Revised Volume No. 1. ANR requests that the tariff sheets be made effective February 1, 2006:

Original Volume No. 2
Twelfth Revised Sheet No. 5,
First Revised Sheet No. 1060.
Second Revised Volume No. 1
First Revised Sheet No. 2F.

ANR states that the tariff sheets are submitted in compliance with the Commission's Order Approving Abandonment issued February 1, 2006, in Docket No. CP06–31–000.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 6, 2006.

Magalie R. Salas,
Secretary.
[FR Doc. E6–2707 Filed 2–24–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP06–54–000, CP06–55–000, CP06–56–000]

Broadwater Energy LLC, Broadwater Pipeline LLC; Notice of Applications

February 17, 2006.

Take notice that on January 30, 2006, Broadwater Energy LLC (Broadwater Energy) filed an application under section 3 of the Natural Gas Act (NGA) and Part 153 of the Commission's Rules and Regulations seeking authorization to site, construct and operate an offshore liquefied natural gas (LNG) receiving terminal and associated facilities (Floating Storage and Regasification Unit) in Long Island Sound, approximately nine miles from the shore of Long Island in New York State waters, as a place of entry for the importation of LNG. Broadwater Energy's proposed terminal is intended to facilitate the importation of LNG from foreign nations into the United States.

Also, take notice that on January 30, 2006, Broadwater Pipeline LLC (Broadwater Pipeline) concurrently filed an application requesting: (i) In Docket No. CP06–55–000 a certificate of public convenience and necessity, pursuant to subpart A of part 157 of the Commission's regulations, authorizing Broadwater Pipeline to construct, own, operate and maintain a 30-inch, 22 mile subsea lateral (and related facilities) as a single-use pipeline; and (ii) in Docket No. CP06–56–000, Broadwater Pipeline requests a blanket certificate under section 7(c) of the NGA and part 157, subpart F of the Commission's regulations to perform routine activities in connection with the future construction, operation and maintenance of the proposed 22-mile pipeline. Broadwater Pipeline seeks authorization to permit its proposed pipeline to be operated as a single-use pipeline. That is, it would be used for just one purpose—to transport natural gas approximately 22 miles from the Floating Storage and Regasification Unit (FSRU), to a subsea interconnection with an existing interstate pipeline.

Broadwater Energy and Broadwater Pipeline respectfully request that the Commission issue a final order granting them all necessary authorizations for the Broadwater LNG project by March 31, 2007. We note that certain information regarding design standards for the FSRU that was requested by the FERC and U.S. Coast Guard during the Pre-Filing Process was not provided in the application. FERC staff and the U.S. Coast Guard are unable to initiate the design/engineering review of the FSRU or complete the Waterway Suitability Assessment process without this information. Consequently, at this time we are unable to project a schedule for our review or issuance of the draft environmental impact statement (DEIS). Once this information is received, we will issue a notice establishing the schedule for the completion of the DEIS and the issuance of all Federal authorizations.

These applications are on file with the Commission and open to public inspection. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding these applications should be directed to Brian D. O'Neill or Bruce W. Neely, LeBoeuf, Lamb, Greene & MacRae LLP, 1875 Connecticut Ave., NW., Suite 1200, Washington, DC 20009 by telephone at (202) 986–8000 or by fax (202) 986–8102.

On November 29, 2004, the Commission staff granted Broadwater Energy's and Broadwater Pipeline's request to utilize the Pre-Filing Process and assigned Docket No. PF05–4–000 to staff activities involving the Broadwater LNG project. Now, as of the filing of Broadwater Energy's and Broadwater Pipeline's applications on January 30, 2006, the Pre-Filing Process for this project has ended. From this time forward, Broadwater Energy's and Broadwater Pipeline's proceeding will be conducted in Docket Nos. CP06–54–000, CP06–55–000, and CP06–56–000, as noted in the caption of this Notice.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888

First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: March 10, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–2700 Filed 2–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–64–000]

Central New York Oil and Gas Company, LLC; Notice of Application

February 17, 2006.

On February 10, 2006, Central New York Oil and Gas Company, LLC, (CYNOG) Two Brush Creek Blvd., Suite 200, Kansas City, Missouri 64112, pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, filed an abbreviated application for a certificate of public convenience and necessity seeking authority to expand the existing Stagecoach Storage Facility, located in Tioga County, New York and Bradford County, Pennsylvania, and to provide expanded high-deliverability natural gas storage service and interruptible wheeling service in interstate commerce at market-based rates. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

The Stagecoach Phase II Expansion Project consists of developing four additional natural gas reservoirs in the Stagecoach field, drilling up to eight injection/withdrawal wells, installing an additional 12,000 horsepower of compression and approximately 5.9 miles of 20-inch mainline, and constructing the 9.3 mile, 24-inch diameter North Lateral to connect with the proposed Millenium Pipeline. The expanded facilities will add approximately 13 Bcf of working storage capacity. CYNOG will offer firm and interruptible storage services and interruptible wheeling service. The proposed rates, terms and conditions are included in the pro forma tariff included in Exhibit P of the application.

Any questions regarding this application should be directed to William R. Moler, Vice President-Midstream Operations, CYNOG, Two Brush Creek Blvd., Suite 200, Kansas City, Missouri 64112, phone (816) 329–5344.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right

to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: March 10, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–2702 Filed 2–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–221–010]

High Island Offshore System, L.L.C.; Notice of Refund Report

February 17, 2006.

Take notice that on February 10, 2006, High Island Offshore System, L.L.C., tendered for filing its Refund Report.

HIOS state that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 24, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–2698 Filed 2–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP06–62–000, CP06–63–000, and CP06–65–000]

Rendezvous Gas Services, L.L.C. and Rendezvous Pipeline Company, L.L.C.; Notice of Applications

February 17, 2006.

Take notice that on February 10, 2006, Rendezvous Gas Services, L.L.C. (RGS) and Rendezvous Pipeline Company, L.L.C. (Rendezvous Pipeline), both located at 1050 17th Street, Suite 500, Denver, Colorado 80265, filed an application pursuant to sections 7 (b) and (c) of the Natural Gas Act and Part 157 of the Commission's regulations requesting, in Docket No. CP06–62–000: (1) Approval to abandon RGS' certificate authorities, issued in Docket Nos. CP05–40–000 and CP05–41–000, including authorization to construct and operate a 20.8-mile, 20-inch pipeline in Uinta and Lincoln Counties, Wyoming; and (2) issuance of a certificate of public convenience and necessity to Rendezvous Pipeline to acquire RGS' jurisdictional assets and to succeed to RGS' authority to construct and operate the pipeline facilities. The application also requests, in Docket Nos. CP06–63–000 and CP06–65–000, respectively, that Rendezvous Pipeline be issued: (1) A blanket certificate under Subpart F of Part 157 of the Commission's regulations; and (2) a blanket certificate under Subpart G of Part 284 of the Commission's regulations. The application is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding the application are to be directed to Perry H. Richards, Rendezvous Pipeline Company, L.L.C., 1050 17th Street, Suite 500, Denver, CO 80265, or call (303) 672–6986 or Fax (303) 308–3610.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper, see, 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: February 24, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–2701 Filed 2–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–31–002]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

February 17, 2006.

Take notice that on February 13, 2006, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Sixth Revised Sheet No. 5 and First Revised Sheet No. 1031, with an effective date of February 1, 2006.

Tennessee states that the filing is being made in compliance with the Commission's Order Approving Abandonment issued February 1, 2006, in docket No. CP06–31–000.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 6, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–2699 Filed 2–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC06–78–000, et al.]

Entegra Power Group LLC, et al.; Electric Rate and Corporate Filings

February 17, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Entegra Power Group LLC, Gila River Power, L.P., Union Power Partners, L.P.

[Docket No. EC06–78–000]

Take notice that on February 10, 2006, Entegra Power Group, LLC, on behalf of itself and its wholly-owned subsidiaries Gila River Power, L.P. (Gila River) and Union Power Partners, L.P. (Union Power, Entegra and Gila River, collectively, Applicants), and on behalf of the current and future owners of equity interests in Entegra, filed with the Commission an application pursuant to section 203 of the Federal Power Act requesting blanket authorization for certain future transfers and acquisitions of equity interests in Entegra that meet the criteria set forth therein (the Pre-Authorized Transactions). Applicants request that the Commission, consistent with its precedent, grant limited waivers of its Part 33 filing requirements to the extent that such information is not necessary to ensure that the Pre-Authorized Transactions meet the statutory requirements of section 203.

Comment Date: 5 p.m. Eastern Time on March 3, 2006.

2. Bridgeport Energy LLC, Duke Bridgeport Energy LLC, LS Power Generation, LLC, United Bridgeport Energy, Inc.

[Docket No. EC06–79–000]

Take notice that on February 13, 2006, Bridgeport Energy LLC (Bridgeport), Duke Bridgeport Energy LLC (DBE), United Bridgeport Energy, LLC (UBE) and LS Power Generation, LLC (LSP Generation, and together Bridgeport, DBE and UBE, Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization to transfer UBE one-third interest in Bridgeport, an approximately 490 MW generator, to DBE. Applicants request privileged treatment of commercially sensitive information included in the application. Furthermore, Applicants seek waiver of certain of the Commission's filing requirements.

Comment Date: 5 p.m. Eastern Time on March 6, 2006.

3. KGen Enterprise LLC, Navasota Wharton Energy Partners LP

[Docket No. EC06–80–000]

Take notice that on February 14, 2006, KGen Enterprise LLC (KGen) and Navasota Wharton Energy Partners LP (Navasota) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby KGen will transfer all of its ownership interests in two gas turbine generator sets to Navasota. Applicants request confidential treatment of Exhibit I, pursuant to 18 CFR 388.112 of the Commission's regulations.

Comment Date: 5 p.m. Eastern Time on March 7, 2006.

4. Georgia Power Company, Savannah Electric and Power Company

[Docket No. EC06–81–000]

Take notice that on February 14, 2006, Georgia Power Company (Georgia Power) and Savannah Electric and Power Company (Savannah Electric) (collectively, Applicants) pursuant to section 203 of the Federal Power Act, submitted for authorizations for Savannah Electric to merge into its sister company, Georgia Power, a transaction that may be considered as a disposition of jurisdictional facilities by Savannah Electric and a consolidation of jurisdictional facilities even though the jurisdictional facilities of the Applicants are operated today on an integrated basis.

Comment Date: 5 p.m. Eastern Time on March 7, 2006.

5. California Independent System Operator Corporation

[Docket No. ER06–61–001]

Take notice that on February 10, 2006, the California Independent System Operator Corporation (ISO) submitted a compliance filing to amend the Metered Subsystem Agreement between the ISO and the City of Vernon, CA, filed on January 17, 2006.

Comment Date: 5 p.m. Eastern Time on February 23, 2006.

6. NorthWestern Corporation

[Docket No. ER06–168–001]

Take notice that on February 6, 2006, NorthWestern Corporation tendered for filing proposed modification to its Large Generator Interconnection Procedures and Large Generator Interconnection Agreement as requested by the Commission on January 5, 2006.

Comment Date: 5 p.m. Eastern Time on February 27, 2006.

7. California Independent System Operator Corporation

[Docket No. ER06–615–000]

Take notice that on February 9, 2006, the California Independent System Operator Corporation (CAISO) submitted its proposed electric tariff to reflect the Market Redesign and Technology Upgrade.

Comment Date: 5 p.m. Eastern Time on March 27, 2006.

8. Duke Power Company LLC, Duke Power Company, Duke Energy Trading and Marketing, L.L.C., Duke Energy Marketing America, LLC, Duke Energy Fayette, LLC, Duke Energy Hanging Rock, LLC, Duke Energy Lee, LLC, Duke Energy Vermillion, LLC, Duke Energy Washington, LLC, Cincinnati Gas & Electric Co., PSI Energy, Inc., Union Light Heat & Power Company, Cinergy Marketing & Trading, LP, Brownsville Power I, L.L.C., Caledonia Power I, L.L.C., CinCap IV, LLC, CinCap V, LLC, Cinergy Capital & Trading, Inc., Cinergy Power Investments, Inc., St. Paul Cogeneration, LLC

[Docket Nos. ER06–619–000, ER96–110–019, ER99–2774–011, ER03–956–008, ER03–185–006, ER03–17–006, ER01–545–008, ER00–1783–008, ER02–795–006, ER96–2504–013, ER05–1367–002, ER05–1368–002, ER05–1369–003, ER00–826–005, ER00–828–005, ER98–421–016, ER98–4055–013, ER01–1337–008, ER02–177–009, ER03–1212–007]

Take notice that on February 7, 2006, the above-referenced proceedings, tendered for filing under section 205 of the Federal Power Act: (1) Amended market based rate tariffs for each of the MBR Companies and (ii) a notice of succession for the name change of Duke Power, currently a division of Duke Energy to Duke Power Company LLC.

Comment Date: 5 p.m. Eastern Time on February 28, 2006.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–2708 Filed 2–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–16–000]

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly; Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations; Order Revising Market-Based Rate Tariffs and Authorizations

Issued February 16, 2006.

1. The Commission has decided to rescind Market Behavior Rules 2 and 6 and to codify the substance of Market Behavior Rules 1, 3, 4, and 5 in the Commission's regulations under the Federal Power Act (FPA).[1] The central purpose of the Market Behavior Rules [2] was to prohibit market manipulation by public utility sellers acting under market-based rate authority. This prohibition is set out in Market Behavior Rule 2. Subsequent to the issuance of the Market Behavior Rules, Congress provided the Commission with specific anti-manipulation authority in the Energy Policy Act of 2005 (EPAct 2005).[3] To implement this new authority, the Commission recently issued Order No. 670, adopting a final rule making it unlawful for any entity, including public utility market-based rate sellers, to engage in fraudulent or deceptive conduct in connection with the purchase or sale of electric energy, natural gas, or transmission or transportation services subject to the jurisdiction of the Commission.[4] In order to avoid regulatory uncertainty and confusion, to assure that all market participants are held to the same standard, and to provide clarity to entities subject to our rules and regulations, we rescind Market Behavior Rule 2 effective upon publication of this order in the **Federal Register**.

2. In addition, we will remove Market Behavior Rules 1, 3, 4, and 5 from public utility market-based rate tariffs and instead codify them in our regulations, rescind Market Behavior Rule 6 as no longer necessary, and rescind Appendix B of the Market Behavior Rules Order as no longer applicable. Contemporaneously herewith, the Commission is issuing a Final Rule in Docket No. RM06–13–000 [5] which is being made effective immediately upon publication in the **Federal Register**. The Market Behavior Rules Codification Order incorporates Rules 1, 3, 4, and 5 into our FPA regulations with no substantive change. In light of this action, Market Behavior Rules 1, 3, 4, and 5 will no longer be of any force or effect in market-based rate tariffs as of the date the Market Behavior Rules Codification Order is effective.[6]

I. Background

3. On November 17, 2003, acting pursuant to section 206 of the FPA, the

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[1] 16 U.S.C. 791a *et seq.* (2000).

[2] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, ''Order Amending Market-Based Rate Tariffs and Authorizations,'' 105 FERC ¶ 61,218 (2003), *reh'g denied*, 107 FERC ¶ 61,175 (2004) at Appendix A (Market Behavior Rules Order). The Market Behavior Rules are currently on appeal. *Cinergy Marketing & Trading, L.P.* v. *FERC*, Nos. 04–1168 *et al.* (DC Cir. Filed April 28, 2004).

[3] Energy Policy Act of 2005, Public Law No. 109–58, 119 Stat. 594 (2005). Congress prohibited the use or employment of ''any manipulative or deceptive device or contrivance'' in connection with the purchase or sale of electric energy or transmission services subject to the jurisdiction of the Commission. Congress directed the Commission to give these terms the same meaning as under the Securities Exchange Act of 1934, 15 U.S.C. 78j(b) (2000).

[4] *Prohibition of Energy Market Manipulation*, Order No. 670, 71 FR 4244 (Jan. 26, 2006), FERC Stats. & Regs. ¶ 31,202, 114 FERC ¶ 61,047 (Jan. 19, 2006) (Order No. 670).

[5] *Compliance for Public Utility Market-Based Rate Authorization Holders*, Docket No. RM06–13–000, issued February 16, 2006 (Market Behavior Rules Codification Order).

[6] As provided for in the Market Behavior Rules Order, the Market Behavior Rules have been included in tariff filings by a number of market-based rate sellers. As a result of the changes being made in this order and the contemporaneous Market Behavior Rules Codification Order, the Market Behavior Rules no longer will be part of seller's market-based rate tariffs. It would be burdensome, however, to require sellers to make new tariff filings for the sole purpose of removing the Market Behavior Rules from their tariffs. Sellers need not do so, unless we direct otherwise in the future. In the absence of any such direction, at such time as sellers make any amendments to their market-based rate tariffs or seek continued authorization to sell at market-based rates (*e.g.*, in their three-year update filings), sellers shall at that time remove the Market Behavior Rules from their tariffs. Nonetheless, Market Behavior Rules 2 and 6 will be of no force or effect in sellers' tariffs as of the date this order is published in the **Federal Register**, and Market Behavior Rules 1, 3, 4, and 5 will be of no force and effect as of the effective date of the Market Behavior Rules Codification Order.

Commission amended all market-based rate tariffs and authorizations to include the Market Behavior Rules. We determined that sellers' market-based tariffs and authorizations to make sales at market rates would be unjust and unreasonable unless they included clearly-delineated rules governing market participant conduct, and that the Market Behavior Rules fairly apprised market participants of their obligations in competitive power markets and were just and reasonable.[7]

4. Market Behavior Rule 1 requires sellers to follow Commission-approved rules and regulations in organized power markets. These rules and regulations are part of the Commission-approved tariffs of Independent System Operators (ISO) or Regional Transmission Organizations (RTO), and, where applicable, market-based rate sellers' agreements to operate within ISOs and RTOs bind them to follow the applicable rules and regulations of the organized market.

5. Market Behavior Rule 2 prohibits ''actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices, market conditions, or market rules for electric energy or electricity products.'' Actions or transactions explicitly contemplated in Commission-approved rules and regulations of an organized market, or undertaken by a market-based rate seller at the direction of an ISO or RTO, however, are not violations of Market Behavior Rule 2. In addition, Market Behavior Rule 2 prohibits certain specific behavior: Rule 2(a) prohibits wash trades, Rule 2(b) prohibits transactions predicated on submitting false information, Rule 2(c) prohibits the creation and relief of artificial congestion, and Rule 2(d) prohibits collusion for the purpose of market manipulation.

6. Market Behavior Rule 3 requires sellers to provide accurate and factual information, and not to submit false or misleading information or to omit material information, in any communication with the Commission, market monitors, ISOs, RTOs, or jurisdictional transmission providers.

7. Market Behavior Rule 4 deals with reporting of transaction information to price index publishers. It requires that if a seller reports transaction data, the data be accurate and factual, and not knowingly false or misleading, and be reported in accordance with the Commission's Policy Statement on price indices.[8] Rule 4 also requires that sellers notify the Commission of whether they report transaction data to price index publishers in accordance with the Price Index Policy Statement, and to update any changes in their reporting status.

8. Market Behavior Rule 5 requires that sellers retain for a minimum three-year period all data and information upon which they billed the prices charged for electricity and related products in sales made under their market-based rate tariffs and authorizations or in transactions the prices of which were reported to price index publishers.

9. Finally, Market Behavior Rule 6 directs sellers not to violate, or to collude with others in actions that violate, sellers' market-based rate codes of conduct or the Standards of Conduct under part 358 of our regulations.[9]

10. Following enactment of EPAct 2005, the Commission issued a Notice of Proposed Rulemaking on October 20, 2005, in which we proposed rules to implement the new statutory anti-manipulation provisions.[10] In the Anti-Manipulation NOPR, we noted the overlap between Market Behavior Rule 2 and the proposed EPAct 2005 regulations. We said that we would retain Market Behavior Rule 2 for the time being, but also indicated that we would seek comment on whether we should revise or rescind Market Behavior Rule 2. In the meantime, we assured market participants that we will not seek duplicative sanctions for the same conduct in the event that conduct violates both Market Behavior Rule 2 and the proposed new anti-manipulation rule.[11]

11. In an order dated November 21, 2005,[12] the Commission, acting pursuant to section 206 of the FPA, proposed to rescind the Market Behavior Rules once we issued final regulations implementing the anti-manipulation provisions of EPAct 2005 and have had the opportunity to incorporate certain other aspects of the Market Behavior Rules in appropriate Commission orders, rules, and regulations. The Commission also requested comment on whether the Market Behavior Rules should be revised or rescinded. We noted that rescission of the Market Behavior Rules will simplify the Commission's rules and regulations, avoid confusion, and provide greater clarity and regulatory certainty to the industry. We emphasized our belief that rescinding the Market Behavior Rules is consistent with Congressional intent in EPAct 2005, which provided the Commission with explicit anti-manipulation authority, and that rescission will simplify and streamline the rules and regulations sellers must follow, yet not eliminate beneficial rules governing market behavior.[13]

12. The Commission received 21 comments and four reply comments in response to the November 21 Order.[14] Many of the comments support the Commission's overall objectives in this proceeding, that is, to simplify the Commission's rules and regulations, avoid confusion, and provide greater clarity and regulatory certainty to the industry, while not eliminating beneficial rules governing market behavior by addressing them in other rules and regulations.

13. On January 19, 2006, the Commission issued Order No. 670, adopting regulations implementing the EPAct 2005 anti-manipulation provisions. In Order No. 670 the Commission adopted a new part 1c of our regulations under which it is

[7] Market Behavior Rules Order, 105 FERC ¶ 61,218 at P 3, 158–74.

[8] *Price Discovery in Natural Gas and Electric Markets*, ''Policy Statement on Natural Gas and Electric Price Indices,'' 104 FERC ¶ 61,121 (2003) (Price Index Policy Statement).

[9] 18 CFR part 358 (2005). At the same time that the Market Behavior Rules were adopted for jurisdictional wholesale electric transactions, the Commission issued Order No. 644, which introduced parallel provisions in part 284 of our regulations under the Natural Gas Act governing pipelines and holders of blanket certificate authority that sell natural gas at wholesale. 18 CFR 284.288 and 284.403 (2005). Not every aspect of the electric Market Behavior Rules was applicable in the natural gas sales context, however. The part 284 regulations encompass Market Behavior Rule 2, including wash sales and collusion to manipulate, and Market Behavior Rules 4 and 5. Contemporaneously herewith, we also are issuing a final rule in Docket No. RM06–5–000 making parallel changes in sections 284.288 and 284.403 of the Commission's regulations.

[10] *Prohibition of Energy Market Manipulation*, 113 FERC ¶ 61,067 (2005) (Anti-Manipulation NOPR).

[11] *Id.* at P 15. *See also Enforcement of Statutes, Orders, Rules, and Regulations*, ''Policy Statement on Enforcement,'' 113 FERC ¶ 61,068 at P 14 (2005).

[12] *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 113 FERC ¶ 61,190 (2005) (November 21 Order).

[13] November 21 Order, 113 FERC ¶ 61,190 at P 13. At the same time we issued a Notice of Proposed Rulemaking in Docket No. RM06–5–000 proposing similar changes to sections 284.288 and 284.403 of the regulations under the Natural Gas Act, 18 CFR 284.288 and 284.403 (2005).

[14] Entities filing comments and reply comments are listed in the Appendix to this order, along with the acronyms for such commenters. The Commission has accepted and considered all comments filed, including late-filed comments. With respect to commenters that also filed motions to intervene, we are treating this proceeding as a rulemaking seeking comments from all interested entities. *See Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, ''Order Addressing Application of *Ex Parte* Rule and Requests for Extension of Time,'' 104 FERC ¶ 61,132 at P 5 (2003).

''unlawful for any entity, directly or indirectly, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, (1) to use or employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (3) to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity.''[15]

II. Discussion

A. Market Behavior Rule 2

14. In the November 21 Order the Commission sought comment on whether there is a need or basis for retaining existing Market Behavior Rule 2 in light of the then-proposed anti-manipulation rule, and whether the Commission should retain any of the affirmative defenses against a claim of manipulation, that is, actions or transactions explicitly contemplated by Commission rules, or undertaken at the direction of an ISO or RTO, or actions taken for a ''legitimate business purpose.''

1. Should the Commission Retain or Rescind Market Behavior Rule 2?

a. Comments

15. Commenters were divided on the issue of whether Rule 2 should be retained or rescinded in light of the anti-manipulation provisions. Those in favor of retaining Rule 2 argue two principal points: first, the foreseeability standard of Rule 2 reaches negligent conduct or other conduct that falls short of being ''provably'' intentional but nonetheless has a foreseeable impact on rates; and second, Rule 2 has lasting utility because it provides a remedy for activities that may not be fraudulent, but could nevertheless function to manipulate prices for wholesale electric power and transmission services.[16]

16. Several commenters argue that Rule 2 should be retained because it prohibits conduct that ''foreseeably could manipulate market prices,'' and does not require the showing of scienter (intentional or reckless conduct), which means that Rule 2 reaches a broader range of conduct that may adversely affect consumers and energy markets than would the proposed anti-manipulation rule alone.[17] CPUC and others argue that nothing in EPAct 2005 dictates or justifies the repeal of Rule 2. They argue that, in determining whether rates are just and reasonable, the Commission should only focus on the effect of a seller's action and not on the seller's intent, and that relying solely on intent may result in rates becoming unjust and unreasonable because it would limit the Commission's ability to remedy conduct falling short of being intentional but whose rate-altering effect is foreseeable.[18] PG&E and others argue that there is no risk of confusion or double jeopardy created by having both the Market Behavior Rules and the anti-manipulation rule promulgated pursuant to EPAct 2005, and TDUS argues that repeal of the Market Behavior Rules may well create confusion rather than promote clarity.[19] More generally, TDUS argues that the need for vigilant consumer protection is just as strong today as it was in 2003 when the Market Behavior Rules were adopted.[20] NYISO comments that the scienter standard of the proposed anti-manipulation regulations will make extensive discovery a necessity and greatly increase the cost of enforcement for all parties involved.[21]

17. APPA/TAPS (which argue that Rule 2 should be interpreted to include a scienter requirement) and others comment that Rule 2 should be retained because it prohibits the exercise of market power.[22] SMUD notes that a tariff condition that protects the rights of consumers to refunds of charges that are the product of the exercise of market power or collusion is critical to customers who may have no antitrust remedy for such conduct.[23] PJM supports repeal of the Market Behavior Rules (including Rule 2), but encourages the Commission to amplify its continuing authority to take action to curb the exercise of market power in particular transactions in contexts not necessarily including fraud.[24]

18. Commenters advocating rescission of Rule 2 argue three main points. First, commenters argue that the Commission should not retain the foreseeability standard of proof of Rule 2 because of the clear Congressional intent in section 1283 of EPAct 2005, which directs the Commission to adopt a standard of proof based upon scienter.[25] Second, commenters supporting rescission argue that there should be only one definition or standard to define what constitutes market manipulation. Retaining two sets of proscriptions, they argue, could lead to regulatory uncertainty and confusion, and would be unduly discriminatory because of the dual standard applicable to market-based rate sellers of electricity while the remaining industry participants would be covered solely by the new standard of section 1c.2.[26] Third, the anti-manipulation regulations represent an improvement over Rule 2 because, among other things, the language of new section 1c.2 provides stakeholders with clarity of language not present in Rule 2, and similarly, the broad language of section 1c.2 means that any behavior forbidden by Rule 2 would also act as a fraud within the meaning of the anti-manipulation regulations.[27]

19. EEI disagrees with commenters who argue for retention of the Market Behavior Rules in market-based rate tariffs on the theory that they provide an additional check on unlawful exercise of market power.[28] To the contrary, EEI thinks the Commission has established an increasingly sophisticated screening process to identify and require mitigation of any potential market power a tariff applicant may possess, prior to granting or reauthorizing market-based rate authority, and has developed several other tools, including RTO market rules and tariffs, market monitor oversight, and OMOI enforcement capabilities, to prevent and remedy the exercise of market power.[29]

20. Some commenters supporting rescission of Rule 2, however, do so with the qualification that the specifically prohibited activities in Rule 2(a) through 2(d) (*i.e.* wash trades, transactions predicated on submitting false information, transactions creating and relieving artificial congestion, and collusion for the purpose of market manipulation) be retained to provide clearer guidance to market participants.[30] SUEZ supports rescission, but thinks the Commission should take steps to explain that it intends to retain the precedent that has

[15] 18 CFR 1c.2(a), 71 FR 4244, 4258 (2006).

[16] CEOB at 4–7; CAISO at 3–7; CPUC at 5–9; NASUCA at 5–10; NECPUC at 5–6; NJBPU at 5–7; NYISO at 7–12; PG&E at 7–12; PJMICC at 7–11; TDUS at 17–20.

[17] CAISO at 1–2, 8; CPUC at 4, 6–9; NASUCA at 5; NECPUC at 2, 6; NJBPU at 5–6; PJMICC at 3, 7–8, 10–11; TDUS (Reply) at 11–12.

[18] CPUC at 7–8; CEOB at 4; NASUCA at 5, 8; NECPUC at 6; PJMICC at 10.

[19] PG&E at 12; NYISO at 14; TDUS at 14.

[20] TDUS at 5.

[21] NYISO at 11.

[22] APPA/TAPS at 3, 8–12; ISO–NE (Reply) at 11; PJM at 4–5; TDUS at 2, 7.

[23] SMUD at 2–3.

[24] PJM at 1, 4–5.

[25] Ameren at 7; Cinergy at 7–8; EEI at 4–5, 8–9; EPSA at 6–7; PNMR at 8.

[26] Cinergy at 6–7; EEI at 5; PJM at 1–2.

[27] Ameren at 6, 9; Cinergy at 7.

[28] EEI (Reply) at 7–8.

[29] EEI (Reply) at 8.

[30] EEI at 6; Indicated Market Participants at 12–13; PNMR at 6–7; SCE at 4.

accumulated under the Market Behavior Rules.[31]

b. Commission Determination

21. The Commission finds it unnecessary to retain Rule 2. Congress prohibited market manipulation by any entity and defined manipulation to include the requirement of scienter.[32] It would be inconsistent with Congress' direction if foreseeability were retained as a lesser standard of proof for market manipulation perpetrated by public utility market-based rate sellers. To avoid the potential for uneven application of regulatory requirements based on whether an entity is a public utility under the FPA and a ''non-jurisdictional'' entity, or whether an entity is a public utility selling under market-based rate authority or selling at cost-based rates, the same standard of proof should apply to all entities and all jurisdictional sales for purposes of determining whether market manipulation occurred. It is not appropriate, as some commenters suggest, for the Commission to maintain a lesser standard of proof for only certain market participants or certain types of sales.

22. The Commission rejects comments that suggest Rule 2 has a purpose other than to prevent market manipulation, that is, also to curb market power or anti-competitive conduct that does not meet the deceptive conduct criteria for manipulation. Rule 2 focused on actions or transactions intended to manipulate market prices, conditions, or rules, not the existence or use of market power absent some manipulation. Market power, of course, can be used by a seller to manipulate markets; in such cases it is the act of manipulation—perpetrating a fraud or deceit of some kind—that is the violation of Rule 2 or of the new anti-manipulation rule.

23. Generally speaking, however, market power is a structural issue to be remedied, not by behavioral prohibitions, but by processes to identify and, where necessary, mitigate market power that a tariff applicant may possess or acquire. This occurs in the screening process before the Commission grants an application for market-based rate authority, on consideration of changes in the seller's status or operations, and in the triennial review of market-based rate authorization, all of which are designed to assure just and reasonable rates. In addition, the Commission requires RTOs and ISOs to have independent market monitors,[33] and the Office of Market Oversight and Investigations monitors market operations. When such monitoring detects market abuse or structural problems, they will be addressed under FPA sections 205 or 206 to assure that reliance on market mechanisms produces just and reasonable rates.

24. With respect to the suggestion that the specific proscribed behaviors in Market Behavior Rule 2(a)–(d) be retained, the Commission finds this unnecessary. As we stated in issuing the new anti-manipulation rule, the specifically prohibited actions in Rule 2 (*i.e.*, wash trades, transactions predicated on submitting false information, transactions creating and relieving artificial congestion, and collusion for the purpose of market manipulation) all are prohibited activities under new section 1c.2 of our regulations and are subject to sanctions and remedial action.[34] Furthermore, we recognize that fraud is a very fact-specific violation, the permutations of which are limited only by the imagination of the perpetrator. Therefore, no list of prohibited activities could be all-inclusive. The absence of a list of specific prohibited activities does not lessen the reach of the new anti-manipulation rule, nor are we foreclosing the possibility that we may need to amplify section 1c.2 as we gain experience with the new rule, just as the SEC has done.[35]

25. In short, rescission of Rule 2 is consistent with Congressional direction and will not dilute customer protection. If conduct occurs that is not the result of fraud or deceit but nonetheless results in unjust and unreasonable rates, a person may file a complaint at the Commission under FPA section 206, or the Commission on its own motion may institute a proceeding under section 206, to modify the rates that have become unjust and unreasonable. In many respects customers are better protected by section 1c.2's breadth and purposeful design as a broad ''catch all'' anti-fraud provision.[36]

2. Affirmative Defenses

a. Actions or Transactions Undertaken at the Direction of a Commission-approved ISO or RTO

i. Comments

26. Several commenters argue that actions undertaken at the direction of a Commission-approved ISO or RTO should have explicit safe harbor status because market participants should be able to rely on the directives of an ISO or RTO without fear of prosecution for market manipulation for following such provisions.[37] CEOB and PJM, however, caution that such an affirmative defense should not be allowed in circumstances where: (1) The market participant does not have ''clean hands'' in creating the situation that necessitated the directions of the ISO/RTO; (2) the rule/direction is general or ambiguous; or (3) there is any associated fraudulent conduct because a market seller should not be able to use the RTO as a shield for those activities not explicitly permitted by market rules or where the RTO did not specifically prohibit the behavior.[38] Similarly, SCE, informed by its experience during the California energy crisis of 2001–2002, argues that actions which were individually contemplated by ISO/RTO rules should not categorically be exempt from punishment should the Commission find that, in combination, intentional, unlawful market manipulation has nevertheless occurred.[39]

[31] SUEZ at 6, 10, referring to *Intertie Bidding in the California Independent System Operator's Supplemental Energy Market*, ''Order Authorizing Public Disclosure of Staff Report of Investigation,'' 112 FERC ¶ 61,333 (2005); *see generally* EPSA at 9–10, 13.

[32] In new section 222 of the FPA, Congress used the terms ''manipulative or deceptive device or contrivance'' and directed that they be given the same meaning as used in section 10b of the Securities Exchange Act of 1934. It is well settled that those terms require a showing of scienter, that is, an intent to deceive, manipulate or defraud. *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 201 (1976). *See* Order No. 670, 114 FERC ¶ 61,047 at P 52–53.

[33] The Commission issued a policy statement on market monitors which discussed, among other things, referrals by market monitors to the Commission when a market monitor finds actions by a market participant that may be a violation of the Market Behavior Rules. *Market Monitoring Units in Regional Transmission Organizations and Independent System Operators*, ''Policy Statement on Market Monitoring Units,'' 111 FERC ¶ 61,267 at P 6 and Appendix A (Protocols on Referrals). We clarify that this Policy Statement applies to potential violations of the new Order No. 670 anti-manipulation rule in lieu of Market Behavior Rule 2, and will apply to the requirements of Market Behavior Rules 1, 3, 4, 5, and 6 to the extent they are incorporated into other parts of the Commission's regulations.

[34] Order No. 670, 114 FERC ¶ 61,047 at P 59.

[35] After considerable experience with Rule 10b–5, upon which our new anti-manipulation rule is modeled, the SEC has expanded the original Rule 10b–5 to add a number of specific provisions describing prohibited conduct. *See* 17 CFR 240.10b–5–1 through 240.10b–5–14.

[36] *Aaron* v. *SEC*, 446 U.S. 680, 690 (1980); *see also Schreiber* v. *Burlington Northern, Inc.*, 472 U.S. 1, 6–7 (1985) (describing section 10(b) as a ''general prohibition of practices * * * artificially affecting market activity in order to mislead investors * * * .''); *Affiliated Ute Citizens of Utah* v. *United States*, 406 U.S. 128, 151–53 (1972) (noting that the repeated use of the word ''any'' in section 10(b) and SEC Rule 10b–5 denotes a congressional intent to have the provisions apply to a wide range of practices).

[37] Ameren at 8; CAISO at 11; EEI at 6; Indicated Market Participants at 11–12; NYISO at 16–17; PG&E at 14; SUEZ at 1, 7.

[38] CEOB at 7; PJM at 6.

[39] SCE at 4.

ii. Commission Determination

27. Comments that market participants should be able to rely on the directives of an ISO or RTO make a valid point. As the Commission stated in Order No. 670, if a market participant undertakes an action or transaction that is explicitly contemplated in Commission-approved rules and regulations, we will presume that the market participant is not in violation of section 1c.2. If a market participant undertakes an action or transaction at the direction of an ISO or RTO that is not approved by the Commission, the market participant can assert this as a defense for the action taken.[40] Of course, if a market participant acting with the requisite scienter has provided inaccurate or incomplete information to the ISO or RTO, and the ISO and RTO acts in reliance on the false or incomplete information, following such ISO or RTO directions is no defense to such manipulative conduct for that market participant. Just as we reject calls for inclusion of a list of prohibited conduct in section 1c.2, we similarly reject a list-type approach to defenses. Instead, we will evaluate all of the facts and circumstances of an allegation of market manipulation before deciding how to proceed.

b. Legitimate Business Purpose

i. Comments

28. Commenters are divided on whether the Commission should retain the ''legitimate business purpose'' provision of Rule 2. CEOB and CAISO oppose retention because in their view there is simply no manner in which activity taken with intent to defraud can constitute a legitimate business practice.[41] CPUC argues that no such ''good faith'' defense exists in the context of SEC Rule 10b–5.[42] NASUCA argues that the Commission should not keep only aspects of Rule 2 that are favorable to market-based rate sellers.[43] EEI, however, thinks the affirmative defense of legitimate business purpose was part of a generic definition of market manipulation that was vague and confusing to many in the industry, but it believes that the concept of legitimate business purpose should be maintained as an affirmative defense.[44] NYISO says it would be appropriate to continue the legitimate business purpose defense now specified in Rule 2 because this defense would ensure proper consideration of the economic, commercial and physical complexities of competitive energy markets, including such practices as valid arbitrage between real-time and forward markets.[45] EPSA argues that the legitimate business purpose affirmative defense should also be preserved given the intent standard required by EPAct 2005.[46] Similarly, Indicated Market Participants argue that a legitimate business purpose should be a complete defense to an allegation of market manipulation whether under Market Behavior Rule 2 or under the anti-manipulation rule.[47]

ii. Commission Determination

29. In promulgating section 1c.2, the Commission purposefully modeled its anti-manipulation rule after SEC Rule 10b–5 to provide stakeholders with as much regulatory certainty and clarity as possible, given the large body of precedent interpreting SEC Rule 10b–5.[48] SEC Rule 10b–5 does not include provisions for ''good faith'' defenses. However, in all cases, the intent behind and rationale for actions taken by an entity will be examined and taken into consideration as part of determining whether the actions were manipulative behavior. The reasons given by an entity for its actions are part of the overall facts and circumstances that will be weighed in deciding whether a violation of the new anti-manipulation regulation has occurred. Therefore, the Commission rejects calls for inclusion of a ''legitimate business purpose'' affirmative defense.

B. Remedies and Sanctions

1. Comments

30. A number of commenters arguing for retention of the Market Behavior Rules express concern that the Market Behavior Rules provide the Commission with remedies, such as disgorgement of unjust profits for tariff violations, that may not be available under the anti-manipulation regulations.[49] These commenters also contend that civil penalties may not be a sufficient deterrent and, regardless, such sanctions are paid to the United States Treasury and not to the damaged customers. NYISO seeks clarification on whether the Commission has discretion to use monies it receives in the form of civil penalties to compensate victims of market manipulation.[50]

31. Arguing for repeal of the Market Behavior Rules, EEI submits that, under new FPA section 222, disgorgement of profits proximately linked to well-defined acts of market manipulation is a remedy available to the Commission and applicable to all, and not limited to market-based rate sellers.[51]

2. Commission Determination

32. Concerns over the extent of the Commission's remedial powers are misplaced. The Market Behavior Rules Order addressed a concern, stemming from the abuses in Western markets in 2000–2001, that there were not clear rules to deal with abusive market conduct. By fashioning tariff rules prohibiting manipulation, we established a clear basis for ordering disgorgement of unjust profits, along with other remedial actions, in the event of violations of such rules.[52] With the issuance of Order No. 670 and the availability of significant civil monetary penalties for violations, the Commission now has a more complete set of enforcement tools—both rules and remedies and/or sanctions—to deal with market manipulation. The Commission will use these authorities as the facts and circumstances of each case indicate, as our discretion is at its zenith in determining an appropriate remedy for violations.[53] Accordingly, if companies subject to our jurisdiction violate the statutes, orders, rules, or regulations administered by the Commission, the Commission can order, among other things, disgorgement of unjust profits.[54]

[40] Order No. 670 at P 67.

[41] CEOB at 7; CAISO at 11–12.

[42] CPUC at 11.

[43] NASUCA at 20.

[44] EEI at 11.

[45] NYISO at 16–17.

[46] EPSA at 10, 13–14.

[47] Indicated Market Participants at 10–11.

[48] Order No. 670, 114 FERC ¶ 61,047 at P 30–31.

[49] APPA/TAPS at 3, 13; CEOB at 3; NASUCA at 5, 7–8, 11–13; NECPUC at 1, 3; NYISO at 10–13; PJMICC at 8–9; SMUD at 3; TDUS at 24–27, TDUS (Reply) at 14. ISO-NE, for instance, urges the Commission to clarify that, under new FPA section 222, we are not limited to imposing civil penalties in the event of market manipulation, but may also order disgorgement of profits or other economic benefits to be returned to ratepayers. ISO-NE (Reply) at 14–17.

[50] NYISO at 13.

[51] EEI (Reply) at 4–5, 12–14.

[52] *Market Behavior Rules Order*, 105 FERC ¶ 61,218 at P 149 (stating ''in approving these Market Behavior Rules and requiring sellers to be fully accountable for any unjust gains attributable to their violation, we do not foreclose our reliance on existing procedures or other remedial tools, as may be necessary, including generic rule changes or the approval of new market rules applicable to specific markets''). *See also Market Behavior Rules Order, order on reh'g*, 107 FERC ¶ 61,175 at P 129.

[53] *See Niagara Mohawk Power Corp.* v. *FERC*, 379 F.2d 153, 159 (DC Cir. 1967); *accord* 16 U.S.C. 825h (2000); *Mesa Petroleum Co.* v. *FERC*, 441 F.2d 182, 187–88 (DC Cir. 1971); *Gulf Oil Corporation* v. *FPC*, 563 F.2d 588, 608 (3rd Cir. 1977), *cert. denied* 434 U.S. 1062, *reh'g denied*, 435 U.S. 981 (1978); *Consolidated Gas Transmission Corp.* v. *FERC*, 771 F.2d 1536, 1549 (DC Cir. 1985).

[54] See, e.g., *Transcontinental Gas Pipe Line Corp.* v. *FERC*, 998 F.2d 1313, 1320 (5th Cir. 1993) (holding the remedy of disgorgement of ill-gotten profits for a violation of the Natural Gas Act ''well within [the Commission's] equitable powers'');

Continued

The Commission also has the option of conditioning, suspending, or revoking market-based rate authority, certificate authority, or blanket certificate authority.[55] Moreover, while section 206 of the FPA does not permit the Commission to establish just and reasonable rates prior to the refund effective date established under section 206, the Commission clearly has authority to order disgorgement of profits associated with an illegally charged rate, *i.e.*, a rate other than the rate on file or in violation of a Commission rule, order, regulation, or tariff on file.[56] Therefore, the Commission may use disgorgement of unjust profits where appropriate, including to remedy a violation of the new anti-manipulation regulations.

33. EPAct 2005 has enhanced the Commission's civil penalty authority.[57] Civil penalties, however, serve a different purpose from disgorgement or other equitable remedies. As we have said, the purpose of civil penalties is to ''encourage compliance with the law.'' [58] The purpose of disgorgement, on the other hand, is to remedy unjust enrichment. The Commission will choose from the full range of available remedies and penalties—revocation, suspension, or conditioning of authority, disgorgement, and civil penalties—according to the nature of the violation and all of the facts presented. The imposition of both remedies and civil penalties in tandem may be necessary under certain circumstances to reach a fair result.[59] These are separate powers available to the Commission, as they arise under different provisions of the FPA.[60]

34. We note that other agencies also impose civil penalties and equitable remedies in tandem. For example, the SEC can require an accounting and disgorgement to investors for losses and also impose penalties for the misconduct, and the CFTC can order restitution or obtain disgorgement and also impose fines for violations.[61] Similarly, in the environmental context, the government is free to seek an equitable remedy in addition to, or independent of, civil penalties.[62] When we impose disgorgement as a remedy, we have broad discretion in allocating monies to those injured by the violations. As we noted in our *Policy Statement on Enforcement*, each case depends on the circumstances presented, and the Commission will not predetermine which remedy and/or sanction authorities it will use.[63]

C. Market Behavior Rules 1, 3, 4, 5, and 6

35. In the November 21 Order, we indicated that some provisions of the Market Behavior Rules, such as Rules 1 and 6, restate existing obligations, and that other parts of the Market Behavior Rules, such as Rule 3 and the first part of Rule 4, would be covered by the new anti-manipulation rule. Other rules, we noted, should be incorporated into other regulatory requirements. [64] We indicated that action on the Market Behavior Rules would be taken in such a way as to assure there would be no gap in regulatory requirements.

1. Comments

36. Some commenters addressed Rule 1, arguing that a requirement to comply with organized market rules should be retained because these markets may not have adequate remedies for violations of their rules, or that such rules can be violated without fraudulent behavior.[65] NASUCA argues that Rule 1 provides a disgorgement remedy when a seller's conduct violates the tariff rules of another utility (the RTO).[66] On the other hand, Indicated Market Participants support elimination of Rule 1, but ask the Commission to make clear that compliance with the requirements of an organized market is an affirmative defense to a claim of manipulation.[67]

37. Other commenters addressed Rule 3, suggesting that the requirement of providing accurate and factual information in communications is broader than prohibiting manipulation. NASUCA believes that Rule 3 covers misinformation that could be harmful but that does not amount to intentional misrepresentation, such as negligent transaction reporting that could manipulate index prices.[68] NYISO agrees and urges the Commission to retain a broad requirement for accurate and complete information provided to RTOs, ISOs, and the Commission.[69] PJM likewise says that Rule 3 is needed to impose an affirmative duty to provide accurate information even in circumstances involving no intent to

Coastal Oil & Gas Corp. v. *FERC*, 782 F.2d 1249, 1253 (5th Cir. 1986) (profits from illegal intrastate sales of gas in excess of a just and reasonable rate may be subject to disgorgement).

[55] *See, e.g., Enron Power Marketing, Inc.*, 103 FERC ¶ 61,343 at P 52 (2003); *Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices*, 99 FERC ¶ 61,272 at 62,154 (2002); *San Diego Gas & Electric Company*, 95 FERC ¶ 61,418 at 62,548, 62,565, *order on reh'g*, 97 FERC ¶ 61,275 (2001), *order on reh'g*, 99 FERC ¶ 61,160 (2002); *accord Enron Power Marketing, Inc.*, ''Order Proposing Revocation of Market-Based Rate Authority and Termination of Blanket Marketing Certificates,'' 102 FERC ¶ 61,316 at P 8 and n.10 (2003), and cases cited therein.

[56] *Transcontinental Gas Pipe Line Corp.*, 998 F.2d 1313 at 1320; *see also Dominion Resources, Inc. et al.*, 108 FERC ¶ 61,110 (2004) (disgorgement for violations of the Commission's Standards of Conduct); *El Paso Electric Company*, 105 FERC ¶ 61,131 at P35 (2003) (finding disgorgement an ''appropriate and proportionate remedy'' for a violation of the Federal Power Act); *Kinder Morgan Interstate Gas Transmission LLC*, 90 FERC ¶ 61,310 (2000) (disgorgement ordered to remedy preferential discounts to affiliates); *Stowers Oil & Gas Company*, 44 FERC ¶ 61,128 (1988), *reh. denied in part and granted in part*, 48 FERC ¶ 61,230 at 61,817 (1989), *appeal dismissed sub nom. Northern Natural Gas Co.* v. *FERC*, Case Nos. 89–1512 *et al.*, (DC Cir. 1992) (Commission ''properly exercised its broad equitable power'' in requiring disgorgement of unjust enrichment resulting from illegal sales of gas).

[57] EPAct 2005 expanded the Commission's FPA civil penalty authority to encompass violations of all provisions of FPA part II (EPAct 2005 section 1284(e)(1), amending FPA section 316A(a)), and established the maximum civil penalty the Commission can assess under FPA part II as $1 million per day per violation. EPAct 2005 section 1284(e)(2), amending FPA section 316A(b).

[58] *Procedures for the Assessment of Civil Penalties under Section 31 of the Federal Power Act*, Order No. 502, 53 FR 32035 (Aug. 23, 1988), FERC Stats. & Regs. ¶ 30,828 (Aug. 17, 1988).

[59] *Policy Statement on Enforcement*, 113 FERC ¶ 61,068 at P 12 (2005) (''Our enhanced civil penalty authority will operate in tandem with our existing authority to require disgorgement of unjust profits obtained through misconduct and/or to condition, suspend, or revoke certificate authority or other authorizations, such as market-based rate authority for sellers of electric energy'').

[60] The authority to order disgorgement and other equitable remedies arises under the ''necessary or appropriate'' powers of section 309 of the FPA. *Towns of Concord* v. *FERC*, 955 F.2d 67, 73 (DC Cir. 1992). The authority to impose civil penalties arises under section 316A of the FPA as amended by EPAct 2005.

[61] See sections 21–21C of the Securities Exchange Act, 15 U.S.C. 78u–78u–3 (2000); *SEC* v. *Happ*, 392 F.3d 12, 31–33 (1st Cir. 2004) (upholding SEC's imposition of both disgorgement and a civil penalty equal to the amount of disgorgement; further, the court noted that the wrongdoer bears the risk of uncertainty in calculating the amount of disgorgement). The CFTC can revoke or suspend a registration, suspend or prohibit certain trading, issue cease and desist orders, order restitution, and seek equitable remedies (injunction, rescission, or disgorgement), all in addition to imposing a monetary fine. 7 U.S.C. 13a and 13b (2000); Comm. Fut. L. Rep. (CCH) ¶ 26,265 at 42,247 (1994).

[62] *See, e.g., Tull* v. *United States*, 481 U.S. 412, 425 (1987) (holding that the Clean Water Act does not intertwine equitable relief with the imposition of civil penalties; instead, each kind of relief is separately authorized in distinct statutory provisions).

[63] *Policy Statement on Enforcement*, 113 FERC ¶ 61,068 at P 13 (2005) (''[W]e will not prescribe specific penalties or develop formulas for different violations. It is important that we retain the discretion and flexibility to address each case on its merits, and to fashion remedies appropriate to the facts presented, including any mitigating factors.'').

[64] November 21 Order at P 19–23.

[65] APPA/TAPS at 3; CAISO at 10; CPUC at 3, 5–6; NYISO at 14–15.

[66] NASUCA at 6–7. NASUCA notes that disgorgement is available as a remedy when a seller violates its own tariff but, absent Rule 1, it is not clear that the disgorgement remedy (as opposed to penalties that may apply under the RTO tariff) would be available for a seller's violation of RTO tariff provisions or rules.

[67] Indicated Market Participants at 15–16.

[68] NASUCA at 21.

[69] NYISO at 19.

deceive.[70] CAISO argues that Rule 3 prohibits submitting any false information, not just material information.[71] SCE argues that Rule 3 is a superior formulation to the anti-manipulation rule and urges that it be used instead of the Rule 10b–5 language.[72]

38. Some commenters believe Rule 4 is unnecessary, arguing that false reporting to an index publisher would be a violation of the new anti-manipulation rule. EPSA, for instance, urges the Commission to repeal Rule 4 but reaffirm the applicability of the Policy Statement on price indices.[73] Ameren, on the other hand, proposes that Rule 4 be added to the anti-manipulation regulations to explicitly require any entity to provide accurate and factual information to price index publishers.[74] CAISO believes that it is necessary to maintain a separate requirement in Rule 4 to report transaction information accurately to the extent a seller reports such information to price index publishers, because the accuracy of the information published should not depend upon whether the provider of the information had an intent to defraud.[75] EEI sees value in the guidance provided by Rule 4 and suggests that it be adopted as a Commission rule, thereby applying to all market participants.[76] TDUS calls for the retention of requirements to report changes in reporting status.[77]

39. There was little controversy over Rule 5, as parties generally recommended that the record retention requirement be retained. CAISO says the data retention requirement is crucial to the Commission's enforcement powers.[78] The Indicated Market Participants say that the record retention requirement more appropriately belongs in the Commission's general regulations so that it will be applicable to more than just market-base rate sellers.[79] EEI supports keeping the three-year retention requirement, noting that otherwise the default ten-year period of part 125 of the Commission's regulations might be deemed to apply.[80] NASUCA, however, is concerned that moving the record retention requirement to another rule might limit ''remedies for the benefit of consumers when records are not kept.''[81]

40. There also was general agreement that Rule 6, for the most part, restates requirements independently applicable to market-based rate sellers under each seller's code of conduct or by the Standards of Conduct in Part 358 of the Commission's regulations. PJM, EEI, and EPSA think Rule 6 may be rescinded as duplicative and unnecessary.[82] APPA/TAPS, however, believes that Rule 6 should be retained because market-based rate sellers' codes of conduct and the Standards of Conduct do not identify remedies for violations, thus potentially leaving the Commission without an appropriate remedy.[83] SCE, on the other hand, expresses concern that aspects of Rule 6, particularly its prohibition of collusion, may not be captured by the proposed anti-manipulation regulations because there are collusive activities that do not amount to fraud.[84]

2. Commission Determination

41. The Commission already indicated that certain requirements of the Market Behavior Rules would be recast in other Commission rules or regulations. Upon consideration of the comments, we have determined that there is benefit to incorporating most of the non-manipulation provisions of the Market Behavior Rules into the Commission's regulations, and we do so contemporaneously in the Market Behavior Rules Codification Order. While the basis for incorporating Rules 1, 3, 4, and 5 in our regulations is discussed there, we note the value provided by these rules briefly below. We also discuss the reason for rescinding Rule 6 as unnecessary.

42. Market Behavior Rule 1 is applicable in organized RTO or ISO markets. While it is essentially a restatement of existing obligations that are in the tariffs of the RTOs and ISOs, applicable to market participants through their participant agreements, there is value to customers in reinforcing the obligation to operate in accordance with Commission-approved rules and regulations by placing this expectation in the Commission's regulations. Accordingly, the Market Behavior Rules Codification Order includes Market Behavior Rule 1 in the Commission's regulations.

43. Market Behavior Rule 3 requires accurate and factual communications with the Commission, Commission-approved market monitors, Commission-approved RTOs and ISOs, or jurisdictional transmission providers. In the November 21 Order we commented that this requirement would be covered by the new anti-manipulation rule, and it could be confusing to have a duplicate rule regarding accurate and factual information.[85] As commenters point out, however, this rule is somewhat broader than the new anti-manipulation rule, as it applies to all communications, not just those that are material in furtherance of a fraudulent or deceptive scheme. Accordingly, we believe the substance of Rule 3 can be incorporated in our regulations without duplicating or causing undue confusion with respect to the new anti-manipulation rule.

44. Market Behavior Rule 4 requires sellers to provide accurate data to price index publishers, if the seller is reporting transactions to such publishers, and includes a requirement that sellers notify the Commission of their price reporting status and of any changes in that status. While a deliberate false report would be a violation of the new anti-manipulation rule, there is no confusion in stating this in our regulations and thereby reinforcing the importance of the Price Index Policy Statement. The second aspect of Market Behavior Rule 4, notification to the Commission of the market participant's price reporting status and of any changes in that status, is not otherwise provided for. This is a simple and non-burdensome way for the Commission to be informed of the prevalence of price reporting to price index developers, and is included in the Market Behavior Rules Codification Order.[86]

45. Market Behavior Rule 5 requires sellers to maintain certain records for a period of three years to reconstruct prices charged for electricity and related products. This is different from the record retention requirements in part

[70] PJM at 7–8; TDUS at 21.

[71] CAISO at 12.

[72] SCE at 6; *see also* Ameren at 11; PG&E at 14.

[73] EPSA at 11–12, 15–16. *See also* SUEZ at 10–11; Indicated Market Participants at 16–19.

[74] Ameren at 11; SCE at 6.

[75] CAISO at 12.

[76] EEI at 12–13.

[77] TDUS at 27.

[78] CAISO at 10. *See also* CPUC at 9; TDUS at 27.

[79] Indicated Market Participants at 17–18.

[80] EEI at 13.

[81] NASUCA at 7.

[82] PJM at 8; EEI at 13; EPSA at 16.

[83] APPA/TAPS at 13. APPA/TAPS agrees that Rule 6 does not itself impose any new obligation, but notes that the Market Behavior Rules also provide for remedies for rule violations. *Id.*

[84] SCE at 7. SCE is concerned that market participants could collude, through a combination of lawful means, to accomplish an unlawful purpose. *Id.*

[85] November 21 Order at P 19.

[86] As is discussed in the Market Behavior Rules Codification Order, codification of the notification requirement does not mean that sellers who have previously provided notifications pursuant to Rule 4 now must repeat that notification. Only sellers who have not previously provided a notification of their price reporting status, and sellers who have a change in their reporting status, are required to notify the Commission. In other words, codification of Rule 4 does not increase the burden of, or requirements for, notification in any way.

125 of our regulations, which largely are related to cost-of-service rate requirements.[87] Given the importance of records related to charges under market-based rate authority to any investigation of possible wrongdoing, a separate record retention requirement specifically for market-based transactions is necessary. We include the Rule 5 record retention requirement in the Market Behavior Rules Codification Order.[88]

46. Market Behavior Rule 6 requires adherence to a market-based rate seller's code of conduct and to the Order No. 2004 Standards of Conduct, and prohibits collusion to violate codes of conduct or the Standards of Conduct. The Standards of Conduct are already in our regulations. Many market-based rate sellers have a code of conduct in their tariff as a result of the authorization granted by the Commission to make market-based rate sales.[89] As for collusion, to the extent a seller colludes to violate either a code of conduct or the Standards of Conduct, the collusion would be a violation of the new anti-manipulation rule. In light of these facts, we find it unnecessary to codify Rule 6. Accordingly, we will rescind Market Behavior Rule 6 effective upon publication of this order in the **Federal Register**.

D. Miscellaneous Issues

1. The Commission Can Rescind the Market Behavior Rules in a Section 206 Order

a. Comments

47. A few commenters advocating retention of the Market Behavior Rules argue that the Commission has not found the Market Behavior Rules unjust and unreasonable. NASUCA, PG&E, and PJMICC contend that such a finding is a necessary prerequisite to acting under FPA section 206 to remove the Market Behavior Rules from market-based tariffs and authorizations. These commenters contend that there have been no changed circumstances warranting rescission of the Market Behavior Rules.[90] Other commenters, however, argue that it is unduly discriminatory, confusing, and duplicative to retain the Market Behavior Rules given the implementation of the new anti-manipulation rule applicable to all entities, not just market-based rate sellers.[91]

b. Commission Determination

48. The Commission is acting within the scope of its authority under section 206 of the FPA in rescinding the Market Behavior Rules 2 and 6. Although the Commission in most circumstances would need to find that existing rates, terms or conditions are unjust, unreasonable, unduly discriminatory or preferential in order to modify them under section 206, here such a finding is not necessary because, as discussed in greater detail below, we are basing our changes to public utility tariffs on the change in law in EPAct 2005 and the incorporation of substitute anti-manipulation provisions in our regulations. Additionally, were we not to modify public utility tariffs to delete Market Behavior Rule 2, public utilities would be subject to two differing standards for manipulative practices while other market participants would be subject to one standard for manipulative practices. We do not believe this non-comparable treatment is justified.

49. The Market Behavior Rules were based upon the Commission's findings in 2003 that market-based rate sellers' existing tariffs were unjust and unreasonable without provisions to prohibit market manipulation.[92] Since that time, circumstances have changed significantly with enactment of EPAct 2005. Congress has provided the Commission with an anti-manipulation statute and expressly required that manipulation include the requirement of scienter. Consistent with this Congressional mandate, the Commission has adopted a comprehensive new rule prohibiting energy market manipulation.

50. The central reason for adopting the Market Behavior Rules in 2003 was the absence of any rules or regulations concerning market manipulation. That is no longer the case. Given the adoption of implementing regulations for the Commission's new statutory anti-manipulation authority, it would be inappropriate to maintain a differently worded tariff rule barring manipulation, that is, a rule that may not fully comport with Congressional intent. There should not be any inconsistency or conflict between two prohibitions governing the same conduct. The protection from manipulation of wholesale energy markets needed for tariffs to be just and reasonable is still in effect, but now through a rule of general applicability governing all entities, not just market-based rate sellers. Circumstances have changed. The protection needed to assure that market-based rate transactions are just and reasonable remains, but in a new regulation consistent with Congressional direction. The Commission thus has retained important protections for wholesale energy markets, but has done so in a way that reinforces regulatory certainty.

51. Likewise, there is no barrier to removal of Market Behavior Rules 1, 3, 4, 5, and 6. Rules 1, 3, 4, and 5 will remain in effect in another form, as we are adopting the substantive provisions of these rules in the Commission's regulations. To the extent these provisions are incorporated elsewhere, there is no substantive change and therefore no need to address whether these behavior rules are no longer just and reasonable. Finally, there is no barrier to rescinding Market Behavior Rule 6. As discussed, this rule repeats existing requirements to follow applicable codes of conduct and the Standards of Conduct in the Commission's regulations, and any collusion to violate these requirements would be in violation of the new anti-manipulation rule. There is no substantive change in regulatory requirements.

2. Time Limits on Complaints

52. A few commenters ask the Commission to retain the 90-day requirement of the Market Behavior Rules' remedies and complaint procedures.[93] EEI says these are important provisions that should be preserved in the new anti-manipulation rule.[94] Similarly, EPSA argues that

[87] 18 CFR Part 125 (2005).

[88] Order No. 670, 114 FERC ¶ 61,047 at P 62–63. In a Notice of Proposed Rulemaking in Docket No. RM06–14–000, issued contemporaneously herewith, we propose to extend the record retention period to five years. We encourage sellers to take the proposed change into account in their record retention policies.

[89] To safeguard against affiliate abuse, the Commission requires affiliates of public utilities, when they request market-based rate authority, to submit a code of conduct to govern their relationship with the affiliated utility. *See, e.g., Potomac Electric Power Company*, 93 FERC ¶ 61,240 at 61,782 (2000); *Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062–63 (1994). Not all market-based rate sellers have codes of conduct. In addition, the Commission may waive the code of conduct requirement where there are no captive customers and, therefore, no potential for affiliate abuse. *Alcoa, Inc.* 88 FERC ¶ 61,045 at 61,119 (1999).

[90] NASUCA at 14; PG&E at 4, 7; PJMICC at 6–7.

[91] EEI (reply) at 15; Cinergy at 4. EEI also argues that the Commission has ample evidence to find that retaining the Market Behavior Rules in market-based rate tariffs would be unduly discriminatory and, therefore, unjust and unreasonable. EEI (reply) at 15.

[92] Market Behavior Rules Order, 107 FERC ¶ 61,175 at P 162; *order on reh'g*, 107 FERC ¶ 61,175 at P 161.

[93] In Appendix B to the Market Behavior Rules Order, the Commission required that complaints alleging a violation be filed within 90 days of the end of the calendar quarter in which a transaction occurred or, if the party could not then know of the alleged violation, 90 days from when the party should have known of the violation.

[94] EEI at 7.

absence of a 90-day limit on bringing complaints will cause regulatory uncertainty and present significant cost and risks to market participants.[95] Because the Market Behavior Rules are being rescinded, the 90-day time limit will no longer apply. In Order No. 670, we noted that a five-year statute of limitations is applicable to the imposition of civil penalties, and specifically rejected requests to retain the 90-day period used for the Market Behavior Rules.[96] Consistent with the discussion of this issue in Order No. 670, we reject requests to retain the 90-day requirement and rescind Appendix B of the Market Behavior Rules Order.

3. Additional Comments

53. A few parties requested an additional opportunity to comment once the Commission has finalized the proposed new anti-manipulation rule. The CEOB, for instance, asked that we provide the final language of the new anti-manipulation rule, then permit another round of comments in this proceeding on the appropriate scope and nature of changes to the Market Behavior Rules.[97] Similarly, SCE asks the Commission to institute a comprehensive, omnibus proceeding to adopt a new regulatory regime and, as appropriate, eliminate the current Market Behavior Rules.[98] This is not necessary. Order No. 670 adopted the proposed anti-manipulation rule with no substantive changes. As a result, comments predicated on the proposed anti-manipulation rule remain valid, and there is no need to have yet another round of comments on proposed changes to the Market Behavior Rules.

III. Conclusion

54. The Market Behavior Rules played a beneficial role as the Commission's oversight of wholesale energy markets continued to evolve. With the enactment of specific anti-manipulation authority in EPAct 2005, however, the time has come to shift our regulatory tools to focus on the anti-manipulation authority we now have under new FPA section 222 and the new rule in part 1c of our regulations. This will allow us to continue to protect customers with respect to manipulation by any entity, but in a manner consistent with Congressional guidance. The Commission will continue to monitor wholesale markets as they evolve and will consider changes in its regulations as may be necessary to assure that wholesale markets are well-functioning and result in just and reasonable energy prices. With respect to the other provisions of the Market Behavior Rules, the substantive aspects of these Rules are being codified in our regulations and being made applicable to market-based rate sellers.

The Commission Orders

(A) Market Behavior Rules 2 and 6 and Appendix B of the Market Behavior Rules Order are hereby rescinded, effective upon publication of this order in the **Federal Register**. As discussed in the body of this order, Market Behavior Rules 1, 3, 4, and 5 are removed from sellers' market-based rate tariffs as of the date they are codified in the Commission's regulations under the Federal Power Act.

(B) Market-based rate sellers are hereby notified that they need not refile or amend their tariffs with respect to the rescission and removal of the Market Behavior Rules, unless we direct otherwise in the future. In the absence of any such direction, at such time as sellers make any amendments to their market-based rate tariffs or seek continued authorization to sell at market-based rates (*e.g.*, in their three-year update filings), sellers shall at that time remove the Market Behavior Rules from their tariffs. Notwithstanding this, as of the date this order is published in the **Federal Register**, Market Behavior Rules 2 and 6 will be of no force or effect in sellers' tariffs, and Market Behavior Rules 1, 3, 4, and 5 will be of no force and effect in seller's tariffs as of the effective date of the Market Behavior Rules Codification Order.

(C) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Magalie R. Salas,

Secretary.

Appendix—List of Parties Filing Comments and Reply Comments and Acronyms

Ameren Services Company (Ameren).
American Public Power Association and the Transmission Access Policy Study Group (APPA/TAPS).
California Electricity Oversight Board (CEOB).
California ISO (CAISO).
California Public Utilities Commission (CPUC).**
Cinergy Services, Inc. and Cinergy Marketing & Trading, LP (Cinergy).
Constellation Energy Group Inc., *et al.* (Indicated Market Participants).
Edison Electric Institute (EEI).**
Electric Power Supply Association (EPSA).
ISO New England (ISO–NE).*
National Association of State Utility Consumer Advocates (NASUCA).
New England Conf. of Public Utilities Commissioners and Vermont Department of Public Service (NECPUC).
New Jersey Board of Public Utilities (NJBPU).
New York Independent System Operator, Inc. (NYISO).
Pacific Gas and Electric Company (PG&E).
PJM Industrial Customer Coalition (PJMICC).
PJM Interconnection, L.L.C. (PJM).
PNM Resources (PNMR).
Sacramento Municipal Utility District (SMUD).
Southern California Edison Company (SCE).
SUEZ Energy North America, Inc. (SUEZ).
Transmission Dependent Utility Systems (TDUS).**

* Entities filing reply comments only.
** Entities filing reply comments in addition to initial comments.

[FR Doc. 06–1720 Filed 2–24–06; 8:45 am]

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[95] ESPA at 8.
[96] Order No. 670, 114 FERC ¶ 61,047 at P 62–63.
[97] CEOB at 6.
[98] SCE at 3, 9.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11858–002, California]

Elsinore Municipal Water District and the Nevada Hydro Company, Inc.; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Lake Elsinore Advanced Pumped Storage Project

February 17, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the proposed Lake Elsinore Advanced Pumped Storage Project (FERC No. 11858), located on Lake Elsinore and San Juan Creek, in the Town of Lake Elsinore, Riverside County, California, and has prepared a Draft Environmental Impact Statement (draft EIS) for the project.

In the draft EIS, Commission staff evaluate the co-applicant's proposal and the alternatives for licensing the proposed project. The draft EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicants, and Commission staff.

Comments should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All comments must be filed by April 25, 2006, and should reference Project No. 11858–002. Comments may be filed electronically via the Internet in lieu of

paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site at *http://www.ferc.gov* under the eLibrary link.

The Commission staff will consider comments made on the draft EIS in preparing a final EIS for the project, which we expect to issue in July of this year. Before the Commission makes a licensing decision, it will take into account all concerns relevant to the public interest. The final EIS will be part of the record from which the Commission will make its decision.

Copies of the draft EIS are available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The draft EIS also may be viewed on the Internet at *http://www.ferc.gov* under the eLibrary link. Please call (202) 502–8822 for assistance.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Jim Fargo at (202) 502–6095 or at *james.fargo@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–2704 Filed 2–24–06; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2183–035—Oklahoma]

Grand River Dam Authority; Notice of Availability of Environmental Assessment

February 17, 2006.

In accordance with the National Environmental Policy Act of 1969, as amended, and Federal Energy Regulatory Commission (FERC or Commission) regulations (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a new license for the Markham Ferry Project (FERC No. 2183–035), located on the Grand River in Mayes County, Oklahoma, and has prepared an environmental assessment (EA). The EA contains the staff's analysis of the potential environmental effects of relicensing the project and concludes that issuing a new license, with appropriate environmental measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA also may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments on the EA should be filed within 30 days of the date of this notice and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1-A, Washington, DC 20426. Please reference ''Markham Ferry Project, FERC Project No. 2183–035'' on all comments. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. For further information, contact John Ramer at (202) 502–8969.

Magalie R. Salas,

Secretary.

[FR Doc. E6–2706 Filed 2–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2114–116]

Public Utility District No. 2 of Grant County, Washington (Grant PUD); Notice of Settlement Agreement and Soliciting Comments

February 17, 2006.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* The Priest Rapids Salmon and Steelhead Settlement Agreement.

b. *Project No.:* P–2114–116.

c. *Date Filed:* February 10, 2006.

d. *Applicant:* Public Utility District No. 2 of Grant County, Washington (Grant PUD).

e. *Name of Project:* Priest Rapids Hydroelectric Project.

f. *Location:* On the mid-Columbia River, near the city of Ellensburg, in Grant, Yakima, Kittitas, Douglas, Benton, and Chelan Counties, Washington.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* William J. Madden, Jr., Attorney, Winston & Strawn LLP, 1700 K Street, NW., Washington, DC 20006, (202) 282–5000.

i. *FERC Contact:* Charles Hall, (202) 502–6853, *charles.hall@ferc.gov.*

j. *Deadline for Filing Comments:* March 8, 2006. Reply comments: March 20, 2006.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. Grant PUD filed the settlement agreement on behalf of themselves and NOAA Fisheries; U.S. Fish and Wildlife Service; Washington Department of Fish and Wildlife; and the Confederated Tribes of the Colville Reservation. The purpose of the settlement agreement is to resolve among the signatories issues regarding the relicensing of the Priest Rapids Hydroelectric Project. The signatories have agreed that the settlement agreement is fair and reasonable and in the public interest. On behalf of the signatories, Grant PUD requests that the Commission approve the settlement agreement and adopt it as part of a new license without material modification.

l. A copy of the settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY (202) 502–8659. A copy is also available

for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E6–2705 Filed 2–24–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at a Meeting of PJM Interconnection, L.L.C.

February 17, 2006.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meeting noted below of the PJM Interconnection, L.L.C. The attendance by staff is part of the Commission's ongoing outreach efforts.

Regional Planning Process Working Group (RPPWG), February 24, 2006, 10 a.m.–3 p.m. (EST), Spencer Hotel, 700 King Street, Wilmington, DE 19801.

The discussion may address matters at issue in the following proceedings:

Docket Nos. ER05–1410 and EL05–148, PJM Interconnection, L.L.C.

Docket No. ER06–456, PJM Interconnection, L.L.C.

Docket No. EL06–50, American Electric Power Service Corporation.

The meeting is open to the public.

For additional information, contact Daniel Nowak, Office of Energy Markets and Reliability at 202–502–6607 or by e-mail at *daniel.nowak@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–2703 Filed 2–24–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8036–8]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Citizens Advisory Committee (CAC).

DATES: The meeting will be held in conjunction with the Gulf of Mexico Summit on Tuesday, March 28, 2006, from 8:30 p.m. to 6 p.m.; Wednesday, March 29, 2006, from 8 a.m. to 6 p.m., and Thursday, March 30, 2006, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Omni-Bayfront Hotel, 900 North Shoreline Boulevard, Corpus Christi, TX 78401, (361) 887–1600, *http://www.omnihotels.com.*

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: The proposed agenda includes the following topics: Hurricane Recovery; Coastal Growth and Development; Economic Vitality; Habitat Alterations; Public Health; and Collaborative Regional Governance.

The meeting is open to the public.

Dated: February 17, 2006.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. E6–2728 Filed 2–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8037–3]

RIN 2040–AB75

Meeting of the National Drinking Water Advisory Council

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given of the forthcoming conference call meeting of the National Drinking Water Advisory Council (Council), established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*). The Council will listen to a report from the NDWAC's working group on Public Education Requirements of the Lead and Copper Rule. The Council will determine whether it will make specific recommendations to EPA relating to the report from the working group.

DATES: The Council meeting will be held on March 10, 2006, from 1 p.m. to 3 p.m., Eastern Standard Time.

ADDRESSES: Council members teleconference into Room 2123 of the EPA East Building, which is physically located at 1201 Constitution Avenue, NW., Washington, DC. A limited number of additional phone lines may be available for members of the public that are outside of the Washington DC metropolitan commuting area and are unable to attend in person. Any additional teleconferencing lines that are available will be reserved on a first-come, first-serve basis.

FOR FURTHER INFORMATION CONTACT: Members of the public that would like to attend the meeting, present an oral statement, submit a written statement in advance, or make arrangements to teleconference call into the meeting should contact Elizabeth McDermott by March 8, 2006. Ms. McDermott can be reached at (202) 564–1603; by e-mail at *mcdermott.elizabeth@epa.gov*, or by regular mail at U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (M/C 4606M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The Council encourages the public's input and will allocate 30 minutes for this purpose. To ensure adequate time for public involvement, oral statements will be limited to five minutes, and it is preferred that only one person present the statement on behalf of a group or organization. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Dated: February 21, 2006.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E6–2739 Filed 2–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8036–4]

Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2004

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and request for comments.

SUMMARY: The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2004 is available for public review. Annual U.S. emissions for the period of time from 1990–2004 are summarized and presented by source category and sector. The inventory contains estimates of carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF_6) emissions. The inventory also includes estimates of carbon sequestration in U.S. forests. The technical approach used in this report to estimate emissions and sinks for greenhouse gases is consistent with the methodologies recommended by the Intergovernmental Panel on Climate Change (IPCC) and reported in a format consistent with the United Nations Framework Convention on Climate Change (UNFCCC) reporting guidelines. The Inventory of U.S. Greenhouse Gas Emissions and Sinks is the latest in a series of annual U.S. submissions to the Secretariat of the UNFCCC.

DATES: To ensure your comments are considered for the final version of the document, please submit your comments within 30 days of the appearance of this notice. However, comments received after that date will still be welcomed and be considered for the next edition of this report.

ADDRESSES: Comments should be submitted to Mr. Leif Hockstad at: Environmental Protection Agency, Climate Change Division (6207J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, Fax: (202) 343–2358. You are welcome and encouraged to send an email with your comments to *hockstad.leif@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Leif Hockstad, Environmental Protection Agency, Office of Air and Radiation, Office of Atmospheric Programs, Climate Change Division, (202) 343–9432, *hockstad.leif@epa.gov.*

SUPPLEMENTARY INFORMATION: The draft report can be obtained by visiting the U.S. EPA's global warming site at *http://www.epa.gov/globalwarming/publications/emissions/.*

Dated: February 16, 2006.

Elizabeth Craig,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. E6–2734 Filed 2–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8037–7]

Proposed Agreement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act for the Western Minerals Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment on proposed CERCLA section 122(h)(1) agreement with Electramatic, Inc. for the Western Minerals Superfund Site.

SUMMARY: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (''CERCLA''), notification is hereby given of a proposed administrative agreement concerning the Western Minerals hazardous waste site in Minneapolis, Minnesota (the ''Site''). EPA proposes to enter into this agreement under the authority of section 122(h) and 107 of CERCLA. The proposed agreement has been executed by Electramatic, Inc. (the ''Settling Party'').

Under the proposed agreement, the Settling party will pay $15,000 to the Hazardous Substances Superfund to resolve EPA's claims against it for response costs incurred by EPA at the Site. EPA incurred response costs conducting removal actions to investigate and mitigate potential imminent and substantial endangerments to human health or the environment presented or threatened by hazardous substances present at the Site.

For thirty days following the date of publication of this notice, the Environmental Protection Agency will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before March 29, 2006.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and should refer to: In the Matter of Western Minerals Industrial Site, Chicago, Illinois, U.S. EPA Docket No. V–W–05C–825.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 886–0562.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Richard C. Karl,

Director, Superfund Division, Region 5.

[FR Doc. E6–2738 Filed 2–24–06; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

Date and Time: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 9, 2006, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- February 9, 2006 (Open).

B. Reports

- Farm Credit System Building Association Quarterly Report.

Dated: February 21, 2006.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 06–1840 Filed 2–23–06; 11:33 am]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 14, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Matthew J. and Gayle M. Ahlers, and the Matthew J. Ahlers Family, (consisting of Matthew, Gayle, Michael, Carolyn, Emily, Jeffery, and Matthew Jr. Ahlers), all of Le Mars, Iowa, to acquire additional voting shares of Primebank, Inc., Le Mars, Iowa, and thereby indirectly acquire voting shares of Primebank, Le Mars, Iowa.

Board of Governors of the Federal Reserve System, February 22, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–2712 Filed 2–24–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 24, 2006.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. First M&F Corporation, Kosciusko, Mississippi; to merge with Crockett County Bancshares, Inc., Bells, Tennessee, and thereby indirectly acquire Bells Banking Company, Bells, Tennessee.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Sundance State Bank Profit Sharing and Employee Stock Ownership Plan and Trust, Sundance, Wyoming; to acquire an additional .67 percent, for a total of 26.73 percent, of the voting shares of Sundance Bankshares, Inc., and thereby indirectly acquire additional voting shares of Sundance State Bank, all located in Sundance, Wyoming.

Board of Governors of the Federal Reserve System, February 22, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–2713 Filed 2–24–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 041 0097]

Health Care Alliance of Laredo, L.C.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 15, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Health Care Alliance of Laredo, File No. 041 0097,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following e-mail box: *consentagreement@ftc.gov*.

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, whether filed in paper or electronic form, will be

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC 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: John DeGeeter, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2783.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 13, 2006), on the World Wide Web, at *http://www.ftc.gov/os/2006/02/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with Health Care Alliance of Laredo, L.C. (''HAL''). The agreement settles charges that HAL violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and implementing agreements among physician members of HAL to fix prices and other terms on which they would deal with health plans, and to refuse to deal with such purchasers except on collectively-determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by HAL that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint

The allegations of the complaint are summarized below.

HAL is a multi-specialty independent practice association (''IPA'') in the Laredo, Texas, area with approximately 80 member physicians, a substantial majority of whom are competitors of one another. HAL contracts with payors on behalf of its member physicians and thereby establishes uniform prices and other contract terms applicable to its members.

Although purporting to employ a ''messenger model,'' [2] from 1998 to 2005, HAL attempted to and did negotiate higher reimbursement rates for its member physicians, sent payor offers to its members only after HAL negotiated and approved the rates, and urged its members not to deal individually with payors.

HAL's Board of Managers, nine physicians who are elected by and represent HAL's physician members, authorized and directed each step of the contracting process. The Board initiated negotiations by directing HAL personnel to contact a payor. On several occasions, HAL personnel contacted payors after learning that the payors were soliciting contracts with individual physicians. HAL personnel told the payors that HAL would represent and contract on behalf of HAL's physician members. As negotiations between payors and HAL personnel proceeded, HAL personnel were required to report to the Board on the progress of negotiations, and to seek authorization from the Board before making counterproposals. Ultimately, the Board either accepted or rejected contracts which HAL personnel presented to it. If the Board accepted the contract, HAL would then, and only then, ''messenger'' the contract to HAL's members for their individual acceptance or rejection. HAL did not messenger any rates proposed by the payors during negotiations, and messengered only the rates that the Board approved.

HAL members were fully aware of the payor negotiations HAL conducted on their behalf. HAL's staff provided updates to members on the status of contract negotiations via telephone, monthly newsletters, and monthly meetings. On several occasions, as HAL personnel were attempting to negotiate a group contract, HAL urged its members not to negotiate individually with the health plans, and significant numbers of HAL members refused to deal individually with those payors.

HAL members also had direct input in payor negotiations, aside from their representation on the Board. In 1999, HAL surveyed its members, asking them for ''the 20 most common codes used in the office and the maximum discount that you are willing to accept.'' HAL's Executive Director explained that ''[t]his will help me when I negotiate contracts on behalf of the organization, since I would present these codes as those for which I will seek the advantageous rates.'' In addition to the 1999 survey, HAL personnel and Board members regularly solicited input on acceptable rates from HAL's members, which were then used in negotiations with payors.

HAL has orchestrated collective agreements on fees and other terms of dealing with health plans, carried out collective negotiations with health plans, and fostered refusals to deal. HAL succeeded in forcing numerous health plans to raise the fees paid to HAL physician members, and thereby raised the cost of medical care in the Laredo, Texas, area. HAL engaged in no efficiency-enhancing integration sufficient to justify joint negotiation of fees. By the acts set forth in the Complaint, HAL violated Section 5 of the FTC Act.

The Proposed Consent Order

The proposed order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence. It is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements

[2] Some arrangements can facilitate contracting between health care providers and payors without fostering an illegal agreement among competing physicians on fees or fee-related terms. One such approach, sometimes referred to as a ''messenger model'' arrangement, is described in the 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and U.S. Department of Justice, at 125. *See http://www.ftc.gov/reports/hlth3s.htm#9*.

to raise fees they receive from health plans.

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits HAL from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through an arrangement involving HAL.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits HAL from facilitating exchanges of information between physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes HAL from inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other Commission orders addressing providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. HAL would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians in a ''qualified risk-sharing joint arrangement'' or a ''qualified clinically-integrated joint arrangement.'' The arrangement, however, must not facilitate the refusal of, or restrict, physicians in contracting with payors outside of the arrangement.

As defined in the proposed order, a ''qualified risk-sharing joint arrangement'' possesses two key characteristics. First, all physician participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the physician participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A ''qualified clinically-integrated joint arrangement,'' on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed order, physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Paragraph III, for three years, requires HAL to notify the Commission before entering into any arrangement to act as a messenger, or as an agent on behalf of any physicians, with payors regarding contracts. Paragraph III also sets out the information necessary to make the notification complete.

Paragraph IV, for three years, requires HAL to notify the Commission before participating in contracting with health plans on behalf of a qualified risk-sharing joint arrangement, or a qualified clinically-integrated joint arrangement. The contracting discussions that trigger the notice provision may be either among physicians, or between HAL and health plans. Paragraph IV also sets out the information necessary to satisfy the notification requirement.

Paragraph V requires HAL to distribute the complaint and order to all physicians who have participated in HAL, and to payors that negotiated contracts with HAL or indicated an interest in contracting with HAL. Paragraph V.D requires HAL, at any payor's request and without penalty, or, at the latest, within one year after the order is made final, to terminate its current contracts with respect to providing physician services. Paragraph V.D also allows any contract currently in effect to be extended, upon mutual consent of HAL and the contracted payor, to any date no later than one year from when the order became final. This extension allows both parties to negotiate a termination date that would equitably enable them to prepare for the impending contract termination. Paragraph V.E requires HAL to distribute payor requests for contract termination to all physicians who participate in HAL.

Paragraphs VI, VII, and VIII of the proposed order impose various obligations on HAL to report or provide access to information to the Commission to facilitate monitoring HAL's compliance with the order.

The proposed order will expire in 20 years.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–2721 Filed 2–24–06; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

Notice of Intent to Prepare an Environmental Impact Statement for the Calexico West Port of Entry Expansion/Renovation, Calexico, California

AGENCY: Public Buildings Service, GSA

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Public Scoping Meeting

SUMMARY: The General Services Administration (GSA) announces its intent to prepare an Environmental Impact Statement (EIS) for the expansion/renovation of the Calexico West Port of Entry (POE), located in Calexico, California. The purpose of the expansion/renovation is to reduce traffic congestion in Calexico and Mexicali city centers caused by vehicles crossing the border, to improve border security; and to provide safe, secure, and efficient operational areas for the public and Federal employees. This facility serves both vehicular and pedestrian traffic into and out of the Mexican city of Mexicali. The need for this expansion/renovation derives from the substantial increase in its use by international travelers. The existing POE is not equipped to process this increase within an acceptable level of service consistent with the Federal Inspection Service's minimum standards. Problems at the current facility are mostly related to inadequate space for inspection operations, equipment, and personnel. The facility also requires seismic retrofitting.

The EIS will address potential environmental impacts of the alternatives for the proposed project related to geology and soils, water resources, land use, biological resources, cultural resources, visual resources, infrastructure, traffic, air quality, noise, human health and safety, socioeconomics, and environmental justice. The existing contamination of the New River and traffic congestion have been identified as potential environmental impacts. Information regarding other potential environmental impacts will be gathered during the public scoping process.

DATES: The views and comments of the public are necessary in determining the

scope and content of the environmental analysis in connection with the proposed project. A public scoping meeting for the proposed project will be held on Wednesday, March 8, 2006 from 3 to 6 p.m. at the Calexico City Hall, 608 Heber Avenue in Calexico, California. Interested parties may attend to present questions and concerns that they believe should be addressed in the EIS. Comments and questions can also be submitted to the Point of Contact (see the ADDRESS section below). Due to time limits mandated by Federal law, responses to scoping are requested no later than 45 days after publication of this notice. It is anticipated that the Draft EIS will be available for public review and comment in January of 2007.

ADDRESSES: Submit comments and questions to Mr. Morris Angell, Regional Environmental Quality Advisor, 450 Golden Gate Avenue, 3rd Floor East, San Francisco, California, 94102, 415–522–3473, *morris.angell@gsa.gov*.

FOR FURTHER INFORMATION CONTACT: If you require additional information regarding the public scoping meeting or the proposed project, or require special assistance to attend the meeting, please contact Morris Angell, GSA Regional Environmental Quality Advisor, (see the ADDRESS section above).

SUPPLEMENTARY INFORMATION: GSA is proposing two alternative actions: 1) construct a new vehicle and pedestrian inspection facility on the existing site and federally owned vacant land immediately to the west of the current facility, and 2) a ''no action'' alternative. Under the ''no action'' alternative, the existing facilities and their operation will remain unchanged.

Dated: February 10, 2006.

Peter G. Stamison,

Regional Administrator, Public Buildings Service, Pacific Rim Region.

Dated: February 10, 2006.

Jeffrey Neely,

Assistant Regional Administrator, Public Buildings Service, Pacific Rim Region.

[FR Doc. E6–2694 Filed 2–24–06; 8:45 am]

BILLING CODE 6820–YF–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–0428]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

PHS Supplements to the Application for Federal Assistance SF–424 (0920–0428)—Revision—Office of the Director (OD), Centers for Disease Control and Prevention (CDC) is requesting a three-year extension for continued use of the Supplements to the Request for Federal Assistance Application (SF–424).

Background and Brief Description

The Checklist, Program Narrative, and the Public Health System Impact Statement (third party notification) (PHSIS) are a part of the standard application for State and local governments and for private non-profit and for-profit organizations when applying for financial assistance from PHS grant programs. The Checklist assists applicants to ensure that they have included all required information necessary to process the application. The Checklist data helps to reduce the time required to process and review grant applications, expediting the issuance of grant awards. The PHSIS Third Party Notification Form is used to inform State and local health agencies of community-based proposals submitted by non-governmental applicants for Federal funding.

There may be some revisions made to one or more of the forms to allow the respondents easy web-base access. This should not affect the current burden. There is no cost to the respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses/ respondent	Average burden/ response (in hrs.)	Total burden (in hrs.)
State and local health departments; non-profit and for-profit organizations	7,457	1	5.7255	42,695
Total				42,695

Dated: February 21, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–2709 Filed 2–24–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–06–0463]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–4766 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Longitudinal Surveillance for Beryllium Disease Prevention—0920–0463—Extension—National Institute for Occupational Safety and Health (NIOSH)—Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. The Occupational Safety and Health Act, Public Law 91–596 (section 20[a][1]) authorizes the National Institute for Occupational Safety and Health (NIOSH) to conduct research to advance the health and safety of workers. NIOSH is conducting a study of beryllium workers. Beryllium is a lightweight metal with many applications. Exposed workers may be found in the primary production, nuclear power and weapons, aerospace, scrap metal reclamation, specialty ceramics, and electronics industries, among others. The size of the U.S. workforce at risk of chronic beryllium disease (CBD), from either current or past work-related exposure to the metal, may be as high as one million. Demand for beryllium is growing worldwide, which means that increasing numbers of workers are likely to be exposed.

CBD is a chronic granulomatous lung disease mediated through an immunologic mechanism in workers who become sensitized to the metal. Sensitization can be detected with a blood test called the beryllium lymphocyte proliferation test (BeLPT), which is used by the industry as a surveillance tool. Use of this test for surveillance was first reported in 1989. Sensitized workers, identified through workplace surveillance programs, undergo clinical diagnostic tests to determine whether they have CBD. Research has indicated certain genetic determinants in the risk of CBD; follow-up studies will be invaluable for further characterizing the genetic contribution to sensitization and disease.

NIOSH is in a unique position to accomplish this research for a number of reasons: (a) It has a successful collaboration with the leading manufacturer of beryllium in the US. This has allowed us to establish well-characterized worker cohorts within the beryllium industry. (b) It is conducting industrial hygiene research that should significantly improve workplace-based exposure assessment methods. This research will allow characterization of jobs and tasks by physicochemical characteristics, leading to an estimation of dose rather than mass concentration-based exposure. (c) It has pioneered the evaluation of the dermal exposure route in the beryllium sensitization process. (d) It has developed and improved genetic research that will contribute to the understanding of risk variability in sensitization and disease, as well as discerning the underlying mechanisms. (e) NIOSH has the institutional stability to continue longitudinal evaluations of health outcomes in relation to exposure and genetic risk factors.

NIOSH has been conducting this survey of beryllium workers for three years and this extension will allow for completion of the data collection on former workers. Workers are asked to complete an interviewer administered medical and work history questionnaire and to give a blood sample. Without medical and work history data on former workers, NIOSH staff will be unable to conduct the necessary research to make recommendations for preventing beryllium sensitization and disease. Follow-up on this cohort will provide invaluable information on the natural history of disease, gene-gene, and gene-environment interactions, which can become the basis for prevention policy at both company and government levels.

There are no costs to the respondents other than their time. The only change to this previously approved project is a decrease in the burden hours because the proposed data collection is almost complete. The total estimated annualized burden hours are 50.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Former Workers	100	1	30/60

Dated: February 21, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–2710 Filed 2–24–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0443]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Focus Groups as Used by the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 29, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Focus Groups as Used by the Food and Drug Administration—(OMB Control Number 0910–0497)—Extension

FDA will collect and use information gathered through the focus group vehicle. This information will be used to develop programmatic proposals, and as such, compliments other important research findings to develop these proposals. Focus groups do provide an important role in gathering information because they allow for a more in-depth understanding of consumers' attitudes, beliefs, motivations, and feelings than do quantitative studies.

Also, information from these focus groups will be used to develop policy and redirect resources, when necessary, to our constituents. If this information is not collected, a vital link in information gathering by FDA to develop policy and programmatic proposals will be missed causing further delays in policy and program development.

In the **Federal Register** of November 25, 2005 (FR 70 71165), FDA published a 60-day notice requesting public comment on the information collection provisions. FDA received one comment, however it was not related to the information collection.

Annually, FDA projects about 28 focus group studies using 286 focus groups lasting an average of 1.78 hours each. FDA has allowed burden for unplanned focus groups to be completed so as not to restrict the agency's ability to gather information on public sentiment for its proposals in its regulatory as well as other programs. To arrive at each center's estimated burden we multiplied the number of focus groups per study by the number of participants per group. (*e.g.,* Center for Biologics Evaluation and Research (CBER): 5x9=45). We multiplied that total by the hours of duration for each group to arrive at the total burden hours. (*e.g.,* CBER: 45x1.58=71.1).

The total annual estimated burden imposed by this collection of information is 4,252 hours annually.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Center	Subject	No. of Focus Groups per Study	No. of Focus Groups Sessions Conducted Annually	No. of Participants per Group	Hours of Duration for Each Group (Includes Screening)	Total Hours
Center for Biologics Evaluation and Research	May use focus groups when appropriate	1	5	9	1.58	71
Center for Drug Evaluation and Research	Varies (*e.g.,* direct-to-consumer Rx drug promotion, physician labeling of Rx drugs, medication guides, over-the-counter drug labeling, risk communication)	10	200	9	1.58	2,844
Center for Devices and Radiological Health	Varies (*e.g.,* FDA Seal of Approval, patient labeling, tampons, on-line sales of medical products, latex gloves)	4	16	9	2.08	300
Center for Food Safety and Applied Nutrition	Varies (*e.g.,* food safety, nutrition, dietary supplements, and consumer education)	8	40	9	1.58	569
Center for Veterinary Medicine	Varies (*e.g.,* animal nutrition, supplements, labeling of animal Rx)	5	25	9	2.08	468

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

FDA Center	Subject	No. of Focus Groups per Study	No. of Focus Groups Sessions Conducted Annually	No. of Participants per Group	Hours of Duration for Each Group (Includes Screening)	Total Hours
Total		28	286		1.78	4,252

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 21, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–2726 Filed 2–24–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0080]

Agency Information Collection Activities; Proposed Collection; Comment Request; Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the labeling requirements for aluminum content in large volume parenterals (LVPs), small volume parenterals (SVPs), and pharmacy bulk packages (PBPs) used in total parenteral nutrition (TPN).

DATES: Submit written or electronic comments on the collection of information by April 28, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Aluminum in Large and Small Volume Parenterals Used in Total Parenteral Nutrition—21 CFR 201.323 (OMB Control Number 0910–0439)—Extension

FDA is requesting OMB approval under the PRA for the labeling requirements for aluminum content in LVPs, SVPs, and PBPs used in TPN. As explained in the final rule on aluminum content labeling requirements published in the **Federal Register** of January 26, 2000 (65 FR 4103) (the January 2000, final rule), aluminum content in parenteral drug products could result in a toxic accumulation of aluminum in the tissues of individuals receiving TPN therapy. Research indicates that neonates and patient populations with impaired kidney function may be at high risk of exposure to unsafe amounts of aluminum. Studies show that aluminum may accumulate in the bone, urine, and plasma of infants receiving TPN. Many drug products used routinely in parenteral therapy may contain levels of aluminum sufficiently high to cause clinical manifestations. Generally, when medication and nutrition are administered orally, the gastrointestinal tract acts as an efficient barrier to the absorption of aluminum, and relatively little ingested aluminum actually reaches body tissues. However, parenterally administered drug products containing aluminum bypass the protective mechanism of the gastrointestinal tract, and aluminum circulates and is deposited in human tissues.

Aluminum toxicity is difficult to identify in infants because few reliable techniques are available to evaluate bone metabolism in premature infants. Techniques used to evaluate the effects of aluminum on bone in adults cannot be used in premature infants. Although aluminum toxicity is not commonly detected clinically, it can be serious in selected patient populations, such as neonates, and may be more common than is recognized.

FDA amended its regulations to add labeling requirements for aluminum content in LVPs, SVPs, and PBPs used in TPN. FDA specified an upper limit of aluminum permitted in LVPs and

required applicants to submit to FDA validated assay methods for determining aluminum content in parenteral drug products. The agency added these requirements because of evidence linking the use of parenteral drug products containing aluminum to morbidity and mortality among patients on TPN therapy, especially among premature neonates and patients with impaired kidney function.

The information collection reporting requirements are as follows:

Section 201.323(b) (21 CFR 201.323(b)) requires that the package insert of all large volume parenterals used in total parenteral nutrition therapy state that the drug product contains no more than 25 micrograms (µg)/liter (L). This information must be contained in the ''Precautions'' section of the labeling of all LVPs used in TPN therapy.

Section 201.323(c) (21 CFR 201.323(c)) requires that the maximum level of aluminum present at expiry be stated on the immediate container label of all SVP drug products and PBPs used in the preparation of TPN solutions. The aluminum content must be stated as prescribed in the regulation. The immediate container label of all SVP drug products and PBPs that are lyophilized powders used in the preparation of TPN solutions must contain the statement prescribed in the regulation.

Section 201.323(d) (21 CFR 201.323(d)) requires that the package insert for all LVPs, SVPs, and PBPs used in TPN contain a warning statement, prescribed in the regulation, intended for patients with impaired kidney function and for neonates receiving TPN therapy. This information must be contained in the ''Warnings'' section of the labeling.

Section 201.323(e) (21 CFR 201.323(e)) requires that applicants and manufacturers must use validated assay methods to determine the aluminum content in parenteral drug products. The assay methods must comply with current good manufacturing practice requirements. Applicants must submit to FDA both validation of the method used and release data for several batches. Manufacturers of parenteral drug products not subject to an approved application must make assay methodology available to FDA during inspections. Holders of pending applications must submit an amendment to the application.

Compliance with the information collection burdens under § 201.323(b), (c), and (d) consists of submitting application supplements to FDA containing the revised labeling for each product, and analytical method validation must be submitted under § 201.323(e). During the period since the publication of the January 2000, final rule, FDA has received approximately 100 supplements and analytical method validation from approximately four respondents. Because the final rule was effective on July 26, 2004, FDA expects to receive fewer submissions per year. FDA estimates that it will take approximately 14 hours to prepare and submit to FDA each submission.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
201.323(b),(c),(d)	4	1.25	5	14	70
201.323(e)	4	1.25	5	14	70
Total					140

[1]There are no capital costs or operating and maintenance costs associated with this collection.

Dated: February 21, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–2727 Filed 2–24–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security.

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

Name: Federal Interagency Committee on Emergency Medical Services (FICEMS).

Date of Meeting: March 2, 2006.

Place: 10th Floor MacCracken Room, FAA Building, 800 Independence Ave SW., Washington, DC 20591.

Times: 10:30 a.m.—Main FICEMS Meeting; 1 p.m.—FICEMS Ambulance Safety Subcommittee.

Proposed Agenda: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Safety Subcommittee Meeting Minutes; Action Items review; presentation of member agency reports; and reports of other interested parties.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. See the Response and Security Procedures below.

Response Procedures: Committee Members and members of the general public who plan to attend the meeting should contact Mr. Mike McKay, on or before Tuesday, February 28, 2006, via mail at NATEK Incorporated, 21355 Ridgetop Circle, Suite 200, Dulles, Virginia 20166–8503, or by telephone at (703) 674–0190, or via facsimile at (703) 674–0195, or via e-mail at *mmckay@natekinc.com.* This is necessary to be able to create and provide a current roster of visitors to FAA Security per directives.

Security Procedures: All visitors must have a valid picture identification card and their vehicles will be subject to search by Security personnel. All visitors will be issued a visitor pass which must be worn at all times while in the facility. Please allow adequate time before the meeting to complete the security process.

Conference Call Capabilities: If you are not able to attend in person, a toll free number has been set up for teleconferencing. The toll free number will be available from 10 a.m. until 4 p.m. Members should call in around 10:30 a.m. The number is 1–800–320–4330. The FICEMS conference code is ''361352#,'' which is different.

FICEMS Meeting Minutes: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next

FICEMS Committee Meeting. The minutes will also be posted on the United States Fire Administration Web site at *http://www.usfa.fema.gov/fire-service/ems/ficems.shtm* within 30 days after their approval at the next FICEMS Committee Meeting.

Dated: February 23, 2006.

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–2718 Filed 2–24–06; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Contacts Concerning Project Speak Out, Form G–1046; OMB Control Number 1615–0074.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 23, 2005, at 70 FR 76322. The notice allowed for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 29, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0074 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Contacts Concerning Project Speak Out.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–1046; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; Not-for-profit institutions. This form provides a standardized way of recording the number of individuals contacting the Community Based Organizations concerning the practitioner fraud pilot program. The USCIS will use the information collected on the form to determine how many persons are served by the program and if its public outreach efforts are successful.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 6,000 responses at 42 minutes per response, plus 600 submissions at 10 minutes per submission.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,300 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm*.

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: February 21, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 06–1762 Filed 2–24–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–04]

Notice of Proposed Information Collection: Comment Request; Application for Fee or Roster Personnel Designation, and Appraisal Report Forms

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 28, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Lillian_Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret Burns, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed

collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Application for Fee or Roster Personnel Designation, and Appraisal Report Forms.

OMB Control Number, if applicable: 2502–0538.

Description of the need for the information and proposed use: Information is collected from real estate appraisers and inspectors seeking placement on the Federal Housing Administration (FHA) Appraiser and Inspector Rosters. The FHA Appraiser Roster is a national listing of eligible appraisers who prepare appraisals on single family properties that will be security for FHA insured mortgages. The FHA Inspector Roster is a national listing of eligible inspectors who determine the quality of construction of single family properties that will be security for FHA insured mortgages. FHA Roster Appraisers and Inspectors assist in protecting the interest of HUD, the taxpayers, and the FHA insurance fund.

Agency form numbers, if applicable: HUD–92563 and HUD–92564–CN.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 1,494; the number of respondents is 470,668 generating 470,868 annual responses; the frequency per response is on occasion; and the estimated time needed to prepare the responses varies from 0 to 30 minutes.

Status of the proposed information collection: This is a revision of a currently approved collection, seeking to include the requirements approved under OMB control number 2502–0548, FHA Fee Inspector Panel Application Package.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 17, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E6–2730 Filed 2–24–06; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Outer Continental Shelf (OCS) Scientific Committee—Notice of Renewal

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of renewal of the Outer Continental Shelf Scientific Committee.

SUMMARY: Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is renewing the OCS Scientific Committee.

The OCS Scientific Committee provides advice on the feasibility, appropriateness, and scientific value of the Outer Continental Shelf Environmental Studies Program to the Secretary of the Interior through the Director of the Minerals Management Service. The Committee reviews the relevance of the research and data being produced to meet MMS scientific information needs for decision making and may recommend changes in scope, direction, and emphasis.

FOR FURTHER INFORMATION CONTACT: Jeryne Bryant, Minerals Management Service, Offshore Minerals Management, Herndon, Virginia 20170–4817, telephone (703) 787–1213.

Certification

I hereby certify that the renewal of the OCS Scientific Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 43 U.S.C. 1331 *et seq.*, 30 U.S.C. 1701 *et. seq.*, and 30 U.S.C. 1001 *et. seq.*

Dated: February 17, 2006.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. E6–2729 Filed 2–24–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on a Proposed New Information Collection Submitted to OMB for Review Under the Paperwork Reduction Act

A proposal extending information collection described below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Address your comments and suggestions on the proposal by fax (202) 395–6566 or e-mail (*oira_docket@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Interior Department. Send copies of your comments to Phadrea Ponds, U.S. Geological Survey, 2150 Centre Avenue Building C, Fort Collins, CO 80526–8118 or e-mail (*phadrea_ponds@usgs.gov*).

As required by OMB regulations at 5 CFR 1320.8(d)(1), the USGS solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Community Survey of Rappahannock River Valley Residents.

OMB Approval No.: New collection.

Summary: This information collection is in support of development of a Comprehensive Conservation Plan for Rappahannock National Wildlife Refuge. Under the National Wildlife Refuge System Improvement Act of 1997, all national wildlife refuges are required to develop a Comprehensive Conservation Plan (CCP). A CCP is a document that provides a framework for guiding refuge management decisions. This planning process ensures the opportunity for active public involvement in the preparation and revision of comprehensive conservation plans. This information collection will inform the planning process by providing information to the U.S. Fish and Wildlife Service on the attitudes and opinions of local residents

regarding Rappahannock National Wildlife Refuge and its management.

Estimated Completion Time: 25 minutes.

Estimated Annual Number of Respondents: 650.

Frequency: One time.

Estimated Annual Burden Hours: 271 hours.

Affected Public: Residents adjacent to the Rappahannock River Basin, Virginia.

For Further Information Contact: To obtain copies of the survey, contact Phadrea Ponds, U.S. Geological Survey, 2150 Centre Avenue Building C, Fort Collins, CO 80526–8118, telephone 970–226–9445.

Dated: December 27, 2005.

Carol Cooper,

Acting Associate Director for Biology.

[FR Doc. 06–1764 Filed 2–24–06; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of major portion prices for calendar year 2004.

SUMMARY: Final regulations for valuing gas produced from Indian leases, published on August 10, 1999, require MMS to determine major portion values and notify industry by publishing the values in the **Federal Register**. The regulations also require MMS to publish a due date for industry to pay additional royalty based on the major portion value. This notice provides the major portion values for the 12 months of 2004. The due date to pay is April 30, 2006, after which late interest will accrue.

FOR FURTHER INFORMATION CONTACT: John Barder, Indian Oil and Gas Compliance and Asset Management, MMS; telephone (303) 231–3702; FAX (303) 231–3755; e-mail to *John.Barder@mms.gov;* or Larry Gratz, Indian Oil and Gas Compliance and Asset Management, MMS; telephone (303) 231–3427; FAX (303) 231–3755; e-mail to *Larry.Gratz@mms.gov.* Mailing address: Minerals Management Service, Minerals Revenue Management, Compliance and Asset Management, Indian Oil and Gas Compliance and Asset Management, P.O. Box 25165, MS 396B2, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: On August 10, 1999, MMS published a final rule titled ''Amendments to Gas Valuation Regulations for Indian Leases,'' (64 FR 43506) with an effective date of January 1, 2000. The gas regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases, except leases on the Osage Indian Reservation.

The rule requires that MMS publish major portion prices for each designated area not associated with an index zone for each production month beginning January 2000, along with a due date for additional royalty payments. See 30 CFR 206.174(a)(4)(ii) (2005). If additional royalties are due based on a published major portion price, the lessee must submit an amended Form MMS–2014, Report of Sales and Royalty Remittance, to MMS by the due date. If additional royalties are not paid by the due date, late payment interest, under 30 CFR 218.54 (2005), will accrue using the Internal Revenue Service underpayment rate (26 CFR 6621(a)(2)) from the due date until payment is made and an amended Form MMS–2014 is received. The table below lists the major portion prices for all designated areas not associated with an index zone. The due date is April 30, 2006.

GAS MAJOR PORTION PRICES FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

MMS-Designated Areas	Jan 2004 (MMBtu)	Feb 2004 (MMBtu)	Mar 2004 (MMBtu)	Apr 2004 (MMBtu)
Blackfeet Reservation	7.37	7.07	6.35	6.61
Fort Belknap	5.42	5.32	5.25	5.25
Fort Berthold	5.32	4.70	4.56	5.12
Fort Peck Reservation	5.83	5.43	4.75	4.87
Navajo Allotted Leases in the Navajo Reservation	5.04	4.80	4.27	4.38
Rocky Boys Reservation	4.19	3.93	4.08	4.24
Ute Allotted Leases in the Uintah and Ouray Reservation	4.39	4.65	4.19	4.15
Ute Tribal Leases in the Uintah and Ouray Reservation	5.06	4.74	4.28	4.11

	May 2004 (MMBtu)	Jun 2004 (MMBtu)	Jul 2004 (MMBtu)	Aug 2004 (MMBtu)
Blackfeet Reservation	6.78	7.58	7.32	7.27
Fort Belknap	5.35	5.55	5.56	5.42
Fort Berthold	5.83	5.80	5.22	6.35
Fort Peck Reservation	5.02	5.67	5.59	5.91
Navajo Allotted Leases in the Navajo Reservation	4.92	5.41	5.22	5.18
Rocky Boys Reservation	4.55	4.55	4.41	4.18
Ute Allotted Leases in the Uintah and Ouray Reservation	4.82	5.13	5.09	4.87
Ute Tribal Leases in the Uintah and Ouray Reservation	4.91	5.24	4.97	4.89

	Sep 2004 (MMBtu)	Oct 2004 (MMBtu)	Nov 2004 (MMBtu)	Dec 2004 (MMBtu)
Blackfeet Reservation	6.48	6.22	9.20	8.95
Fort Belknap	5.37	5.56	5.67	5.74
Fort Berthold	4.14	4.94	8.00	5.67
Fort Peck Reservation	5.35	6.91	7.61	7.09
Navajo Allotted Leases in the Navajo Reservation	4.47	4.54	6.47	5.73
Rocky Boys Reservation	3.66	4.54	4.62	4.86
Ute Allotted Leases in the Uintah and Ouray Reservation	4.25	4.40	6.32	5.81

	Sep 2004 (MMBtu)	Oct 2004 (MMBtu)	Nov 2004 (MMBtu)	Dec 2004 (MMBtu)
Ute Tribal Leases in the Uintah and Ouray Reservation	4.37	4.46	6.57	6.03

For information on how to report additional royalties due to major portion prices, please refer to our Dear Payor letter dated December 1, 1999, on the MMS Web site address at *http://www.mrm.mms.gov/ReportingServices/PDFDocs/991201.pdf.*

Dated: January 17, 2006.

Shirley M. Conway,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. E6–2690 Filed 2–24–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Region; Carter G. Woodson Home National Historic Site, Designation as a Unit of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Designation of Carter G. Woodson Home National Historic Site, Washington, DC as a unit of the National Park System.

SUMMARY: Under and by virtue of the authority conferred upon the Secretary of the Interior by section 3 of the Carter G. Woodson Home National Historic Site Act of December 19, 2003 (117 Stat. 2873), the property at 1538 Ninth Street, NW., Washington, DC, with the structure thereon, is established and designated a unit of the National Park System having the name ''Carter G. Woodson Home National Historic Site.'' The administration, protection and development of this national historic site shall be exercised by the National Park Service in accordance with the provisions of the authorizing legislation as well as laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (16 U.S.C. 1, 2–4) and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461–467). Warning is expressly given to all unauthorized persons not to appropriate, injure, destroy, deface, or remove any feature of this historic site.

DATES: February 27, 2006 is the date of the establishment of the Carter G. Woodson Home National Historic Site in accordance with Public Law 108–192 (117 Stat. 2873, December 19, 2003).

ADDRESSES: The Carter G. Woodson Home National Historic Site is administered as a site under the management of the Superintendent, National Capital Parks—East, 1900 Anacostia Drive, SE., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Superintendent Gayle Hazelwood, National Capital Parks—East, 1900 Anacostia Drive, SE., Washington, DC 20020, Telephone (202) 690–5185.

SUPPLEMENTARY INFORMATION: Whereas the Congress of the United States has declared it to be a national policy to preserve for the public use historical sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States, and whereas the Congress has recognized that:

(1) Dr. Carter G. Woodson, cognizant of the widespread ignorance and scanty information concerning the history of African Americans, founded on September 9, 1915, the Association for the Study of Negro Life and History, since renamed the Association for the Study of African-American Life and History.

(2) The Association was founded in particular to counter racist propaganda alleging black inferiority and the pervasive influence of Jim Crow prevalent at the time.

(3) The mission of the Association was and continues to be educating the American public of the contributions of Black Americans in the formation of the Nation's history and culture.

(4) Dr. Woodson dedicated nearly his entire adult life to every aspect of the Association's operations in furtherance of its mission.

(5) Among the notable accomplishments of the Association under Dr. Woodson's leadership, Negro History Week was instituted in 1926 to be celebrated annually during the second week of February. Negro History Week has since evolved into African American History Month.

(6) The headquarters and center of operations of the Association was Dr. Woodson's residence, located at 1538 Ninth Street, NW., Washington, DC.

Congress, therefore, on October 24, 2000, directed a resource study of the Dr. Carter G. Woodson Home and headquarters of the Association for the Study of African-American Life and History, located at 1538 Ninth Street, NW., Washington, DC, to identify the suitability and feasibility of designating the Carter G. Woodson Home as a unit of the National Park System.

Upon its consideration of that completed study and the recommendation of the Secretary of the Interior (Secretary) that the Carter G. Woodson Home should be made a unit of the National Park System, the Congress directed to the Secretary to establish the Carter G. Woodson Home National Historic Site as a unit of the National Park System by publication of a notice to that effect in the **Federal Register** upon the acquisition of the Carter G. Woodson Home. The Secretary was granted authority to acquire the Carter G. Woodson Home and any of three properties immediately to its north located at 1540, 1542, and 1544 Ninth Street, NW., described on the map entitled ''Carter G. Woodson Home National Historic Site'', numbered 876/82338–A and dated July 22, 2003.

Dated: February 17, 2006.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 06–1732 Filed 2–24–06; 8:45 am]

BILLING CODE 4312–JK–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Chattem Chemicals, Inc.: Grant of Registration To Import Schedule II Substances

I. Background

On February 9, 2002, Chattem Chemicals, Inc. (Chattem) applied to the Drug Enforcement Administration (DEA) for registration under 21 U.S.C. 958(a) as an importer of the narcotic raw materials (NRMs) raw opium, concentrate of poppy straw (CPS) and thebaine, all of which are Schedule II controlled substances.[1]

Pursuant to 21 CFR 1301.34(a), Mallinckrodt, Inc. (Mallinckrodt), Penick Corporation (Penick) and Noramco of Delaware, a Division of Ortho McNeil, Inc. (Noramco), requested a hearing on Chattem's application for registration as an importer of NRMs. The United States

[1] Chattem later withdrew its request for registration to import thebaine. In December 2001, DEA granted Chattem a registration as a bulk manufacturer of, among other controlled substances, codeine, morphine, thebaine and oxycodone.

Department of Justice, Drug Enforcement Administration (DEA or the Government) also participated as a party to the proceeding.

A hearing before a DEA Administrative Law Judge (ALJ) was held in Arlington, Virginia, in September and October 2002, and January 2003, with Chattem, Penick, Noramco, Mallinckrodt and the Government (the Objectors) participating and represented by counsel. All parties called witnesses to testify and introduced documentary evidence. After the hearing, the parties filed proposed findings of fact, conclusions of law and argument, and reply briefs.

Pursuant to 21 CFR 1301.44(c), Chattem has the burden of proof to show that it has met the statutory and regulatory requirements to import NRMs. The other parties to the proceeding have the burden of proving any propositions of fact or law asserted by them. *See Penick Corporation, Inc., Grant of Registration to Import Schedule II Controlled Substances*, 68 FR 6947, 6948 (DEA 2003).

On January 13, 2005, the ALJ filed an Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision (ALJ Opinion). The ALJ recommended that Chattem's application be granted. All of the parties filed exceptions to the ALJ's recommended decision. Chattem filed a response to the exceptions filed by Mallinckrodt and Noramco.

After considering all of the evidence and post hearing submissions, The Deputy Administrator adopts, in part, the ALJ Opinion, makes independent findings, and rejects all contradictory findings and conclusions as unsupported by a preponderance of the evidence. The Deputy Administrator adopts all of the ALJ's decisions on motions filed during this proceeding, other than those that were overruled in the Deputy Administrator's Final Orders on the interlocutory appeals filed in this matter.[2]

All of the foregoing is incorporated into this Final Order as though set forth at length herein. The Deputy Administrator also incorporates by reference the Deputy Administrator's earlier decisions on the interlocutory appeals filed in this proceeding. Except as expressly noted herein, those parts of the ALJ's opinion adopted by the Deputy Administrator are in no manner diminished by any recitation of facts, issues and conclusions herein, or by any failure to mention a matter of fact or law.

II. Preliminary Matters

Regulatory Context

Because Chattem is applying for both a registration and permission to import, this proceeding is a combined adjudication and rulemaking. The rulemaking determines whether Chattem may lawfully import NRMs into the United States pursuant to 21 U.S.C. 952(a). Chattem has the burden of proof, and must establish by a preponderance of the evidence that such a rule can be issued. In order to do this, Chattem must show by a preponderance of the evidence that the NRMs that it intends to import are ''necessary'' to provide for medical, scientific or other legitimate purposes.

The adjudication determines whether DEA should grant Chattem's application for registration as an importer NRMs. In accordance with the DEA Statement of Policy and Interpretation on Registration of Importers, 40 FR 43,745 (1975), the Deputy Administrator will not grant Chattem's application unless Chattem establishes that the requirements of 21 U.S.C. 958(a) and 823(a) and 21 CFR 301.34(b)(1)–(7) are met to show that Chattem's registration to import is in the public interest. DEA has the discretion to determine the weight assigned to each of the factors that must be considered to determine whether Chattem's registration to import will be granted. *MD Pharmaceutical, Inc.* v. *DEA*, No. 95–1267, 1996 U.S. App. LEXIS 1229 (DC Cir. 1996) (unpublished opinion.)

III. Final Order

The Deputy Administrator has carefully reviewed the entire record in this matter, as defined above, and hereby issues this final rule and final order prescribed by 21 CFR 1316.67 and 21 CFR 1301.46, based upon the following findings and conclusions.

A. The Rulemaking

As explained above, Chattem cannot be registered as an importer of NRMs unless the Deputy Administrator finds that Chattem will be allowed to import NRMs pursuant to 21 U.S.C. 952(a)(1). Because Chattem is the proponent of such a rule, it must establish by a preponderance of the evidence that such a rule can be issued.

21 U.S.C. 952(a)(1) makes it unlawful to import controlled substances in Schedule I or II except ''such amounts of crude opium, poppy straw, concentrate of poppy straw, and coca leaves as the Attorney General finds to be necessary to provide for medical, scientific, or other legitimate purposes.'' Whether Chattem's importation of NRMs is ''necessary'' was disputed at the hearing of this matter. Some of the Objectors argued that they as a group are able to import all necessary NRMs necessary to provide for medical, scientific or other legitimate purposes.

The ALJ found that it is undisputed that Chattem seeks to import NRMs for legitimate uses. The ALJ also noted that the actual amounts of NRMs necessary for those uses are established in subsequent proceedings by DEA. Those proceedings, which establish quotas pursuant to 21 U.S.C. 826, and grant permits to import pursuant to 21 CFR part 1312, are not part of this proceeding. Moreover, there is nothing in the legislative history of the statute that supports any intention to limit the number of importers under the statute. *See Johnson Matthey, Inc., Grant of Registration to Import Schedule II Controlled Substances*, 67 FR 39041, 39043 (DEA 2002). Accordingly, the Deputy Administrator adopts the ALJ's ruling on this issue, and finds that Chattem's proposed importation of raw opium and CPS is ''necessary to provide for medical, scientific, or other legitimate purposes.''

B. The Adjudication

Longstanding Federal policy prohibits the cultivation of the opium poppy in the United States, and also generally prohibits the importation of bulk narcotic alkaloids such as morphine and codeine. Therefore, NRMs must be imported into the United States for purposes of extracting morphine and codeine for pharmaceutical use. Following the extraction of these alkaloids, the manufacturers convert them into active pharmaceutical ingredients (APIs), such as oxycodone and hydrocodone. These APIs are then sold to other manufacturers to produce either dosage formulations or other APIs. The formulated drugs are then sold to drug wholesalers or directly to health care entities.

At the time of the hearing, Noramco and Mallinckrodt were the only companies registered with DEA as importers of NRMs. By order of May 22, 2002, DEA granted a conditional registration to Johnson Matthey, Inc., to import NRMs. *See Johnson Matthey,*

[2] In Chattem's Proposed Findings of Fact and Conclusions of Law, Chattem contended that the ALJ did not decide Noramco's motion to substitute Ortho McNeil as a party to these proceedings. Chattem opposed the motion, contending that Noramco should not be permitted to be a party to the proceeding, since Noramco, at the time of the hearing, was not a corporation, but was a division of Ortho-McNeil, and Noramco's DEA registration as an importer was issued to ''Noramco, Inc., a division of Ortho McNeil, Inc.'' The Deputy Administrator hereby grants Noramco's motion to substitute.

supra. By order of January 29, 2003, DEA granted a registration to Penick to import NRMs. *See Penick, supra.* At the time of the hearing, Chattem had to purchase NRMs from Mallinckrodt or Noramco in order to manufacture APIs. After Chattem applied to DEA to be registered to import NRMs, Noramco, Mallinckrodt, Penick and the Government opposed Chattem's application and asked for a hearing.

At present, Mallinckrodt, Noramco, Penick, Johnson Matthey and Chattem are also registered with DEA as bulk manufacturers of morphine, codeine and oxycodone, all of which are products made from NRMs. Chattem is also registered with DEA as an importer of controlled substances other than NRMs. In 2002 DEA granted registrations to three additional companies for the bulk manufacture of controlled substances made from NRMs. See Rhodes Technologies, 67 FR 36917 (DEA 2002), *Houba, Inc.*, 67 FR 40752 (DEA 2002) and *Cedarburg Pharmaceuticals, L.L.C.*, 67 FR 42058–02 (DEA 2002). Notably, these registrations were granted *after* the Government took the position in this proceeding that registering Chattem as an importer of NRMs was not in the public interest.

Any company that wishes to import NRMs must comply with the ''80–20 rule,'' which requires that 80 percent of the NRMs imported into the United States have as their original source Turkey or India. The remaining 20 percent must come from Yugoslavia, France, Poland, Hungary, or Australia. 21 CFR 1312.13(f). At the hearing, Frank Sapienza, then Chief of DEA's Drug and Chemical Evaluation Section in DEA's Office of Diversion Control, testified that the purpose of the rule is to limit diversion of raw materials by avoiding a proliferation of countries producing NRMs. He also testified that DEA estimates that ten to thirty percent of India's poppy crop is diverted.

Pursuant to 21 U.S.C. 958(a) and 823(a), DEA is required to register Chattem as an importer of Schedule I and II substances if the registration is ''consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971.'' In determining the public interest, DEA must consider the factors enumerated at U.S.C. 958 and 823(a)(1)–(6) and 21 CFR 1301.34(b)(1)–(7), many of which are identical. Accordingly, the Deputy Administrator will first consider United States obligations under international treaties, then each of the factors delineated in 21 U.S.C. 823(a) and 21 CFR 1301.34(b)(1)–(7), as follows.

1. Treaty Obligations

The Objectors did not adduce sufficient evidence at the hearing that the importation of NRMs by Chattem would violate or be inconsistent with United States obligations under international treaties, conventions or protocols. The United States is a party to a number of international drug control treaties, including the United Nations Single Convention on Narcotic Drugs of 1961 (the Single Convention). Under the Single Convention, the United States is obligated to take all necessary measures to ensure that the international movement of narcotics is limited to legitimate medical and scientific needs.

Mr. Sapienza testified at the hearing about DEA's obligations under the Single Convention and other treaties. He testified that the United States is the world's largest importer of NRMs, and the commentary on the Single Convention states that ''it may be advisable or even essential to keep to a minimum the number of licensees of manufacturers and international traders (importers as well as exporters) or of the state enterprises engaged in these activities.'' *Commentary on the Single Convention on Narcotic Drugs*, 1961, United Nations, New York, 1973, p. 264. The Deputy Administrator agrees that the Single Convention provides important guidance on the registration of importers of NRMs and manufacturers of bulk narcotics. The Deputy Administrator finds that the evidence did not show that it would be ''advisable'' or ''essential'' to deny Chattem's application for registration. Moreover, as set forth more fully below, the Deputy Administrator finds that registration of Chattem would not likely cause significant increased diversion. Accordingly, the Deputy Administrator finds that registering Chattem as an importer of NRMs at this time would violate or be inconsistent with the Single Convention or other treaties.

2. Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate, medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes

a. *Diversion*

There is no dispute in the record that Chattem maintains adequate security at its manufacturing plant. David Blum, Ph.D., Chattem's Vice President of Operations, testified extensively about Chattem's internal security measures. The DEA Diversion Investigator (DI) who conducted the investigation of Chattem's application testified favorably about Chattem's security. Moreover, Mr. Sapienza testified that there were no documented cases of diversion of NRMs imported into the United States, and no significant diversion at the bulk manufacturing level. The Deputy Administrator therefore finds Chattem has met its burden of proof in showing that there is no significant risk of diversion of imported NRMs or other controlled substances from, or in transit to, Chattem's facilities.

The Government alleged that the addition of Chattem as an importer of NRMs could increase the diversion of the Schedule II controlled substances in the United States, ''downstream'' at the retail level. Mr. Sapienza testified that the abuse and diversion of prescription narcotics at the retail level, especially oxycodone, hydrocodone and OxyContin, a time-released brand of oxycodone, appears to be increasing at an alarming rate. The Government argued that registering another importer could lead to increase diversion at the retail level because of the potential of increased importation, increased manufacturing of bulk narcotic APIs, an increased number of products, increased inventories and greater availability of narcotic medication.

The Deputy Administrator finds that the Government's evidence showed that the diversion of Schedule II narcotics at the retail level has greatly increased in recent years, and is an extremely serious problem. The evidence also shows that DEA continued to register bulk manufacturers of oxycodone; hydrocodone and other narcotics made from NRMs after the Government took a position against granting Chattem's application as an importer. The Objectors offered no explanation of this fact, and there is little evidence in the record that Chattem's registration as an importer would have any greater effect on diversion downstream than DEA's continued registration of bulk manufacturers. Moreover, 21 U.S.C. 823(a)(1) does not differentiate between importer and bulk manufacturer registrations in its discussion of the possibility of limiting such registrations in order to avoid diversion. Also, the Government's evidence showed that new registrations of *both* bulk manufacturers of Schedule II controlled substances and importers of NRMs were

a potential source of increased diversion downstream, and that the efforts to control diversion of controlled substances made from NRMs ''must start at the source of the bulk material (importer and manufacturer) and its products (dosage form manufacturers).'' There was also evidence adduced that importer registrants do not have a free hand; the Government has the ability to restrict imports of NRMs with respect to the number of countries and proportions allowed from each. The Deputy Administrator also notes that DEA has the authority to restrict the issuance of import permits for NRMs if it finds that such importation is not necessary to provide for medical, scientific, or other legitimate purposes. 21 CFR 1312.13.

Also, based upon the testimony of Julie L. Tisinger, a DEA Drug Science Officer with DEA's Drug and Chemical Evaluation Section, it does not appear that registering Chattem as an additional importer would necessarily increase the demand or availability of Schedule II narcotics at the retail level. As Ms. Tisinger testified, DEA establishes manufacturing and procurement quotas each year for Schedule II controlled substances in order to avoid the overproduction of these substances, for the purpose of reducing the risk of diversion to illicit traffic. Such quotas are determined by information obtained from manufacturers, which includes past and present sales, anticipated need and existing inventories. Thus the evidence showed that the demand for retail products is the major factor that results in increases in the bulk manufacturing and importation of NRMs. It therefore appears unlikely that granting Chattem's application for a registration to import NRMs would be a significant cause of increased diversion at the retail level. Moreover, Chattem is already registered with DEA as a bulk manufacturer of products made from NRMs. Therefore Chattem's need for NRMs is already a factor in determining DEA quotas. Chattem's registration as an importer would not change that, but would simply permit Chattem to purchase NRMs directly from foreign suppliers rather than from Mallinckrodt and other companies already registered with DEA as importers of NRMs. Accordingly, while the Deputy Administrator realizes that diversion of narcotics at the retail level is an extremely serious problem, the Deputy Administrator finds that there is no solid evidence in the record that granting Chattem a registration to import NRMs would have the potential to increase the demand or availability of narcotics medications, or cause a corresponding increase in diversion at the retail level.

The Government also argued that registering Chattem would make it more difficult for DEA to control diversion inside the United States because DEA conducts more inspections of importers and manufacturers than of physicians and pharmacies. The Deputy Administrator finds, however, that the evidence did not show that the addition of one more NRM importer would cause any significant strain on DEA resources, or result in increased diversion at the retail level. Chattem is already registered as a bulk manufacturer of controlled substances, which will require additional inspections, and there was no evidence that an inspection of a manufacturer/importer is more consuming of DEA resources than that of a manufacturer that does not import NRMs. Also, DEA's continued registration of bulk manufacturers after its opposition to Chattem's application shows that DEA has the capacity to handle an increased number of inspections of manufacturers and importers.

The Government also argued that efforts to control diversion must involve the availability of controlled substances at their points of diversion, which includes diversion at the international level. The issue of whether DEA should also consider the possibility of foreign diversion in granting registrations to import NRMs has been discussed in prior cases. In *Johnson Matthey, supra*, the Deputy Administrator found that DEA was not required to consider foreign diversion in determining whether to grant a registration for the import of controlled substances. The appellate court in *Noramco, supra*, agreed with this position, basing its opinion on the legislative history of 21 U.S.C. 823(a). *Noramco of Delaware Inc.* v. *Drug Enforcement Administration*, 375 F.3d 1148 (DC Cir. 2004) at 1155–56. The Government argued, however, that the possibility of foreign diversion should be considered in this matter, as the United States is a world leader in promoting international and domestic control of narcotics and other controlled substances.

The evidence showed that the Single Convention urges all participants to assist in limiting the production, manufacture, importation, exportation, distribution and use of drugs exclusively to legitimate medical and other purposes. Moreover, DEA's Mission Statement discusses DEA's responsibility to coordinate and cooperate with foreign governments in programs designed to reduce the availability of illicit drugs subject to abuse on the United States market.

The Deputy Administrator agrees that DEA has already assumed a major role in controlling the diversion of controlled substances around the world. Accordingly, the Deputy Administrator finds the failure in prior cases to give any consideration to international diversion was too narrow an interpretation of the 21 U.S.C. 823(a), which permits the Deputy Administrator to consider any additional matters relevant to the public health and safety. The Deputy Administrator therefore finds that DEA should consider international diversion in the granting of NRM import registrations. Based upon the legislative history of 21 U.S.C. 823(a), however, as set forth in *Noramco*, such consideration should be limited to evidence of the contribution of foreign diversion to diversion in the United States.

In this matter, however, the Deputy Administrator finds that the Objectors adduced insufficient evidence that foreign diversion was likely to occur if Chattem were registered as an importer of NRMs, and no evidence of the effect of such diversion, if it were to occur, on the diversion of narcotics in the United States. The Deputy Administrator finds that there is no question that a certain percentage of the opium produced in India is commonly diverted at the grower level. Several witnesses, including an official of the United States Department of State, testified at the hearing that the addition of another importer might cause an increase in production and an oversupply of opium in India, causing further diversion of Indian opium. There was no hard evidence, however, that the addition of one importer of NRMs would cause any significant increase in the amount of diversion of opium in India, particularly when considered in light of DEA's continued registrations of bulk manufacturers of APIs. The evidence showed that if the registration of Chattem as an importer of NRMs would cause increased diversion of opium in India, such diversion would also be caused by DEA's continued registration of bulk manufacturers of narcotics. While the Government argued that NRM importer registrations have a different effect on diversion in India than the registration of bulk manufacturers, the Government offered no solid evidence in support of this proposition, or the proposition that such diversion would cause increased diversion of controlled substances in the United States. Accordingly, while the Deputy Administrator agrees that the diversion

of opium in India is a serious and continuing problem, the Deputy Administrator finds no substantial evidence in the record that Chattem's registration as an importer would result in a significant increase in foreign diversion of NRMs, or that such diversion, if it were to occur, would significantly increase diversion of controlled substances in this country.

The Deputy Administrator therefore finds that Chattem has met its burden of proof in showing that its registration as an importer of NRMs will not significantly interfere with the maintenance of effective controls against diversion. Moreover, it would be inequitable to deny an importer registration to Chattem while continuing to register bulk manufacturers of narcotics made from NRMs. The Deputy Administrator therefore finds that this factor favors the registration of Chattem as an importer of NRMs.

b. *Adequate Competition and Adequate Supply*

The ALJ Opinion included consideration of the issues of whether there is adequate competition in the NRM processing market, and whether the current importers can provide an adequate supply. She did so, however, only because she found that Chattem had not met its burden of proof in showing that diversion would not occur as a result of its registration. In *Johnson Matthey*, the Deputy Administrator found that in determining whether to register an importer of NRMs, DEA need not consider the issue of adequate competition or the adequacy of supply unless DEA finds that diversion cannot be effectively controlled. The court in *Noramco* agreed that this determination was a sound interpretation of DEA policy. Unlike *Johnson Matthey*, however, in *Penick*, a later case involving a challenge to an application for registration as an importer of NRMs, the Deputy Administrator did consider whether there was adequate competition in the NRM processing market even though the Deputy Administrator also found that the registration of Penick was unlikely to result in diversion of controlled substances. The *Noramco* court, however, which issued its opinion after the *Penick* Final Order, approved the application of the DEA policy, as applied in *Johnson Matthey*, of not considering the adequacy of competition in both the registration of bulk manufacturers of Schedule I and II controlled substances and registration of NRM importers, if the Deputy Administrator finds that there are sufficient controls against diversion. *Noramco* at 1153. The Deputy Administrator will therefore follow the policy applied in *Johnson Matthey* and approved by the appellate court in *Noramco.* Accordingly, in light of the Deputy Administrator's finding above concerning the lack of evidence of potential diversion, the Deputy Administrator will not consider the adequacy of competition or supply in this matter.

3. Compliance With Applicable State and Local Law

There is no significant evidence that Chattem has failed to comply with applicable State and local law. The evidence showed that on two occasions in the past, Chattem destroyed controlled substance in violation of DEA policy. Chattem's actions, however, were based on the advice of a Diversion Investigator in a DEA field office, and none of the Objectors adduced evidence to the contrary. Moreover, Dr. Blum testified that Chattem intended to fully comply with all DEA laws and regulations. The evidence also showed that the Food and Drug Administration (FDA) issued a warning letter to Chattem in 2000 revealing various deviations from Current Good Manufacturing Practices. Dr. Blum testified that the deficiencies were corrected and the matter resolved. Chattem also introduced into evidence FDA warning letters to Ortho-McNeil Pharmaceuticals, (Noramco's owner at the time of the hearing), and Mallinckrodt. The Deputy Administrator therefore finds that this factor weighs in favor of granting Chattem's application.

4. Promotion of Technical Advances in the Art of Manufacturing These Substances and the Development of New Substances

Dr. Blum testified that Chattem has produced advances in the art of manufacturing those controlled substances that it is already registered to produce. Dr. Blum also testified that Chattem intends to attempt to develop a process to produce thebaine from PSC if registered as an importer. There was little evidence, however, that Chattem has achieved any noteworthy success in technical advances in the manufacturing of controlled substances, or in the development of new substances or patents. Accordingly, the Deputy Administrator finds that this factor weighs against granting Chattem's application.

5. Prior Conviction Record of Applicant Under Federal And State Laws Relating to the Manufacture, Distribution, or Dispensing of Such Substances

It is undisputed that neither Chattem nor any of its officers, agents, or key employees has been convicted of any Federal or State law relating to the manufacture, distribution, or dispensing of controlled substances. The Deputy Administrator therefore concludes that this factor weighs in favor of granting Chattem's application.

6. Past Experience in the Manufacture of Controlled Substances and the Existence in the Establishment of Effective Controls Against Diversion

The evidence in the record showed that Chattem maintains effective controls against diversion, as discussed above. The record also showed that Chattem has experience in manufacturing controlled substances other than narcotics produced from NRMs. Chattem has no experience, however, in processing NRMs. Chattem introduced credible evidence, however, that the processing of NRMs is not complicated, and that Chattem has sufficient facilities to carry out the process. Dr. Frank Stermitz, Centennial Professor Emeritus of chemistry at Colorado State University, testified that the fundamental procedures for extracting and isolating alkaloids from NRMs do not require sophisticated technology or specialized equipment. Dr. Stermitz further testified that Chattem has experience in handling alkaloid-like materials that could be directly applicable to the processing of opium alkaloids. The ALJ gave little weight to that part of Dr. Stermitz's testimony concerning Chattem's plans for large scale production of APIs. The ALJ did not, however, comment negatively upon Dr. Stermitz's additional testimony concerning the process for the extraction of alkaloids from NRMs. Some of the Objectors introduced evidence that processing NRMs was not a simple process, and that Chattem was unlikely to possess the necessary technology to efficiently process NRMs. Similar to the Deputy Administrator's finding in *Johnson Matthey*, however, the Deputy Administrator finds that the record here showed by a preponderance of the evidence that the extraction of alkaloids from NRMs is not a new or complex process. Moreover, DEA has already granted a bulk manufacturing registration to Chattem for the manufacture of APIs from NRMs, and at the time of the hearing DEA had already issued a procurement quota to Chattem

for the purchase of PSC. It seems improbable that DEA would have issued the registration and quota if it had concerns about Chattem's technology for processing NRMs. The Deputy Administrator therefore finds that the evidence showed that Chattem possesses sufficient technology to process NRMs with efficiency. Accordingly, the Deputy Administrator concludes that this factor weighs in favor of granting Chattem's application.

7. Such Other Factors as May Be Relevant to and Consistent With the Public Health And Safety

The Deputy Administrator agrees with the ALJ's finding that there are no factors that might be relevant to and consistent with the public health and safety other than those discussed above.

C. Exceptions

All of the Objectors filed exceptions to the ALJ Opinion. Chattem responded to those exceptions. Having considered the record in its entirety, including the parties' exceptions and responses, the Deputy Administrator finds no merit in any of the exceptions, most of which concerned matters that were addressed at length at the hearing. The exceptions were extensive and are part of the record. Only one of the exceptions merits further discussion, and the remainder will not be restated herein.

In its exceptions, Mallinckrodt argued that conditions should be placed upon Chattem's registration, requiring Chattem to provide DEA with plans for a new facility capable of processing both opium and PSC and providing DEA with plans and a time table for upgrading and expanding its controlled substances facilities and equipment to meet Chattem's needs. The Deputy Administrator finds no need for such conditions. The evidence showed that while Chattem has potential plans to build a larger facility if warranted by its future sales, it currently has sufficient facilities to process both opium and PSC.

IV. Conclusion

Based upon the foregoing, the Deputy Administrator finds that Chattem has met its burden of proof to show that it is in the public interest, as defined by 21 U.S.C. 823(a) and 21 CFR 1301.34(b), to grant its application to be registered as an importer of NRMs. This decision is effective March 29, 2006.

Dated: February 17, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6–2696 Filed 2–24–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; ERISA Summary Annual Report

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that the data the Department gathers can be provided in the desired format, the reporting burden (time and financial resources) is minimized, the public clearly understands the Department's collection instruments, and the Department can accurately assess the impact of collection requirements on respondents. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments concerning an extension of the information collections in the regulation implementing the requirement under the Employee Retirement Income Security Act of 1974 (ERISA) that administrators of employee benefit plans annually furnish participants and certain beneficiaries a statement that fairly summarizes the plan's latest annual report. A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before April 28, 2006.

ADDRESSES: Direct all written comments regarding the information collection request and burden estimates to Susan G. Lahne, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410, FAX (202) 219–4333. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 104(b)(3) of ERISA and the regulation published at 29 CFR 2520.104b–10 require, with certain exceptions, that administrators of employee benefit plans furnish annually to each participant and certain beneficiaries a summary annual report (SAR) meeting the requirements of the statute and regulation. The regulation prescribes the content and format of the SAR and the timing of its delivery. The SAR provides current information about the plan and assists those who receive it in understanding the plan's current financial operation and condition. It also explains participants' and beneficiaries' rights to receive further information on these issues.

EBSA previously submitted the information collection provisions in the regulation at 29 CFR 2520.104b–10 to the Office of Management and Budget (OMB) for review in an information collection request (ICR). OMB approved the ICR under OMB Control No. 1210–0040. The ICR approval is scheduled to expire on May 31, 2006.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Evaluate whether and to what extent the proposed collection of information minimizes 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.*, by permitting electronic submissions of responses.

III. Current Action

This notice requests comments on an extension of the information collections in the ERISA Summary Annual Report regulation. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is being proposed or made at this time. A

summary of the ICR and the current burden estimates follows:

Type of Review: Extension of a currently approved collection of information.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: ERISA Summary Annual Report Regulation.

OMB Number: 1210–0040.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 815,114.

Responses: 304,196,000.

Estimated Total Burden Hours: 325,240.

Estimated Total Burden Cost (Operating and Maintenance): $142,448,000.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the ICR and will also become a matter of public record.

Dated: February 21, 2006.

Susan G. Lahne,

Senior Pension Law Specialist, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E6–2717 Filed 2–24–06; 8:45 am]

BILLING CODE 4510–29–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Appointment of Members of Senior Executive Services Performance Review Board

AGENCY: Office of National Drug Control Policy [ONDCP].

ACTION: Notice of appointments.

SUMMARY: The following persons have been appointed to the ONDCP Senior Executive Service Performance Review Board: Ms. Michele Marx, Mr. Joseph Keefe, Mr. Robert Denniston, and Mr. Patrick Ward.

FOR FURTHER INFORMATION CONTACT: Please direct any questions to Linda V. Priebe, Assistant General Counsel (202) 395–6622, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503.

Linda V. Priebe,

Assistant General Counsel.

[FR Doc. E6–2725 Filed 2–24–06; 8:45 am]

BILLING CODE 3180–02–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Week of February 27, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 27, 2006

Monday, February 27, 2006.

2:45 p.m. Affirmation Session (Public Meeting) (Tentative).

a. Hydro Resources, Inc. (P.O. Box 777, Crownpoint, NM 87313)(*in situ* leach mining operation)—concerning review of LBP–06–1, Partial Initial Decision (Phase II Radiological Air Emissions Challenges to In Situ Leach Uranium Mining License). (Tentative).

* * * * *

By a vote of 5–0 on February 21, 2006, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of Hydro Resources, Inc. (P.O. Box 777, Crownpoint, NM 87313)(*in situ* leach mining operation)—concerning review of LBP–06–1, Partial Initial Decision (Phase II Radiological Air Emissions Challenges to In Situ Leach Uranium Mining License)'' be held February 27, 2006, and on less than one week's notice to the public.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: February 22, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–1860 Filed 2–23–06; 12:58 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Submissions for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions:

Form SE—OMB Control No. 3235–0327—SEC File No. 270–289.

Form ID—OMB Control No. 3235–0328—SEC File No. 270–291.

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 requests for extension of the previously approved collections of information discussed below.

Form SE is used by registrants to file paper copies of exhibits that would be difficult or impossible to submit electronically. The information contained in Form SE is used by the Commission to identify paper copies of exhibits. Form SE is a public document and is filed on occasion. Form SE is filed by individuals, companies or other for-profit organizations that are required to file electronically. Approximately 782 registrants file Form SE and it takes an estimated .10 hours per response for a total annual burden of 78 hours.

Form ID is used by companies to apply for identification numbers and passwords used in conjunction with the EDGAR electronic filing system. The information provided on Form ID is essential to the security of the EDGAR system. Form ID is a not a public document because it is used solely for the purpose of registering filers on the EDGAR system. Form ID must be filed

every time a registrant or other person obtains or changes an identification number. Form ID is filed by individuals, companies or other for-profit organizations that are required to file electronically. Approximately 196,800 registrants file Form ID and it takes an estimated .15 hours per response for a total annual burden of 29,520 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: February 16, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–2687 Filed 2–24–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53332; File No. SR–Amex–2006–16]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rule 903 To Provide That the Exchange Will Typically Open Four Expiration Months for Each Class of Options Open for Trading

February 17, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 15, 2006, the American Stock Exchange LLC (''Amex'' 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 Amex. The Amex filed this proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 903 to provide that the Exchange will typically open four expiration months for each class of options open for trading. The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com*, the Office of the Secretary of the Amex 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 Amex 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 Amex 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 is proposing to amend Amex Rule 903 in order to avoid confusion and conform to industry standard. The Amex states that this proposal will not change the manner in which options expiration months are offered and listed, but instead, will clearly set forth how the Exchange will add these additional series.

Current Amex Rule 903 sets forth the manner in which options series are offered and listed on the Exchange. In connection with expiration month series, the rule provides that at the commencement of trading on the Exchange of a particular class of options relating to an underlying stock or Exchange-Traded Fund Share, series of options having three different expiration months in three-month intervals will normally be opened. Although Amex Rule 903 does not specifically provide that four expiration months will be open for trading for each options class, the Exchange in 1989 received approval together with the other options exchanges to provide four expiration months.[6] Accordingly, the Exchange submits that this amendment to Amex Rule 903 largely implements the prior Commission approval permitting four outstanding expiration months.

The other options exchanges provide that they will open four expiration months for each class of options open for trading with the first two months being the two nearest months, regardless of the quarterly cycle on which the class trades; and the third and fourth being the next two months of the quarterly cycle previously designated by the exchange for that specific class.[7] The Exchange believes that it is necessary to amend its rules to codify and conform the listing of options expiration months to the industry standard. Specifically, the Exchange is proposing to add new paragraph (b) to Amex Rule 903 to provide that the Exchange will usually open four expiration months for each class of options open for trading on the Exchange. The first two expiration months will be the two nearest term months, regardless of the quarterly cycle on which the options class trades while the third and fourth expiration months will be the next two months of the quarterly cycle previously designated by the Exchange for the specific class. For example, if the Exchange listed, in late April, a new stock option on a January-April-July-October quarterly cycle, the Exchange would list the two nearest term months (May and June) and the next two expiration months of the cycle (July and October). When the May series expires, the Exchange would then add the January series. When the June series expires, the Exchange would add the August series as the next nearest month, and would not add April.

Current Exchange Rule 903 permits additional expiration month series of the same options class to be added at or about the time a prior expiration month series expires. The rules of the other options exchanges provide that, due to unusual market conditions, new series of options on an individual stock (including an Exchange-Traded Fund

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] As required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii), the Amex submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

[6] *See* Securities Exchange Act Release Nos. 26934 (June 14, 1989), 54 FR 26283 (June 22, 1989) and 22099 (May 31, 1985), 50 FR 23862 (June 6, 1985).

[7] *See, e.g.*, Chicago Board Options Exchange, Incorporated (''CBOE'') Rule 5.5 and International Securities Exchange, Inc. (''ISE'') Rule 504.

Share) may be added up until five business days prior to expiration.[8] The Amex states that the rules of the other options exchanges also permit new series of options on individual stocks and Exchange-Traded Fund Shares to be added until the beginning of the month in which the options contracts expire. In order to conform to market convention, the Exchange is proposing to add new paragraph (d) to Amex Rule 903 as well as Commentary .04. New paragraph (d) provides for the opening of additional series of options of the same class, which new series would not affect the prior series of the same class previously opened, in the event the Exchange deems such to be necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock or Exchange-Traded Fund Share moves substantially from the initial exercise price or prices. Commentary .04 provides that such new series of options on individual stocks and Exchange-Traded Fund Shares may be added until five business days prior to expiration. It also provides that a new series of FLEX Equity Options may be added on any business day prior to the expiration date.

The Exchange believes that its Rule 903 should be amended as proposed in order to conform the Exchange's options offering and listing standards to previously approved rule filings as well as to conform to industry standard.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[9] in general and furthers the objectives of section 6(b)(5) of the Act[10] in particular in that it is 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 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purpose of the Act or the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the 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

The Amex 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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Amex has asked the Commission to waive the 30-day operative delay. The Commission believes that the proposed rule change does not raise any new regulatory issues; the proposed rule is identical to CBOE Rule 5.5 and ISE Rule 504. Waiver of the 30-day operative period would enable the Exchange to implement the proposal as quickly as possible, and thereby provide for greater uniformity with respect to the manner in which options series are offered and listed. Therefore, the Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[11] For this reason, the Commission designates that the proposal has become effective and operative immediately 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 No. SR–Amex–2006–16 on the subject line.

Paper comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Amex–2006–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. 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

[8] The Exchange received Commission approval in 1985 relating to the manner of adding additional options series. *See* Securities Exchange Act Release No. 21929 (April 10, 1985), 50 FR 15258 (April 17, 1985). This proposal seeks to implement this prior Commission approval.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] *See* Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii).

submissions should refer to File No. SR–Amex–2006–16 and should be submitted on or before March 20, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E6–2688 Filed 2–24–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53331; File No. SR–CBOE–2006–17]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program Relating to Market-Maker Bid-Ask Width Requirements for Non-Hybrid System Classes

February 17, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 15, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The CBOE has filed this proposal pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b-4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend until February 17, 2007, a pilot program establishing a limited exemption from the bid/ask differential requirements of CBOE Rule 8.7(b)(iv). The text of the proposed rule change appears below. Proposed new language is *italicized*; proposed deletions are [bracketed].

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 8.7. Obligations of Market-Makers

(a)–(e) No Change.

* * * Interpretations and Policies:

.01–.12 No Change.

.13 Market-Makers will be exempt from the requirements of subparagraph (b)(iv) of this Rule for a period of 30 seconds in cases where the Exchange automatically adjusts one side of the disseminated quote to one minimum increment below (above) the NBBO bid (offer): (1) because the size associated with that quote has been exhausted by automatic executions; or (2) to comply with the terms of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage. This exemption will be in effect until [February 17, 2006] *February 17, 2007* on a pilot basis.

* * * * *

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 Exchange is proposing to extend until February 17, 2007, a pilot program that provides a limited exemption from the Market-Maker bid/ask differential requirements contained in CBOE Rule 8.7(b)(iv).[6] As part of accommodating compliance with the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the ''Linkage Plan''),[7] the Exchange introduced an ''autofade'' functionality for classes NOT trading on the CBOE's Hybrid platform (''Hybrid'') (there are currently fewer than 10 classes that are not on Hybrid).[8] Because dynamic quoting is a feature of the Hybrid system, it does not require the autofade enhancement. Autofade causes one side of the CBOE's disseminated quote to move to an inferior price when the quote is required to fade pursuant to the terms of the Linkage Plan and/or when the size associated with the quote has been depleted by automatic Retail Automatic Execution System (''RAES'') executions (of both Linkage orders and non-Linkage orders). Without this enhancement, the system would not change the quote as required.

Linkage orders are generally Immediate or Cancel limit orders priced at the national best bid or offer (''NBBO'') that must be acted upon within 15 seconds. The Linkage Plan provides several instances in which a Participant receiving a Linkage order must fade its quote. For example, if a Participant receives a Principal Acting as Agent (''PA'') order for a size greater than the Firm Customer Quote Size and does not execute the entirety of the PA Order within 15 seconds, the Participant is required to fade its quote. The CBOE's autofade functionality automates the fading process to ensure that members (and the Exchange) are in full compliance with this aspect of the Linkage Plan. Autofade moves the CBOE's quote to a price that is one tick inferior to the NBBO.[9] This ensures that the Exchange will not immediately receive additional Linkage orders to allow the quote to refresh (either manually or through an autoquote update).

As mentioned above, autofade also applies any time an automatic execution of any order via RAES has depleted the size of the CBOE's quote. Once a quote is exhausted, autofade moves the quote to a price that is one tick inferior to the NBBO, as described above. For equity option classes that are not trading on the Hybrid System, the CBOE quote is generally derived from an autoquote system that is maintained by the

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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] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b-4(f)(6).

[5] The CBOE has asked the Commission to waive the 30-day operative delay provided in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

[6] The Commission approved the pilot program on September 10, 2003. *See* Securities Exchange Act Release No. 48471 (September 10, 2003), 68 FR 54251 (September 16, 2003) (order approving File No. SR–CBOE–2003–08). The pilot program was subsequently extended for an additional 18 months, until February 17, 2006. *See* Securities Exchange Act Release No. 50292 (August 31, 2004), 69 FR 54167 (September 7, 2004) (notice of filing and immediate effectiveness of File No. SR–CBOE–2004–39).

[7] The Commission approved the Linkage Plan on July 28, 2000. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

[8] Hybrid is the CBOE's trading platform that allows individual Market Makers to submit electronic quotes in their appointed classes. *See* CBOE Rule 1.1(aaa).

[9] The only exception is when CBOE's NBBO quote (or next best quote) is represented by a customer order in the book. In such cases, the Exchange does not fade a booked order (it would have to be traded).

Designated Primary Market-Maker (''DPM''). Certain DPMs utilize an Exchange-provided autoquote system, while others employ proprietary autoquote systems. In either case, the autoquote system calculates bid and ask *prices* that are transmitted to the Exchange for dissemination to the Options Price Reporting Authority (''OPRA''). The DPM and the trading crowd separately input the *size* associated with the bid/ask prices. When an automatic execution occurs through the RAES system, the size associated with the quote is decremented until it is exhausted. However, because the autoquote system is only calculating prices and not quote sizes, the autoquote system is not aware that the size has been exhausted (or in the case of a remaining balance on a Linkage order, that the quote needs to fade in order to comply with the Linkage Plan). Therefore, the autofade functionality was built to override autoquote and move the quote price to one tick inferior to the NBBO. The ''override'' period only lasts for 30 seconds. However, the override can be overridden during that 30-second time period if the quote is manually updated by a trader or if the autoquote system transmits new bid/ask pricing to the Exchange.

The exemption established by the pilot program is for limited instances where the autofade functionality moves the quote in a manner that causes the quote width to widen beyond the bid/ask parameters provided in CBOE Rule 8.7(b)(iv). The CBOE seeks to extend on a pilot basis the temporary exception to the requirements of CBOE Rule 8.7(b)(iv) in cases where *autofade* causes a quote that exceeds the quote width parameters of that rule. The proposed exemption period lasts for a maximum of 30 seconds after any given autofade that caused a quote wider than allowed under CBOE Rule 8.7(b)(iv). Thus, to the extent a quote remained outside of the maximum width after the 30-second time period, the responsible broker or dealer disseminating the quote would be deemed in violation of CBOE Rule 8.7(b)(iv) for regulatory purposes. The CBOE proposes to extend the pilot for one more year, until February 17, 2007.

2. Statutory Basis

The CBOE believes that the proposed rule change will, among other things, allow the Exchange to more easily comply with the requirements of the Linkage Plan. Accordingly, the Exchange believes the proposed rule change is consistent with section 6(b) of the Act,[10] in general, and furthers the objectives of section 6(b)(5) of the Act,[11] in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and 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

The CBOE neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CBOE has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, as required under Rule 19b-4(f)(6)(iii),[12] the CBOE provided the Commission with written notice of its intention to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[13] and Rule 19b-4(f)(6) thereunder.[14]

Pursuant to Rule 19b-4(f)(6)(iii) under the Act, a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The CBOE has asked the Commission to waive the 30-day operative delay to allow the pilot program to continue without interruption.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the pilot program to continue to operate without interruption through February 17, 2007.[15] Accordingly, the Commission waives the 30-day operative delay.

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 Number SR–CBOE–2006–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CBOE–2006–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the 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

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 240.19b-4(f)(6)(iii).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b-4(f)(6).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Room. Copies of the 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 No. SR–CBOE–2006–17 and should be submitted on or before March 20, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. 06–1733 Filed 2–24–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53338; File No. SR–PCX–2005–141]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change Relating to Modifications to the Archipelago Exchange's Closing Auction

February 21, 2006.

On December 21, 2005, the Pacific Exchange, Inc. (''PCX''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules governing the Closing Auction[3] of the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE. The proposed rule change was published for notice and comment in the **Federal Register** on January 19, 2006.[4] The Commission received no comment letters on the proposal.

The proposed rule change would clarify ArcaEx's Closing Auction functionality and conform it substantially to its Market Order Auction rules.[5] Specifically, the proposed rule change would provide that if there were Limited Price Orders[6] eligible for execution in the Closing Auction, the Closing Auction price would be the Indicative Match Price[7] and that if no such orders were eligible for execution, any Market-on-Close Orders (''MOC'')[8] submitted to participate in the Closing Auction, would be rejected. In addition to a few non-substantive changes, the proposed rule change would clarify the priority for execution of orders on the side of an imbalance in the Closing Auction and the circumstances, such as system malfunctions, in which Limit-on-Close Orders (''LOC'')[9] and MOC Orders would be cancelled. The Exchange also proposes to delete a provision in the Closing Auction rule related to limiting the Closing Auction price to a threshold amount since a similar concept is already incorporated into the definition ''Indicative Match Price.''

The proposed rule change would limit the Closing Auction to Exchange-listed securities, including Exchange-listed funds for which PCXE is the primary market. In its filing, the Exchange explained that, as a result of limited participation and limited liquidity in the ArcaEx Closing Auction, orders are frequently executed at prices that vary from the closing prices at other primary markets. The proposed rule change is aimed at protecting Users[10] from executions that may occur at such prices. In addition, the proposal would clarify that orders submitted to the Closing Auction while such auction is suspended would be rejected.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change is reasonably designed to clarify and conform substantially the Closing Auction pricing mechanism to the Market Order Auction pricing mechanism, as well as to provide investors with a clearer understanding of how orders will be priced in the Closing Auction. Further, the proposal appears to be reasonably designed to delineate the circumstances under which the PCXE may suspend the Closing Auction, which should enhance transparency for Users as to when a Closing Auction in a particular security may not occur.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PCX–2005–141) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E6–2686 Filed 2–24–06; 8:45 am]

BILLING CODE 8010–01–P

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* PCXE Rule 7.35(e).

[4] *See* Securities Exchange Act Release No. 53096 (January 11, 2006), 71 FR 3145.

[5] *See* PCXE Rule 7.35(c).

[6] *See* PCXE Rule 1.1(s).

[7] *See* PCXE Rule 1.1(r).

[8] *See* PCXE Rule 7.31(dd).

[9] *See* PCXE Rule 7.31(ee).

[10] *See* PCXE Rule 1.1(yy).

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5320]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Youth Leadership Programs for Indonesia and the Philippines

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–06–21.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates: Application Deadline: April 19, 2006

Executive Summary: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for two Youth Leadership Programs: One with Indonesia and one with the Philippines. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to recruit and select youth and adult participants overseas and to provide the participants with a U.S.-based exchange project focused on civic education, leadership, conflict resolution, tolerance and respect for diversity, and/or community activism.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual

understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Overview: The Youth Leadership Programs enable teenagers (ages 15–17) and adult educators to participate in intensive, thematic, month-long projects in the United States that complement a more formal education in the principles of a civil society. Participants will be engaged in a variety of activities such as workshops, community and/or school-based programs, cultural activities, seminars and other activities designed to achieve the projects' stated goals and objectives. Opportunities for participants to interact with American youth and adult educators will be included as much as possible.

The goals of the programs are:

(1) To develop a sense of civic responsibility and commitment to community development among youth;

(2) To develop a cadre of community activists who will share their knowledge and skills with their peers through positive action;

(3) To foster relationships among youth from different ethnic, religious, and national groups;

(4) To promote mutual understanding between the United States and the people of other countries.

Applicants should identify their own specific objectives and measurable outcomes based on these program goals and the project specifications provided in this solicitation.

Should organizations wish to apply for more than one project, they must submit a separate proposal for each. The two projects will be judged independently and proposals for a particular country will be compared only to proposals for the same country. ECA intends to award only one grant for each project.

Project A: Indonesia

Objective: To introduce students and educators from Indonesia to the principles of democracy, civil society, and youth leadership as they are practiced in the United States, with an additional focus on volunteerism/community activism and peer education.

Participants: Fifteen to 20 students and teachers (approx. ratio of 4:1) who have demonstrated an interest in playing a role in their communities. The participants need not be proficient in English; interpretation should be provided.

Applicants should propose a U.S. program between March and August 2007. Total funding: $167,000.

Project B: Philippines

Objective: To advance a dialogue and a degree of mutual understanding between Muslim and non-Muslim youth from the Autonomous Region of Muslim Mindanao and surrounding provinces, leading to a strategy to implement cooperatively after re-entry.

Participants: 20–25 teenagers and 3–8 educators. Educators should have demonstrated conflict resolution experience and expect to remain in positions where they can continue working with youth on matters related to conflict resolution and inter-ethnic understanding. The group should be evenly divided between Muslim and non-Muslim participants (both youth and adults). Participants will be proficient in English.

Applicants should propose a U.S. program between January and June 2007. The project will also include an alumni activity that involves alumni since the beginning of the program in 2004. Total funding: $200,000.

For both projects, applicants must demonstrate their capacity for doing projects of this nature, focusing on three areas of competency: (1) Provision of programs that address the goals and themes outlined in this document; (2) age-appropriate programming for youth; and (3) previous experience in working with the specified countries. Applicants need to have the necessary capacity in the geographic areas from which participants will be recruited or a partnered institution with the requisite capacity to recruit and select participants for the program and to provide follow-on activities.

The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. The Bureau also reserves the right to renew this grant in future years contingent upon the successful performance of the grant recipient and the availability of funding.

Guidelines: Grants should begin on or about August 15, 2006, subject to the availability of funds. The grant period will be 12 to 16 months in duration, as appropriate.

In pursuit of the goals outlined above, the programs will include the following:

- Recruitment and selection of youth and adult educators from the appropriate geographic regions.
- A pre-departure orientation program.
- Designing and planning of activities in the United States that provide a substantive program on leadership development, civic education, community service, and conflict resolution. Some activities should be school and/or community-based, as feasible, and the projects will involve as much interaction with American peers as possible.
- Logistical arrangements, home-stay arrangements (as appropriate) and/or other accommodation, provisions for religious observance, disbursement of stipends/per diem, local travel, and travel between sites.
- Follow-on activities in the participants' home countries designed to reinforce the ideas, values, and skills imparted during the U.S. program.

Recruitment and Selection: The grant recipients must consult with the Public Affairs Sections at the U.S. Embassies to review a recruitment and participant selection plan. Organizers must strive for the broadest regional and ethnic diversity within specified areas of each country. The Department of State and/or its overseas representatives reserve final approval of all selected delegations.

Participants: The participants will be teenagers aged 15 to 17, who have demonstrated leadership aptitude and an interest in community service, and adults who are teachers, school administrators, and/or community leaders who work with youth. The ratio of students to adults will be approximately 5:1. The adult participants will be participants first and foremost, but will also serve as chaperones and advisors.

Criteria for selection of participants will be leadership skills, an interest in service to the community, strong academic and social skills, overall composure, openness and flexibility and, for the Philippines project, English proficiency. It is desirable that 2–3 participants attend or teach at the same school or live in the same community so that they can support each other upon return.

U.S. Program: The projects may take place in one or two communities and should offer the participants exposure to the variety of American life. The program should focus primarily on interactive activities, practical experiences, and other hands-on opportunities to learn about the fundamentals of a civil society, community service, conflict resolution,

tolerance and respect for diversity, and building leadership skills. Suggestions include simulations, a volunteer service project, and leadership training exercises. All programming should include American participants wherever possible. Cultural and recreational activities will balance the schedule. Please see the POGI for more details.

Follow-on Activities and In-Country Programming: Follow-on activities for U.S. program alumni are required, and additional in-country programming is strongly recommended. Applicants should present creative and effective ways to address the project themes, for both program participants and their peers, as a means to amplify the program impact.

Proposals must demonstrate how the stated objectives will be met. The proposal narrative should provide detailed information on the major program activities, and applicants should explain and justify their programmatic choices. Programs must comply with J–1 visa regulations. Please be sure to refer to the complete Solicitation Package—this RFGP, the Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI)—for further information.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: 2006.

Approximate Total Funding: $367,000—$167,000 for Indonesia + $200,000 for Philippines.

Approximate Number of Awards: Two.

Anticipated Award Date: August 15, 2006.

Anticipated Project Completion Date: 12–18 months after start date, to be specified by applicant based on project plan

Additional Information: Pending successful implementation of the projects and the availability of funds in subsequent fiscal years, ECA reserves the right to renew grants for up to two additional fiscal years before openly competing grants under this program again.

III. Eligibility Information

III.1. *Eligible applicants:* Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. *Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. *Other Eligibility Requirements:*

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding two grants, each in amounts over $60,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. *Contact Information to Request an Application Package:*

Please contact the Youth Programs Division (ECA/PE/C/PY), Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Telephone (202) 203–7505, Fax (202) 203–7529, e-mail: *LantzCS@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA/PE/C/PY–06–21) located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria, and budget instructions tailored to this competition.

Please specify Bureau Program Officer Carolyn Lantz and refer to the Funding Opportunity Number (ECA/PE/C/PY–06–21) located at the top of this announcement on all other inquiries and correspondence.

IV.2. *To Download a Solicitation Package Via Internet:* The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*, or from the *Grants.gov* Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. *Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 form that is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status

as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. *Please take into consideration the following information when preparing your proposal narrative:*

IV.3d.1 Adherence To All Regulations Governing The J Visa.

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et. seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 203–5029. FAX: (202) 453–8640.

IV.3d.2 Diversity, Freedom and Democracy Guidelines.

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation.

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning*, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior*, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes*, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be

judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. *Please take the following information into consideration when preparing your budget:*

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. Awards may not exceed the amounts specified. Funding for the project with Indonesia is not to exceed $167,000. Funding for the project with the Philippines is not to exceed $200,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the other documents in the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. *Application Deadline and Methods of Submission:*

Application Deadline Date: April 19, 2006.

Reference Number: ECA/PE/C/PY–06–21.

Methods of Submission:

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov*.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications.

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original, one fully-tabbed copy, and five copies of the application with Tabs A–E (for a total of 7 copies) should be sent to:

U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–06–21, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

Applicants must also submit the executive summary, proposal narrative, budget section, and any important appendices as e-mail attachments in Microsoft Word and Excel to the following e-mail address: *LantzCS@state.gov*. In the e-mail message subject line, include the name of the applicant organization and the partner country. The Bureau will transmit these files electronically to the Public Affairs Sections of the relevant U.S. embassies for review.

IV.3f.2. Submitting Electronic Applications.

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Applicants have until midnight (12 a.m.) of the closing date to ensure that their entire applications have been uploaded to the grants.gov site. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

IV.3g. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

Please see the review criteria in the accompanying Project Objectives, Goals, and Implementation (POGI) document.

VI. Award Administration Information

VI.1a. *Award Notices:* Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the

application review from the ECA program office coordinating this competition.

VI.2. *Administrative and National Policy Requirements:* Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants.

http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.

VI.3. *Reporting Requirements:* You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Interim reports, as required in the Bureau grant agreement.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. *Program Data Requirements:* Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three workdays prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Carolyn Lantz, Program Officer, Youth Programs Division (ECA/PE/C/PY), Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Telephone (202) 203–7505, Fax (202) 203–7529, e-mail: *LantzCS@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–06–21.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: February 21, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E6–2723 Filed 2–24–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5319]

Title: Summer Work/Travel 12-month Pilot Program

AGENCY: Department of State.

ACTION: Notice with Request for Comment.

DATES: The Department will accept comments from the public up to 60 days from February 27, 2006.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Director, Office of Exchange Coordination and Designation, U.S. Department of State, SA–44, 301 4th St., SW., Room 734, Washington, DC 20547. E-mail: *jexchanges@state.gov;* FAX: 202–203–5087.

SUMMARY: The Department hereby announces its intent to investigate the possible adoption of a pilot program that will provide foreign university students an opportunity to work and travel in the United States for up to 12 months.

The Conference Report (H. Rep. 108–792) that accompanied The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 2005, H.R. 4818, Public Law 108–447, incorporated by reference certain language set forth in S. Rep. 108–344, that accompanied S. 2809. In that report, the Senate Committee on Appropriations directed the Department as follows:

''Working Exchanges—The Committee directs the Department of State to work with the Governments of Australia, Canada, and New Zealand to establish bilateral exchange programs that will allow young people from these countries to visit the United States for a period of up to 1 year for purposes of work and travel and vice versa. The United States has long enjoyed close and valuable exchange relationships with Australia, Canada, and New Zealand. The bilateral relationships between the United States and these countries would be further strengthened by expanding opportunities for young people to visit each other's countries for an extended period. The Committee directs the Department to work within current regulatory frameworks governing the exchange visitor programs, and specifically the summer work travel program, administered by the Bureau of Educational and Cultural Affairs. The Committee recognizes the work of the Ministry of Foreign Affairs of the Government of New Zealand in raising the visibility of this promising program called ''Working Holiday Schemes,'' within the United States Government.''

To further the above stated directive and better inform its decision making, the Department hereby solicits comment and proposals on the design of a pilot program that will provide a 12-month period of work and travel that will operate within existing summer work travel program regulations set forth at 22 CFR 62.32. Of specific interest to the Department is the selection of eligible university students and how their

participation will affect their student status in their home country. Also of interest to the Department is the placement and monitoring of participants in a manner that will satisfy the requirements of the PATRIOT Act.

Dated: February 21, 2006.

Stanley S. Colvin,

Director, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E6–2722 Filed 2–24–06; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA), as Amended: Notice Regarding the 2004 and 2005 Annual Reviews

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) received petitions in September 2005 to review certain practices in certain beneficiary developing countries to determine whether such countries are in compliance with the ATPA eligibility criteria. USTR published a list of responsive petitions that were accepted for review in a notice published on November 22, 2005 (70 FR 70652). This notice specifies the results of the preliminary review of those petitions as well as the status of the petitions filed in 2004 that have remained under review.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, at (202) 395–9446.

SUPPLEMENTARY INFORMATION: The ATPA (19 U.S.C. 3201 *et seq.*), as renewed and amended by the Andean Trade Promotion and Drug Eradication Act of 2002 (ATPDEA) in the Trade Act of 2002 (Public Law 107–210), provides trade benefits for eligible Andean countries. Pursuant to section 3103(d) of the ATPDEA, USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) regarding the review of eligibility of countries for the benefits of the ATPA, as amended.

USTR announced initiation of the 2005 ATPA Annual Review with a deadline of September 19, 2005 for the filing of petitions (70 FR 48622). Several of these petitions that USTR received requested the review of certain practices in certain beneficiary developing countries regarding compliance with the eligibility criteria set forth in sections 203(c) and (d) and section 204(b)(6)(B) of the ATPA, as amended (19 U.S.C. 3203(c) and (d); 19 U.S.C. 3203(b)(6)(B)).

In a notice dated November 22, 2005, USTR published a list of the responsive petitions filed pursuant to the announcement of the annual review (70 FR 70652). The Trade Policy Staff Committee (TPSC) has conducted a preliminary review of these petitions. It has determined that due to developments in the matter raised by Exxon Mobil, concerning Peru, that petition does not require further action, and the TPSC is terminating its review. With respect to the remaining 2005 petitions, the TPSC is modifying the schedule for this review, in accordance with 15 CFR 2016.2(b). The results of this review will be announced on or about May 31, 2006.

With respect to the 2004 petition submitted by Electrolux Home Products Inc. concerning Ecuador, the TPSC has determined that the petition does not require further action, and is terminating its review. The TPSC is modifying the date of the announcement of the results of preliminary review for the remaining 2004 petitions to May 31, 2006. Following is the list of all petitions that remain under review:

Peru: Parsons Corporation;
Peru: Engelhard;
Peru: Princeton Dover;
Peru: LeTourenau;
Peru: Duke Energy;
Ecuador: AFL–CIO; Human Rights Watch; and US/LEAP;
Ecuador: Chevron Texaco.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. E6–2695 Filed 2–24–06; 8:45 am]

BILLING CODE 3190–W6–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review, Request for Comments; Renewal of an Approved Information Collection Activity, Agricultural Aircraft Operator Certificate Application

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) renewal of a current information collection. The **Federal Register** Notices with a 60-day comment period soliciting comments on the following collection of information was published on November 16, 2005, vol. 70 #220, page 69624. Standards have been established for the operation of agricultural aircraft and for the dispensing of chemicals, pesticides, and toxic substances. Information collected shows applicant compliance and eligibility for certification by FAA.

DATES: Please submit comments by March 29, 2006.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Agricultural Aircraft Operator Certificate Application.

Type of Request: Renewal of an approved collection.

OMB Control Number: 2120–0049.

Forms(s): FAA Form 8710–3.

Affected Public: A total of 3980 Respondents.

Frequency: The information is collected on an as-needed basis.

Estimated Average Burden Per Response: Approximately 30 minutes per response.

Estimated Annual Burden Hours: An estimated 14,037 hours annually.

Abstract: Standards have been established for the operation of agricultural aircraft and for the dispensing of chemicals, pesticides, and toxic substances. Information collected show applicant compliance and eligibility for certification by FAA.

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 February 16, 2006.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 06–1756 Filed 2–24–06; 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, Suspected Unapproved Parts Notification

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) renewal of a current information collection. The **Federal Register** Notices with a 60-day comment period soliciting comments on the following collection of information was published on November 16, 2005, vol. 70, #220, pages 69624–69625. The information collected on the FAA Form 8120–11 will be reported voluntarily by manufacturers, repair stations, aircraft owner/operators, air carriers, and the general public who wish to report suspected ''unapproved'' parts to the FAA for review. The information will be used to determine if an ''unapproved'' part investigation is warranted.

DATES: Please submit comments by March 29, 2006.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Suspected Unapproved Parts Notification.

Type of Request: Renewal of an approved collection.

OMB Control Number: 2120–0552.

Forms: FAA Form 8120–11.

Affected Public: A total of 300 Respondents.

Frequency: The information is collected on an as-needed basis.

Estimated Average Burden Per Response: Approximately 30 minutes per response.

Estimated Annual Burden Hours: An estimated 150 hours annually.

Abstract: The information collected on the FAA Form 8120–11 will be reported voluntarily by manufacturers, repair stations, aircraft owner/operators, air carriers, and the general public who wish to report suspected ''unapproved'' parts to the FAA for review. The information will be used to determine if an ''unapproved'' part investigation is warranted.

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 February 16, 2006.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 06–1757 Filed 2–24–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Government/Industry Aeronautical Charting Forum Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the bi-annual meeting of the Federal Aviation Administration (FAA) Aeronautical Charting Forum (ACF) to discuss informational content and design of aeronautical charts and related products, as well as instrument flight procedures development policy and design criteria.

DATES: The ACF is separated into two distinct groups. The Instrument Procedures Group will meet April 18, 2006, from 9 a.m. to 5 p.m. The Charting Group will meet April 19 and 20 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Advanced Management Technology, Incorporated (AMTI), 1515 Wilson Boulevard Suite 1100, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: For information relating to the Instrument Procedures Group, contact Thomas E. Schneider, FAA, Flight Procedures Standards Branch, AFS–420, 6500 South MacArthur Blvd, PO Box 25082, Oklahoma City, OK 73125; telephone (405) 954–5852; fax: (405) 954–2528.

For information relating to the Charting Group, contact John A. Moore, FAA, National Aeronautical Charting Group, Requirements and Technology Team, AJW–3521, 1305 East-West Highway, SSMC4–Station 5544, Silver Spring, MD 20910; telephone: (301) 713–2631, Ext 172; fax: (301) 713–1960.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aeronautical Charting Forum to be held from April 18, 2006, to April 20, 2006, from 9 a.m. to 5 p.m. at the Advanced Management Technology, Incorporated, 1515 Wilson Boulevard, Suite 1100, Arlington, VA 22209.

The Instrument Procedures Group agenda will include briefings and discussions on recommendations regarding pilot procedures for instrument flight, as well as criteria, design, and developmental policy for instrument approach and departure procedures.

The Charting Group agenda will include briefings and discussions on recommendations regarding aeronautical charting specifications, flight information products, as well as new aeronautical charting and air traffic control initiatives.

Attendance is open to the interested public, but will be limited to the space available.

The public must make arrangements by April 7, 2006, to present oral statements at the meeting. The public may present written statements and/or new agenda items to the committee by providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by March 31, 2006. Public statements will only be considered if time permits.

Dated: Issued in Washington, DC, on February 17, 2006.

John A. Moore, Jr.,

Co-Chair, Government/Industry, Aeronautical Charting Forum.

[FR Doc. 06–1755 Filed 2–24–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2005–22844]

Notice for Renewal of Currently Approved Information Collection: Highway Performance Monitoring System (HPMS)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to renew an information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 21st, 2005. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by March 29, 2006.

ADDRESSES: You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2005–22844.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rozycki, (202) 366–5059, Highway Systems Performance (HPPI–20), Office of Highway Policy Information, Office of Policy & Governmental Affairs, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Highway Performance Monitoring System (HPMS).

OMB Control Number: 2125–0028 (Expiration Date: April 30, 2006).

Background: The HPMS data that is collected is used for management decisions that affect transportation, including estimates of the Nation's future highway needs and assessments of highway system performance. The information is used by the FHWA to develop and implement legislation and by State and Federal transportation officials to adequately plan, design, and administer effective, safe, and efficient transportation systems. This data is essential to the FHWA and Congress in evaluating the effectiveness of the Federal-aid highway program. The HPMS also provides miles, lane-miles and travel components of the Federal-Aid Highway Fund apportionment formulae. The data that is required by the HPMS is continually reassessed and streamlined by the FHWA.

Respondents: State and local governments of the 50 United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Estimated Average Burden Per Response: The estimated average reporting burden per response for the annual collection of the data is 1,440 hours for the States, District of Columbia, and the Commonwealth of Puerto Rico.

Estimated Total Annual Burden: The estimated total annual burden for all Respondents is 74,880 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. Internet users may reach the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara*.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: February 21, 2006.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E6–2719 Filed 2–24–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2005–22844]

Notice of Request for Extension of Currently Approved Information Collection: A Guide To Reporting Highway Statistics

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to renew an information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 21, 2005. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by March 29, 2006.

ADDRESSES: You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2005–22844.

FOR FURTHER INFORMATION CONTACT: Thomas W. Howard, Department of Transportation, Federal Highway Administration, Office of Policy, Office of Highway Policy Information, Highway Funding and Motor Fuels (HPPI–10), 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: A Guide to Reporting Highway Statistics.

OMB Control Number: 2125–0032 (Expiration Date: March 31, 2006).

Background: A Guide to Reporting Highway Statistics provides for the collection of information by describing policies and procedures for assembling

statistical data from the existing files of State agencies. The data includes motor-vehicle registration and fees, motor-fuel use and taxation, driver licensing, and highway taxation and finance. Federal, State, and local governments use the data for transportation policy discussions and decisions. Motor-fuel data are used in attributing receipts to the Highway Trust Fund and subsequently in the apportionment formulas that are used to distribute Federal-Aid Highway Funds. The data are published annually in the FHWA's Highway Statistics and Our Nation's Highways. Information from Highway Statistics is used in the joint FHWA and Federal Transit Administration required biennial report to Congress, The Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance Report to Congress, which contrasts present status to future investment needs.

Respondents: State and local governments of the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, and the four territories (American Samoa, Guam, Northern Marianas, and Virgin Islands).

Estimated Average Burden Per Response: The estimated average reporting burden per response for the annual collection of the data is 825.6 hours for the States and the District of Columbia; and 20 hours for the Commonwealth of Puerto Rico and each of the four territories.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is 42,206 hours.

Public Comments Invited: You are asked to comment on any aspect of this Information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that burdens could be minimized, including use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or Include your comments in the request for OMB's clearance of this information collection.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. Internet users may reach the **Federal Register**'s Home Page *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: February 21, 2006.

James R. Kabel,

Chief, Management Programs and Analysis, Division.

[FR Doc. E6–2724 Filed 2–24–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind Notice of Intent To Prepare an Environmental Impact Statement: Benton County, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind Notice of Intent to prepare an environmental impact statement.

SUMMARY: The FHWA is issuing this notice to advise the public that we are rescinding the Notice Of Intent (NOI) to prepare an environmental impact statement (EIS) for a proposed project in central Missouri. The NOI was published in the **Federal Register** on April 20, 1994. This rescission is based on a reduction in scope from the 1994 proposal to build a 17.5-mile, four-lane relocation of U.S. Route 65 in Benton County.

FOR FURTHER INFORMATION CONTACT: Peggy J. Casey, Environmental Projects Engineer, FHWA Division Office, 3220 West Edgewood, Suite H, Jefferson City, MO 65109; Telephone: (573) 638–2620 or Mr. Kevin Keith, Chief Engineer, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102, Telephone: (573) 751–2803.

SUPPLEMENTARY INFORMATION: This project as now proposed involves widening approximately 15 miles of U.S. Route 65 in Benton County, Missouri, from two lanes to four lanes with consideration of relocation in the vicinity of Lincoln. We will also consider a two plus one improvement, which calls for two lanes with the addition of a passing lane, where needed. The proposed project begins south of the Missouri Route 52 South Junction and proceeds southward to the Missouri Route 7 North Junction at Warsaw.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 14, 2006.

Peggy J. Casey,

Environmental Projects Engineer, Jefferson City.

[FR Doc. 06–1775 Filed 2–24–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Boone County and the City of Columbia, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed improvements between the I–70 and State Route Z interchange and the U.S. Route 63 and State Route AC interchange in Boone County and the City of Columbia, Missouri.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy J. Casey, Environmental Projects Engineer, FHWA Division Office, 3220 West Wedgewood, Suite H, Jefferson City, MO 65109, Telephone: (573) 638–2620 or Mr. Dave Nichols, Director of Project Development, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102, Telephone: (573) 751–4586.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare an EIS for a proposal for improvements between the I–70 and State Route Z interchange and the U.S. 63 and State Route AC interchange in Boone County and the City of Columbia, Missouri. A location study will run concurrently with the preparation of the EIS and will provide definitive reasonable alternatives for evaluation in the EIS. The proposed action will accomplish several goals: (1) Improve safety, (2) decrease congestion, and (3) support community regional development.

The proposed project will include improvements to be located within a study area defined by U.S. Route 63 on the west, State Route PP (Clark Lane) on the north, State Route AC on the south, and State Route Z on the east. The study area is approximately 5 miles in length and 4 miles in width. Known potential impacts include residential and/or commercial relocations and access changes. A Department of Army Section

404 permit and a floodplain development permit from the State Emergency Management Agency may be required.

Alternatives under consideration include (1) taking no action, (2) implementing transportation system management options, (3) and build alternatives. Substantial preliminary coordination has occurred with local officials. As part of the scoping process, an interagency coordination meeting will be held with all appropriate Federal, state and local agencies. This coordination will continue throughout the study as an ongoing process. In addition, public information meetings and further meetings with community officials will be held to solicit public and agency input. A location public hearing will be held to present the findings of the Draft EIS. Public notice will be given announcing the time and place of all public meetings and the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or MoDOT at the addresses previously provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highways Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on February 13, 2006.

Peggy J. Casey,

Environmental Projects Engineer, Jefferson City.

[FR Doc. 06–1774 Filed 2–24–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2006–23550]

Interstate Oasis Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The FHWA is soliciting comments on a proposed Interstate Oasis program. Specifically, section 1310 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (''SAFETEA–LU'', Pub. L. 109–59, enacted August 10, 2005), requires the Secretary of Transportation to develop standards for designating certain facilities as Interstate Oases and to design a uniform logo for such designated facilities. The FHWA has developed a preliminary framework for an Interstate Oasis program and is seeking public comments in order to refine and finalize the program.

DATES: Comments must be received on or before April 28, 2006.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit electronically at *http://dms.dot.gov/submit,* or fax comments to (202) 493–2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgement page that appears after submitting comments electronically. 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 comments (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.*

FOR FURTHER INFORMATION CONTACT: Mr. Hari Kalla, (202) 366–5915, Office of Transportation Operations, HOTO, or Mr. Robert Black, Office of the Chief Counsel, HCC–30, (202) 366–1359. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dms.dot.gov/submit.* The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

In response to a provision in the Joint Explanatory Statement of the Committee of Conference (House Report 106–355) that accompanied the Department of Transportation and Related Agencies Appropriations Act, 2000 (Pub. L. 106–69, 113 Stat. 986), the FHWA has been in the process of investigating a number of issues relating to rest areas on the Interstate System. Of particular concern is that States are considering closing or privatizing rest areas on Interstate highways because of the costs of maintenance and operation, security issues, and potential liability. Insufficient truck parking has also been found to be a significant problem in some States at rest areas on the Interstate system, on local road systems near interchanges with Interstate highways, and at adjoining businesses. Commercialization of existing Interstate highway public rest areas to allow private firms to provide services such as those found in ''service plazas'' on many toll roads and turnpikes, in exchange for private responsibility for maintenance and operation of the rest areas, has been advocated by some States and by the American Association of State Highway and Transportation Officials (AASHTO). However, such commercialization is not authorized by current laws and regulations and is strongly opposed by business interests located off the Interstate system.

The designation of certain privately owned facilities off the Interstate system, such as commercial truck stops, under public-private partnership agreements, has been identified as a potential alternative to address road user needs in lieu of commercialization of Interstate rest areas and as a possible way to provide motorist services as well as help address shortages of truck parking. Such private facilities would be required to meet certain minimum standards and signing would be provided on the highway to lead road users to these facilities. The FHWA has identified two States, Utah and Vermont, that have programs in operation for designation of and signing to such off-Interstate facilities, and a third State, Louisiana, that has developed the framework for such a program but has not implemented it.

In August 2005, SAFETEA–LU was enacted. Section 1310 of SAFETEA–LU, entitled ''Interstate Oasis Program'', requires FHWA to establish an Interstate Oasis program and, after providing an opportunity for public comment, develop standards for designating as an Interstate Oasis a facility that, as a minimum, offers products and services

to the public, 24-hour access to restrooms, and parking for automobiles and heavy trucks. Section 1310 also requires the standards for designation as an Interstate Oasis to include the ''appearance of a facility'' and the proximity of the facility to the Interstate system, and requires FHWA to design a logo to be displayed by a designated Interstate Oasis facility. Further, section 1310 requires that, if a State elects to participate in the Interstate Oasis program, any facility meeting the standards for designation shall be eligible for designation as an Interstate Oasis.

A related provision of SAFETEA–LU, section 1305, authorized a separate program to provide Federal funding for building, expanding, or improving truck parking facilities along the National Highway System. The FHWA plans to issue a separate notice in the **Federal Register** to announce this program and solicit applications for use of the available funding. The FHWA will closely coordinate the section 1305 and section 1310 programs to assure they are compatible and complementary to each other in serving the public need.

Description of Proposed Interstate Oasis Program

The FHWA has developed a preliminary framework for an Interstate Oasis program that FHWA believes is responsive to the requirements in section 1310 of SAFETEA–LU. Figures will be developed and sign numbers will be designated at a later date to illustrate certain signing elements after they are finalized. Therefore, figure numbers included in the draft text of the program document are left blank at this time, and sign numbers are general and not specific. The draft text of the program document is as follows:

''An Interstate Oasis shall be defined as a facility near an Interstate highway, but not within the Interstate right-of-way, designated by a State after meeting certain eligibility criteria, that provides products and services to the public, 24-hour access to public restrooms, and parking for automobiles and heavy trucks.

Interstate Oasis facilities shall comply with laws concerning:

1. The provisions of public accommodations without regard to race, religion, color, age, sex, national origin, or disability; and

2. The State and local licensing and approval of such service facilities.

If a State elects to provide Interstate Oasis signing, there should be a statewide policy, program, procedures, and criteria for the designation and signing of a facility as an Interstate Oasis. To qualify for designation and signing as an Interstate Oasis, a business should, at a minimum:

1. Be located no more than 3 miles from an interchange with an Interstate highway, except a lesser distance may be required when State laws restrict truck travel to lesser distances from the Interstate system;

2. As determined by an engineering study, be accessible via highways that are unrestricted as to vehicle weight or vehicle type, size, or weight and from which road users can safely and conveniently travel to the facility, enter and leave the facility, return to the Interstate highway, and continue in the same direction of travel;

3. As determined by an engineering study, have physical geometry of site layout and driveway access to safely and efficiently accommodate ingress, on-site travel, maneuvering, and parking, and egress by all vehicles, including heavy trucks of the size and weight anticipated to use the facility;

4. Have modern sanitary facilities (rest rooms) and drinking water, available to the public at no charge or obligation at all times (24 hours per day, 365 days per year);

5. Have adequate and well lit parking accommodations for vehicles, including heavy trucks, with maximum allowed parking duration not less than 10 hours, to meet demands based on volumes, the percentage of heavy vehicles in the Interstate highway traffic, and other pertinent factors;

6. Be staffed by at least one person on duty at all times (24 hours per day, 365 days per year); and

7. Provide, at a minimum, the following products and services:

a. Public telephone;

b. Food (vending, snacks, fast food, and/or full service); and

c. Fuel, oil, and water for automobiles and trucks.

Statewide criteria may impose additional minimum requirements, beyond those listed above, determined necessary by the State to promote and enhance road user safety, efficiency, and productivity. If a State elects to provide Interstate Oasis signing, any facility meeting the State's minimum criteria shall be eligible for designation as an Interstate Oasis.

Signing to denote the availability of an Interstate Oasis at an interchange, to guide road users to an Interstate Oasis, or to designate a business as an Interstate Oasis should incorporate the Interstate Oasis symbol depicted in Figure ''X''. [Figure to be developed and numbered later.]

States electing to provide Interstate Oasis signing should use only one of the following signing practices on the freeway for any given exit:

1. If Specific Service signing (See MUTCD Chapter 2F) is provided at the interchange, a 12-inch diameter circular ''patch'' containing the Interstate Oasis symbol may be located in the lower right-hand corner of the specific service logo panel for the designated business in a manner in which it touches both the specific service logo and the blue sign panel; or

2. If General Service signing (See MUTCD Figures 2E–41 and 2E–42) is provided at the interchange, the Interstate Oasis General Service Sign (D9-x) may be included on or appended above or below an existing D9–18, D9–18a, or D9–18e General Service sign; or

3. If no other service signing is provided at the interchange, the Interstate Oasis General Service Sign (D9-x) may be appended above or below an existing ground mounted Advance Guide or Exit Direction sign, or a separate D9-y sign, incorporating both the Interstate Oasis symbol and the legend ''Interstate Oasis'' may be installed in an effective location, between the Advance Guide sign and the Exit Direction sign and with adequate spacing from other adjacent signs, in advance of the exit leading to the Oasis. The D9-y sign shall have a blue background and white border and legend and shall contain an action message such as ''NEXT EXIT'' for unnumbered interchanges or, for numbered interchanges, the exit number as illustrated in Figure ''Y''. [Figure to be developed and numbered later.]

Signing should be provided near the exit ramp terminal and along the cross road to guide road users from the interchange to the Interstate Oasis and back to the interchange.''

Discussion of Proposed Interstate Oasis Program

The FHWA believes that the draft text stated above meets the intent and the specific requirements of section 1310 of SAFETEA–LU and enhances the safety, efficiency, and productivity of the highway system and its users. It would establish minimum criteria meeting the needs of travelers on the Interstate highway system in a manner that any State could implement despite wide varieties in existing conditions and needs from State to State. Similar to criteria for businesses to be eligible for Specific Services signing, detailed in Chapter 2F of the Manual on Uniform Traffic Control Devices (MUTCD), States could decide to impose additional criteria, beyond the minimum national criteria, that they deem appropriate for their State.

Section 1310 specifically states that the standards for designation of an Interstate Oasis shall include standards relating to ''the appearance of a facility.'' The FHWA does not believe that it is feasible to prescribe uniform nationwide standards for facility appearance, in terms of building design, site layout, or other potential elements of appearance. The FHWA believes that the minimum eligibility criteria, plus the use of a standard nationwide Interstate Oasis symbol (logo) on official traffic signs and on private business signing of designated facilities, will meet the intent of assuring that travelers can readily identify the specific locations of facilities meeting the required criteria.

The proposed Interstate highway signing requirements for exits providing access to an Interstate Oasis generally follow the principles of General Services and Specific Services signing, as established in Part 2 of the MUTCD, and the FHWA's Interim Approval dated September 6, 2005, for use of ''RV Friendly'' symbol ''patches'' on Specific Services signs. The complete MUTCD and FHWA's September 6, 2005, Interim Approval can be accessed at FHWA's MUTCD Web site at *http://mutcd.fhwa.dot.gov*. Proposed sign numbers and figure numbers in the draft text are indeterminate at this time and will be finalized in the completed document.

Specific Questions on Which FHWA Is Seeking Comments

The FHWA is requesting comments on this proposed Interstate Oasis program as described above. The FHWA is also seeking comments and input regarding several specific questions to help refine and finalize the program:

1. Is 3 miles an appropriate maximum distance from the interchange? The maximum distance specified in MUTCD Section 2F.01 for specific services is 3 miles. If the concept of identifying an Interstate Oasis by adding a ''patch'' to the Specific Service logo panel is used, consistency in the distance policies may be needed. States would have the flexibility to require a closer distance in their State policies, especially if a State's laws limit certain trucks to a lesser distance when traveling off the Interstate system. However, in some sparsely populated areas, it may be difficult to find any facilities within 3 miles that would qualify as an Interstate Oasis along very long sections of Interstate highways. Should States have the flexibility to extend the 3-mile maximum (as they can do for existing Specific Services) in cases such as this?

2. Should the criteria for safe and convenient access to and from a potential Interstate Oasis facility, and for adequate on-site geometry, be more specific, or is it sufficient to require the States to perform an engineering study to make these determinations?

3. Should the minimum national criteria require a specific minimum number of parking spaces for cars and/or heavy trucks, or a specific minimum percentage of total spaces that must be designed for use by heavy trucks? If so, what should those numbers be and on what basis or rationale are they recommended?

4. Are there other products and services beyond those listed that are essential for inclusion in the minimum national criteria for designation as an Interstate Oasis? States will have the flexibility to add their own requirements for products and/or services beyond the national minimums. However, States will not have the ability to waive any required products or services contained in the minimum national criteria.

5. Should States have the flexibility to designate and sign an exit for an Interstate Oasis if all the criteria cannot be met by any one business at the exit, but the combination of two or more businesses in close proximity to each other do meet the criteria? For example, one particular business may meet all criteria except offering fuel, but fuel is continuously available from another nearby business. In areas where no public rest areas are available for very long distances along the Interstate highway, would allowing States this flexibility for Interstate Oasis designation better serve the public need?

6. What symbol (logo) should be used to indicate an Interstate Oasis? The symbol must be simple, conspicuous and legible from a long distance at freeway speeds, and easily understood. It must also be capable of being displayed by designated businesses on their facilities and on their private signing.

7. If a State provides separate signing, such as ''Interstate Oasis Next Exit'', advising road users of the availability of an Interstate Oasis at an interchange, should the business designated as an Interstate Oasis be disqualified from having business logos on Specific Service signs for gas, food, etc. at that interchange? Conversely, should the States have the flexibility to include the name and/or business logo of the designated business on the separate signing, such as ''Interstate Oasis—Business Name/Logo—Next Exit''?

8. Assuming proper marketing and public education, will the name ''Interstate Oasis'' be readily understood by the public and identified with the type of service offered? Utah and Vermont use the names ''Rest Stop'' and ''Rest Exit,'' respectively, for the types of facilities contemplated under the Interstate Oasis program. Would the Vermont or Utah names, or other names, better serve the public, and if so, what names are suggested and why?

9. What educational and marketing efforts would be necessary to familiarize travelers and businesses with this program?

Comments regarding the program and/or the questions listed above should clearly state the reasoning behind the responses. After receiving and considering comments submitted to the docket in response to this Notice, the FHWA may issue a policy memorandum detailing the Interstate Oasis program. The FHWA also may propose revising the MUTCD via the normal formal rulemaking process, to add pertinent standards, guidance, and options regarding Interstate Oasis signing in a future edition of the MUTCD.

Authority: Sec. 1305, Pub. L. 105–59, 119 Stat. 1144; 23 U.S.C. 109(d), 315, and 402; 23 CFR 1.32 and 655.603; and 49 CFR 1.48(b).

Issued on: February 16, 2006.

J. Richard Capka,

Acting Federal Highway Administrator.

[FR Doc. E6–2682 Filed 2–24–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–23669]

Notice of Request for Clearance of a New Information Collection: Commercial Driver's License Policies and Practices Among the 51 Jurisdictions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces FMCSA's plan to submit the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for approval and comment. The ICR is related to Commercial Driver's License (CDL) policies and practices among the 50 States and the District of Columbia (referred to as the 51

jurisdictions). On October 26, 2005, the agency published a **Federal Register** notice with a 60-day comment period to solicit the public's views on the information collection pertaining to this subject. Ten comments were received.

DATES: Comments must be submitted on or before March 29, 2006. A comment to OMB is most effective if OMB receives it within 30 days of this publication.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: DOT/FMCSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Ms. Glenda Davis, FMCSA, 400 Seventh Street, SW., Rm. 8304, Washington, DC 20590; phone: 202–366–5209; fax: 202–366–7298; e-mail: *glenda.davis@fmcsa.dot.gov* or Lorena F. Truett, National Transportation Research Center, 2360 Cherahala Boulevard, Room I–32, Knoxville, TN 37932; phone: 865–946–1306; fax: 865–946–1314; e-mail: *TruettLF@ornl.gov.*

SUPPLEMENTARY INFORMATION: This package contains the following supplementary information:

Title: Commercial Driver's License Policies and Practices Among the 51 Jurisdictions.

OMB Control Number: 2126–XXXX.

Type of Request: New information collection.

Background: The Commercial Motor Vehicle Safety Act (CMVSA), (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, October 27, 1998), was passed in an effort to improve highway safety as it related to commercial motor vehicle (CMV) drivers. The Commercial Driver's License Program was created as a result of the CMVSA. The Motor Carrier Safety Improvement Act of 1999 (MCSIA), (Pub. L. 106–159, 113 Stat. 1748, December 9, 1999), further strengthened the CDL Program through more vehicle and driver inspections and carrier compliance reviews, stronger enforcement, expedited completion of rules, and effective CDL testing, record keeping, and sanctions. The goal of both the CMVSA and MCSIA was to improve highway safety by ensuring that drivers of commercial motor vehicles were qualified to operate those vehicles and to remove unsafe and unqualified drivers from the highways.

FMCSA conducts Compliance Reviews (CRs) of the 50 States plus Washington, DC, to ensure that the States are complying with the Federal Motor Carrier Safety Regulations. Additional objectives of the State CRs include the following: Identifying technical, operational, and administrative deficiencies in State CDL programs; establishing a mechanism for identifying and correcting serious program deficiencies; and identifying opportunities for CDL fraud.

Based on the results of the State CRs, which were completed in every State, some States had fewer compliance issues than others. It appears, however, that each State was in non-compliance to some degree at the time the CR was conducted in the State. FMCSA believes it is necessary to understand why the States are in non-compliance. While there is anecdotal evidence to suggest that fault may lie with the various processes used within the States, or the Agency's failure to provide adequate guidance, or even with the States' inability to understand the Federal regulations, there has been no systematic effort to determine the cause of non-compliance. For FMCSA to find a solution which brings the States into compliance with the CDL Federal requirements and thereby increase commercial-vehicle safety, FMCSA must obtain input from the States. No other survey of this type is being conducted.

The primary means for obtaining information from the State officials through this survey will be via a password-protected Web site. In the introduction (''welcome screen'') to the questionnaire, the respondent will be provided alternatives for taking the survey via a paper copy or over a phone call with a contractor hired by FMCSA. If the respondent indicates a preference for the paper copy or phone survey, arrangements will be made for administering the survey in the desired format. In addition, any respondents who prefer to be interviewed via a phone call will also be provided an e-mail address so they may submit additional comments if desired.

Respondents: The total number of respondents is 51. Each of the 51 jurisdictions (50 States plus the District of Columbia) will be contacted.

Average Burden per Response: Each response is expected to take about 1 hour to complete.

Estimated Total Annual Burden: The estimated total annual burden is 51 hours (51 responses × 1 hour per response = 51 hours).

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of FMCSA, including whether the information will have practical utility; (b) the accuracy of the estimated burden; (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, without reducing the quality of the collected information. All responses to this notice will be summarized and included in the request for OMB approval.

Issued on: February 17, 2006.

Annette M. Sandberg,

Administrator.

[FR Doc. E6–2680 Filed 2–24–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (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 the expected burden. The **Federal Register** Notice with a 60-day comment period was published on December 5, 2005 (70 FR 72500–72501).

DATES: Comments must be submitted on or before March 29, 2006.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: John Siegler at the National Highway Traffic Safety Administration, Office of Research and Technology (NTI–132), 202–366–3976, 400 Seventh Street, SW., Room 5119, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Evaluation Surveys for Impaired Driving and Safety Belt Interventions.

OMB Number: 2127–New.

Type of Request: New information collection requirement.

Abstract: The National Highway Traffic Safety Administration proposes to conduct a series of telephone surveys that will examine the effectiveness of multiple National and State Click It or Ticket mobilizations and impaired

driving crackdowns, as well as examine the effectiveness of more localized demonstration projects designed to curb impaired driving and/or raise belt use. The National and State telephone surveys would be conducted during the mid 2006–mid 2009 time period. Since Congress has authorized NHTSA to spend millions of dollars annually, to conduct National and State mobilizations and smaller demonstration projects, NHTSA must account for whether these initiatives were effective. The National telephone surveys will be administered to randomly selected samples of 1,200 persons age 18 and older, while regional demonstration surveys can range from as few as 200 participants for a small county to 2,000 participants for a region covering several States. An essential part of this evaluation effort is to compare baseline and post-intervention measures of attitudes, intervention awareness, and (relevant) self-reported behavior to determine if the interventions were associated with changes on those indices.

Affected Public: Randomly selected members of the general public in telephone households.

Estimated Total Annual Burden: 4,000 hours (24,000 interviews averaging 10 minutes each).

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 estimate 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. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Authority: 44 U.S.C. 3506(c)(2)(A).

Marilena Amoni,

Associate Administrator, Program Development and Delivery.

[FR Doc. 06–1763 Filed 2–24–06; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No.: NHTSA–2006–24001]

Reports, Forms, and Recordkeeping Requirements

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

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995 (PRA), before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes three collections of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before April 28, 2006.

ADDRESSES: Direct all written comments to U.S. Department of Transportation Dockets, 400 Seventh Street, SW., 401, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: David Bonelli, Office of Chief Counsel, NCC–113, telephone (202) 366–1834, fax (202) 366–3820, NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the PRA, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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) The accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Grant Program to Prohibit Racial Profiling, State Traffic Safety Information System Improvements, and Child Safety and Child Booster Seat Incentive Grants.

OMB Control Number: N/A.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: New collection.

Affected Public: State Governments.

Form Number: HS–217.

Abstract: The Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, authorizes several grant programs covering fiscal years (FY) 2006–2009, to be administered by the National Highway Traffic Safety Administration (NHTSA).

Section 1906 authorizes a grant program for States that enact and enforce a law that prohibits the use of racial profiling in the enforcement of traffic laws on Federal-aid highways. To be eligible for a grant, a State must have such a law and maintain and allow public inspection of statistical information for each motor vehicle stop in the state showing the race and ethnicity of the driver and any passengers. A State may also receive a grant if it provides assurances satisfactory to the Secretary of Transportation that the State is undertaking activities that will lead to compliance with the requirements of this section.

Section 2006 authorizes a grant program to support the development and implementation of State traffic safety information systems. The program provides grants to eligible States to support the development of effective programs to improve State traffic safety data and the compatibility and interoperability of State data systems with national and State data systems.

Section 2011 authorizes a grant program for child safety seats and child booster seats. The program provides grant funds to States that enforce a law requiring that all children under the age

of 8 be secured in a child restraint meeting applicable Federal motor vehicle safety standards.

The information collected for these grant programs is to include various reporting requirements. A State that receives grant funds must indicate to NHTSA how it intends to obligate and expend grant funds for each fiscal year, and how grant funds were expended and spent each fiscal year. It is important for NHTSA to be notified about these activities so that it can effectively administer the programs and account for the expenditure of funds. To reduce burdens, A State will document these activities largely by making use of mechanisms that have received PRA clearance for other similar highway safety programs. A State will first notify NHTSA of its obligation of funds in accordance with the applicable provisions of SAFETEA–LU by submitting a Program Cost Summary (HS–217), a form with existing PRA clearance, within 30 days of the award notification. A State will also report to NHTSA, as part of its annual Highway Safety Plan under 23 U.S.C. 402, on how it intends to obligate and expend grant funds for each fiscal year. This reporting requirement, however, will not be a significant extra burden for the States because they are already required by statute to submit an annual Highway Safety Plan. Finally, a State that receives grants funds must submit each fiscal year, as part of the Annual Report for its highway safety program pursuant to 23 CFR 1200.33, a report indicating how grant funds were expended and identifying the programs carried out with the grant funds. Again, this reporting requirement will not be a significant extra burden for the States because they are already required by regulation to submit an Annual Report for their highway safety program. In addition, for the Section 2011 program, this report is required by provisions of SAFETEA–LU.

Estimated Annual Burden: 5130.

Estimated Number of Respondents: 52 (fifty States, the District of Columbia, and Puerto Rico) for Child Safety and Child Booster Seat Incentive Grants; 56 (fifty States, District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) for Grant Program to Prohibit Racial Profiling; and 57 (fifty States, District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Bureau of Indian Affairs) for the State Traffic Safety Information System Improvements.

Comments are invited on: Whether the proposed collections of information are 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 estimate 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 collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: February 22, 2006.

John Donaldson,

Assistant Chief Counsel for Legislation and General Law.

[FR Doc. E6–2715 Filed 2–24–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–21015]

RailCrew Xpress, LLC and RailCrew Xpress, Corp.—Acquisition of Control—Raudin McCormick, Inc., and JLS, Inc., d/b/a AAA Limo, and RailCrew Xpress, LLC—Acquisition of Control—Brown's Crew Car of Wyoming, Inc., d/b/a Armadillo Express

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice Tentatively Approving Finance Transaction.

SUMMARY: RailCrew Xpress, LLC (RCXLLC), a noncarrier, and its wholly owned subsidiary, RailCrew Xpress, Corp. (RCXCORP), also a noncarrier (together with the other parties to these transactions, applicants), have filed an application under 49 U.S.C. 14303 for RXCCORP to acquire all of the stock of two federally regulated motor passenger carriers, Raudin McCormick, Inc. (RMI) (MC–184860), and JLS, Inc., d/b/a AAA Limo (JLS) (MC–225657), and for RCXLLC to acquire control of Brown's Crew Car of Wyoming, Inc., d/b/a Armadillo Express (Brown's), a federally regulated motor passenger carrier (MC–168832), by acquiring all of its stock. Persons wishing to oppose this application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transactions, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by April 13, 2006. Applicants may file a reply by April 28, 2006. If no comments are filed by April 13, 2006, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–21015 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representatives, Jeremy Kahn, Kahn and Kahn, 1730 Rhode Island Avenue, NW., Suite 810, Washington, DC 20036, and Bradford E. Kistler, Kinsey Ridenour Becker & Kistler, LLP, P.O. Box 85778, Lincoln, NE 68501.

FOR FURTHER INFORMATION CONTACT: Eric S. Davis, (202) 565–1608 [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339].

SUPPLEMENTARY INFORMATION: RCXLLC is a Delaware limited liability company that holds all of the stock of and controls RCXCORP, also a Delaware corporation. In turn, RCXCORP owns all of the stock of and controls RMI and JLS.[1]

In addition to its federally issued operating authority, Brown's also holds authorities issued by the states of California, Colorado, Iowa, Minnesota, Nebraska, Nevada, Utah, and Wyoming. Brown's operating revenues for the year 2005 were in excess of $15 million. RCXLLC and RCXCORP propose to continue to control carriers RMI and JLS, each of which holds, in addition to its federally issued operating authority, intrastate operating authorities. RMI holds authorities issued by the states of Kansas, Oklahoma, and Texas. JLS holds authorities issued by the states of Alabama, Indiana, Kansas, Louisiana, Missouri, New Mexico, and Oklahoma.

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction found to be consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicants have submitted information, as required by 49 CFR 1182.2, including the information to demonstrate that the proposed transactions are consistent with the public interest under 49 U.S.C.

[1] In August 2005, RCXCORP acquired all of the stock of RMI and JLS. However, according to applicants, they were unaware at that time that such transactions required Board authority under 49 U.S.C. 14303(a)(4). RCXCORP and RCXLLC, through control of RCXCORP, now seek such approval. Accordingly, RCXCORP has been added as an applicant in this proceeding.

14303(b). Applicants state that the proposed transactions will have no impact on the adequacy of transportation services available to the public, that the proposed transactions will not have an adverse effect on total fixed charges, and that the interest of employees of the carriers to be acquired will not be adversely impacted. Additional information, including a copy of the application, may be obtained from applicants' representatives.

On the basis of the application, we find that the proposed acquisitions of control are consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated, and unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

Board decisions and notices are available at our Web site at ''*http://www.stb.dot.gov*.''

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed finance transactions are approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this notice will be deemed as having been vacated.

3. This notice will be effective April 13, 2006, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th Street, SW., Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: February 21, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E6–2697 Filed 2–24–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 21, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 29, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1353.

Type of Review: Extension.

Title: F1–189–84 (Final) Debt Instruments with Original Discount; Imputed interest on Deferred Payment Sales or Exchanges or Property.

Description: These regulations provide definitions, reporting requirements, elections, and general rules relating to the tax treatment of debt instruments with original issue discount and the imputation, of, and accounting for, interest on certain sales or exchanges of property.

Respondents: Individuals or households; Business or other for-profit; Farms; and State, Local or Tribal Government.

Estimated Total Burden Hours: 185,500 hours.

OMB Number: 1545–1428.

Type of Review: Extension.

Title: Elections Under section 338 for Corporations Making Qualified Stock Purchases.

Form: IRS form 8023.

Description: Form 8023 is used by corporations that acquire the stock of another corporation to elect to treat the purchase of stock as a purchase of the other corporation's assets. The IRS uses Form 8023 to determine if the purchasing corporation reports the sale of its assets on its income tax return and to determine if the purchasing corporation has properly made the election.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 2,559 hours.

OMB Number: 1545–1466.

Type of Review: Extension.

Title: Third-Party Disclosure Requirements in IRS Regulations.

Description: This submission contains third-party disclosure regulations subject to the Paperwork Reduction Act of 1995.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Estimated Total Burden Hours: 68,885,183 hours.

OMB Number: 1545–1965.

Type of Review: Extension.

Title: REG–133446–03 (Temp) Guidance on Passive Foreign Company (PFIC) Purging Elections.

Description: The IRS needs the information to substantiate the taxpayer's computation of the taxpayer's share of the PFIC's post-1986 earning and profits.

Respondents: Individuals or households; Business or other for-profit.

Estimated Total Burden Hours: 250 hours.

OMB Number: 1545–1967.

Type of Review: Extension.

Title: Announcement 2005–80, Global Settlement Initiative.

Description: This announcement provides a settlement initiative under which taxpayers and the Service may resolve certain abusive tax transactions.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Estimated Total Burden Hours: 2,500 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–2716 Filed 2–24–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, March 15, 2006, at 2:30 p.m. e.t.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, March 15, 2006 at 2:30 p.m. e.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: February 16, 2006.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E6–2684 Filed 2–24–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada).

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Wednesday, March 15, 2006.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, March 15, 2006 from 2:00 pm Pacific Time to 3:00 pm Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: February 16, 2006.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E6–2685 Filed 2–24–06; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 71, No. 38

Monday, February 27, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53276; File No. SR–NASD–2005–098]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Submission of SEC Rule 15c2–11 Information on Non-Nasdaq Securities

Correction

In notice document E6–2368 beginning on page 8875 in the issue of Tuesday, February 21, 2006, make the following correction:

On page 8877, in the third column, in the second and third lines from the top, ''March 10, 2006'' should read ''March 14, 2006''.

[FR Doc. Z6–2368 Filed 2–24–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
February 27, 2006

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for Electric Utility Steam Generating Units, Industrial–Commercial–Institutional Steam Generating Units, and Small Industrial–Commercial–Institutional Steam Generating Units; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2005–0031; FRL–8033–3]

RIN 2060–AM80

Standards of Performance for Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978; Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units; and Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: Pursuant to section 111(b)(1)(B) of the Clean Air Act (CAA), EPA has reviewed the emission standards for nitrogen oxides (NO_X), sulfur dioxide (SO_2), and particulate matter (PM) contained in the new source performance standards (NSPS) for electric utility steam generating units and industrial-commercial-institutional steam generating units. EPA proposed amendments to 40 CFR part 60, subparts Da, Db, and Dc, on February 28, 2005. This action reflects EPA's responses to issues raised by commenters, and promulgates the amended standards of performance.

The final rule amendments revise the existing standards for PM emissions by reducing the numerical emission limits for both utility and industrial-commercial-institutional steam generating units and revise the existing standards for NO_X emissions by reducing the numerical emission limits for utility steam generating units. The amendments also revise the standards for SO_2 emissions for both electric utility and industrial-commercial-institutional steam generating units. The numerical standard for electric utility steam generating units has been reduced, and the maximum percent reduction requirement has been increased. A numerical standard has been added for units presently subject to the NSPS and new industrial-commercial-institutional steam generating units, and the maximum percent reduction requirement for new units has been increased. Both utility and industrial steam generating units can either meet a numerical limit or demonstrate a percent reduction.

Several technical clarifications and compliance alternatives have been added to the existing provisions of the current rules.

DATES: The final rule amendments are effective on February 27, 2006.

ADDRESSES: *Docket:* EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0031. All documents in the docket are listed on the Internet at *http://www.regulations.gov.* 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, Docket ID No. EPA–HQ–2004–0490, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4003; e-mail *fellner.christian@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by the final rule amendments are new, reconstructed, and modified electric utility steam generating units and new, reconstructed, and modified industrial-commercial-institutional steam generating units. The final rule amendments will affect the following categories of sources:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Industry	221112		Fossil fuel-fired electric utility steam generating units.
Federal Government	22112		Fossil fuel-fired electric utility steam generating units owned by the Federal Government.
State/local/tribal government	22112		Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150		Fossil fuel-fired electric steam generating units in Indian Country.
Any industrial, commercial, or institutional facility using a boiler as defined in 60.40b or 60.40c.	211	13	Extractors of crude petroleum and natural gas.
	321	24	Manufacturers of lumber and wood products.
	322	26	Pulp and paper mills.
	325	28	Chemical manufacturers.
	324	29	Petroleum refiners and manufacturers of coal products.
	316, 326, 339	30	Manufacturers of rubber and miscellaneous plastic products.
	331	33	Steel works, blast furnaces.
	332	34	Electroplating, plating, polishing, anodizing, and coloring.
	336	37	Manufacturers of motor vehicle parts and accessories.
	221	49	Electric, gas, and sanitary services.
	622	80	Health services.
	611	82	Educational services.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be subject to the final rule amendments. To determine whether your facility may be subject to the final rule amendments, you should examine the applicability criteria in 40 CFR part 60, sections 60.40a, 60.40b, or 60.40c. If you have any questions regarding the applicability of the final rule amendments to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's action is available on the WWW through the Technology Transfer Network (TTN). Following signature, EPA has posted a copy of today's action on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn.* The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by April 28, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that ''only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for EPA to convene a proceeding for reconsideration, ''if the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to EPA should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section, and the Director of the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave, NW., Washington, DC 20004.

Outline. The following outline is provided to aid in locating information in this preamble.

I. Summary of the Final Rule.
A. What are the requirements for new electric utility steam generating units (40 CFR part 60, subpart Da)?
B. What are the requirements for industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Db)?
C. What are the requirements for small industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Dc)?
II. Background Information
A. What is the statutory authority for the final rule?
B. What is the regulatory authority for the final rule?
III. Responses to Public Comments
A. Electric Utility Steam Generating Units (40 CFR Part 60, Subpart Da)
B. Industrial-Commercial-Institutional and Small Industrial-Commercial-Institutional Steam Generating Units (40 CFR Part 60, Subparts Db and Dc)
IV. Impacts of the Final Rules
A. What are the impacts for electric utility steam generating units (40 CFR part 60, subpart Da)?
B. What are the impacts for industrial-commercial-institutional boilers (40 CFR part 60, subparts Db and Dc)?
C. What are the economic impacts?
D. What are the social costs and benefits?
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Summary of Final Rule

The final rule amends the emission limits for SO_2, NO_X, and PM for subpart Da, 40 CFR part 60 (electric utility steam generating units) the SO_2 and PM emission limits for subpart Db, 40 CFR part 60 (industrial-commercial-institutional steam generating units), and the SO_2 and PM emission limits for subpart Dc, 40 CFR part 60 (small industrial-commercial-institutional steam generating units). With one exception, only those units that begin construction, modification, or reconstruction after February 28, 2005, will be affected by the final rule. The exception is that the SO_2 standard for industrial-commercial-institutional units presently subject to the NSPS has been amended to reflect the difficulty of units burning fuels with inherently low sulfur emissions from consistently achieving 90 percent reduction. Compliance with the emission limits of the final rule will be determined using similar testing, monitoring, and other compliance provisions set forth in the existing standards.

In addition to the emissions limits contained in the final rule, we also are including several technical clarifications and corrections to existing provisions of the existing amendments, as explained below. We included language to clarify the applicability of subparts Da, Db, and Dc of 40 CFR part 60 to combined cycle power plants. Heat recovery steam generators that are associated with combined cycle and combined heat and power combustion turbines burning less than 75 percent (by heat input) synthetic-coal gas are not subject to subparts Da, Db, or Dc, 40 CFR part 60, if the unit meets the applicability requirements of subpart KKKK, 40 CFR part 60 (Standards of Performance for Stationary Combustion Turbines). Subpart Da of 40 CFR part 60 will apply to combined cycle and combined heat and power combustion turbines and the associated heat recovery units that burn 75 percent or more (by heat input) synthetic-coal gas (e.g., integrated coal gasification combine cycle power plants) and that meet the applicability criteria of the final rule amendments, respectively.

We also made amendments to the definitions for boiler operating day, cogeneration, coal, gross output, and petroleum. The purpose of the final rule amendments is to clarify definitions across the three subparts and to incorporate the most current applicable American Society for Testing and Materials (ASTM) testing method references. Also, we clarified the definition of an ''electric utility steam generating unit'' as applied to cogeneration units.

A. What are the requirements for new electric utility steam generating units (40 CFR part 60, subpart Da)?

The PM emission limit for new and reconstructed electric utility steam generating units is 6.4 nanograms per joule (ng/J) (0.015 pound per million British thermal units (lb/MMBtu)) heat input or 99.9 percent reduction regardless of the type of fuel burned. The PM emission limit for modified electric utility steam generating units is 6.4 ng/J (0.015 lb/MMBtu) heat input or 99.8 percent reduction regardless of the type of fuel burned. Compliance with this emission limit can be determined using similar testing, monitoring, and other compliance provisions for PM standards set forth in the existing rule. While not required, PM CEMS may be used as an alternative method to demonstrate continuous compliance

and as an alternative to opacity and parameter monitoring requirements.

The SO_2 emission limit for new electric utility steam generating units is 180 ng/J (1.4 pound per megawatt hour (lb/MWh)) gross energy output or 95 percent reduction regardless of the type of fuel burned with one exception. The SO_2 emission limit for new electric utility steam generating units that burn over 75 percent coal refuse (by heat input) is 180 ng/J (1.4 lb/MWh) gross energy output or 94 percent reduction. The SO_2 emission limit for reconstructed and modified electric utility steam generating units burning any fuel except over 75 percent coal refuse (by heat input) is 65 ng/J (0.15 lb/MMBtu) heat input or 95 percent reduction and 65 ng/J (0.15 lb/MMBtu) heat input or 90 percent reduction, respectively. The SO_2 emission limit for reconstructed and modified electric utility steam generating units burning over 75 percent coal refuse (by heat input) is 65 ng/J (0.15 lb/MMBtu) or 94 percent reduction and 65 ng/J (0.15 lb/MMBtu) or 90 percent reduction, respectively. Compliance with the SO_2 emission limit is determined on a 30-day rolling average basis using a CEMS to measure SO_2 emissions as discharged to the atmosphere and following the compliance provisions in the existing rule for the output-based NO_X standards applicable to new sources that were built after July 9, 1997.

The NO_X emission limit for new electric utility steam generating units is 130 ng/J (1.0 lb NO_X/MWh) gross energy output regardless of the type of fuel burned in the unit. Compliance with this emission limit is determined on a 30-day rolling average basis using similar testing, monitoring, and other compliance provisions in the existing rule for the output-based NO_X standards applicable to new sources that were built after July 9, 1997. The NO_X limit for reconstructed and modified electric utility steam generating units is 47 ng/J (0.11 lb/MMBtu) heat input and 65 ng/J (0.15 lb/MMBtu) heat input, respectively.

B. What are the requirements for industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Db)?

The PM emission limit for new and reconstructed industrial-commercial-institutional steam generating units is 13 ng/J (0.03 lb/MMBtu) for units that burn coal, oil, gas, wood, or a mixture of these fuels with other fuels. The PM emission limit for modified industrial-commercial-institutional steam generating units is 13 ng/J (0.03 lb/MMBtu) heat input or 99.8 percent reduction [with a maximum emission limit of 22 ng/J (0.051 lb/MMBtu) heat input] for units that burn coal, oil, gas, wood, or a mixture of these fuels with other fuels with two exceptions. The standard for modified wood-fired units with a maximum heat input less than or equal to 250 MMBtu/h is 43 ng/J (0.10 lb/MMBtu) heat input and 37 ng/J (0.085 lb/MMBtu) heat input for larger modified wood-fired boilers. While not required, PM CEMS may be used as an alternative method to demonstrate continuous compliance and as an alternative to opacity monitoring requirements.

Units burning only oil, that contains no more than 0.3 weight percent sulfur, or liquid or gaseous fuels with a potential sulfur dioxide emission rate equal to or less than 140 ng/J (0.32 lb/MMBtu) heat input, may demonstrate compliance with the PM standard by maintaining certification of the fuels burned. Such units are not required to conduct PM compliance tests, conduct continuous monitoring, or comply with any other recordkeeping or reporting requirements unless the boiler changes the fuel burned to something other than the certified fuels.

The SO_2 emission limit for new and reconstructed industrial-commercial-institutional steam generating units is 87 ng/J (0.20 lb/MMBtu) heat input, or 92 percent reduction with a maximum emission rate of 520 ng/J (1.2 lb/MMBtu). Compliance with the SO_2 emission limits is determined following similar procedures as in the existing NSPS.

Units burning only oil that contains no more than 0.3 weight percent sulfur or any individual fuel that, when combusted without SO_2 emission control, have an SO_2 emission rate equal to or less than 140 ng/J (0.32 lb/MMBtu) heat input are exempt from other SO_2 emission limits and may demonstrate compliance with the SO_2 standard by maintaining certification of the fuels burned. Such units are not required to conduct SO_2 compliance tests, conduct continuous monitoring, or comply with any other recordkeeping or reporting requirements unless the boiler changes the fuel burned to something other than the certified fuels.

An alternate numerical SO_2 limit of 87 ng/J (0.20 lb/MMBtu) heat input has been added both for units presently subject to the NSPS and for modified units. The alternative limit has been made available to units presently subject to the NSPS as well as modified units in recognition of the technical difficulties of facilities firing inherently low sulfur fuels to achieve 90 percent reduction.

C. What are the requirements for small industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Dc)?

The PM emission limit for new and reconstructed small industrial-commercial-institutional steam generating units is 13 ng/J (0.03 lb/MMBtu) heat input for units that burn coal, oil, gas, wood, or a mixture of these fuels with other fuels. The PM emission limit for modified industrial-commercial-institutional steam generating units is 13 ng/J (0.03 lb/MMBtu) heat input or 99.8 percent reduction for units that burn coal, oil, gas, wood, or a mixture of these fuels with other fuels with one exception. The standard for modified wood-fired industrial-commercial-institutional steam generating units is 43 ng/J (0.10 lb/MMBtu) heat input. These limits apply to units between 8.7 MW and 29 MW (30 to 100 MMBtu/h) heat input. While not required, PM CEMS may be used as an alternate method to demonstrate continuous compliance and as an alternative to opacity monitoring.

Units burning only oil that contains no more than 0.5 weight percent sulfur or liquid or gaseous fuels that, when combusted without SO_2 emission control, have a SO_2 emission rate equal to or less than 230 ng/J (0.54 lb/MMBtu) heat input, may demonstrate compliance with the PM standard by maintaining certification of the fuels burned. Such units are not required to conduct PM compliance tests, conduct continuous monitoring, or any other recordkeeping or reporting requirements unless the boiler changes the fuel burned to something other than the certified fuels.

II. Background Information

A. What is the statutory authority for the final rule?

New source performance standards implement CAA section 111(b), and are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

Section 111 of the CAA requires that NSPS reflect the application of the best system of emissions reductions which (taking into consideration the cost of achieving such emissions reductions, any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. This level of control is commonly referred to as best demonstrated technology (BDT).

Section 111(b)(1)(B) of the CAA requires EPA to periodically review and revise the standards of performance, as necessary, to reflect improvements in methods for reducing emissions.

B. What is the regulatory authority for the final rule?

The current standards for steam generating units are contained in the NSPS for electric utility steam generating units (40 CFR part 60, subpart Da), industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Db), and small industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Dc).

The NSPS for electric utility steam generating units (40 CFR part 60, subpart Da) were originally promulgated on June 11, 1979 (44 FR 33580) and apply to units capable of firing more than 73 megawatts (MW) (250 MMBtu/h) heat input of fossil fuel that commenced construction, reconstruction, or modification after September 18, 1978. The NSPS also apply to industrial-commercial-institutional cogeneration units that sell more than 25 MW and more than one-third of their potential output capacity to any utility power distribution system. The most recent amendments to emission standards under subpart Da, 40 CFR part 60, were promulgated in 1998 (63 FR 49442) resulting in new NO_X limitations for subpart Da, 40 CFR part 60, units. Furthermore, in the 1998 amendments, the use of output-based emission limits was incorporated.

The NSPS for industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Db) apply to units for which construction, modification, or reconstruction commenced after June 19, 1984, that have a heat input capacity greater than 29 MW (100 MMBtu/h). Those standards were originally promulgated on November 25, 1986 (51 FR 42768) and also have been amended since the original promulgation to reflect changes in BDT for these sources. The most recent amendments to emission standards under subpart Db, 40 CFR part 60, were promulgated in 1998 (63 FR 49442) resulting in new NO_X limitations for subpart Db, 40 CFR part 60, units.

The NSPS for small industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Dc) were originally promulgated on September 12, 1990, (55 FR 37674) and apply to units with a maximum heat input capacity greater than or equal to 2.9 MW (10 MMBtu/h) but less than 29 MW (100 MMBtu/h). Those standards apply to units that commenced construction, reconstruction, or modification after June 9, 1989.

III. Responses to Public Comments

The proposed rule was published February 28, 2005 (70 FR 9706).

A. Electric Utility Steam Generating Units (40 CFR Part 60, Subpart Da)

Greenhouse Gases

Comment: One group of commenters state that CAA section 111 requires EPA to set standards of performance for each pollutant emitted by a source category that causes, or contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The commenters presented an argument to support their conclusion that carbon dioxide (CO_2) and other greenhouse gases emitted by steam generating units are ''reasonably anticipated to endanger public health or welfare.'' Thus, EPA must set NSPS for greenhouse gases emitted from steam generating units.

One commenter states that the electricity sector includes the nation's largest sources of CO_2 emissions, and it is essential that EPA utilize its authority to limit CO_2 emissions under CAA section 111. The commenter states that, in the preamble, EPA alludes to the importance of controlling greenhouse gases, and that EPA revised its earlier position that it did have authority to regulate CO_2; the commenter notes that this position is currently under judicial review. The commenter summarizes the public health dangers from rising CO_2 levels and provides supporting attachments to its submittal. The commenter states that technologies, e.g., integrated gasification combine cycle (IGCC) technology and others, are available to the electric utility industry to reduce CO_2 emissions that were not available in 1979 when the power plant NSPS were promulgated. The commenter attached supporting information on the available technology for lowering CO_2 emissions. For existing sources, the commenter recommends that EPA require States to implement standards of performance for CO_2 from existing sources. According to the commenter, CAA section 111(d) provides that EPA require States to implement standards of performance for existing sources when the pollutant is not regulated as a criteria pollutant. A program of trading CO_2 emission credits is an effective way of regulating CO_2 emissions from existing sources.

One commenter recommends that EPA set CO_2 emission limits as minimum thermal efficiency levels for boilers.

Response: EPA's statutory authority for establishing NSPS to control air pollutants from stationary sources is under CAA section 111. EPA has concluded that it does not presently have the authority to set NSPS to regulate CO_2 or other greenhouse gases that contribute to global climate change.

Selection of NO_X Emission Level

Comment: One group of commenters state that to meet the requirements of CAA section 111, EPA must establish a NO_X limit of no more than 0.5 lb/MWh for electric utility steam generating units. The commenters present information and data references to support their selection of a NO_X emission level for the NSPS.

One commenter states that a lower NO_X emission standard of 0.7 or 0.8 lb/MWh is justified based on existing demonstrated technology and is consistent with the mandate in section 111 of the CAA. The commenter cites two fluidized bed boilers that began operating in the late 1980s and have been retrofitted with selective non-catalytic reduction (SNCR) and have actual NO_X emission rates between 0.12 and 0.13 lb/MMBtu.

One commenter states that the standards for NO_X are insufficiently stringent and do no reflect the best system of emission reduction as required by CAA section 111. The commenter provides the following supporting rationale for their view: The 1.0 lb/MWh standard is based on an input-based level of 0.11 lb/MMBtu, which is well above the levels being achieved with recent selective catalytic reduction (SCR) installations. The commenter attached 2003 data showing at least 62 coal-fired plant units achieving a rate of 0.100 lb/MMBtu or below and 37 units emitted at a rate at or below 0.080 lb/MMBtu. New plants should be able to do better. EPA acknowledges that SCR can reduce NO_X emissions by at least 90 percent. Because most existing facilities subject to the final rule are meeting rates of 0.30–0.60 lb/MMBtu without SCR, units with SCR should readily achieve these levels. Even though EPA recognizes that SCR is BDT, it is proposing a less stringent standard based on fluidized beds and advanced combustion controls as an alternative to SCR or SNCR. This contravenes section 111. EPA uses efficiency data for existing plants rather than higher efficiency levels achievable by new plants using either SCR or IGCC technology. A standard closer to the lower end of the range being considered is appropriate.

One commenter states that new coal-fired units can achieve NO_X emission limits of less than 0.500 lb/MWh through the implementation of low NO_X burners and SCR technologies.

One commenter reviewed recent BACT determinations in new source permits for electric utility steam-generating units of more than 250 MMBtu/h (combusting bituminous, sub-bituminous, anthracite and lignite coal) from EPA's Clean Air Technology Center RACT/BACT/LAER Clearinghouse (RBLC) and examined the five most recent permitting decisions. The commenter included RBLC data showing that the permitted NO_X emission limits for all five were 0.07 or 0.08 lb/MMBtu. The commenter states that, as reflected in the RBLC, a limit of 0.08 lb/MMBtu is achievable using SCR and low NO_X burners, and notes that EPA cites SCR as the basis for its proposed limit of 1.0 lb/MWh (equivalent to 0.11 lb/MMBtu). The commenter recommends an output-based standard equivalent to a heat-input based standard between 0.07 and 0.08 lb/MMBtu.

Response: EPA disagrees that the amended NSPS are inappropriate. EPA acknowledges that boiler types and control configurations are technically capable of achieving lower NO_X emissions. EPA has concluded that with advanced combustion controls, coal-fired electric utility steam-generating units are able to achieve a NO_X emissions rate of 1.0 lb/MWh (0.11 lb/MMBtu). The incremental cost of requiring SCR for reduction to 0.7 lb/MWh (0.08 lb/MMBtu) is approximately $5,000 per ton. The final NO_X standard is based on the best demonstrated technology taking into account costs, other environmental impacts, and additional energy requirements. Requiring SCR in addition to advanced combustion controls not only increases costs and decreases the net efficiency of the unit, but leads to ammonia emissions and catalyst disposal concerns. States and BACT permitting process are still capable of requiring additional controls as appropriate.

NO_X Control for Lignite-Fired Steam-Generating Units

Comment: Several commenters disagree with EPA's assessment of the feasibility of meeting the proposed NO_X limit for lignite-fired boilers. The commenters disagree with EPA's assessment that units burning lignite can meet the proposed NO_X limit with either SCR or fluidized bed combustors and SNCR because EPA is specifying a boiler design that has never been built larger than 300 MW and is generally no larger than 100 MW. According to the commenter, this violates CAA section 111(b)(5) which prohibits setting a standard based upon a particular technology. One commenter states that information was provided to EPA prior to proposal suggesting that pore pluggage of SCR catalysts makes the proposed limit of 1.0 lb/MWh unachievable at lignite units. According to the commenter, there were no commercial applications of SCR (retrofit or new unit applications) for either northern or southern lignite. One commenter cites published research showing SCR technology ineffective for NO_X reduction from lignite-fired steam-generating units and states that it is unlikely that any new pulverized coal units using Fort Union lignite would install SCR technology to reduce NO_X emissions. The commenter also states that combustion controls, the only effective means to reduce NO_X emissions at some lignite-fired units, have been problematic for Fort Union lignite. The commenter recommends retaining the current NSPS of 1.6 lb/MWh for units burning Fort Union lignite.

Response: EPA disagrees that lignite-fired steam-generating units would not be able to achieve the amended NSPS. While there are no existing lignite-fired electric utility steam-generating units with SCR in the United States, there is considerable experience in the industry to show that use of SCR on lignite is technically feasible. EPA has concluded that the primary reason that no pulverized lignite-fired units are equipped with SCR is because no new pulverized lignite unit has been built in the United States since 1986.

The Electric Power Research Institute testing of SCR catalyst in a slipstream at the Martin Lake Power plant showed acceptable results from Gulf Coast lignite. In addition, two recent permit applications for pulverized lignite-fired utility units in Texas (Twin Oaks 3 and Oak Grove facilities) propose to use SCR to control NO_X emissions to 0.07 and 0.10 lb/MMBtu, respectively. Finally, technology suppliers report that SCR has been successfully used on lignite and brown coal boilers in Europe. EPA has concluded that SCR can be used on lignite boilers in the United States and catalyst suppliers have indicated that they will offer performance guarantees on these applications.

Pore plugging and binding of a catalyst is a common problem experienced by pilot test facilities. In full scale installations, this concern is addressed during the SCR design stage. The methods used to avoid this problem include duct design to promote ash fallout prior to the SCR, catalyst reactor design to avoid ash buildup, and on-line cleaning methods (soot blowers and sonic horns).

In addition, the use of SCR is not required to comply with the amended NO_X standard. The existing Big Brown facility in Texas burns pulverized Gulf Coast lignite and is able to achieve 0.15 lb NO_X/MMBtu with combustion controls alone. EPA has concluded that new lignite-fired units would either be able to achieve the amended standards without the use of any backend controls or could use SNCR to comply. Existing units at 0.15 lb/MMBtu would only need 30 percent NO_X reduction to comply with the amended NO_X standard. This level of control has been demonstrated for existing pulverized coal (PC) units retrofit with SNCR, and new units could achieve even better results.

Fluidized bed combustion and gasification are also options for new lignite units. The proposed permits for the Westmoreland and South Heart facilities in North Dakota both propose to burn Fort Union lignite in fluidized beds and use SNCR to achieve a NO_X emissions limit of 0.09 lb/MMBtu. With regard to size, Foster Wheeler recently designed a 460 MW supercritical fluidized bed.

Selection of SO_2 Emission Limit

Comment: One group of commenters state that EPA's proposed SO_2 standard for electric utility steam-generating units violates CAA section 111 because it does not reflect BDT for this source category. EPA also did not consider foreign experience or advanced scrubber designs, which indicate lower SO_2 limits have been achieved and are achievable. The processes that have demonstrated greater than 98 percent SO_2 removal and for which vendors offer guarantees greater than 98 percent are the magnesium-enhanced lime (''MEL'') flue gas desulfurization (FGD) process, the Chiyoda CT–121 bubbling jet reactor, and circulating fluidized bed scrubbers. Further, design enhancements and additives are available that can increase SO_2 removal efficiencies above 98 percent for other technologies within this general class. Also, EPA did not consider the use of coal washing in its determination.

Response: EPA has concluded that 98 percent control is possible with certain control and boiler configurations under ideal conditions. The amended SO_2 standard is based on a 30-day average that includes the variability that occurs from non-ideal operating conditions. The best long-term SO_2 control performance data that EPA has available

are for the Harrison, Conemaugh, Northside, Clover, and similar facilities. The amended standards are based on operational data from these facilities. EPA has concluded that this level of control is achievable for a broad range of coal and boiler types.

Comment: One group of commenters state that to meet the requirements of CAA section 111, EPA must establish a SO_2 limit of no more than 0.9 lb/MWh for all utility steam-generating units. Alternatively, if EPA finds that this standard would be cost-prohibitive for high sulfur coal, then it should either set emissions limits on a sliding scale that reflects BDT for coals of increasing sulfur content, or establish both stringent emissions limits and stringent percentage reduction requirements that would apply simultaneously. The commenters' review of proposed and final emission limits in recent permits and permit applications for 32 recent coal-fired steam-generating unit projects found 9 units with emissions limits of 0.10 lb/MMBtu or lower (0.95 lb/MWh or lower, assuming 36 percent efficiency) and 22 units with emission limits of 0.13 lb/MMBtu or lower (1.2 lb/MWh or lower).

One commenter states that the standard for SO_2 is insufficiently stringent and does not reflect the best system of emission reduction as required by CAA section 111. The commenter provides the following supporting rationale:

- About 70 percent of coals in use can meet the proposed limit with add-on controls. The data before EPA supports a limit at the low end of the range being considered by EPA (0.90–2.0 lb/MWh) rather than the proposed level (2.0 lb/MWh), which is at the top of the range.
- All coals currently in use can meet a more stringent standard, e.g., 88 percent of coals currently in use can meet 1.1 lb/MWh without pretreatment and using wet lime FGD that consistently achieves a 97 percent reduction; EPA has determined that reductions greater than 98 percent are demonstrated.
- For high sulfur coals, other technologies are available, e.g., IGCC technology which is capable of reductions of over 99 percent. The highest sulfur coals (uncontrolled level of 7.92 lb/MMBtu) can meet 1.1 lb/MWh using technologies that reduce sulfur levels by 99 percent. Other options for meeting more stringent standards include coal washing and blending with low sulfur coals.
- Actual 2003 emissions data show 25 plants with scrubbers achieving emissions at or below 0.10 lb/MMBtu (data attached to commenter's submittal). EPA's BACT/LAER clearinghouse establishes permitted levels for new scrubbers below the proposed standard and as low as 0.06 lb/MMBtu; IGCC units show even lower permitted levels, 0.03 and 0.032 lb/MMBtu.
- Vendors of scrubber report removal efficiencies of 99.5 percent of sulfur from high sulfur coal (as high as 4 percent) achieving SO_2 emission rates of 0.04 lb/MMBtu. The commenter attached a supporting report by a vendor of scrubber equipment.
- New Source Review (NSR) enforcement settlements reflect better emission rates than 0.21 lb/MMBtu even at existing plants. EPA routinely obtains commitments for FGD retrofits to meet rates of 0.100 to 0.130 lb/MMBtu. The commenter attached supporting consent decrees.
- EPA's proposed standards rely on an estimate that new plants will operate at a 36 percent gross efficiency even though the top 10 percent of existing units operate at 38 percent. This is unreasonable given that the standards will govern new PC plants, with new supercritical plants able to achieve a net efficiency of 45 percent and a gross efficiency of 40 percent.

One commenter states that new coal-fired units can achieve SO_2 emission limits of 0.500 to 1.5 lb/MWh depending on sulfur content. The commenter supports lower SO_2 limits for lower sulfur coal and suggests that this can be done by maintaining a percent reduction requirement or setting a range of SO_2 limits based on sulfur content of coal. The commenter recommends that where a percent reduction limit is used, it should be in addition to the emission rate limit.

One commenter recommends an output-based limit equivalent to a heat-input based limit of 0.10 lb/MMBtu. Based on a survey of EPA's RBLC for recent permitting decisions, permitted SO_2 levels of 0.022 to 0.12 lb/MMBtu, are common State requirements. EPA's argument for a higher limit to account for the highest-sulfur coal is flawed because industry can use lower sulfur coal or use technologies to reduce SO_2 emissions beyond the proposed level.

Response: EPA acknowledges that certain boiler and coal configurations are technically capable of achieving SO_2 emissions rates of 1.0 lb/MWh. The NSPS are based on limits that can be achieved on a consistent basis for a broad range of boiler and coal types. High sulfur coals are an important part of the United States energy resources, and spray dryers for SO_2 control are important in locations with limited water resources. EPA has concluded that it is vital that the amended NSPS preserve the use of both high sulfur coals and spray dryers. Therefore, EPA is amending the SO_2 standard to allow units greater flexibility in complying with the final SO_2 standard. The amended SO_2 standard is either 1.4 lb/MWh or 95 percent reduction on a 30-day rolling average. The numerical limit is aggressive, but preserves the ability of approximately half the coals presently used in the United States to use spray dryers. The percent maximum reduction requirement is similarly aggressive, but preserves the ability of units to burn high sulfur coals. Based on the sulfur content of coals presently being burned in the United States, EPA has concluded that the majority of new units will comply with the 1.4 lb/MWh standard, but has provided the maximum percent reduction requirement to address the concerns of users of high sulfur coals. The BACT permitting process and states requirements are able to require additional controls as appropriate.

Comment: One commenter states that many scrubbers used for high sulfur coals—3 to 4 percent sulfur—will be unable to meet the proposed SO_2 limit of 2.0 lb/MWh on a consistent basis. According to the commenter, EPA has based their decision on a single, high performance magnesium-enhanced lime scrubber, i.e., the Harrison facility in Pennsylvania. The commenter states that the specialty agent used at the unit may not be broadly available and brings into question whether the SO_2 levels being attained at this plant can be sustained long term. The commenter also states that EPA's use of a scrubber at a single facility as the basis for the SO_2 limit is in conflict with CAA section 111(b)(5), which prohibits setting a standard based upon a particular technology.

The commenter continues by stating that there is considerable uncertainty that the high removal efficiency that would be required for high sulfur coals can consistently and broadly be achieved. According to the commenter, coals with sulfur content exceeding 2.5 percent would require removal efficiencies of up to 98 percent; for these coals, wet scrubbers are the sole option and uncertainties in meeting the NSPS may dissuade some from using such coals.

Response: The final rule amendments allow units to either comply with an output-based limit of 1.4 lb/MWh or demonstrate 95 percent reduction. The maximum percent reduction requirement is achievable for multiple boiler and control configurations and addresses concerns of the use of high sulfur fuels.

Particulate Matter Emission Limit

Comment: One commenter states that fabric filters, the technology on which the proposed PM emission standard is based, is problematic with coals whose sulfur content exceeds 1.5 percent. With only 134 of 1,250 U.S. coal-fired power plants using fabric filters, the commenter notes that with the exception of a limited number of applications on small atypical boilers, there are no fabric filters in operation on plants firing sulfur greater than 2.0 percent by weight. The commenter cites an example of a plant that encountered problems after installing a fabric filter on a unit burning medium-or high-sulfur coal. For this reason, the commenter states that EPA's proposed PM standard is neither achievable nor adequately demonstrated for all coals.

Response: In general, EPA disagrees with the comment that the use of fabric filters to control PM emissions is problematic for electric utility steam generating units firing coals with sulfur contents exceeding 1.5 percent. The example cited by the commenter is for a retrofit application of a fabric filter at an existing facility for which the temperature of the flue gas in the fabric filter unit was not maintained above the acid dew point. Consequently, acid mist formed in the flue gas, condensed on the bags and internal components of the unit, and adversely impacted the performance of the control device. Based on discussions with fabric filter equipment suppliers, EPA has concluded that a similar problem should not occur in fabric filters installed on new and reconstructed facilities because of the capability at these sites to incorporate design options that will maintain the temperature of the flue gas passing through the fabric filter at levels above the acid dew point of the flue gas. These options include use of high temperature bags and injection of hydrated lime to lower the acid dew point of the flue gas. The Department of Energy sponsored two demonstration projects (SNOX Flue Gas Cleaning Demonstration Project (SNOX) and SO_X-NO_X-RO_X-Box Flue Gas Cleanup Demonstration Project (SNRB) projects) that successfully used fabric filters for PM control for electric utility steam generating units burning high sulfur coal, potential SO_2 emissions of 5 and 6 lb/MMBtu, respectively. In addition, two recent permit applications propose to use fabric filters for PM control while burning relatively high sulfur coals. The Longview power plant in West Virginia is proposing to burn 2.5 percent sulfur coal, and the Elm Road plant is proposing to burn coal with potential SO_2 emissions of 4 lb/MMBtu.

EPA recognizes that in certain site-specific situations where an existing electric utility steam generating unit becomes subject to the NSPS because of modifications to the unit, replacement of an electrostatic precipitator (ESP) with a fabric filter could be problematic. Not all locations may be able to cost-effectively maintain the temperature of the flue gas in a fabric filter above the acid dew point of the flue gas because of existing site conditions and space constraints. Therefore, EPA decided it is appropriate to establish a separate PM standard for modified sources subject to subpart Da, 40 CFR part 60. Owners and operators of modified electric utility steam generating units subject to the NSPS are given the option of meeting either a 0.015 lb/MMBtu or 99.8 percent reduction standard. ESPs can be modified to cost-effectively achieve this level of control.

Comment: One commenter takes issue with EPA's proposed input-based standard for PM emissions. According to the commenter, although EPA determined that ESPs and fabric filters are the best demonstrated technology for controlling filterable particulate matter, EPA's justification for the revised PM limit is based on three plants where fabric filtration is used. The commenter also states that of the three plants, two use fluidized bed boilers, which use limestone as an active bed material, significantly altering the nature of the PM generated for collection. The commenter states that the record does not support the proposed NSPS for PM for ESPs or that fluidized bed combustors are appropriate units on which to base PM standards for pulverized coal steam generating units, which are projected to make up the majority of new units.

Response: EPA has gathered additional stack test data that indicates an ESP could be used by the majority of coal types to comply with the final rule amendments. Based on ESP cost models, they are often less expensive than fabric filters for high sulfur applications. Additional information is available in the PM control cost memorandum.

Comment: One group of commenters state that the proposed opacity limit does not reflect BDT because the proposed rule retains the existing opacity limit of 20 percent. The commenters state that this limit is over 20 years old, and is not based on the performance of modern baghouse control systems. Because EPA has acknowledged in the proposed rule that the former 0.03 lb/MMBtu PM limit should at least be halved to 0.015 lb/MMBtu, there should be a proportionate halving of the opacity limit, from 20 percent to 10 percent. Ten percent opacity can be easily and continuously attained by subpart Da, 40 CFR part 60, facilities using appropriate control technology. There are existing power plants around the country with BACT limits of 10 percent for opacity, including the Sevier Power Company—Sigurd plant in Utah, Intermountain Power in Utah, and Plum Point Energy in Arkansas.

Response: Since opacity is used as an indication on PM emissions, EPA has provided sources with two options to demonstrate continuous compliance with the amended PM standard. Sources may elect to install and operate PM CEMS and demonstrate compliance each boiler operating day. For these units, opacity monitoring shall no longer be required. Units that do not install PM CEMS shall perform stack tests to demonstrate compliance and shall still be subject to the existing 6-minute opacity limit. In addition, sources shall use bag leak detectors or monitor ESP parameters in addition to developing a site-specific opacity trigger level that is based on the opacity during the stack test. Sources that deviate from this opacity or other parameter are required to perform a stack test within 60 days of the deviation. Stack opacity characteristics are different for fabric filters and ESP. Therefore, EPA has concluded that a site-specific opacity trigger is the best approach to monitor continuous compliance.

B. Industrial-Commercial-Institutional and Small Industrial-Commercial-Institutional Steam Generating Units (40 CFR Part 60, Subparts Db and Dc)

Comment: Several commenters opposed both the proposed single SO_2 limit of 0.24 lb/MMBtu heat input and the limit of either 0.15 lb/MMBtu heat input or 95 percent reduction for a variety of reasons. Several commenters believed that these approaches would discourage the use of high sulfur coals found in the Midwest and would be difficult to meet consistently for circulating fluidized bed boilers and boilers burning low sulfur coal. They also stated that industrial boilers cannot routinely achieve high percent reductions of 95 percent or more, as would be required to meet these standards, because of variations in coal quality and operational variations due to fluctuations in steam demand. Also, meeting 95 percent reduction would not be feasible for existing units that are modified. Three of the commenters recommended adopting the same SO_2

standard as subpart Da, 40 CFR part 60 (90 percent reduction with a 70 percent reduction for units that demonstrate emissions below 0.20 lb/MMBtu heat input). Two commenters recommended retaining the current 90 percent SO_2 reduction requirement with an alternative emission limit of 0.24 lb/MMBtu heat input. One commenter supported EPA's decision that the current SO_2 emission limits in subparts Db and Dc of 40 CFR part 60 should not be amended because option 1 and 2 would impose unacceptable compliance costs and are not warranted. One commenter also opposed reducing the SO_2 limit for units with heat input capacities of 10–75 MMBtu/h.

Several commenters maintained that the changes to the SO_2 limit to remove the percent reduction requirement should apply to existing units as well as new units. Excluding existing units from the change would provide a disincentive to use low sulfur coal and would not provide relief for existing compliance problems. Many existing boilers were designed to achieve 90 percent reduction using high sulfur coals. An existing unit that wanted to switch to low sulfur coal would have difficulty in meeting a 90 percent requirement using existing control equipment. Also, circulating fluidized bed (CFB) boilers that use low sulfur coal have had difficulty in achieving a 90 percent reduction consistently. The technical impossibility of measuring uncontrolled SO_2 emissions at a CFB unit creates an inherent difficulty in adjusting limestone injection rate to accommodate short-term variations in coal sulfur content. One such unit that burns low sulfur coal has been cited for short-term violations of the NSPS even though average emissions were in the range of 0.13 lb/MMBtu (0106).

Response: After considering all the comments and additional information provided by commenters, we have decided to provide industrial units the following options. Units presently subject to the NSPS and modified units may reduce SO_2 emissions by 90 percent or meet an SO_2 emission limit of 0.20 lb/MMBtu heat input. New and reconstructed units that become subject to the NSPS after February 28, 2005, may reduce SO_2 emissions by 92 percent or meet an SO_2 emission limit of 0.20 lb/MMBtu heat input. This approach will be more stringent than the existing subpart Db, 40 CFR part 60, requirements, and at the same time allow units with difficulty in achieving high levels of SO_2 control to overcome compliance demonstrations problems by burning low sulfur fuels.

IV. Impacts of the Final Rule?

A. What are the impacts for electric utility steam generating units (40 CFR part 60, subpart Da)?

We estimate that 5 new electric utility steam generating units will be installed in the United States over the next 5 years and affected by the final rule. All of these units will need to install add-on controls to meet the PM, SO_2, and NO_X limits required under the final rule. However, these boilers will already be required to install add-on PM, SO_2, and NO_X controls to meet the reduction requirements of the existing NSPS. Compared to the existing NSPS, the incremental PM, SO_2, and NO_X reductions resulting from the final rule will be 530 tons of PM, 8,400 tons of SO_2, and 1,400 tons of NO_X. Using this comparison, the annualized cost of the final utility amendments are $4.4 million.

Using this comparison, we expect the final rule to result in an increase in electrical supply generated by unaffected sources (e.g., existing electric utility steam generating units), we have concluded that this will not result in higher NO_X, SO_2, and PM emissions from these sources. Other emission control programs such as the Clean Air Interstate Rule (CAIR), the Clean Air Mercury Rule (CAMR), and PSD/NSR already promote or require emission controls that would effectively prevent emissions from increasing. All the emissions reductions estimates and assumptions have been documented in the docket to the final rule.

A more accurate assessment of the emissions reductions and annualized costs of the final utility amendments include other regulatory programs that are presently requiring controls beyond what is required by the existing NSPS. The BACT permitting process requires new sources to install controls at or beyond what the final NSPS amendments require. In addition, the recently finalized CAIR and CAMR rules, along with the proposed revisions to ambient particulate matter standards, will push permits even lower. The amended NSPS reflect the levels of control presently being required by these other programs. Therefore, the actual environmental benefits and cost impacts of the final rule are essentially zero. A more detailed discussion of the cost and emissions impacts of the amended NSPS is available in the docket.

B. What are the impacts for industrial-commercial-institutional boilers (40 CFR part 60, subparts Db and Dc)?

We estimate that approximately 186 new industrial-commercial-institutional boilers will be installed in the United States over the next 5 years and affected by the final rule. All of these units will need to install add-on controls to meet the PM and SO_2 limits required under the final rule. However, these new boilers will already be required to install add-on PM and SO_2 controls to meet the existing NSPS. The new source requirements under the maximum achievable control technology (MACT) program and PSD/NSR require new units presently to install controls beyond what is required by the existing NSPS.

Wood-fired boilers are the only industrial sources that could potentially use the alternative compliance limit in the boiler MACT and would not be required to meet the new source MACT limit. We estimate that 17 new wood-fired boilers will be installed in the United States over the next 5 years and affected by the final rule. Using the existing NSPS as a baseline, the additional annualized costs are $2.2 million, and the PM emissions reductions are 930 tons. EPA has concluded that new wood-fired units will not use the compliance alternatives available in the boiler MACT and that they will comply with the new source PM limit of 0.025 lb/MMBtu. Due to PSD/NSR and the limited applicability of the alternate compliance limit to new units, it will primarily only be used by existing wood-fired boilers. Thus, we concluded that the PM and SO_2 reductions and costs resulting from the final rule will essentially be zero.

C. What are the economic impacts?

Even though actual costs and benefits are essentially zero, EPA prepared an economic impact analysis comparing the existing NSPS with the amended NSPS to evaluate the impacts the final rule will have on electric utilities and consumers of goods and services produced by electric utilities. The analysis showed minimal changes in prices and output for products made by the industries affected by the final rule. The price increase for affected output is less than 0.003 percent, and the reduction in output is less than 0.003 percent for each affected industry. Estimates of impacts on fuel markets show price increases of less than 0.01 percent for petroleum products and natural gas, and price increases of 0.04 and 0.06 percent for base-load and peak-load electricity, respectively. The price

of coal is expected to decline by about 0.002 percent, and that is due to a small reduction in demand for this fuel type. Reductions in output are expected to be less than 0.02 percent for each energy type, including base-load and peak-load electricity.

D. What are the social costs and benefits?

The social costs of the final rule are estimated at $0.4 million (2002 dollars). Social costs include the compliance costs, but also include those costs that reflect changes in the national economy due to changes in consumer and producer behavior in response to the compliance costs associated with a regulation. For the final rule, changes in energy use among both consumers and producers to reduce the impact of the regulatory requirements of the rule lead to the estimated social costs being less than the total annualized compliance cost estimate of $6.5 million. The primary reason for the lower social cost estimate is the increase in electricity supply generated by unaffected sources (*e.g.*, existing electric utility steam generating units), which offsets mostly the impact of increased electricity prices to consumers. The social cost estimates discussed above do not account for any benefits from emission reductions associated with the final rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by OMB and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers the final rule amendments a ''significant regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The final rule amendments do not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The final rule amendments result in no changes to the information collection requirements of the existing standards of performance and would have no impact on the information collection estimate of project cost and hour burden made and approved by OMB during the development of the existing standards of performance. Therefore, the information collection requests have not been amended. The OMB has previously approved the information collection requirements contained in the existing standards of performance (40 CFR part 60, subparts Da, Db, and Dc) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, at the time the standards were promulgated on June 11, 1979 (40 CFR part 60, subpart Da, 44 FR 33580), November 25, 1986 (40 CFR part 60, subpart Db, 51 FR 42768), and September 12, 1990 (40 CFR part 60, subpart Dc, 55 FR 37674). The OMB assigned OMB control numbers 2060–0023 (ICR 1053.07) for 40 CFR part 60, subpart Da, 2060–0072 (ICR 1088.10) for 40 CFR part 60, subpart Db, 2060–0202 (ICR 1564.06) for 40 CFR part 60, subpart Dc. Copies of the information collection request document(s) may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*.

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 Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of the final rules on small entities, small entity is defined as follows: (1) A small business that is an ultimate parent entity in the regulated industry that has a gross annual revenue less than $6.5 million (this varies by industry category, ranging up to $10.5 million for North American Industrial Classification System (NAICS) code 562213 (VSMWC)), based on Small Business Administration's size standards; (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; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, we conclude that this action will not have a significant economic impact on a substantial number of small entities. We have determined for electric utility steam generating units, based on the existing inventory for the corresponding NAICS code and presuming the percentage of entities that are small in that inventory (estimated to be 3 percent) is representative of the percentage of small entities owning new utility boilers in the 5th year after promulgation, that at most, one entity out of five new entities in the industry may be small entities and thus affected by the final rule amendments.

We have determined for industrial-commercial steam generating units,

based on the existing industrial boilers inventory for the corresponding NAICS codes and presuming the percentage of small entities in that inventory is representative of the percentage of small entities owning new wood-fueled industrial boilers in the 5th year after promulgation, that between two and three entities out of 17 in the industry with NAICS code 321 and 322 may be small entities, and thus affected by the final rule amendments.

Based on the boiler size definitions for the affected industries (subpart Db of 40 CFR part 60: greater than or equal to 100 MMBtu/h; subpart Dc of 40 CFR part 60: 10–100 MMBtu/h), EPA determined that the firms being affected were likely to fall under the subpart Dc of 40 CFR part 60 boiler category. These two or three affected small entities are estimated to have annual compliance costs between $70 and $105 thousand which represents less than 5 percent of the total compliance cost for all affected wood-fired industrial boilers. Based on the average employment per facility data from the U.S. Census Bureau, for the corresponding NAICS codes under the subpart Db of 40 CFR part 60 and subpart Dc of 40 CFR part 60 categories, the compliance cost of these facilities is expected to be less than 1 percent of their estimated sales. For more information on the results of the analysis of small entity impacts, please refer to the economic impact analysis in the docket.

Although the final rule amendments will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the final rule amendments on small entities. In the final rule amendments, the Agency is applying the minimum level of control and the minimum level of monitoring, recordkeeping, and reporting to affected sources allowed by the CAA. This provision should reduce the size of small entity impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 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, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if EPA publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, EPA must develop a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the final rule amendments contain no Federal mandates that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, the final rule amendments are not subject to the requirements of section 202 and 205 of the UMRA. In addition, we determined that the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not unfairly apply to small governments. Therefore, the final rule amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The final rule amendments do not have federalism implications. They 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. The final rule amendments will not impose substantial direct compliance costs on State or local governments, it will not preempt State law. Thus, Executive Order 13132 does not apply to the final rule amendments.

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

Executive Order 13175, (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' ''Policies that have Tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.''

The final rule amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to the final rule amendments.

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

Executive Order 13045 (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 EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives EPA considered.

EPA interprets Executive Order 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 Executive Order has the potential to influence the regulation. The final rule amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health and safety risks.

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

This action is not a ''significant energy action,'' as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution, or energy use. Further, we concluded that this action is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Today's action does not involve any new technical standards or the incorporation by reference of existing technical standards. Therefore, the consideration of voluntary consensus standards is not relevant to today's action.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing today's action 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 final rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** Today's action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule amendments will be effective February 27, 2006.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 9, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart Da—[Amended]

■ 2. Section 60.40Da is amended by revising paragraph (b) to read as follows:

§ 60.40Da Applicability and designation of affected facility.

* * * * *

(b) Heat recovery steam generators that are associated with stationary combustion turbines burning fuels other than 75 percent (by heat input) or more synthetic-coal gas on a 12-month rolling average and that meet the applicability requirements of subpart KKKK of this part are not subject to this subpart. Heat recovery steam generators and the associated stationary combustion turbine(s) burning fuels containing 75 percent (by heat input) or more synthetic-coal gas on a 12-month rolling average are subject to this part and are not subject to subpart KKKK of this part. This subpart will continue to apply to all other electric utility combined cycle gas turbines that are capable of combusting more than 73 MW (250 MMBtu/h) heat input of fossil fuel in the heat recovery steam generator. If the heat recovery steam generator is subject to this subpart and the combined cycle gas turbine burn fuels other than synthetic-coal gas, only emissions resulting from combustion of fuels in the steam-generating unit are subject to this subpart. (The combustion turbine emissions are subject to subpart GG or KKKK, as applicable, of this part).

* * * * *

■ 3. Section 60.41Da is amended by revising the definitions of ''Boiler operating day,'' ''Cogeneration,'' ''Electric utility steam-generating unit,'' and ''Gross output'' and by adding in alphabetical order the definitions of ''ISO conditions'' and ''Petroleum'' to read as follows:

§ 60.41Da Definitions.

* * * * *

Boiler operating day for units constructed, reconstructed, or modified on or before February 28, 2005, means a 24-hour period during which fossil fuel is combusted in a steam-generating unit for the entire 24 hours. For units constructed, reconstructed, or modified after February 28, 2005, *boiler operating day* means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the steam-generating unit. It is not necessary for fuel to be combusted the entire 24-hour period.

* * * * *

Cogeneration, also known as ''combined heat and power,'' means a steam-generating unit that simultaneously produces both electric (or mechanical) and useful thermal energy from the same primary energy source.

* * * * *

Electric utility steam-generating unit means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. For the purpose of this subpart, net-electric output is the gross electric sales to the utility power distribution system minus purchased power on a 12-month rolling average. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected facility.

* * * * *

Gross output means the gross useful work performed by the steam generated. For units generating only electricity, the gross useful work performed is the gross electrical output from the turbine/generator set. For cogeneration units, the gross useful work performed is the gross electrical output plus 75 percent of the useful thermal output measured relative to ISO conditions that is not used to generate additional electrical or mechanical output (i.e., steam delivered to an industrial process).

* * * * *

ISO conditions means a temperature of 288 Kelvin, a relative humidity of 60

percent, and a pressure of 101.3 kilopascals.

* * * * *

Petroleum means crude oil or petroleum or a fuel derived from crude oil or petroleum, including distillate, residual oil, and petroleum coke.

* * * * *

■ 4. Section 60.42Da is amended by revising the introductory text in paragraph (a) and adding paragraphs (c) and (d) to read as follows:

§ 60.42Da Standard for particulate matter.

(a) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced before or on February 28, 2005, any gases that contain particulate matter in excess of:

* * * * *

(c) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification is commenced after February 28, 2005, except for modified affected facilities meeting the requirements of paragraph (d) of this section, any gases that contain particulate matter in excess of either:

(1) 18 ng/J (0.14 lb/MWh) gross energy output; or

(2) 6.4 ng/J (0.015 lb/MMBtu) heat input derived from the combustion of solid, liquid, or gaseous fuel.

(d) As an alternative to meeting the requirements of paragraph (c) of this section, the owner or operator of an affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, may elect to meet the requirements of this paragraph. On and after the date on which the performance test required to be conducted under § 60.8 is completed, the owner or operator subject to the provisions of this subpart shall not cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, any gases that contain particulate matter in excess of:

(1) 13 ng/J (0.03 lb/MMBtu) heat input derived from the combustion of solid, liquid, or gaseous fuel, and

(2) 0.1 percent of the combustion concentration determined according to the procedure in § 60.48Da(o)(5) (99.9 percent reduction) for an affected facility for which construction or reconstruction commenced after February 28, 2005 when combusting solid fuel or solid-derived fuel, or

(3) 0.2 percent of the combustion concentration determined according to the procedure in § 60.48Da(o)(5) (99.8 percent reduction) for an affected facility for which modification commenced after February 28, 2005 when combusting solid fuel or solid-derived fuel.

■ 5. Section 60.43Da is amended by revising the introductory text in paragraphs (a) and (b) and adding paragraphs (i), (j), and (k) to read as follows:

§ 60.43Da Standard for sulfur dioxide.

(a) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility which combusts solid fuel or solid-derived fuel and for which construction, reconstruction, or modification commenced before or on February 28, 2005, except as provided under paragraphs (c), (d), (f) or (h) of this section, any gases that contain sulfur dioxide in excess of:

* * * * *

(b) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility which combusts liquid or gaseous fuels (except for liquid or gaseous fuels derived from solid fuels and as provided under paragraphs (e) or (h) of this section) and for which construction, reconstruction, or modification commenced before or on February 28, 2005, any gases that contain sulfur dioxide in excess of:

* * * * *

(i) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, except as provided for under paragraphs (j) or (k) of this section, any gases that contain sulfur dioxide in excess of the applicable emission limitation specified in paragraphs (i)(1) through (3) of this section.

(1) For an affected facility for which construction commenced after February 28, 2005, any gases that contain sulfur dioxide in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis, or

(ii) 5 percent of the potential combustion concentration (95 percent reduction) on a 30-day rolling average basis.

(2) For an affected facility for which reconstruction commenced after February 28, 2005, any gases that contain sulfur dioxide in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis,

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis, or

(iii) 5 percent of the potential combustion concentration (95 percent reduction) on a 30-day rolling average basis.

(3) For an affected facility for which modification commenced after February 28, 2005, any gases that contain sulfur dioxide in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis,

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis, or

(iii) 10 percent of the potential combustion concentration (90 percent reduction) on a 30-day rolling average basis.

(j) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, and that burns 75 percent or more (by heat input) coal refuse on a 12-month rolling average basis, any gases that contain sulfur dioxide in excess of the applicable emission limitation specified in paragraphs (j)(1) through (3) of this section.

(1) For an affected facility for which construction commenced after February 28, 2005, any gases that contain sulfur dioxide in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis, or

(ii) 6 percent of the potential combustion concentration (94 percent reduction) on a 30-day rolling average basis.

(2) For an affected facility for which reconstruction commenced after February 28, 2005, any gases that

contain sulfur dioxide in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis,

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis, or

(iii) 6 percent of the potential combustion concentration (94 percent reduction) on a 30-day rolling average basis.

(3) For an affected facility for which modification commenced after February 28, 2005, any gases that contain sulfur dioxide in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis,

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis, or

(iii) 10 percent of the potential combustion concentration (90 percent reduction) on a 30-day rolling average basis.

(k) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, and that is located in a noncontinental area, any gases that contain sulfur dioxide in excess of the applicable emission limitation specified in paragraphs (k)(1) and (2) of this section.

(1) For an affected facility that burns solid or solid-derived fuel, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 520 ng/J (1.2 lb/MMBtu) heat input on a 30-day rolling average basis.

(2) For an affected facility that burns other than solid or solid-derived fuel, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of if the affected facility or 230 ng/J (0.54 lb/MMBtu) heat input on a 30-day rolling average basis.

■ 6. Section 60.44Da is amended by revising paragraph (d) and adding paragraphs (e) and (f) to read as follows:

§ 60.44Da Standard for nitrogen oxides.

* * * * *

(d)(1) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no new source owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction commenced after July 9, 1997, but before or on February 28, 2005, any gases that contain nitrogen oxides (expressed as NO_2) in excess of 200 ng/J (1.6 lb/MWh) gross energy output, based on a 30-day rolling average, except as provided under § 60.48Da(k).

(2) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no existing source owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which reconstruction commenced after July 9, 1997, but before or on February 28, 2005, any gases that contain nitrogen oxides (expressed as NO_2) in excess of 65 ng/J (0.15 lb/MMBtu) heat input, based on a 30-day rolling average.

(e) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, except for an IGCC meeting the requirements of paragraph (f) of this section, any gases that contain nitrogen oxides (expressed as NO_2) in excess of the applicable emission limitation specified in paragraphs (e)(1) through (3) of this section.

(1) For an affected facility for which construction commenced after February 28, 2005, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain nitrogen oxides (expressed as NO_2) in excess of 130 ng/J (1.0 lb/MWh) gross energy output on a 30-day rolling average basis, except as provided under § 60.48Da(k).

(2) For an affected facility for which reconstruction commenced after February 28, 2005, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain nitrogen oxides (expressed as NO_2) in excess of either:

(i) 130 ng/J (1.0 lb/MWh) gross energy output on a 30-day rolling average basis, or

(ii) 47 ng/J (0.11 lb/MMBtu) heat input on a 30-day rolling average basis.

(3) For an affected facility for which modification commenced after February 28, 2005, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain nitrogen oxides (expressed as NO_2) in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output on a 30-day rolling average basis, or

(ii) 65 ng/J (0.15 lb/MMBtu) heat input on a 30-day rolling average basis.

(f) On and after the date on which the performance test required to be conducted under § 60.8 is completed, the owner or operator of an IGCC subject to the provisions of this subpart that burns liquid fuel as a supplemental fuel and for which construction, reconstruction, or modification commenced after February 28, 2005, shall meet the requirements specified in paragraphs (f)(1) through (3) of this section.

(1) The owner or operator shall not cause to be discharged into the atmosphere any gases that contain nitrogen oxides (expressed as NO_2) in excess of 130 ng/J (1.0 lb/MWh) gross energy output on a 30-day rolling average basis, except as provided for in paragraphs (f)(2) and (3) of this section.

(2) When burning liquid fuel exclusively or in combination with synthetic gas derived from coal such that the liquid fuel contributes 50 percent or more of the total heat input to the combined cycle combustion turbine, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain nitrogen oxides (expressed as NO_2) in excess of 190 ng/J (1.5 lb/MWh) gross energy output on a 30-day rolling average basis.

(3) In cases when during a 30-day rolling average compliance period liquid fuel is burned in such a manner to meet the conditions in paragraph (f)(2) of this section for only a portion of the 30-day period, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain nitrogen oxides (expressed as NO_2) in excess of the computed weighted-average emissions limit based on the proportion of gross energy output (in MWh) generated during the compliance period for each of emissions limits in paragraphs (f)(1) and (2) of this section.

■ 7. Section 60.48Da is amended by revising paragraphs (g), (i), (k) introductory text, (k)(1) introductory text, (k)(1)(iv), (k)(2) introductory text, and adding paragraphs (m), (n), (o), and (p) to read as follows:

§ 60.48Da Compliance provisions.

* * * * *

(g) The owner or operator of an affected facility subject to emission limitations in this subpart shall determine compliance as follows:

(1) Compliance with applicable 30-day rolling average SO_2 and NO_X emission limitations is determined by calculating the arithmetic average of all hourly emission rates for SO_2 and NO_X for the 30 successive boiler operating days, except for data obtained during

startup, shutdown, malfunction (NO_X only), or emergency conditions (SO_2) only.

(2) Compliance with applicable SO_2 percentage reduction requirements is determined based on the average inlet and outlet SO_2 emission rates for the 30 successive boiler operating days.

(3) Compliance with applicable daily average particulate matter emission limitations is determined by calculating the arithmetic average of all hourly emission rates for particulate matter each boiler operating day, except for data obtained during startup, shutdown, and malfunction.

* * * * *

(i) *Compliance provisions for sources subject to § 60.44Da(d)(1), (e)(1), or (f).* The owner or operator of an affected facility subject to § 60.44Da(d)(1) or (e)(1) shall calculate NO_X emissions by multiplying the average hourly NO_X output concentration, measured according to the provisions of § 60.49Da(c), by the average hourly flow rate, measured according to the provisions of § 60.49Da(l), and dividing by the average hourly gross energy output, measured according to the provisions of § 60.49Da(k).

* * * * *

(k) *Compliance provisions for duct burners subject to § 60.44Da(d)(1) or (e)(1).* To determine compliance with the emission limitation for NO_X required by § 60.44Da(d)(1) or (e)(1) for duct burners used in combined cycle systems, either of the procedures described in paragraphs (k)(1) and (2) of this section may be used:

(1) The owner or operator of an affected duct burner used in combined cycle systems shall determine compliance with the applicable NO_X emission limitation in §60.44Da(d)(1) or (e)(1) as follows:

* * * * *

(iv) Compliance with the applicable NO_X emission limitation in § 60.44Da(d)(1) or (e)(1) is determined by the three-run average (nominal 1-hour runs) for the initial and subsequent performance tests.

(2) The owner or operator of an affected duct burner used in a combined cycle system may elect to determine compliance with the applicable NO_X emission limitation in § 60.44Da(d)(1) or (e)(1) on a 30-day rolling average basis as indicated in paragraphs (k)(2)(i) through (iv) of this section.

* * * * *

(m) *Compliance provisions for sources subject to § 60.43Da(i)(1)(i) or (j)(1)(i).* The owner or operator of an affected facility subject to § 60.43Da(i)(1)(i) or (j)(1)(i) shall calculate SO_2 emissions by multiplying the average hourly SO_2 output concentration, measured according to the provisions of § 60.49Da(b), by the average hourly flow rate, measured according to the provisions of § 60.49Da(l), and divided by the average hourly gross energy output, measured according to the provisions of § 60.49Da(k).

(n) *Compliance provisions for sources subject to § 60.42Da(c)(1).* The owner or operator of an affected facility subject to § 60.42Da(c)(1) shall calculate particulate matter emissions by multiplying the average hourly particulate matter output concentration, measured according to the provisions of § 60.49Da(t), by the average hourly flow rate, measured according to the provisions of § 60.49Da(l), and divided by the average hourly gross energy output, measured according to the provisions of § 60.49Da(k). Compliance with the emission limit is determined by calculating the arithmetic average of the hourly emission rates computed for each boiler operating day.

(o) *Compliance provisions for sources subject to § 60.42Da(c)(2) or (d).* Except as provided for in paragraph (p) of this section, the owner or operator of an affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, shall demonstrate compliance with each applicable emission limit according to the requirements in paragraphs (o)(1) through (o)(5) of this section.

(1) Conduct an initial performance test according to the requirements in § 60.50Da to demonstrate compliance by the applicable date specified in § 60.8(a) and, thereafter, conduct the performance test annually, and

(2) An owner or operator must use opacity monitoring equipment as an indicator of continuous particulate matter control device performance and demonstrate compliance with § 60.42Da(b). In addition, baseline parameters shall be established as the highest hourly opacity average measured during the performance test. If any hourly average opacity measurement is more than 110 percent of the baseline level, the owner or operator will conduct another performance test within 60 days to demonstrate compliance. A new baseline is established during each stack test. The new baseline shall not exceed the opacity limit specified in § 60.42Da(b), and

(3) An owner or operator using an ESP to comply with the applicable emission limits shall use voltage and secondary current monitoring equipment to measure voltage and secondary current to the ESP. Baseline parameters shall be established as average rates measured during the performance test. If a 3-hour average voltage and secondary current average deviates more than 10 percent from the baseline level, the owner or operator will conduct another performance test within 60 days to demonstrate compliance. A new baseline is established during each stack test, and

(4) An owner or operator using a fabric filter to comply with the applicable emission limits shall install, calibrate, maintain, and continuously operate a bag leak detection system according to paragraphs (o)(4)(i) through (viii) of this section.

(i) Install and operate a bag leak detection system for each exhaust stack of the fabric filter.

(ii) Each bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations and in accordance with the guidance provided in EPA–454/R–98–015, September 1997.

(iii) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

(iv) The bag leak detection system sensor must provide output of relative or absolute particulate matter loadings.

(v) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(vi) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel. Corrective actions must be initiated within 1 hour of a bag leak detection system alarm. If the alarm is engaged for more than 5 percent of the total operating time on a 30-day rolling average, a performance test must be performed within 60 days to demonstrate compliance.

(vii) For positive pressure fabric filter systems that do not duct all compartments of cells to a common stack, a bag leak detection system must be installed in each baghouse compartment or cell.

(viii) Where multiple bag leak detectors are required, the system's instrumentation and alarm may be shared among detectors, and

(5) An owner or operator of a modified affected source electing to meet the emission limitations in

§ 60.42Da(d) shall determine the percent reduction in particulate matter by using the emission rate for particulate matter determined by the performance test conducted according to the requirements in paragraph (o)(1) of this section and the ash content on a mass basis of the fuel burned during each performance test run as determined by analysis of the fuel as fired.

(p) As an alternative to meeting the compliance provisions specified in paragraph (o) of this section, an owner or operator may elect to install, certify, maintain, and operate a continuous emission monitoring system measuring particulate matter emissions discharged from the affected facility to the atmosphere and record the output of the system as specified in paragraphs (p)(1) through (p)(8) of this section.

(1) The owner or operator shall submit a written notification to the Administrator of intent to demonstrate compliance with this subpart by using a continuous monitoring system measuring particulate matter. This notification shall be sent at least 30 calendar days before the initial startup of the monitor for compliance determination purposes. The owner or operator may discontinue operation of the monitor and instead return to demonstration of compliance with this subpart according to the requirements in paragraph (o) of this section by submitting written notification to the Administrator of such intent at least 30 calendar days before shutdown of the monitor for compliance determination purposes.

(2) Each continuous emission monitor shall be installed, certified, operated, and maintained according to the requirements in § 60.49Da(v).

(3) The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the affected facility, as specified under § 60.8 of subpart A of this part or within 180 days of the date of notification to the Administrator required under paragraph (p)(1) of this section, whichever is later.

(4) Compliance with the applicable emissions limit shall be determined based on the 24-hour daily (block) average of the hourly arithmetic average emissions concentrations using the continuous monitoring system outlet data. The 24-hour block arithmetic average emission concentration shall be calculated using EPA Reference Method 19, section 4.1.

(5) At a minimum, valid continuous monitoring system hourly averages shall be obtained for 90 percent of all operating hours on a 30-day rolling average.

(i) At least two data points per hour shall be used to calculate each 1-hour arithmetic average.

(ii) [Reserved]

(6) The 1-hour arithmetic averages required shall be expressed in ng/J, MMBtu/h, or lb/MWh and shall be used to calculate the boiler operating day daily arithmetic average emission concentrations. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2) of subpart A of this part.

(7) All valid continuous monitoring system data shall be used in calculating average emission concentrations even if the minimum continuous emission monitoring system data requirements of paragraph (j)(5) of this section are not met.

(8) When particulate matter emissions data are not obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained by using other monitoring systems as approved by the Administrator or EPA Reference Method 19 to provide, as necessary, valid emissions data for a minimum of 90 percent of all operating hours per 30-day rolling average.

■ 8. Section 60.49Da is amended by revising paragraphs (a), (b)(2), (f), (k)(3), (l), and (o), and adding paragraphs (t), (u), and (v) to read as follows:

§ 60.49Da Emission monitoring.

(a) Except as provided for in paragraphs (t) and (u) of this section, the owner or operator of an affected facility, shall install, calibrate, maintain, and operate a continuous monitoring system, and record the output of the system, for measuring the opacity of emissions discharged to the atmosphere, except where gaseous fuel is the only fuel combusted. If opacity interference due to water droplets exists in the stack (for example, from the use of an FGD system), the opacity is monitored upstream of the interference (at the inlet to the FGD system). If opacity interference is experienced at all locations (both at the inlet and outlet of the sulfur dioxide control system), alternate parameters indicative of the particulate matter control system's performance are monitored (subject to the approval of the Administrator).

(b) * * *

(2) For a facility that qualifies under the numerical limit provisions of § 60.43Da(d), (i), (j), or (k) sulfur dioxide emissions are only monitored as discharged to the atmosphere.

* * * * *

(f)(1) For units that began construction, reconstruction, or modification on or before February 28, 2005, the owner or operator shall obtain emission data for at least 18 hours in at least 22 out of 30 successive boiler operating days. If this minimum data requirement cannot be met with a continuous monitoring system, the owner or operator shall supplement emission data with other monitoring systems approved by the Administrator or the reference methods and procedures as described in paragraph (h) of this section.

(2) For units that began construction, reconstruction, or modification after February 28, 2005, the owner or operator shall obtain emission data for at least 90 percent of all operating hours for each 30 successive boiler operating days. If this minimum data requirement cannot be met with a continuous monitoring system, the owner or operator shall supplement emission data with other monitoring systems approved by the Administrator or the reference methods and procedures as described in paragraph (h) of this section.

* * * * *

(k) * * *

(3) For affected facilities generating process steam in combination with electrical generation, the gross energy output is determined from the gross electrical output measured in accordance with paragraph (k)(1) of this section plus 75 percent of the gross thermal output (measured relative to ISO conditions) of the process steam measured in accordance with paragraph (k)(2) of this section.

* * * * *

(l) The owner or operator of an affected facility demonstrating compliance with an output-based standard under § 60.42Da, § 60.43Da, § 60.44Da, or § 60.45Da shall install, certify, operate, and maintain a continuous flow monitoring system meeting the requirements of Performance Specification 6 of appendix B and procedure 1 of appendix F of this subpart, and record the output of the system, for measuring the flow of exhaust gases discharged to the atmosphere; or

* * * * *

(o) The owner or operator of a duct burner, as described in § 60.41Da, which is subject to the NO_X standards of § 60.44Da(a)(1), (d)(1), or (e)(1) is not required to install or operate a continuous emissions monitoring system to measure NO_X emissions; a wattmeter to measure gross electrical output; meters to measure steam flow, temperature, and pressure; and a continuous flow monitoring system to

measure the flow of exhaust gases discharged to the atmosphere.

* * * * *

(t) The owner or operator of an affected facility demonstrating compliance with the output-based emissions limitation under § 60.42Da(c)(1) shall install, certify, operate, and maintain a continuous monitoring system for measuring particulate matter emissions according to the requirements of paragraph (v) of this section. An owner or operator of an affected source demonstrating compliance with the input-based emission limitation under § 60.42Da(c)(2) may install, certify, operate, and maintain a continuous monitoring system for measuring particulate matter emissions according to the requirements of paragraph (v) of this section in lieu of the requirements in § 60.48Da(o).

(u) An owner or operator of an affected source that meets the conditions in either paragraph (u)(1) or (2) of this section is exempted from the continuous opacity monitoring system requirements in paragraph (a) of this section and the monitoring requirements in § 60.48Da(o).

(1) A continuous monitoring system for measuring particulate matter emissions is used to demonstrate continuous compliance on a boiler operating day average with the emissions limitations under § 60.42Da(a)(1) or § 60.42Da(c)(2) and is installed, certified, operated, and maintained on the affected source according to the requirements of paragraph (v) of this section.

(2) The affected source burns only oil that contains no more than 0.15 weight percent sulfur or liquid or gaseous fuels that when combusted without sulfur dioxide emission control, have a sulfur dioxide emissions rate equal to or less than or equal to 65 ng/J (0.15 lb/MMBtu) heat input.

(v) The owner or operator of an affected facility using a continuous emission monitoring system measuring particulate matter emissions to meet requirements of this subpart shall install, certify, operate, and maintain the continuous monitoring system as specified in paragraphs (v)(1) through (v)(3).

(1) The owner or operator shall conduct a performance evaluation of the continuous monitoring system according to the applicable requirements of § 60.13, Performance Specification 11 in appendix B of this part, and procedure 2 in appendix F of this part.

(2) During each relative accuracy test run of the continuous emission monitoring system required by Performance Specification 11 in appendix B of this part, particulate matter and oxygen (or carbon dioxide) data shall be collected concurrently (or within a 30-to 60-minute period) by both the continuous emission monitors and conducting performance tests using the following test methods.

(i) For particulate matter, EPA Reference Method 5, 5B, or 17 shall be used.

(ii) For oxygen (or carbon dioxide), EPA Reference Method 3, 3A, or 3B, as applicable shall be used.

(3) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 2 in appendix F of this part. Relative Response Audit's must be performed annually and Response Correlation Audits must be performed every 3 years.

■ 9. Section 60.50Da is amended by revising paragraph (g)(2) to read as follows:

§ 60.50Da Compliance determination procedures and methods.

* * * * *

(g) * * *

(2) Use the Equation 1 of this section to determine the cogeneration Hg emission rate over a specific compliance period.

$$ER_{cogen} = \frac{M}{\left(V_{grid} + 0.75 \times V_{process}\right)} \quad \text{(Eq. 1)}$$

Where:

ER_{cogen} = Cogeneration Hg emission rate over a compliance period in lb/MWh;

E = Mass of Hg emitted from the stack over the same compliance period (lb);

V_{grid} = Amount of energy sent to the grid over the same compliance period (MWh); and

$V_{process}$ = Amount of energy converted to steam for process use over the same compliance period (MWh).

* * * * *

Subpart Db—[Amended]

■ 10. Section 60.40b is amended by revising paragraph (i) and adding paragraphs (k) and (l) to read as follows:

§ 60.40b Applicability and delegation of authority.

* * * * *

(i) Heat recovery steam generators that are associated with combined cycle gas turbines and that meet the applicability requirements of subpart KKKK of this part are not subject to this subpart. This subpart will continue to apply to all other heat recovery steam generators that are capable of combusting more than 29 MW (100 MMBtu/h) heat input of fossil fuel. If the heat recovery steam generator is subject to this subpart, only emissions resulting from combustion of fuels in the steam generating unit are subject to this subpart. (The gas turbine emissions are subject to subpart GG or KKKK, as applicable, of this part.)

* * * * *

(k) Any facility covered by subpart Eb or subpart AAAA of this part is not covered by this subpart.

(l) Any facility covered by an EPA approved State or Federal section 111(d)/129 plan implementing subpart Cb or subpart BBBB of this part is not covered by this subpart.

■ 11. Section 60.41b is amended by adding the definition of ''Cogeneration'' in alphabetical order and revising the definition of ''Very low sulfur oil'' to read as follows:

§ 60.41b Definitions.

* * * * *

Cogeneration, also known as combined heat and power, means a facility that simultaneously produces both electric (or mechanical) and useful thermal energy from the same primary energy source.

* * * * *

Very low sulfur oil for units constructed, reconstructed, or modified on or before February 28, 2005, means an oil that contains no more than 0.5 weight percent sulfur or that, when combusted without sulfur dioxide emission control, has a sulfur dioxide emission rate equal to or less than 215 ng/J (0.5 lb/MMBtu) heat input. For units constructed, reconstructed, or modified after February 28, 2005, *very low sulfur oil* means an oil that contains no more than 0.3 weight percent sulfur or that, when combusted without sulfur dioxide emission control, has a sulfur dioxide emission rate equal to or less than 140 ng/J (0.32 lb/MMBtu) heat input.

* * * * *

■ 12. Section 60.42b is amended by revising paragraphs (a) introductory text, (b), (d) introductory text, and (d)(3) and by adding paragraphs (d)(4) and (k) to read as follows:

§ 60.42b Standard for sulfur dioxide.

(a) Except as provided in paragraphs (b), (c), (d), (j), or (k) of this section, on and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that commenced construction,

reconstruction, or modification on or before February 28, 2005, that combusts coal or oil shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 87 ng/J (0.20 lb/MMBtu) or 10 percent (0.10) of the potential sulfur dioxide emission rate (90 percent reduction) and the emission limit determined according to the following formula:

* * * * *

(b) On and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification on or before February 28, 2005, that combusts coal refuse alone in a fluidized bed combustion steam generating unit shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 87 ng/J (0.20 lb/MMBtu) or 20 percent (0.20) of the potential sulfur dioxide emission rate (80 percent reduction) and 520 ng/J (1.2 lb/MMBtu) heat input. If coal or oil is fired with coal refuse, the affected facility is subject to paragraph (a) or (d) of this section, as applicable.

* * * * *

(d) On and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever comes first, no owner or operator of an affected facility listed in paragraphs (d)(1), (2), (3), or (4) of this section shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 520 ng/J (1.2 lb/million Btu) heat input if the affected facility combusts coal, or 215 ng/J (0.5 lb/million Btu) heat input if the affected facility combusts oil other than very low sulfur oil. Percent reduction requirements are not applicable to affected facilities under paragraphs (d)(1), (2), (3) or (4).

* * * * *

(3) Affected facilities combusting coal or oil, alone or in combination with any fuel, in a duct burner as part of a combined cycle system where 30 percent (0.30) or less of the heat input to the steam generating unit is from combustion of coal and oil in the duct burner and 70 percent (0.70) or more of the heat input to the steam generating unit is from the exhaust gases entering the duct burner; or

(4) The affected facility burns coke oven gas alone or in combination with any other gaseous fuels.

* * * * *

(k) On or after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences construction or reconstruction after February 28, 2005, and that combusts coal, oil, gas, a mixture of these fuels, or a mixture of these fuels with any other fuels shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 8 percent (0.08) of the potential sulfur dioxide emission rate (92 percent reduction) and 520 ng/J (1.2 lb/MMBtu) heat input, except as provided in paragraphs (k)(1) or (k)(2). Affected facilities subject to this paragraph are also subject to paragraphs (e) through (g) of this section.

(1) Units firing only oil that contains no more than 0.3 weight percent sulfur or any individual fuel with a potential sulfur dioxide emission rates of 140 ng/J (0.32 lb/MMBtu) heat input or less are exempt from all other sulfur dioxide emission limits in this paragraph.

(2) Units that are located in a noncontinental area and that combust coal or oil shall not discharge any gases that contain sulfur dioxide in excess of 520 ng/J (1.2 lb/MMBtu) heat input if the affected facility combusts coal, or 230 ng/J (0.54 lb/MMBtu) heat input if the affected facility combusts oil.

■ 13. Section 60.43b is amended by adding paragraph (h) to read as follows:

§ 60.43b Standard for particulate matter.

* * * * *

(h)(1) On or after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences construction, reconstruction, or modification after February 28, 2005, and that combusts coal, oil, gas, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter emissions in excess of 13 ng/J (0.030 lb/MMBtu) heat input, except as provided in paragraphs (h)(2), (h)(3), (h)(4), and (h)(5).

(2) As an alternative to meeting the requirements of paragraph (h)(1) of this section, the owner or operator of an affected facility for which modification commenced after February 28, 2005, may elect to meet the requirements of this paragraph. On and after the date on which the performance test required to be conducted under § 60.8 is completed, the owner or operator subject to the provisions of this subpart shall not cause to be discharged into the atmosphere from any affected facility for which modification commenced after February 28, 2005, any gases that contain particulate matter in excess of:

(i) 22 ng/J (0.051 lb/MMBtu) heat input derived from the combustion of coal, oil, gas, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels, and

(ii) 0.2 percent of the combustion concentration (99.8 percent reduction) when combusting coal, oil, gas, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels.

(3) On or after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences modification after February 28, 2005, and that combusts over 30 percent wood (by heat input) on an annual basis and has a maximum heat input capacity of 73 MW (250 MMBtu/h) or less shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter emissions in excess of 43 ng/J (0.10 lb/MMBtu) heat input.

(4) On or after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences modification after February 28, 2005, and that combusts over 30 percent wood (by heat input) on an annual basis and has a maximum heat input capacity greater than 73 MW (250 MMBtu/h) shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter emissions in excess of 37 ng/J (0.085 lb/MMBtu) heat input.

(5) On or after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences construction, reconstruction, or modification after February 28, 2005, and that combusts only oil that contains no more than 0.3 weight percent sulfur or other liquid or gaseous fuels with potential sulfur dioxide emission rates of 140 ng/J (0.32 lb/MMBtu) heat input or less is not subject to the PM or opacity limits in this section.

■ 14. Section 60.44b is amended by adding paragraph (l)(3) to read as follows:

§ 60.44b Standard for nitrogen oxides.

* * * * *

(l) * * *

(3) After February 27, 2006, units may comply with an optional limit of 270 ng/J (2.1 lb/MWh) gross energy output, based on a 30-day rolling average. Units complying with this output-based limit must demonstrate compliance according to the procedures of § 60.46a (i)(1), and must monitor emissions according to § 60.47a(c)(1), (c)(2), (k), and (l).

■ 15. Section 60.45b is amended by revising the introductory text in paragraph (c) and adding paragraph (k) to read as follows:

§ 60.45b Compliance and performance test methods and procedures for sulfur dioxide.

* * * * *

(c) The owner or operator of an affected facility shall conduct performance tests to determine compliance with the percent of potential sulfur dioxide emission rate (% P_s) and the sulfur dioxide emission rate (E_s) pursuant to § 60.42b following the procedures listed below, except as provided under paragraph (d) and (k) of this section.

* * * * *

(k) Units that burn only oil that contains no more than 0.3 weight percent sulfur or fuels with potential sulfur dioxide emission rates of 140 ng/J (0.32 lb/MMBtu) heat input or less may demonstrate compliance by maintaining records of fuel supplier certifications of sulfur content of the fuels burned.

■ 16. Section 60.46b is amended by revising paragraphs (a) and (b) and adding paragraphs (i) and (j) to read as follows:

* * * * *

§ 60.46b Compliance and performance test methods and procedures for particulate matter and nitrogen oxides.

(a) The particulate matter emission standards and opacity limits under § 60.43b apply at all times except during periods of startup, shutdown, or malfunction, and as specified in paragraphs (i) and (j) of this section. The nitrogen oxides emission standards under § 60.44b apply at all times.

(b) Compliance with the particulate matter emission standards under § 60.43b shall be determined through performance testing as described in paragraph (d) of this section, except as provided in paragraph (i) and (j).

* * * * *

(i) Units burning only oil that contains no more than 0.3 weight percent sulfur or liquid or gaseous fuels with a potential sulfur dioxide emission rates of 140 ng/J (0.32 lb/MMBtu) heat input or less may demonstrate compliance by maintaining fuel supplier certifications of the sulfur content of the fuels burned.

(j) In place of particulate matter testing with EPA Reference Method 5, 5B, or 17, an owner or operator may elect to install, calibrate, maintain, and operate a continuous emission monitoring system for monitoring particulate matter emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility who elects to continuously monitor particulate matter emissions instead of conducting performance testing using EPA Method 5, 5B, or 17 shall comply with the requirements specified in paragraphs (j)(1) through (j)(13) of this section.

(1) Notify the Administrator one month before starting use of the system.

(2) Notify the Administrator one month before stopping use of the system.

(3) The monitor shall be installed, evaluated, and operated in accordance with § 60.13 of subpart A of this part.

(4) The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the affected facility, as specified under § 60.8 of subpart A of this part or within 180 days of notification to the Administrator of use of the continuous monitoring system if the owner or operator was previously determining compliance by Method 5, 5B, or 17 performance tests, whichever is later.

(5) The owner or operator of an affected facility shall conduct an initial performance test for particulate matter emissions as required under § 60.8 of subpart A of this part. Compliance with the particulate matter emission limit shall be determined by using the continuous emission monitoring system specified in paragraph (j) of this section to measure particulate matter and calculating a 24-hour block arithmetic average emission concentration using EPA Reference Method 19, section 4.1.

(6) Compliance with the particulate matter emission limit shall be determined based on the 24-hour daily (block) average of the hourly arithmetic average emission concentrations using continuous emission monitoring system outlet data.

(7) At a minimum, valid continuous monitoring system hourly averages shall be obtained as specified in paragraphs (j)(7)(i) of this section for 75 percent of the total operating hours per 30-day rolling average.

(i) At least two data points per hour shall be used to calculate each 1-hour arithmetic average.

(8) The 1-hour arithmetic averages required under paragraph (j)(7) of this section shall be expressed in ng/J or lb/MMBtu heat input and shall be used to calculate the boiler operating day daily arithmetic average emission concentrations. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2) of subpart A of this part.

(9) All valid continuous emission monitoring system data shall be used in calculating average emission concentrations even if the minimum continuous emission monitoring system data requirements of paragraph (j)(7) of this section are not met.

(10) The continuous emission monitoring system shall be operated according to Performance Specification 11 in appendix B of this part.

(11) During the correlation testing runs of the continuous emission monitoring system required by Performance Specification 11 in appendix B of this part, particulate matter and oxygen (or carbon dioxide) data shall be collected concurrently (or within a 30- to 60-minute period) by both the continuous emission monitors and the test methods specified in paragraphs (j)(7)(i) of this section.

(i) For particulate matter, EPA Reference Method 5, 5B, or 17 shall be used.

(ii) For oxygen (or carbon dioxide), EPA reference Method 3, 3A, or 3B, as applicable shall be used.

(12) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 2 in appendix F of this part. Relative Response Audit's must be performed annually and Response Correlation Audits must be performed every 3 years.

(13) When particulate matter emissions data are not obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained by using other monitoring systems as approved by the Administrator or EPA Reference Method 19 to provide, as necessary, valid emissions data for a minimum of 75 percent of total operating hours per 30-day rolling average.

■ 17. Section § 60.47b is amended by revising paragraphs (a) and (d), and adding paragraph (g) to read as follows:

§ 60.47b Emission monitoring for sulfur dioxide.

(a) Except as provided in paragraphs (b),(f), and (g) of this section, the owner or operator of an affected facility subject to the sulfur dioxide standards under § 60.42b shall install, calibrate, maintain, and operate continuous emission monitoring systems (CEMS)

for measuring sulfur dioxide concentrations and either oxygen (O_2) or carbon dioxide (CO_2) concentrations and shall record the output of the systems. The sulfur dioxide and either oxygen or carbon dioxide concentrations shall both be monitored at the inlet and outlet of the sulfur dioxide control device.

* * * * *

(d) The 1-hour average sulfur dioxide emission rates measured by the CEMS required by paragraph (a) of this section and required under § 60.13(h) is expressed in ng/J or lb/MMBtu heat input and is used to calculate the average emission rates under § 60.42(b). Each 1-hour average sulfur dioxide emission rate must be based on 30 or more minutes of steam generating unit operation. The hourly averages shall be calculated according to § 60.13(h)(2). Hourly sulfur dioxide emission rates are not calculated if the affected facility is operated less than 30 minutes in a given clock hour and are not counted toward determination of a steam generating unit operating day.

* * * * *

(g) Units burning any fuel with a potential sulfur dioxide emission rate of 140 ng/J (0.32 lb/MMBtu) heat input or less are not required to conduct emissions monitoring if they maintain fuel supplier certifications of the sulfur content of the fuels burned.

■ 18. Section 60.48b is amended by revising paragraphs (a), (b) introductory text, (d), and adding paragraphs (j) and (k) to read as follows:

§ 60.48b Emission monitoring for particulate matter and nitrogen oxides.

(a) The owner or operator of an affected facility subject to the opacity standard under § 60.43b shall install, calibrate, maintain, and operate a continuous monitoring system for measuring the opacity of emissions discharged to the atmosphere and record the output of the system, except as provided in paragraphs (j) and (k) of this section.

(b) Except as provided under paragraphs (g), (h), and (i) of this section, the owner or operator of an affected facility subject to a nitrogen oxides standard under § 60.44b shall comply with either paragraphs (b)(1) or (b)(2) of this section.

* * * * *

(d) The 1-hour average nitrogen oxides emission rates measured by the continuous nitrogen oxides monitor required by paragraph (b) of this section and required under § 60.13(h) shall be expressed in ng/J or lb/MMBtu heat input and shall be used to calculate the average emission rates under § 60.44b. The 1-hour averages shall be calculated using the data points required under § 60.13(h)(2).

* * * * *

(j) Units that burn only oil that contains no more than 0.3 weight percent sulfur or liquid or gaseous fuels with potential sulfur dioxide emission rates of 140 ng/J (0.32 lb/MMBtu) heat input or less are not required to conduct PM emissions monitoring if they maintain fuel supplier certifications of the sulfur content of the fuels burned.

(k) Owners or operators complying with the PM emission limit by using a PM CEMs monitor instead of monitoring opacity must calibrate, maintain, and operate a continuous monitoring system, and record the output of the system, for PM emissions discharged to the atmosphere as specified in § 60.46b(j). The continuous monitoring systems specified in paragraph § 60.46b(j) shall be operated and data recorded during all periods of operation of the affected facility except for continuous monitoring system breakdowns and repairs. Data is recorded during calibration checks, and zero and span adjustments.

Subpart Dc—[Amended]

■ 19. Section 60.40c is amended by adding paragraphs (e), (f), and (g) to read as follows:

§ 60.40c Applicability and delegation of authority.

* * * * *

(e) Heat recovery steam generators that are associated with combined cycle gas turbines and meet the applicability requirements of subpart KKKK of this part are not subject to this subpart. This subpart will continue to apply to all other heat recovery steam generators that are capable of combusting more than or equal to 2.9 MW (10 MMBtu/h) heat input of fossil fuel but less than or equal to 29 MW (100 MMBtu/h) heat input of fossil fuel. If the heat recovery steam generator is subject to this subpart, only emissions resulting from combustion of fuels in the steam generating unit are subject to this subpart. (The gas turbine emissions are subject to subpart GG or KKKK, as applicable, of this part).

(f) Any facility covered by subpart AAAA of this part is not covered by this subpart.

(g) Any facility covered by an EPA approved State or Federal section 111(d)/129 plan implementing subpart BBBB of this part is not covered by this subpart.

■ 20. Section 60.41c is amended by revising the definition of coal to read as follows:

§ 60.41c Definitions.

* * * * *

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388–77, 90, 91, 95, or 98a, Standard Specification for Classification of Coals by Rank (IBR—see § 60.17), coal refuse, and petroleum coke. Coal-derived synthetic fuels derived from coal for the purposes of creating useful heat, including but not limited to solvent refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures, are also included in this definition for the purposes of this subpart.

* * * * *

■ 21. Section 60.42c is amended by revising paragraphs (a), (b) introductory text, and (b)(1) to read as follows:

§ 60.42c Standard for sulfur dioxide.

(a) Except as provided in paragraphs (b), (c), and (e) of this section, on and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, the owner or operator of an affected facility that combusts only coal shall neither: Cause to be discharged into the atmosphere from the affected facility any gases that contain SO_2 in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 10 percent (0.10) of the potential SO_2 emission rate (90 percent reduction), nor cause to be discharged into the atmosphere from the affected facility any gases that contain SO_2 in excess of 520 ng/J (1.2 lb/MMBtu) heat input. If coal is combusted with other fuels, the affected facility is subject to the 90 percent SO_2 reduction requirement specified in this paragraph and the emission limit is determined pursuant to paragraph (e)(2) of this section.

(b) Except as provided in paragraphs (c) and (e) of this section, on and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, the owner or operator of an affected facility that:

(1) Combusts only coal refuse alone in a fluidized bed combustion steam generating unit shall neither:

(i) Cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 20 percent (0.20) of the potential SO_2 emission rate (80 percent reduction), nor

(ii) Cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of SO_2 in excess of 520 ng/J (1.2 lb/MMBtu) heat input. If coal is fired with coal refuse, the affected facility subject to paragraph (a) of this section. If oil or any other fuel (except coal) is fired with coal refuse, the affected facility is subject to the 90 percent SO_2 reduction requirement specified in paragraph (a) of this section and the emission limit is determined pursuant to paragraph (e)(2) of this section.

* * * * *

■ 22. Section 60.43c is amended by adding paragraph (e) to read as follows:

§ 60.43c Standard for particulate matter.

* * * * *

(e)(1) On or after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences construction, reconstruction, or modification after February 28, 2005, and that combusts coal, oil, gas, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels and has a heat input capacity of 8.7 MW (30 MMBtu/h) or greater shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter emissions in excess of 13 ng/J (0.030 lb/MMBtu) heat input, except as provided in paragraphs (e)(2) and (e)(3) of this section. Affected facilities subject to this paragraph, are also subject to the requirements of paragraphs (c) and (d) of this section.

(2) As an alternative to meeting the requirements of paragraph (e)(1) of this section, the owner or operator of an affected facility for which modification commenced after February 28, 2005, may elect to meet the requirements of this paragraph. On and after the date on which the performance test required to be conducted under § 60.8 is completed, the owner or operator subject to the provisions of this subpart shall not cause to be discharged into the atmosphere from any affected facility for which modification commenced after February 28, 2005, any gases that contain particulate matter in excess of:

(i) 22 ng/J (0.051 lb/MMBtu) heat input derived from the combustion of coal, oil, gas, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels, and

(ii) 0.2 percent of the combustion concentration (99.8 percent reduction) when combusting coal, oil, gas, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels.

(3) On or after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commences modification after February 28, 2005, and that combusts over 30 percent wood (by heat input) on an annual basis and has a heat input capacity of 8.7 MW (30 MMBtu/h) or greater shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter emissions in excess of 43 ng/J (0.10 lb/MMBtu) heat input.

■ 23. Section 60.45c is amended by revising the introductory text in paragraph (a) and adding paragraphs (c) and (d) to read as follows:

§ 60.45c Compliance and performance test methods and procedures for particulate matter.

(a) The owner or operator of an affected facility subject to the PM and/or opacity standards under § 60.43c shall conduct an initial performance test as required under § 60.8, and shall conduct subsequent performance tests as requested by the Administrator, to determine compliance with the standards using the following procedures and reference methods, except as specified in paragraph (c) and (d) of this section.

* * * * *

(c) Units that burn only oil containing no more than 0.5 weight percent sulfur or liquid or gaseous fuels with potential sulfur dioxide emission rates of 230 ng/J (0.54 lb/MMBtu) heat input or less are not required to conduct emissions monitoring if they maintain fuel supplier certifications of the sulfur content of the fuels burned.

(d) In place of particulate matter testing with EPA Reference Method 5, 5B, or 17, an owner or operator may elect to install, calibrate, maintain, and operate a continuous emission monitoring system for monitoring particulate matter emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility who elects to continuously monitor particulate matter emissions instead of conducting performance testing using EPA Method 5, 5B, or 17 shall install, calibrate, maintain, and operate a continuous emission monitoring system and shall comply with the requirements specified in paragraphs (d)(1) through (d)(13) of this section.

(1) Notify the Administrator 1 month before starting use of the system.

(2) Notify the Administrator 1 month before stopping use of the system.

(3) The monitor shall be installed, evaluated, and operated in accordance with § 60.13 of subpart A of this part.

(4) The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the affected facility, as specified under § 60.8 of subpart A of this part or within 180 days of notification to the Administrator of use of the continuous monitoring system if the owner or operator was previously determining compliance by Method 5, 5B, or 17 performance tests, whichever is later.

(5) The owner or operator of an affected facility shall conduct an initial performance test for particulate matter emissions as required under § 60.8 of subpart A of this part. Compliance with the particulate matter emission limit shall be determined by using the continuous emission monitoring system specified in paragraph (d) of this section to measure particulate matter and calculating a 24-hour block arithmetic average emission concentration using EPA Reference Method 19, section 4.1.

(6) Compliance with the particulate matter emission limit shall be determined based on the 24-hour daily (block) average of the hourly arithmetic average emission concentrations using continuous emission monitoring system outlet data.

(7) At a minimum, valid continuous monitoring system hourly averages shall be obtained as specified in paragraph (d)(7)(i) of this section for 75 percent of the total operating hours per 30-day rolling average.

(i) At least two data points per hour shall be used to calculate each 1-hour arithmetic average.

(ii) [Reserved]

(8) The 1-hour arithmetic averages required under paragraph (d)(7) of this section shall be expressed in ng/J or lb/MMBtu heat input and shall be used to calculate the boiler operating day daily arithmetic average emission concentrations. The 1-hour arithmetic averages shall be calculated using the data points required under § 60.13(e)(2) of subpart A of this part.

(9) All valid continuous emission monitoring system data shall be used in calculating average emission concentrations even if the minimum continuous emission monitoring system data requirements of paragraph (d)(7) of this section are not met.

(10) The continuous emission monitoring system shall be operated according to Performance Specification 11 in appendix B of this part.

(11) During the correlation testing runs of the continuous emission monitoring system required by Performance Specification 11 in

appendix B of this part, particulate matter and oxygen (or carbon dioxide) data shall be collected concurrently (or within a 30- to 60-minute period) by both the continuous emission monitors and the test methods specified in paragraph (d)(7)(i) of this section.

(i) For particulate matter, EPA Reference Method 5, 5B, or 17 shall be used.

(ii) For oxygen (or carbon dioxide), EPA reference Method 3, 3A, or 3B, as applicable shall be used.

(12) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 2 in appendix F of this part. Relative Response Audit's must be performed annually and Response Correlation Audits must be performed every 3 years.

(13) When particulate matter emissions data are not obtained because of continuous emission monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained by using other monitoring systems as approved by the Administrator or EPA Reference Method 19 to provide, as necessary, valid emissions data for a minimum of 75 percent of total operating hours on a 30-day rolling average.

■ 24. Section 60.47c is amended by revising paragraph (a) and adding paragraphs (c) and (d) to read as follows:

§ 60.47c Emission monitoring for particulate matter.

(a) The owner or operator of an affected facility combusting coal, oil, gas, or wood that is subject to the opacity standards under § 60.43c shall install, calibrate, maintain, and operate a COMS for measuring the opacity of the emissions discharged to the atmosphere and record the output of the system, except as specified in paragraphs (c) and (d) of this section.

* * * * *

(c) Units that burn only oil that contains no more than 0.5 weight percent sulfur or liquid or gaseous fuels with potential sulfur dioxide emission rates of 230 ng/J (0.54 lb/MMBtu) heat input or less are not required to conduct PM emissions monitoring if they maintain fuel supplier certifications of the sulfur content of the fuels burned.

(d) Owners or operators complying with the PM emission limit by using a PM CEMS monitor instead of monitoring opacity must calibrate, maintain, and operate a continuous monitoring system, and record the output of the system, for PM emissions discharged to the atmosphere as specified in § 60.45c(d). The continuous monitoring systems specified in paragraph § 60.45c(d) shall be operated and data recorded during all periods of operation of the affected facility except for continuous monitoring system breakdowns and repairs. Data is recorded during calibration checks, and zero and span adjustments.

■ 25. Section 60.48c is amended by revising paragraph (g) to read as follows:

§ 60.48c Reporting and recordkeeping requirements.

* * * * *

(g) The owner or operator of each affected facility shall record and maintain records of the amounts of each fuel combusted during each day. The owner or operator of an affected facility that only burns very low sulfur fuel oil or other liquid or gaseous fuels with potential sulfur dioxide emissions rate of 140 ng/J (0.32 lb/MMBtu) heat input or less shall record and maintain records of the fuels combusted during each calendar month.

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February 27, 2006

Part III

Department of Education

National Institute on Disability and Rehabilitation Research; Spinal Cord Injury Model Systems Centers (SCIMS Centers) and Disability Rehabilitation Research Projects (DRRPs); Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Spinal Cord Injury Model Systems Centers (SCIMS Centers) and Disability Rehabilitation Research Projects (DRRPs)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities for SCIMS Centers and DRRPs.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a final priority for Spinal Cord Injury Model Systems Centers (SCIMS centers) and a final priority and selection criterion for the Disability and Rehabilitation Research Projects (DRRPs) administered by the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use these priorities and selection criterion for competitions in fiscal year (FY) 2006 and later years. We take this action to focus research attention on areas of national need. We intend these priorities and selection criterion to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Effective Date: These priorities are effective March 29, 2006.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202–2700. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Spinal Cord Injury (SCI) Model Systems Program

The Spinal Cord Injury Model Systems (SCIMS) program is designed to study the course of recovery and outcomes following the delivery of a coordinated system of care for individuals with SCI. Under this program, SCIMS centers provide comprehensive rehabilitation services to individuals with SCI and conduct spinal cord research, including clinical research and the analysis of standardized data in collaboration with other related projects.

Each SCIMS center funded under this program establishes a multidisciplinary system for providing rehabilitation services specifically designed to meet the special needs of individuals with SCI. These services include acute care as well as periodic inpatient or outpatient follow-up and vocational services. Centers demonstrate and evaluate the benefits and cost effectiveness of their systems for providing rehabilitation services to individuals with SCI and demonstrate and evaluate existing, new, and improved methods and equipment essential to the care, management, and rehabilitation of individuals with SCI. Centers also demonstrate and evaluate methods of community outreach and education for individuals with SCI in connection with the problems these individuals experience in such areas as housing, transportation, recreation, employment, and community activities. SCIMS centers engage in initiatives and new approaches and maintain close working relationships with other governmental and voluntary institutions and organizations to unify and coordinate scientific efforts, encourage joint planning, and promote the interchange of data and reports among SCI researchers. Additional information on the SCIMS program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#model*.

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Act). An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP*.

We published a notice of proposed priorities (NPP) for these programs in the **Federal Register** on December 13, 2005 (70 FR 73738). The NPP included a background statement that described our rationale for proposing these priorities. This NFP contains several changes from the NPP. We fully explain these changes in the Analysis of Comments and Changes section that follows.

Analysis of Comments and Changes

In response to our invitation in the NPP, 12 parties submitted comments on the proposed priorities. An analysis of the comments and the changes in the priorities since publication of the NPP follows. We discuss major issues according to subject.

Generally, we do not address technical and other minor changes and suggested changes we are not authorized to make under the applicable statutory authority.

Priority One—Collaborative Research Module Projects

Comment: One commenter was unclear about the relationship between the module projects in Priority One and the multi-site collaborative projects in Priority Two.

Discussion: In Priority One, NIDRR is requiring that the SCIMS centers participate in at least one collaborative research module project. These modules are designed to encourage collaboration among the SCIMS centers during the funding cycle. All centers will participate in at least one module project. Centers will determine which module projects they wish to participate in once the project directors and NIDRR select the module projects at the beginning of the funding cycle. NIDRR is recommending that each center set aside up to 15 percent of its budget for participating in these module projects.

The Priority Two competition is a separate competition. While only SCIMS centers selected for funding under the Priority One competition may compete under Priority Two, there is no requirement that the SCIMS centers funded under Priority One compete in the Priority Two competition.

Change: None.

Comment: One commenter asked if NIDRR would clarify that, under Priority One, applicants must both propose at least one and participate in at least one collaborative module project.

Discussion: NIDRR agrees that clarification of this requirement would be helpful to applicants.

Change: The priority has been changed to clarify that, to meet the requirements of Priority One, an applicant must propose at least one collaborative research module project

and participate in at least one collaborative research module project.

Comment: Five commenters raised concerns about the difficulty of budgeting for the collaborative research module project required under Priority One.

Discussion: NIDRR acknowledges that additional direction would facilitate budgeting and therefore planning for the module projects. For planning purposes, we suggest that applicants allot no more than 15 percent of their budget to the module project.

Change: None.

Comment: One commenter asked if the module projects as implemented will be held to the actual parameters as presented in the proposal.

Discussion: The module project proposals of applicants selected for funding under Priority One will be reviewed by all project directors and key NIDRR staff and projects will be selected for implementation. Since these are peer-reviewed projects, it is expected that the projects will be implemented as proposed with adjustments as necessary to accommodate unexpected contingencies. In accordance with NIDRR policy, any substantial changes to project scope must be approved by the assigned NIDRR project officer.

Change: None.

Comment: Two commenters asked whether the module projects can involve non-SCIMS centers.

Discussion: Participation in the module projects will be limited to the funded SCIMS centers.

Change: The priority has been modified to clarify that participation in these module projects is limited to funded SCIMS centers.

Comment: One commenter suggested that NIDRR require that some of the Priority One collaborative research module projects focus on SCI outcome measures.

Discussion: While NIDRR agrees that outcome measures might be an excellent subject for the Priority One module projects, it does not believe that all applicants should be required to propose module projects that focus only on outcomes. Nothing in the priority precludes an applicant from suggesting such a research focus, however. The peer review process will evaluate the merits of the proposals.

Change: None.

Comment: One commenter suggested that NIDRR clarify whether SCIMS centers funded under Priority One will be able to participate in more than one collaborative research module project.

Discussion: NIDRR does not stipulate that applicants participate in only one module project. The number and subject of the modules selected for implementation will not be known, however, until after the first Project Directors' meeting. Each successful applicant will work with NIDRR staff to determine if allocations of staffing and budget allow participation in more than one module project.

Change: None.

Comment: Two commenters asked NIDRR to clarify whether the Priority One module projects must focus on intervention studies or whether these module projects can truly be innovative and pilot in nature.

Discussion: While NIDRR supports the idea that the module projects can be innovative and pilot in nature, NIDRR is not prescribing that only these types of projects can be proposed under Priority One. NIDRR suggests that applicants clearly identify the research question the project will address, its importance, and its proposed outcomes and clarify the nature of the project so that reviewers can determine whether the scope and format of the project is appropriate.

Change: None.

Comment: One commenter asked whether applicants are expected to establish collaborative relationships with other centers prior to submitting their applications and whether applicants can propose the same module projects in their applications.

Discussion: NIDRR is not requiring applicants to identify or to have established relationships with their collaborators when they submit their applications. As stated in the priority, the decisions regarding selection of module projects for implementation will be made by the project directors of the newly awarded centers in conjunction with NIDRR staff. Each center will then be required to participate in at least one of these projects. There is nothing to prohibit applicants under Priority One from proposing the same module project.

Change: None.

Priority One—SCIMS Database

Comment: Several commenters asked that NIDRR clarify whether the requirement that at least 30 subjects be enrolled per year applies to the longitudinal portion of the database (FORM I) or the registry portion of the database.

Discussion: This requirement is for full enrollment into the longitudinal portion of the database. Thus, these subjects must be enrolled with the expectation that they will be followed long-term.

Change: The priority has been changed to reflect this requirement.

Comment: One commenter recommended that NIDRR increase the required number of subjects enrolled in the longitudinal database to 40 instead of 30 subjects.

Discussion: This is the first time that NIDRR has specified a minimum number of subjects for database enrollment. NIDRR based the requirement on an analysis of historical trends within the database. At the present time, SCIMS centers are required to enroll all eligible subjects into the database, and many centers enroll more than 30 subjects. While nothing in the priority precludes an applicant from enrolling more than 30 subjects, NIDRR does not believe that all applicants should be required to enroll at least 40.

Change: None.

Comment: Two commenters asked NIDRR whether there will be differential funding for centers with markedly different workloads for follow-up data collection associated with the longitudinal database. This differential workload occurs when existing centers have large numbers of enrolled subjects in the longitudinal database compared to new centers with none.

Discussion: NIDRR agrees that there should be differential funding associated with the longitudinal database portion of the priority. Information on these funding level differences will be provided in any notice we publish in the **Federal Register** inviting applications for funding under Priority One.

Change: None.

Comment: One commenter recommended that there be a maximum number of enrollees per year in order to relieve the burden on centers that are successful in enrolling large numbers of subjects.

Discussion: NIDRR agrees that this is an issue and plans to work with the project directors and others to determine a scientific basis for limiting enrollment in the database. For the purpose of this priority, however, it is recommended that centers budget for enrolling all eligible subjects into the database, with appropriate adjustment, based on previous experience, for refusals to participate.

Change: None.

Comment: One commenter asked whether subjects enrolled into the longitudinal database must have a traumatic etiology or could have a nontraumatic etiology.

Discussion: The inclusion criteria specify that subjects entered into the database must have a clinically

discernible degree of neurologic impairment caused by a traumatic event.

Change: None.

Priority One—Site-Specific Research Projects

Comment: One commenter expressed concern that the requirement to conduct no more than one site-specific project would force existing SCIMS centers that receive funding under this priority to interrupt or eliminate specific ongoing research projects. The concern is that research that is ongoing and is designed to be carried out in a step-wise fashion over multiple funding cycles will not be continued because of the limit on site-specific projects.

Discussion: NIDRR agrees that this is a valid concern. The decision to limit the number of projects reflects a concern that SCIMS centers devote sufficient resources to site-specific research to allow rigorous methods to be used and to conduct research that is robust enough to engender confidence in the results.

Change: NIDRR will balance these concerns by allowing applicants to propose no more than two site-specific research projects and will allow the peer review process to judge the scientific merit of the proposals and the feasibility of the implementation of up to two projects. NIDRR will not accept applications that propose more than two site-specific projects. The priority has been changed to reflect the requirement regarding the maximum number of site-specific projects that an applicant may propose.

Comment: One commenter asked NIDRR to clarify whether there will be weighting of priorities so that preference is given to intervention studies as the subject of the site-specific research project.

Discussion: NIDRR is encouraging applicants to test innovative approaches to treatment and evaluation of SCI outcomes. This focus on treatment supports an emphasis on interventions research; however, NIDRR suggests that applicants could consider the ways in which prognostic or diagnostic research can support the development of interventions that improve outcomes for persons with SCI. Nothing in the priority would preclude an applicant from suggesting such an approach. The peer review process will evaluate merits of the proposals.

Change: This priority has been changed to clarify the focus on rehabilitation interventions.

Priority One—General

Comment: One commenter suggested that NIDRR require that projects submitted under Priority One focus on the unique issues, including health disparities, faced by persons with SCI from minority backgrounds who live in rural areas.

Discussion: NIDRR agrees that persons with SCI who live in rural areas may experience unique issues, including significant health disparities. NIDRR also agrees that these disparities may be significant for individuals from minority populations. Nothing in the priority precludes an applicant from addressing these issues. However, NIDRR does not believe that all SCIMS centers should be required to address these problems. The peer review process will evaluate the merits of the proposals.

Change: None.

Comment: One commenter suggested that NIDRR require that SCIMS centers have the technology and capacity to lead clinical trials.

Discussion: NIDRR agrees that SCIMS centers must have the capacity to conduct rigorous research. However, NIDRR does not believe that all centers should be required to demonstrate their ability to lead clinical trials.

Change: None.

Comment: One commenter expressed concern regarding requirements for dissemination activities within the SCIMS program.

Discussion: On February 7, 2006, NIDRR published a combined notice of proposed priorities, which included a priority for the funding of a Model Systems Knowledge Translation Center (MSKTC) (71 FR 6317) that will focus on cross-model system dissemination efforts. Applicants are encouraged to review this priority and determine and discuss in their applications what resources will be required to provide information to this center.

Change: None.

Comment: Several commenters noted that the criteria for inclusion in the model SCI systems database, which were described in the background section of the proposed priority, were overly inclusive and did not reflect recent changes to the inclusion criteria.

Discussion: NIDRR acknowledges that there has been recent tightening of the inclusion criteria to require that subjects enrolled into the database must complete inpatient acute rehabilitation at the Model SCI system, not just receive care at one component of the model system of care. These criteria are now as follows:

Eligible subjects must—

(a) Complete inpatient acute rehabilitation at the model SCI system, expire during Model SCI system hospitalization, or achieve complete recovery or minimal deficit status at the time of discharge from the model SCI system; (b) Be treated at a Model SCI system within one year of the injury; (c) Sign a consent form and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) authorization; (d) Reside in a geographic catchment area of the model system at the time of the injury; and (e) Be a U.S. citizen.

Change: None.

Priority Two—General

Comment: Two commenters stated that the timeline for making the awards may not allow sufficient time for applicants to develop successful proposals for collaborative projects for the Priority Two competition.

Discussion: NIDRR recognizes that the timeline for these competitions is tight. NIDRR, however, believes that there is sufficient time to conduct these competitions in the remainder of this fiscal year, and anticipates that applicants for the Priority Two competition will have 60 days to submit their applications following notification of their success in the Priority One competition. Because the priorities for these two competitions are being announced simultaneously, potential applicants will have many months to consider their applications for Priority Two.

Change: None.

Comment: One commenter urged NIDRR to require that applicants for funding under Priority Two recognize clinical practice guidelines (CPGs) in formulating their proposals.

Discussion: While NIDRR agrees that CPGs may be proposed for research under Priority Two, NIDRR does not believe that all applicants should be required to take this approach. Nothing in the priority precludes an applicant from suggesting such an approach. The peer review process will evaluate merits of the proposals.

Change: None.

Comment: None.

Discussion: The NPP specified in paragraph 4 of Priority Two that an applicant must not request an amount in excess of $800,000 to cover startup costs. Upon internal review we are removing this dollar amount to provide applicants with greater flexibility to estimate their startup costs.

Change: We have modified paragraph 4 in Priority Two to remove the reference to the $800,000 cap on startup costs.

Note: This notice does not solicit applications. In any year in which we choose

to use these final priorities and selection criterion, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: This notice of final priorities is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.*

The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8166), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to—(1) Improve the quality and utility of disability and rehabilitation research; (2) Foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) Determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) Identify research gaps; (5) Identify mechanisms of integrating research and practice; and (6) Disseminate findings.

Priorities

Priorities and Selection Criterion

In accordance with section 204(b)(4) of the Act, and 34 CFR part 359, Priority One will provide for the funding of SCIMS centers that will build upon the work of the currently-funded SCIMS centers, to provide comprehensive rehabilitation services to individuals with SCI and conduct spinal cord research, including clinical research and the analysis of standardized data in collaboration with other related projects.

Priority Two, authorized under section 204(a) of the Act and 34 CFR part 350, will provide for the funding of DRRPs to conduct multi-site research that contributes to evidence-based rehabilitation interventions and clinical practice guidelines that improve the lives of individuals with SCI. These projects will serve the overall purpose of the DRRP program, which is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Act. DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance.

The Department is interested in ensuring that grantees use rigorous methods to carry out multi-site research conducted under Priority Two. Therefore, we are establishing an additional selection criterion to address methods for carrying out multi-site research collaboration for Priority Two. This criterion is intended to emphasize the importance of multi-site research collaboration.

To be eligible under Priority Two, an applicant must have received a grant under Priority One. The Department intends to announce the competition for Priority Two awards after selecting the grantees from the Priority One competition. Only successful applicants from the Priority One competition will be eligible to apply for awards under the Priority Two competition.

Priority One—SCIMS Centers

The Assistant Secretary establishes a priority for the funding of Spinal Cord Injury Model Systems (SCIMS) centers to conduct research that contributes to evidence-based rehabilitation interventions and clinical and practice guidelines that improve the lives of individuals with spinal cord injury (SCI). Each SCIMS center must—

1. Contribute to continued assessment of long-term outcomes of SCI by enrolling at least 30 subjects per year into the longitudinal portion of the SCIMS database, following established protocols for the collection of enrollment and follow-up data on subjects;

2. Contribute to improved outcomes for persons with SCI by proposing at least one collaborative research module project and participating in at least one collaborative research module project, which may range from pilot research to more extensive studies. (At the beginning of the funding cycle, the SCI model systems directors, in conjunction with NIDRR, will select specific modules for implementation from the approved applications.) Participation in these module projects is limited to funded SCIMS centers; and

3. Contribute to improved long-term outcomes of individuals with SCI by conducting no more than two site-specific research projects to test innovative approaches that contribute to rehabilitation interventions and evaluating SCI outcomes in accordance with the focus areas identified in NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). Applicants who propose more than two site-specific projects will be disqualified.

In carrying out these activities, applicants may select from the following research domains related to specific areas of the Plan: Health and function, employment, participation and community living, and technology for access and function.

In addition, applicants must address the following requirements:

- Provide a multidisciplinary system of rehabilitation care specifically designed to meet the needs of individuals with SCI. The system must encompass a continuum of care, including emergency medical services, acute care services, acute medical rehabilitation services, and post-acute services.
- Address the needs of people with disabilities including individuals from traditionally underserved populations.
- Coordinate with the NIDRR-funded Model Systems Knowledge Translation Center to provide scientific results and information for dissemination to clinical and consumer audiences.
- Ensure participation of individuals with disabilities in all aspects of SCIMS research.

Priority Two—Spinal Cord Injury Model Systems (SCIMS) Multi-Site Research Projects—and Selection Criterion for SCIMS Multi-Site Research Projects Priority

The Assistant Secretary establishes a priority for the funding of Spinal Cord Injury Model Systems (SCIMS) multi-site research projects to conduct research that contributes to evidence-based rehabilitation interventions and clinical practice guidelines that improve

the lives of individuals with spinal cord injury (SCI).

To be eligible under this priority, an applicant must have received a grant under the SCIMS Centers priority. Following completion of a competition under the SCIMS Centers priority, the Department will invite successful applicants under that competition to apply for funding as a lead center under this SCIMS Multi-Site Research Projects priority.

Each SCIMS multi-site research project must—

1. Ensure utilization of SCIMS capacity by collaborating with three or more of the NIDRR-funded SCIMS centers (for a minimum of four SCIMS sites). Applicants may propose to include other SCI research sites that are not participating in a NIDRR-funded program in their multi-site research projects;

2. Contribute to improved long-term outcomes of individuals with SCI by conducting multi-site research on questions of significance to SCI rehabilitation, using clearly identified research designs. The research must focus on one or more specific domains identified in NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan), including health and function, participation and community living, technology, and employment, and ensure that the research study has appropriate research hypotheses and methods to generate reliable and valid findings;

3. Demonstrate the capacity to carry out multi-site research projects, including the ability to coordinate research among centers; maintain data quality; and adhere to research protocols, confidentiality requirements, and data safety requirements; and

4. Specify startup activities that will be required to mount the proposed multi-site research project, including infrastructure requirements and measurement tools. Applicants must specify in their applications the amount requested to cover these startup costs.

In addition, applicants must address the following requirements:

- Address the needs of people with disabilities, including individuals from traditionally underserved populations.
- Coordinate with the NIDRR-funded Model Systems Knowledge Translation Center by providing scientific results and information for dissemination to clinical and consumer audiences.
- Ensure participation of individuals with disabilities in all aspects of model systems research.

Selection Criterion

In accordance with the provisions of 34 CFR 350.53 and 350.54 and in addition to the selection criteria specified in those sections, the Secretary will consider the following factor in evaluating applications submitted under the SCIMS Multi-Site Research Projects priority:

The extent to which the applicant clearly documents its capacity to manage multi-site research projects, including administrative capabilities, experience with management of multi-site research protocols, and demonstrated ability to maintain standards for quality and confidentiality of data gathered from multiple sites.

Executive Order 12866

This notice of final priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priorities are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priorities, we have determined that the benefits of the final priorities justify the costs.

Summary of potential costs and benefits:

The potential costs associated with these final priorities are minimal while the benefits are significant.

The benefits of the SCIMS and DRRP programs have been well established over the years in that similar projects have been completed successfully. These final priorities will generate new knowledge and technologies through research, development, dissemination, utilization, and technical assistance projects.

Another benefit of these final priorities are that the establishment of new SCIMS centers and the DRRPs conducting SCIMS multi-site research projects will support the President's NFI and will improve the lives of persons with disabilities. These centers and DRRPs will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities in the community.

Applicable Program Regulations: 34 CFR parts 350 and 359.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133N, Model Spinal Cord Injury Centers and 84.133A, Disability Rehabilitation Research Projects).

Program Authority: 29 U.S.C. 760, 764(a), and 764(b)(4).

Dated: February 22, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 06–1796 Filed 2–24–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Spinal Cord Injury Model Systems Centers (SCIMS Centers); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133N–1.

Dates: Applications Available: February 27, 2006.

Deadline for Transmittal of Applications: April 21, 2006.

Date of Pre-Application Meeting: March 20, 2006.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Estimated Available Funds: $6,500,000.

Estimated Range of Awards: $439,000–$489,000.

Estimated Average Size of Awards: $464,000.

Note: For planning purposes, NIDRR suggests that applicants allot no more than 15 percent of their budget to the module project.

Maximum Award: We will reject any application that proposes a budget

exceeding $489,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note 1: The maximum amount includes direct and indirect costs.

Note 2: SCIMS Centers will be funded at varying amounts up to the maximum award based on the numbers of subjects eligible for follow-up in the existing database. Existing centers with significantly larger numbers of subjects will receive higher funding within the specified range, as determined by NIDRR after the applicant is selected for funding.

Applicants should include in their budgets specific estimates of their costs for follow-up data collection. Funding will be determined individually for each successful applicant, up to the maximum allowed, based upon the documented workload associated with the follow-up data collection, the other costs of the grant, and the overall budgetary limits of the program.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide assistance for demonstration projects that (a) provide comprehensive rehabilitation services to individuals with spinal cord injuries and (b) conduct spinal cord research, including clinical research and analysis of standardized data in collection with other related projects.

Priority: This priority is from the notice of final priorities for the SCIMS program and the Disability Rehabilitation Research Projects (DRRP) program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

SCIMS Centers.

The general and specific requirements for meeting this priority are in the notice of final priority for this program and the DRRP program, published elsewhere in this issue of the **Federal Register**.

Note: The Department will invite by letter successful applicants under the SCIMS Centers competition to apply for funding as a lead center under the SCIMS Multi-Site Research Projects priority established for the DRRP program and published elsewhere in this issue of the **Federal Register**. Under this priority, we anticipate funding two collaborative, multi-site research projects in SCI research, with an estimated available funding level of $1.8 million. In addition, $2.66 million is available to support start-up activities associated with mounting these collaborative multi-site research projects.

Program Authority: 29 U.S.C. 760, 764(a), and 764(b)(4).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the SCIMS program and the DRRP program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $6,500,000.

Estimated Range of Awards: $439,000–$489,000.

Estimated Average Size of Awards: $464,000.

Note: For planning purposes, NIDRR suggests that applicants allot no more than 15 percent of their budget to the module project.

Maximum Award: We will reject any application that proposes a budget exceeding $489,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note 1: The maximum amount includes direct and indirect costs.

Note 2: SCIMS Centers will be funded at varying amounts up to the maximum award based on the numbers of subjects eligible for follow-up in the existing database. Existing centers with significantly larger numbers of subjects will receive higher funding within the specified range, as determined by NIDRR after the applicant is selected for funding.

Applicants should include in their budgets specific estimates of their costs for follow-up data collection. Funding will be determined individually for each successful applicant, up to the maximum allowed, based upon the documented workload associated with the follow-up data collection, the other costs of the grant, and the overall budgetary limits of the program.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the ED Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: ED Pubs, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133N.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under *For Further Information Contact* in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (ED Standard Form 424); budget requirements (ED Form 524) and narrative justification, which also includes a detailed budget for research projects and data collection; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: February 27, 2006.

Deadline for Transmittal of Applications: April 21, 2006.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the funding priority and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on March 20, 2006. Interested parties may participate in this meeting either by conference call or in person at the U.S. Department of Education, Office of Special Education and Rehabilitative Services, Potomac Center Plaza, room 6075, 550 12th Street, SW., Washington, DC between 10 a.m. and 12 noon. After the meeting, NIDRR staff also will be available from 1:30 p.m. to 4 p.m. on that same day to provide information and technical assistance through individual consultation. For further information or to make arrangements to attend either in person or by conference call, or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza, room 6030, 550 12th Street, SW., Washington, DC 20202. Telephone (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

Assistance to Individuals With Disabilities at the Pre-Application Meeting

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you will need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (*e.g.*, other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6 *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. Spinal Cord Injury Model System Centers—CFDA Number 84.133N–1 is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Spinal Cord Injury Model Systems Centers, 84.133N–1 at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all

registration steps to allow you to successfully submit an application via Grants.gov.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133N–1), 400 Maryland Avenue, SW., Washington, DC 20202–4260 or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133N–1), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133N–1), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where

required by the selection criteria listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert peer review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the GPRA indicators, revisions and methods appear in the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 22, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 06–1795 Filed 2–24–06; 8:45 am]

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1200–End	(869–056–00044–8)	45.00	Jan. 1, 2005
15 Parts:			
0–299	(869–060–00045–3)	40.00	Jan. 1, 2006
300–799	(869–056–00046–4)	60.00	Jan. 1, 2005
800–End	(869–056–00047–2)	42.00	Jan. 1, 2005
16 Parts:			
0–999	(869–056–00048–1)	50.00	Jan. 1, 2005
1000–End	(869–056–00049–9)	60.00	Jan. 1, 2005
17 Parts:			
1–199	(869–056–00051–1)	50.00	Apr. 1, 2005
200–239	(869–056–00052–9)	58.00	Apr. 1, 2005
240–End	(869–056–00053–7)	62.00	Apr. 1, 2005
18 Parts:			
1–399	(869–056–00054–5)	62.00	Apr. 1, 2005
400–End	(869–056–00055–3)	26.00	[6] Apr. 1, 2005
19 Parts:			
1–140	(869–056–00056–1)	61.00	Apr. 1, 2005
141–199	(869–056–00057–0)	58.00	Apr. 1, 2005
200–End	(869–056–00058–8)	31.00	Apr. 1, 2005
20 Parts:			
1–399	(869–056–00059–6)	50.00	Apr. 1, 2005
400–499	(869–056–00060–0)	64.00	Apr. 1, 2005
500–End	(869–056–00061–8)	63.00	Apr. 1, 2005
21 Parts:			
1–99	(869–056–00062–6)	42.00	Apr. 1, 2005
100–169	(869–056–00063–4)	49.00	Apr. 1, 2005
170–199	(869–056–00064–2)	50.00	Apr. 1, 2005
200–299	(869–056–00065–1)	17.00	Apr. 1, 2005
300–499	(869–056–00066–9)	31.00	Apr. 1, 2005
500–599	(869–056–00067–7)	47.00	Apr. 1, 2005
600–799	(869–056–00068–5)	15.00	Apr. 1, 2005
800–1299	(869–056–00069–3)	58.00	Apr. 1, 2005
1300–End	(869–056–00070–7)	24.00	Apr. 1, 2005
22 Parts:			
1–299	(869–056–00071–5)	63.00	Apr. 1, 2005
300–End	(869–056–00072–3)	45.00	Apr. 1, 2005
23	(869–056–00073–1)	45.00	Apr. 1, 2005
24 Parts:			
0–199	(869–056–00074–0)	60.00	Apr. 1, 2005
200–499	(869–056–00074–0)	50.00	Apr. 1, 2005
500–699	(869–056–00076–6)	30.00	Apr. 1, 2005
700–1699	(869–056–00077–4)	61.00	Apr. 1, 2005
1700–End	(869–056–00078–2)	30.00	Apr. 1, 2005
25	(869–056–00079–1)	63.00	Apr. 1, 2005
26 Parts:			
§§ 1.0–1–1.60	(869–056–00080–4)	49.00	Apr. 1, 2005
§§ 1.61–1.169	(869–056–00081–2)	63.00	Apr. 1, 2005
§§ 1.170–1.300	(869–056–00082–1)	60.00	Apr. 1, 2005
§§ 1.301–1.400	(869–056–00083–9)	46.00	Apr. 1, 2005
§§ 1.401–1.440	(869–056–00084–7)	62.00	Apr. 1, 2005
§§ 1.441–1.500	(869–056–00085–5)	57.00	Apr. 1, 2005
§§ 1.501–1.640	(869–056–00086–3)	49.00	Apr. 1, 2005
§§ 1.641–1.850	(869–056–00087–1)	60.00	Apr. 1, 2005
§§ 1.851–1.907	(869–056–00088–0)	61.00	Apr. 1, 2005
§§ 1.908–1.1000	(869–056–00089–8)	60.00	Apr. 1, 2005
§§ 1.1001–1.1400	(869–056–00090–1)	61.00	Apr. 1, 2005
§§ 1.1401–1.1550	(869–056–00091–0)	55.00	Apr. 1, 2005
§§ 1.1551–End	(869–056–00092–8)	55.00	Apr. 1, 2005
2–29	(869–056–00093–6)	60.00	Apr. 1, 2005
30–39	(869–056–00094–4)	41.00	Apr. 1, 2005
40–49	(869–056–00095–2)	28.00	Apr. 1, 2005
50–299	(869–056–00096–1)	41.00	Apr. 1, 2005

Title	Stock Number	Price	Revision Date
300–499	(869–056–00097–9)	61.00	Apr. 1, 2005
500–599	(869–056–00098–7)	12.00	[5]Apr. 1, 2005
600–End	(869–056–00099–5)	17.00	Apr. 1, 2005
27 Parts:			
1–199	(869–056–00100–2)	64.00	Apr. 1, 2005
200–End	(869–056–00101–1)	21.00	Apr. 1, 2005
28 Parts:			
0–42	(869–056–00102–9)	61.00	July 1, 2005
43–End	(869–056–00103–7)	60.00	July 1, 2005
29 Parts:			
0–99	(869–056–00104–5)	50.00	July 1, 2005
100–499	(869–056–00105–3)	23.00	July 1, 2005
500–899	(869–056–00106–1)	61.00	July 1, 2005
900–1899	(869–056–00107–0)	36.00	[7]July 1, 2005
1900–1910 (§§ 1900 to 1910.999)	(869–056–00108–8)	61.00	July 1, 2005
1910 (§§ 1910.1000 to end)	(869–056–00109–6)	58.00	July 1, 2005
1911–1925	(869–056–00110–0)	30.00	July 1, 2005
1926	(869–056–00111–8)	50.00	July 1, 2005
1927–End	(869–056–00112–6)	62.00	July 1, 2005
30 Parts:			
1–199	(869–056–00113–4)	57.00	July 1, 2005
200–699	(869–056–00114–2)	50.00	July 1, 2005
700–End	(869–056–00115–1)	58.00	July 1, 2005
31 Parts:			
0–199	(869–056–00116–9)	41.00	July 1, 2005
200–499	(869–056–00117–7)	33.00	July 1, 2005
500–End	(869–056–00118–5)	33.00	July 1, 2005
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–056–00119–3)	61.00	July 1, 2005
191–399	(869–056–00120–7)	63.00	July 1, 2005
400–629	(869–056–00121–5)	50.00	July 1, 2005
630–699	(869–056–00122–3)	37.00	July 1, 2005
700–799	(869–056–00123–1)	46.00	July 1, 2005
800–End	(869–056–00124–0)	47.00	July 1, 2005
33 Parts:			
1–124	(869–056–00125–8)	57.00	July 1, 2005
125–199	(869–056–00126–6)	61.00	July 1, 2005
200–End	(869–056–00127–4)	57.00	July 1, 2005
34 Parts:			
1–299	(869–056–00128–2)	50.00	July 1, 2005
300–399	(869–056–00129–1)	40.00	[7]July 1, 2005
400–End & 35	(869–056–00130–4)	61.00	July 1, 2005
36 Parts:			
1–199	(869–056–00131–2)	37.00	July 1, 2005
200–299	(869–056–00132–1)	37.00	July 1, 2005
300–End	(869–056–00133–9)	61.00	July 1, 2005
37	(869–056–00134–7)	58.00	July 1, 2005
38 Parts:			
0–17	(869–056–00135–5)	60.00	July 1, 2005
18–End	(869–056–00136–3)	62.00	July 1, 2005
39	(869–056–00139–1)	42.00	July 1, 2005
40 Parts:			
1–49	(869–056–00138–0)	60.00	July 1, 2005
50–51	(869–056–00139–8)	45.00	July 1, 2005
52 (52.01–52.1018)	(869–056–00140–1)	60.00	July 1, 2005
52 (52.1019–End)	(869–056–00141–0)	61.00	July 1, 2005
53–59	(869–056–00142–8)	31.00	July 1, 2005
60 (60.1–End)	(869–056–00143–6)	58.00	July 1, 2005
60 (Apps)	(869–056–00144–4)	57.00	July 1, 2005
61–62	(869–056–00145–2)	45.00	July 1, 2005
63 (63.1–63.599)	(869–056–00146–1)	58.00	July 1, 2005
63 (63.600–63.1199)	(869–056–00147–9)	50.00	July 1, 2005
63 (63.1200–63.1439)	(869–056–00148–7)	50.00	July 1, 2005
63 (63.1440–63.6175)	(869–056–00149–5)	32.00	July 1, 2005
63 (63.6580–63.8830)	(869–056–00150–9)	32.00	July 1, 2005
63 (63.8980–End)	(869–056–00151–7)	35.00	[7]July 1, 2005
64–71	(869–056–00152–5)	29.00	July 1, 2005
72–80	(869–056–00153–5)	62.00	July 1, 2005
81–85	(869–056–00154–1)	60.00	July 1, 2005
86 (86.1–86.599–99)	(869–056–00155–0)	58.00	July 1, 2005
86 (86.600–1–End)	(869–056–00156–8)	50.00	July 1, 2005
87–99	(869–056–00157–6)	60.00	July 1, 2005
100–135	(869–056–00158–4)	45.00	July 1, 2005
136–149	(869–056–00159–2)	61.00	July 1, 2005
150–189	(869–056–00160–6)	50.00	July 1, 2005
190–259	(869–056–00161–4)	39.00	July 1, 2005
260–265	(869–056–00162–2)	50.00	July 1, 2005
266–299	(869–056–00163–1)	50.00	July 1, 2005
300–399	(869–056–00164–9)	42.00	July 1, 2005
400–424	(869–056–00165–7)	56.00	[8]July 1, 2005
425–699	(869–056–00166–5)	61.00	July 1, 2005
700–789	(869–056–00167–3)	61.00	July 1, 2005
790–End	(869–056–00168–1)	61.00	July 1, 2005
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–056–00169–0)	24.00	July 1, 2005
101	(869–056–00170–3)	21.00	July 1, 2005
102–200	(869–056–00171–1)	56.00	July 1, 2005
201–End	(869–056–00172–0)	24.00	July 1, 2005
42 Parts:			
1–399	(869–056–00173–8)	61.00	Oct. 1, 2005
400–429	(869–056–00174–6)	63.00	Oct. 1, 2005
430–End	(869–056–00175–4)	64.00	Oct. 1, 2005
43 Parts:			
1–999	(869–056–00176–2)	56.00	Oct. 1, 2005
1000–end	(869–056–00177–1)	62.00	Oct. 1, 2005
44	(869–056–00178–9)	50.00	Oct. 1, 2005
45 Parts:			
1–199	(869–056–00179–7)	60.00	Oct. 1, 2005
200–499	(869–056–00180–1)	34.00	Oct. 1, 2005
500–1199	(869–056–00171–9)	56.00	Oct. 1, 2005
1200–End	(869–056–00182–7)	61.00	Oct. 1, 2005
46 Parts:			
1–40	(869–056–00183–5)	46.00	Oct. 1, 2005
41–69	(869–056–00184–3)	39.00	[9]Oct. 1, 2005
70–89	(869–056–00185–1)	14.00	[9]Oct. 1, 2005
90–139	(869–056–00186–0)	44.00	Oct. 1, 2005
140–155	(869–056–00187–8)	25.00	Oct. 1, 2005
156–165	(869–056–00188–6)	34.00	[9]Oct. 1, 2005
166–199	(869–056–00189–4)	46.00	Oct. 1, 2005
200–499	(869–056–00190–8)	40.00	Oct. 1, 2005
500–End	(869–056–00191–6)	25.00	Oct. 1, 2005
47 Parts:			
0–19	(869–056–00192–4)	61.00	Oct. 1, 2005
20–39	(869–056–00193–2)	46.00	Oct. 1, 2005
40–69	(869–056–00194–1)	40.00	Oct. 1, 2005
70–79	(869–056–00195–9)	61.00	Oct. 1, 2005
80–End	(869–056–00196–7)	61.00	Oct. 1, 2005
48 Chapters:			
1 (Parts 1–51)	(869–056–00197–5)	63.00	Oct. 1, 2005
1 (Parts 52–99)	(869–056–00198–3)	49.00	Oct. 1, 2005
2 (Parts 201–299)	(869–056–00199–1)	50.00	Oct. 1, 2005
3–6	(869–056–00200–9)	34.00	Oct. 1, 2005
7–14	(869–056–00201–7)	56.00	Oct. 1, 2005
15–28	(869–056–00202–5)	47.00	Oct. 1, 2005

Title	Stock Number	Price	Revision Date
29–End	(869–056–00203–3)	47.00	Oct. 1, 2005
49 Parts:			
1–99	(869–056–00204–1)	60.00	Oct. 1, 2005
100–185	(869–056–00205–0)	63.00	Oct. 1, 2005
186–199	(869–056–00206–8)	23.00	Oct. 1, 2005
200–299	(869–056–00207–6)	32.00	Oct. 1, 2005
300–399	(869–056–00208–4)	32.00	Oct. 1, 2005
400–599	(869–056–00209–2)	64.00	Oct. 1, 2005
600–999	(869–056–00210–6)	19.00	Oct. 1, 2005
1000–1199	(869–056–00211–4)	28.00	Oct. 1, 2005
1200–End	(869–056–00212–2)	34.00	Oct. 1, 2005
50 Parts:			
1–16	(869–056–00213–1)	11.00	Oct. 1, 2005
17.1–17.95(b)	(869–056–00214–9)	32.00	Oct. 1, 2005
17.95(c)–end	(869–056–00215–7)	32.00	Oct. 1, 2005
17.96–17.99(h)	(869–056–00215–7)	61.00	Oct. 1, 2005
17.99(i)–end and 17.100–end	(869–056–00217–3)	47.00	Oct. 1, 2005
18–199	(869–056–00218–1)	50.00	Oct. 1, 2005
200–599	(869–056–00218–1)	45.00	Oct. 1, 2005
600–End	(869–056–00219–0)	62.00	Oct. 1, 2005
CFR Index and Findings Aids	(869–056–00050–2)	62.00	Jan. 1, 2005
Complete 2006 CFR set		1,398.00	2006
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Subscription (mailed as issued)		332.00	2006
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Complete set (one-time mailing)		325.00	2004

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2005. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.